AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Subtitle B—Regulations of the Department of Agriculture (Continued)

CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE

Part		*Page*
400	General administrative regulations	7
401	[Reserved]	
402	Catastrophic Risk Protection Endorsement	81
403–406	[Reserved]	
407	Group risk plan of insurance regulations for the 2005 and succeeding crop years	85
408–411	[Reserved]	
412	Public information—Freedom of information	109
413–456	[Reserved]	
457	Common crop insurance regulations	110
458	[Reserved]	

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subparts A–B [Reserved]

Subpart C—General Administrative Regulations; Mutual Consent Cancellation

Sec.
400.27 Applicability.
400.28 Mutual consent criteria.
400.29–400.36 [Reserved]

Subparts D–E [Reserved]

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

400.45 Applicability.
400.46 Definitions.
400.47 Denial of crop insurance.
400.48 Protection of interests of tenants, landlords or producers.
400.49–400.50 [Reserved]

Subpart G—Actual Production History

400.51 Availability of actual production history program.
400.52 Definitions.
400.53 Yield certification and acceptability.
400.54 Submission and accuracy of production reports.
400.55 Qualifications for actual production history coverage program.
400.56 Administrative appeal exhaustion.
400.57 [Reserved]

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

400.65–400.66 [Reserved]

Subpart I [Reserved]

Subpart J—Appeal Procedure

400.90 Definitions.
400.91 Applicability.
400.92 Appeals.
400.93 Administrative review.
400.94 Mediation.
400.95 Time limitations for filing and responding to requests for administrative review.
400.96 Judicial review.
400.97 Reservations of authority.
400.98 Reconsideration process.

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

400.115 Purpose.
400.116 Definitions.
400.117 Determination of delinquency.
400.118 Demand for payment.
400.119 Notice to debtor; credit reporting agency.
400.120 Subsequent disclosure and verification.
400.121 Information disclosure limitations.
400.122 Attempts to locate debtor.
400.123 Request for review of the indebtedness.
400.124 Disclosure to credit reporting agencies.
400.125 Notice to debtor, collection agency.
400.126 Referral of delinquent debts to contract collection agencies.
400.127 [Reserved]
400.128 Definitions.
400.129 Salary offset.
400.130 Notice requirements before offset.
400.131 Request for a hearing and result if an employee fails to meet deadlines.
400.132 Hearings.
400.133 Written decision following a hearing.
400.134 Review of FCIC record related to the debt.
400.135 Written agreement to repay debt as an alternative to salary offset.
400.136 Procedures for salary offset; when deductions may begin.
400.137 Procedures for salary offset; types of collection.
400.138 Procedures for salary offset; methods of collection.
400.139 Nonwaiver of rights.
400.140 Refunds.
400.141 Internal Revenue Service (IRS) Tax Refund Offset.
400.142 Past-due legally enforceable debt eligible for refund offset.

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

400.161 Definitions.
400.162 Qualification ratios.
400.163 Applicability.
400.164 Availability of the Standard Reinsurance Agreement.
400.165 Eligibility for Standard Reinsurance Agreements.
400.166 Obligations of the Corporation.
400.167 Limitations on Corporation's obligations.
400.168 Obligations of participating insurance company.
400.169 Disputes.
400.170 General qualifications.
400.171 Qualifying when a state does not require that an Annual Statutory Financial Statement be filed.
400.172 Qualifying with less than two of the required ratios or ten of the analytical ratios meeting the specified requirements.
400.173 [Reserved]

400.174 Notification of deviation from financial standards.
400.175 Revocation and non-acceptance.
400.176 State action preemptions.
400.177 [Reserved]

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

400.201 Applicability of standards.
400.202 Definitions.
400.203 Financial statement and certification.
400.204 Notification of deviation from standards.
400.205 Denial or termination of contract and administrative reassignment of business.
400.206 Financial qualifications for acceptability.
400.207 Representative licensing and certification.
400.208 Term of the contract.
400.209 Electronic transmission and receiving system.
400.210 [Reserved]

Subpart N [Reserved]

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

400.301 Basic, purpose, and applicability.
400.302 Definitions.
400.303 Initial selection criteria.
400.304 Nonstandard Classification determinations.
400.305 Assignment of Nonstandard Classifications.
400.306 Spouses and minor children.
400.307 Discontinuance of participation.
400.308 Notice of Nonstandard Classification.
400.309 Requests for reconsideration.

Subpart P—Preemption of State Laws and Regulations

400.351 Basis and applicability.
400.352 State and local laws and regulations preempted.

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

400.401 Basis and purpose and applicability.
400.402 Definitions.
400.403 Required system of records.
400.404 Policyholder responsibilities.
400.405 Agent and loss adjuster responsibilities.
400.406 Insurance provider responsibilities.
400.407 Restricted access.
400.408 Safeguards and storage.
400.409 Unauthorized disclosure.
400.410 Penalties.
400.411 Obtaining personal records.
400.412 Record retention.
400.413 [Reserved]

Subpart R—Sanctions

400.451 General.
400.452 Definitions.
400.453 Exhaustion of administrative remedies.
400.454 Civil penalties.
400.455 Governmentwide debarment and suspension (procurement).
400.456 Governmentwide debarment and suspension (nonprocurement).
400.457 Program Fraud Civil Remedies Act.
400.458 Scheme or device.
400.459 Indebtedness.
400.460–400.500 [Reserved]

Subpart S [Reserved]

Subpart T—Federal Crop Insurance Reform, Insurance Implementation

400.650 Purpose.
400.651 Definitions.
400.652 Insurance availability.
400.653 Determining crops of economic significance.
400.654 Application and acreage report.
400.655 Eligibility for other program benefits.
400.656–400.657 [Reserved]

Subpart U—Ineligibility for Programs Under the Federal Crop Insurance Act

400.675 Purpose.
400.676 [Reserved]
400.677 Definitions.
400.678 Applicability.
400.679 Criteria for ineligibility.
400.680 Determination and notification of ineligibility.
400.681 Effect of ineligibility.
400.682 Criteria for reinstatement of eligibility.
400.683 Administration and maintenance.

Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium, and Premium Reduction Plans

400.700 Basis, purpose, and applicability.
400.701 Definitions.
400.702 Confidentiality of submission and duration of confidentiality.
400.703 Timing of submission.
400.704 Type of submission.
400.705 Contents required for a new submission or changes to a previously approved submission.
400.706 Review of submission.
400.707 Presentation to the Board for approval or disapproval.

400.708 Approved submission.
400.709 Roles and responsibilities.
400.710 Preemption and premium taxation.
400.711 Right of review, modification, and the withdrawal of reinsurance.
400.712 Research and development reimbursement, maintenance reimbursement, and user fees.
400.713 Non-reinsured supplemental (NRS) policy.
400.714 Requests for the opportunity to offer a premium discount.
400.715 Limitations and prohibitions.
400.716 Contents of the request for the opportunity to offer a premium discount.
400.717 New approved insurance providers.
400.718 RMA Review
400.719 Terms and conditions for the Premium Reduction Plan.
400.720 Standards for approval of a premium discount.
400.721 Determinations and reconsiderations.
400.722 Consumer complaints.

Subpart W [Reserved]

Subpart X—Interpretations of Statutory and Regulatory Provisions

400.765 Basis and applicability.
400.766 Definitions.
400.767 Requester obligations.
400.768 FCIC obligations.

Subparts A–B [Reserved]

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]

§§ 400.29–400.36 [Reserved]

Subparts D–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) The application and policy of insurance will be voided, or the person will be removed from the policy and the policyholder share reduced in accordance with 7 CFR 400.681(b), when any person becomes ineligible for crop insurance under the provisions of paragraph (a) of this section. To obtain crop insurance coverage following the period of ineligibility, the person must submit a new application for crop insurance.

(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; 65 FR 29942, May 10, 2000]

§ 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 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.

[59 FR 47787, Sept. 19, 1994, as amended at 69 FR 9520, Mar. 1, 2004]

§ 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 [Reserved]

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.

§ 400.65–400.66 [Reserved]

Subpart I [Reserved]

Subpart J—Appeal Procedure

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

SOURCE: 67 FR 13251, Mar. 22, 2002, unless otherwise noted.

§ 400.90 Definitions.

Act. The Federal Crop Insurance Act (7 U.S.C. 1501–1524).

Administrative review. A review within the Department of Agriculture of an adverse decision.

Adverse decision. A decision by an employee or Director of the Agency that is adverse to the participant. The term includes the denial of program benefits, written agreements, eligibility, etc. that results in the participant receiving less funds than the participant believes should have been paid or not receiving a benefit to which the participant believes he or she was entitled.

Agency. RMA or FCIC, including the RSO, FOSD or any other division within the Agency with decision making authority.

Appellant. Any participant who appeals or requests mediation of an adverse decision of the Agency in accordance with this subpart. Unless otherwise specified in this subpart, the term ''appellant'' includes an authorized representative.

Authorized representative. Any person, whether or not an attorney, who has obtained a Privacy Act waiver and is authorized in writing by a participant to act for the participant in the administrative review, mediation, or appeal process.

Certified State. A State with a mediation program, approved by the Secretary, that meets the requirements of 7 CFR part 1946, subpart A, or a successor regulation.

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

FOSD. The Fiscal Operations and Systems Division established by the Agency for the purpose of making determinations of indebtedness for policies insured by FCIC and for determining ineligibility for policies both insured and reinsured by FCIC.

FSA. The Farm Service Agency, an agency within USDA, or its successor agency.

Good farming practices. For agricultural commodities insured under the terms contained in 7 CFR part 457 and all other crop insurance policies authorized under the Act, except as provided herein, means the good farming practices as defined at 7 CFR 457.8. For agricultural commodities insured under the terms contained in 7 CFR part 407, means the good farming practices as defined at 7 CFR 407.9.

Insured. An individual or entity that has applied for crop insurance or who holds a crop insurance policy that was in effect for the previous crop year and continues to be in effect for the current crop year.

Mediation. A process in which a trained, impartial, neutral third party (the mediator), meets with the disputing parties, facilitates discussions, and works with the parties to mutually resolve their disputes, narrow areas of disagreement, and improve communication.

NAD. The USDA National Appeals Division. See 7 CFR part 11.

Non-certified State. A State that is not approved by the Secretary of Agriculture to participate in the USDA Mediation Program under 7 CFR part 1946, subpart A, or its successor regulation.

Participant. An individual or entity that has applied for crop insurance or who holds a valid crop insurance policy that was in effect for the previous crop year and continues to be in effect for the current crop year. The term does not include individuals or entities whose claims arise under the programs excluded in the definition of participant published at 7 CFR 11.1.

Reinsured company. A private insurance company, including its agents, that has been approved and reinsured by FCIC to provide insurance to participants.

Reviewing authority. A person assigned the responsibility by the Agency of making a decision on a request for administrative review by the participant in accordance with this subpart.

RMA. The Risk Management Agency, an agency within USDA, or its successor agency.

RSO. The Regional Service Office established by the Agency for the purpose of providing program and underwriting services for private insurance companies reinsured by FCIC under the Act and for FCIC insurance contracts delivered through FSA offices.

Secretary. The Secretary of Agriculture.

USDA. United States Department of Agriculture.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003]

§ 400.91 Applicability.

(a) This subpart applies to:

(1) Adverse decisions made by personnel of the Agency with respect to:

(i) Contracts of insurance insured by FCIC; and

(ii) Contracts of insurance of private insurance companies and reinsured by FCIC under the provisions of the Act.

(2) Determinations of good farming practices made by personnel of the Agency or the reinsured company (*see* § 400.98).

(b) This subpart is not applicable to any decision:

(1) Made by the Agency with respect to any matter arising under the terms of the Standard Reinsurance Agreement with the reinsured company; or

(2) Made by any private insurance company with respect to any contract of insurance issued to any producer by the private insurance company and reinsured by FCIC under the provisions of the Act, except for determinations of good farming practices specified in § 400.91(a)(2).

(c) With respect to matters identified in § 400.91(a)(1), participants may request an administrative review, mediation, or appeal of adverse decisions by the Agency made with respect to:

(1) Denial of participation in the crop insurance program;

(2) Compliance with terms and conditions of insurance;

(3) Issuance of payments or other program benefits to a participant in the crop insurance program; and

(4) Issuance of payments or other benefits to an individual or entity who is not a participant in the crop insurance program.

(d) Only a participant may seek an administrative review or mediation under this subpart, as applicable.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003]

§ 400.92 Appeals.

(a) Except for determinations of good farming practices, nothing in this subpart prohibits a participant from filing an appeal of an adverse decision directly with NAD in accordance with part 11 of this title without first requesting administrative review or mediation under this subpart.

(b) If the participant has timely requested administrative review or mediation, the participant may not participate in a NAD hearing until such administrative review or mediation is concluded. The time for appeal to NAD is suspended from the date of receipt of a request for administrative review or mediation until the conclusion of the administrative review or mediation. The participant will have only the remaining time to appeal to NAD after the conclusion of the administrative review or mediation.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003]

§ 400.93 Administrative review.

(a) With respect to adverse decisions, an appellant may seek one administrative review or seek mediation under § 400.94, but not both.

(b) If the appellant seeks an administrative review, the appellant must file a written request for administrative review with the reviewing authority in accordance with § 400.95. The written request must state the basis upon which the appellant relies to show that:

(1) The decision was not proper and not made in accordance with applicable program regulations and procedures; or

(2) All material facts were not properly considered in such decision.

(c) The reviewing authority will issue a written decision that will not be subject to further administrative review by the Agency.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003]

§ 400.94 Mediation.

For adverse decisions only:

(a) Appellants have the right to seek mediation or other forms of alternative dispute resolution instead of an administrative review under § 400.93.

(b) All requests for mediation under this subpart must be made after issuance of the adverse decision by the Agency and before the appellant has a NAD hearing on the adverse decision.

(c) An appellant who chooses mediation must request mediation not later than 30 calendar days from receipt of the written notice of the adverse decision. A request for mediation will be considered to have been ''filed'' when personally delivered in writing to the appropriate decision maker or when the properly addressed request, postage paid, is postmarked.

(d) An appellant will have any balance of the days remaining in the 30-day period to appeal to NAD if mediation is concluded without resolution. If a new adverse decision that raises new matters or relies on different grounds is issued as a result of mediation, the participant will have a new 30-day period for appeals to NAD.

(e) An appellant is responsible for contacting the Certified State Mediation Program in States where such mediation program exists. The State mediation program will make all arrangements for the mediation process. A list of Certified State Mediation Programs is available at *http://www.act.fcic.usda.gov*.

(f) An appellant is responsible for making all necessary contacts to arrange for mediation in non-certified States or in certified States that are not currently offering mediation on the subject in dispute. An appellant needing mediation in States without a certified mediation program may request mediation by contacting the RSO, which will provide the participant with a list of acceptable mediators.

(g) An appellant may only mediate an adverse decision once.

(h) If the dispute is not completely resolved in mediation, the adverse decision that was the subject of the mediation remains in effect and becomes the adverse decision that is appealable to NAD.

(i) If the adverse decision is modified as a result of the mediation process, the modified decision becomes the new adverse decision for appeal to NAD.

§ 400.95 Time limitations for filing and responding to requests for administrative review.

(a) A request for administrative review must be filed within 30 days of receipt of written notice of the adverse decision. A request for an administrative review will be considered to have been ''filed'' when personally delivered in writing to the appropriate decision maker or when the properly addressed request, postage paid, is postmarked.

(b) Notwithstanding paragraph (a) of this section, an untimely request for administrative review may be accepted and acted upon if the participant can demonstrate a physical inability to timely file the request for administrative review.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003]

§ 400.96 Judicial review.

Except as provided in § 400.98, with respect to adverse determinations:

(a) A participant must exhaust administrative remedies before seeking judicial review of an adverse decision. This requires the participant to appeal an Agency adverse decision to NAD in accordance with 7 CFR part 11 prior to seeking judicial review of the adverse decision.

(b) If the adverse decision involves a matter determined by the Agency to be not appealable, the appellant must request a determination of non-appealability from the Director of NAD, and appeal the adverse decision to NAD if the Director determines that it is appealable, prior to seeking judicial review.

(c) A participant with a contract of insurance reinsured by the Agency may bring suit against the Agency if the suit involves an adverse action in a United States district court after exhaustion of administrative remedies as provided in this section. Nothing in this section can be construed to create privity of contract between the Agency and a participant.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003]

§ 400.97 Reservations of authority.

(a) Representatives of the Agency may correct all errors in entering data on program contracts and other program documents, and the results of computations or calculations made pursuant to the contract.

(b) Nothing contained in this subpart precludes the Secretary, the Manager of FCIC, or the Administrator of RMA, or a designee, from determining at any time any question arising under the programs within their respective authority or from reversing or modifying any adverse decision.

§ 400.98 Reconsideration process.

(a) This reconsideration process only applies to determinations of good farming practices under § 400.91(a)(2).

(b) There is no appeal to NAD of determinations or reconsideration decisions regarding good farming practices.

(c) Only reconsideration is available for determinations of good farming practices. Mediation is not available for determinations of good farming practices.

(d) If the insured seeks reconsideration, the insured must file a written request for reconsideration to the following: USDA/RMA/Deputy Administrator for Insurance Services/Stop 0805, 1400 Independence Avenue SW., Washington, DC 20250–0801.

(1) A request for reconsideration must be filed within 30 days of receipt of written notice of the determination regarding good farming practices. A request for reconsideration will be considered to have been ''filed'' when personally delivered in writing to FCIC or when the properly addressed request, postage paid, is postmarked.

(2) Notwithstanding paragraph (d)(1) of this section, an untimely request for reconsideration may be accepted and acted upon if the insured can demonstrate a physical inability to timely file the request for reconsideration.

(3) The written request must state the basis upon which the insured relies to show that:

(i) The decision was not proper and not made in accordance with applicable program regulations and procedures; or

(ii) All material facts were not properly considered in such decision.

(e) With respect to determinations of good farming practices, the insured is

not required to exhaust the administrative remedies in 7 CFR part 11 before bringing suit against FCIC in a United States district court. However, regardless of whether the Agency or the reinsured company makes the determination, the insured must seek reconsideration under §400.98 before bringing suit against FCIC in a United States District Court. The insured cannot file suit against the reinsured company for determinations of good farming practices.

(f) Any reconsideration decision by the Agency regarding good farming practices shall not be reversed or modified as a result of judicial review unless the reconsideration decision is found to be arbitrary or capricious.

[68 FR 37720, June 25, 2003]

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 [Reserved]

§ 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]

§ 400.132 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]

§ 400.133 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 further redesignated at 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 request the Deputy Administrator of Insurance Services to make a final administrative determination addressing the disputed action. The Deputy Administrator of Insurance Services will render the final administrative determination of the Corporation with respect to the applicable actions. All requests for a final administrative determination must be in writing and submitted within 45 days after receipt after the disputed action.

(b) With respect to compliance matters, the Compliance Field Office renders an initial finding, permits the company to respond, and then issues a final finding. If the company believes that the Compliance Field Office's final finding is not in accordance with the applicable laws, regulations, custom or practice of the insurance industry, or FCIC approved policy and procedure, it may request, the Deputy Administrator of Compliance to make a final administrative determination addressing the disputed final finding. The Deputy Administrator of Compliance will render the final administrative determination of the Corporation with respect to these issues. All requests for a final administrative determination must be in writing and submitted within 45 days after receipt of the final finding.

(c) A company may also request reconsideration by the Deputy Administrator of Insurance Services of a decision of the Corporation rendered under any Corporation bulletin or directive which bulletin or directive does not interpret, explain, or restrict the terms of the reinsurance agreement. The company, if it disputes the Corporation's determination, must request a reconsideration of that determination in writing, within 45 days of the receipt of the determination. The determinations of the Deputy Administrator 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 paragraph (a) or (b) of this section may be appealed to the Board of Contract Appeals in accordance with the provisions of subtitle A, part 24 of title 7 of the Code of Federal Regulations.

[65 FR 3782, Jan. 25, 2000]

§ 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%.

Ratio	Ratio requirement
(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 punitive or compensatory damages or an award of attorney fees or other costs against the Company issuing such policy, unless a determination is obtained from the Corporation that the Company, its employee, agent or loss adjuster failed to comply with the terms of the policy or procedures issued by the Corporation and such failure resulted in the insured receiving a payment in an amount that is less than the amount to which the insured was entitled.

[52 FR 17543, May 11, 1987. Redesignated at 53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988, as amended at 69 FR 48730, Aug. 10, 2004]

§ 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 [Reserved]

Subpart N [Reserved]

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

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

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.*), to prescribe the procedures for nonstandard determinations and the assignment of assigned yields 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 and on those policies where the insurance coverage or indemnities are based on determinations applicable to the individual insured. These regulations will not be applicable to any policy where the amount of coverage or indemnities are based on the experience of the area.

[62 FR 22876, Apr. 28, 1997]

§ 400.302 Definitions.

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

Actively engaged in farming means a person who, in return for a share of profits and losses, makes a contribution to the production of an insurable crop in the form of capital, equipment, land, personal labor, or personal management.

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.

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

Corporation—means the Federal Crop Insurance Corporation.

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.

Cumulative loss ratio—means the ratio of total indemnities to total earned premiums during the base period expressed as a decimal.

Earned premium means premium earned (both the amount subsidized and the amount paid by the producer, but excluding any amount of the subsidy attributed to the operating and administrative expenses of the insurance provider) for a crop under a policy insured or reinsured by the Corporation.

Earned premium rate—means premium earned divided by liability and expressed as a percentage.

Entity—means a person as defined in this subpart other than an individual.

Indemnified loss means a loss applicable for the policy for any year during the NCS base period for which the total indemnity exceeds the total earned premium. If the person has insurance for the crop in more than one county for any crop year, indemnities and premiums will be accumulated for all counties for each crop year to determine an indemnified loss.

Insurance experience means earned premiums, indemnities paid (but not including replant payments), and other data for the crop (after applicable adjustments), resulting from all of the insured's crop insurance policies insured or reinsured by the Corporation for one or more crop years and will include all information from all counties in which the person was insured.

Loss ratio—means the ratio of indemnity to earned premium expressed as a decimal.

NCS means nonstandard classification system.

NCS base period means the 10 consecutive crop years (as defined in the crop policy) ending 2 crop years prior to the crop year in which the NCS classification becomes effective for all crops, except those specified on the Special Provisions. For these excepted crops, the NCS base period means the 10 consecutive crop years ending 3 crop years prior to the crop year in which the NCS classification becomes effective. For example: An NCS classification effective for the 1996 crop year against a producer of citrus production in Arizona, California, and Texas, or sugarcane would have a NCS base period that includes the 1984 through 1993 crop years. An NCS classification effective for the 1996 crop year against a producer of all other crops would have a NCS base period that includes the 1985 through 1994 crop years.

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.

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.

[55 FR 32595, Aug. 10, 1990, as amended at 62 FR 22876, Apr. 28, 1997]

§ 400.303 Initial selection criteria.

(a) Nonstandard classification procedures in this subpart initially apply when all of the following insurance experience criteria (including any applicable adjustment in § 400.303(d)) for the crop have been met:

(1) Three (3) or more indemnified losses during the NCS base period;

(2) Cumulative indemnities in the NCS base period that exceed cumulative premiums during the same period by at least $500;

(3) The result of dividing the number of indemnified losses during the NCS base period by the number of years premium is earned for that period equals .30 or greater; and

(4) Either of the following apply:

(i) The natural logarithm of the cumulative earned premium rate multiplied by the square root of the cumulative loss ratio equals 2.00 or greater; or

(ii) Five (5) or more indemnified losses have occurred during the NCS base period and the cumulative loss ratio equals or exceeds 1.50.

(b) The minimum standards provided in paragraphs (a) (2), (3), and (4) of this section may be increased in a specific county if that county's overall insurance experience for the crop is substantially different from the insurance experience for which the criteria was determined. The increased standard will apply until the conditions requiring the increase no longer apply. Any change in the standards will be contained in the Special Provisions for the crop.

(c) 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.

(d) Insurance experience for the crop will be adjusted, by county and crop year, to discount the effect of indemnities caused by widespread adverse growing conditions. Adjustments are determined as follows:

(1) Determine the average yield for the county using the annual county crop yields for the previous 20 crop years, unless such data is not available;

(2) Determine the normal variability in the average yield for the county, expressed as the standard deviation;

(3) Subtract the result of § 400.303(d)(2) from § 400.303(d)(1);

(4) Divide the annual crop yield for the county for each crop year in the NCS base period by the result of § 400.303(d)(3), the result of which may not exceed 1.0;

(5) Subtract the result of § 400.303(d)(4) for each crop year from 1.0;

(6) Multiply the result of § 400.303(d)(5) by the liability for the crop year; and

(7) Subtract the result of § 400.303(d)(6) from any indemnity for that crop year.

(e) FCIC may substitute the crop yields of a comparable crop in determining § 400.303(d) (1) and (2), or may adjust the average yield or the measurement of normal variability for the county crop, or any combination thereof, to account for trends or unusual variations in production of the county crop or if the availability of yield and loss data for the county crop is limited. Information about how these determinations are made is available by submitting a request to the FCIC Regional Service Office for the producer's area. Alternate methods of determining the effects of adverse growing conditions on insurance experience may be implemented by FCIC if allowed in the Special Provisions.

[55 FR 32595, Aug. 10, 1990, as amended at 62 FR 22876, Apr. 28, 1997]

§ 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 are 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 section 400.309, or as the result of appeals under 7 CFR part 11.

(c) A nonstandard classification may be assigned to identified insurable acreage; a person; or to a combination of person and identified acreage for a crop or crop practice, type, variety, or crop option or amendment 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.

[55 FR 32595, Aug. 10, 1990, as amended at 62 FR 22877, Apr. 28, 1997]

§ 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 Discontinuance of participation.

If the person has discontinued participation in the crop insurance program, the person will still be included on the NCS list in the county until the person has discontinued participation

as a policyholder or a person with a substantial beneficial interest in a policyholder for at least 10 consecutive crop years. 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. A nonstandard classification will no longer be applicable to the person or the person on identified acreage if the Corporation determines the person is deceased.

[62 FR 22877, Apr. 28, 1997]

§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 that 30 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) Any person not satisfied by a determination of the Corporation upon reconsideration may further appeal under the provisions of 7 CFR part 11.

[55 FR 32595, Aug. 10, 1990, as amended at 62 FR 22877, Apr. 28, 1997]

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 precludes such damages being imposed against the company if a determination is obtained from FCIC that the company, its employee, agent or loss adjuster failed to comply with the terms of the policy or procedures issued by FCIC and such failure resulted in the insured receiving a payment in an amount that is less than the amount to which the insured was entitled); 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.

[55 FR 23069, June 6, 1990, as amended at 69 FR 48730, Aug. 10, 2004]

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

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

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 Act to prescribe procedures for the collection, use, and confidentiality of Social Security Numbers (SSN) and Employer Identification Numbers (EIN) and related records.

(b) These regulations are applicable to:

(1) All holders of crop insurance policies issued by FCIC under the Act and sold and serviced by local FSA offices.

(2) All holders of crop insurance policies sold by insurance providers and all insurance providers, their contractors and subcontractors, including past and present officers and employees of such companies, their contractors and subcontractors.

(3) Any agent, general agent, or company, or any past or present officer, employee, contractor or subcontractor of such agent, general agent, or company under contract to FCIC or an insurance provider for loss adjustment or any other purpose related to the crop insurance programs insured or reinsured by FCIC; and

(4) All past and present officers, employees, elected officials, contractors, and subcontractors of FCIC and FSA.

[57 FR 46297, Oct. 8, 1992, as amended at 62 FR 28608, May 27, 1997]

§ 400.402 Definitions.

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

Applicant—A person who has submitted an application for crop insurance coverage under the Act.

Authorized person—Any current or past officer, employee, elected official, general agent, contractor, or loss adjuster of FCIC, the insurance provider, or any other government agency whose

duties require access to administer the Act.

Disposition of records—The act of removing and disposing of records containing a participant's SSN or EIN by FCIC, or the insurance provider.

FCIC—The Federal Crop Insurance Corporation of the United States Department of Agriculture or any successor agency.

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

Insurance provider—A private insurance company approved by FCIC, or a local FSA office providing crop insurance coverage to producers participating in any program administered under the Act.

Past officers and employees—Any officer or employee of FCIC or the insurance provider who leaves the employ of FCIC or the insurance provider subsequent to the effective date of this rule.

Person—An individual, partnership, association, corporation, estate, trust, or other legal entity, and whenever applicable, a state, political subdivision, or an agency of a state.

Policyholder—An applicant whose application for insurance under the crop insurance program has been accepted by FCIC or the insurance provider.

Retrieval of records—Retrieval of a person's records by that person's SSN or EIN, or name.

Safeguards—Methods of security to be employed by FCIC or the insurance provider to protect a participant's SSN or EIN from unlawful disclosure and access.

Storage—The secured storing of records kept by FCIC or the insurance provider on computer disks or drives, computer printouts, magnetic tape, index cards, microfiche, microfilm, etc.

Substantial beneficial interest—Any person having an interest of at least 10 percent in the applicant or policyholder.

System of records—Records established and maintained by FCIC or the insurance provider containing SSN or EIN data, name, address, city and State, applicable policy numbers, and other information related to multiple peril crop insurance policies as required by FCIC, from which information is retrieved by a personal identifier including, but not limited to the SSN, EIN, or name.

[62 FR 28608, May 27, 1997]

§ 400.403 Required system of records.

Insurance providers are required to implement a system of records for obtaining, using, and storing documents containing SSN or EIN data before they accept or receive any applications for insurance. This data should include: name; address; city and state; SSN or EIN; and policy numbers which have been used by FCIC or the insurance provider.

[62 FR 28608, May 27, 1997]

§ 400.404 Policyholder responsibilities.

(a) The policyholder or applicant for crop insurance must provide a correct SSN or EIN to FCIC or the insurance provider to be eligible for insurance. The SSN or EIN will be used by FCIC and the insurance provider in:

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

(2) Collecting premiums or other amounts due FCIC or the insurance provider;

(3) Determining the amount of indemnities;

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

(5) Determining eligibility for crop insurance program participation or other United States Department of Agriculture 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, FCIC or the reinsured company shall reject the application.

(c) The policyholder or applicant is required to provide to FCIC or the insurance provider, the name and SSN or EIN of any individual or other entity:

(1) holding or acquiring a substantial beneficial interest in such policyholder or applicant; or

(2) having any interest in the policyholder or applicant and receiving separate benefits under another United States Department of Agriculture program as a direct result of such interest.

(d) If a policyholder or applicant is using an EIN for a policy in an individual person's name, the SSN of the

policyholder or applicant must also be provided.

[62 FR 28608, May 27, 1997]

§ 400.405 Agent and loss adjuster responsibilities.

(a) The agent or loss adjuster shall provide his or her correct SSN to FCIC or the insurance provider, whichever is applicable, to be eligible to participate in the crop insurance program. The SSN will be used by FCIC and the insurance provider in establishing a database for the purposes of:

(1) Identifying agents and loss adjusters on an individual basis;

(2) Evaluating agents and loss adjusters to determine level of performance;

(3) Determining eligibility for program participation; and

(4) Collection of any amount which may be owed by the agent and loss adjuster to the United States.

(b) If the loss adjuster contracting with FCIC to participate in the crop insurance program does not provide his or her correct SSN on forms or contracts where such SSN is required, the loss adjuster's contract will be cancelled effective on the date of refusal and the loss adjuster will be subject to suspension and debarment in accordance with the suspension and debarment regulations of the United States Department of Agriculture.

(c) If the agent or loss adjuster contracting with an insurance provider, who is also a private insurance company, to participate in the crop insurance program does not provide his or her correct SSN on forms or contracts where such SSN is required, the premium subsidy payable for administrative and operating expenses under the Standard Reinsurance Agreement, or any other reinsurance agreement, will not be paid on those policies lacking the correct SSN.

[62 FR 28609, May 27, 1997]

§ 400.406 Insurance provider responsibilities.

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

[62 FR 28609, May 27, 1997]

§ 400.407 Restricted access.

The Manager, other officer, or employee of FCIC or an authorized person may have access to the SSNs and EINs obtained pursuant to this subpart, only for the purpose of establishing and maintaining a system of records necessary for the effective administration of the Act.

[62 FR 28609, May 27, 1997]

§ 400.408 Safeguards and storage.

Records must be maintained in secured storage with proper safeguards sufficient to enforce the restricted access provisions of this subpart.

[62 FR 28609, May 27, 1997]

§ 400.409 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.

[57 FR 46297, Oct. 8, 1992. Redesignated at 62 FR 28608, May 27, 1997]

§ 400.410 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.

[57 FR 46297, Oct. 8, 1992. Redesignated at 62 FR 28608, May 27, 1997]

§ 400.411 Obtaining personal records.

Policyholders, agents, and loss adjusters in the crop insurance program will be able to review and correct their records as provided by the Privacy Act. Records may be requested by:

(a) Mailing a signed written request to the headquarters office of FCIC; the FCIC Regional Service Office, or the insurance provider; or

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

[57 FR 46297, Oct. 8, 1992. Redesignated and amended at 62 FR 28608, 28609, May 27, 1997]

§ 400.412 Record retention.

(a) FCIC or the insurance provider will retain all records of policyholders for a period of not less than 3 years from the date of final action on a policy for the crop year, unless further maintenance of specific records is requested by FCIC. Final actions on insurance policies include conclusion of insurance events, such as the latest of termination of the policy, completion of loss adjustment, or satisfaction of claim.

(b) The statute of limitations for FCIC contract claims may permit litigation to be instituted after the period of record retention. Destruction of records prior to the expiration of the statute of limitations will not provide a defense to any action by FCIC against any private insurance company.

[62 FR 28609, May 27, 1997]

§ 400.413 [Reserved]

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 an amount specified in § 3.91(b)(7) of this title 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; 62 FR 40928, July 31, 1997]

§ 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]

§§ 400.460–400.500 [Reserved]

Subpart S [Reserved]

Subpart T—Federal Crop Insurance Reform, Insurance Implementation

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, 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.

[61 FR 42975, Aug. 20, 1996, as amended at 68 FR 37721, June 25, 2003]

§ 400.651 Definitions.

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

Additional coverage. A level of coverage greater than catastrophic risk protection.

Administrative fee. An amount the producer must pay for catastrophic, and additional coverage each crop year on a per crop and county basis as specified in the Basic Provisions or the Catastrophic Risk Protection Endorsement.

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 actual production history (APH) yield, calculated and approved by the verifier, used to determine the production guarantee by summing the yearly actual, assigned, adjusted or unadjusted transitional yields and dividing the sum by the number of yields contained in the database, which will always contain at least four yields. The database may contain up to 10 consecutive crop years of actual or assigned yields. The approved yield may have yield adjustments elected under applicable policy provisions, or other

limitations according to FCIC approved procedures applied when calculating the approved yield.

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.

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 § 400.655, 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.

[61 FR 42975, Aug. 20, 1996, as amended at 63 FR 40634, July 30, 1998; 64 FR 40742, July 28, 1999; 68 FR 37721, June 25, 2003]

§ 400.652 Insurance availability.

(a) If sufficient actuarial data are available, FCIC will offer catastrophic risk protection, 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. 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 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.

[61 FR 42975, Aug. 20, 1996, as amended at 68 FR 37721, June 25, 2003]

§ 400.653 Determining crops of economic significance.

To be eligible for certain other program benefits under § 400.655 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 § 400.655. Failure to execute such a waiver will require the producer to refund any benefits already received under a program specified in § 400.655.

(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.

[61 FR 42975, Aug. 20, 1996, as amended at 64 FR 40742, July 28, 1999]

§ 400.654 Application and acreage report.

(a) To participate in catastrophic risk protection, 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 § 400.655, 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 § 400.655. 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 additional coverage after the sales closing date for the substitute crop.

(d) For all coverages, including catastrophic risk protection, 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.

[61 FR 42975, Aug. 20, 1996, as amended at 64 FR 40742, July 28, 1999; 68 FR 37721, June 25, 2003]

§ 400.655 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.

[61 FR 42975, Aug. 20, 1996. Redesignated at 63 FR 40634, July 30, 1998]

§§ 400.656–400.657 [Reserved]

Subpart U—Ineligibility for Programs Under the Federal Crop Insurance Act

AUTHORITY: 7 U.S.C. 1506(1), 1506(p).

SOURCE: 62 FR 42042, Aug. 5, 1997, unless otherwise noted.

§ 400.675 Purpose.

This rule prescribes conditions under which a person may be determined to be ineligible to participate in any program administered by FCIC under the Federal Crop Insurance Act, as amended. This rule also establishes the criteria for reinstatement of eligibility.

§ 400.676 [Reserved]

§ 400.677 Definitions.

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

Actively engaged in farming. Means a person who, in return for a share of profits and losses, makes a contribution to the production of an insurable crop in the form of capital, equipment, land, personal labor, or personal management.

Applicant. A person who has submitted an application for crop insurance coverage under the Act.

Authorized person. Any current or past officer, employee, elected official, general agent, agent, contractor, or loss adjuster of FCIC, the insurance provider, or any other government agency whose duties require access to the Ineligible Tracking System to administer the Act.

CAT. The catastrophic risk protection plan of insurance.

Controlled substance. Any prohibited drug-producing plants including, but not limited to, cacti of the genus (lophophora), coca bushes (erythroxylum coca), marijuana (cannabis sativa), opium poppies (papaver somniferum), and other drug-producing plants, the planting and harvesting of which is prohibited by Federal or state law.

Debt. An amount of money which has been determined by an appropriate agency official to be owed, by any person, to FCIC or an insurance provider under any program administered under the Act based on evidence submitted by the insurance provider. The debt may have arisen from an overpayment, premium or administrative fee nonpayment, interest, penalties, or other causes.

Debtor. A person who owes a debt and that debt is delinquent.

Delinquent debt. Any debt owed to FCIC or the insurance provider, that arises under any program administered under the authority of the Act, 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, or any overdue debt owed to FCIC or the insurance provider which is the subject of a scheduled installment payment agreement which the debtor has failed to satisfy under the terms of such agreement. Such debt may include any accrued interest, penalty, and administrative charges for which demand for repayment has been made, or unpaid premium including any accrued interest, penalty and administrative charges (7 CFR 400.116). A delinquent debt does not include debts discharged in bankruptcy and other debts which are legally barred from collection.

EIN. An Employer Identification Number as required under section 6109 of the Internal Revenue Code of 1986.

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within the United States Department of Agriculture.

FSA. The Farm Service Agency or a successor agency.

Ineligible person. A person who is denied participation in any program administered by FCIC under the Act.

Insurance provider. A reinsured company or FSA providing crop insurance coverage to producers participating in any Federal crop insurance program administered under the Act.

Minor. Any person under 18 years of age. Court proceedings conferring majority on an individual under 18 years of age will result in such persons no longer being considered as a minor.

Person. An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, political subdivision, or an agency of a State.

Policyholder. An applicant whose properly completed application for insurance under the crop insurance program has been accepted by FCIC or an insurance provider.

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

Reinsured company. A private insurance company having a Standard Reinsurance Agreement, or other reinsurance agreement, with FCIC, whose crop insurance policies are approved and reinsured by FCIC.

Scheduled installment payment agreement. An agreement between a person and FCIC or the insurance provider to satisfy financial obligations of the person under conditions which modify the terms of the original debt.

Settlement. An agreement between a person and FCIC or the insurance provider to resolve a dispute arising from a debt or other administrative determination.

SSN. An individual's Social Security Number as required under section 6109 of the Internal Revenue Code of 1986.

Standard Reinsurance Agreement (SRA). The primary reinsurance agreement between the reinsured company and FCIC.

Substantial beneficial interest. An interest held by any person of at least 10 percent or more in the applicant or policyholder.

System of records. Records established and maintained by FCIC and FSA containing SSN or EIN data, name, address, city and State, applicable policy numbers, and other information related to Federal crop programs as required by FCIC, from which information is retrieved by a personal identifier including the SSN, EIN, name, or other unique identifier of a person.

[62 FR 42042, Aug. 5, 1997, as amended at 63 FR 40631, July 30, 1998]

§ 400.678 Applicability.

This subpart applies to any program administered by FCIC under the Act, including:

(a) The catastrophic risk protection plan of insurance;

(b) The limited and additional coverage plans of insurance as authorized under sections 508(c) and 508(m) of the Act; and

(c) Private insurance products authorized under section 508(h) of the Act and reinsured by FCIC.

§ 400.679 Criteria for ineligibility.

Any person may be determined to be ineligible to participate in any program administered by FCIC under the authority of the Act, if the person meets one or more of the following criteria:

(a) Has a delinquent debt on a crop insurance policy, issued or reinsured by FCIC, or any delinquent debt due FCIC under the Act. Any person with a delinquent debt owed to FCIC or to the insurance provider shall be ineligible to participate in any program administered under the authority of the Act. Such determinations will be in accordance with 7 CFR 400.459. The existence and delinquency of the debt must be verifiable.

(b) Has violated the controlled substance (7 CFR part 718) provisions of the Food Security Act of 1985, as amended. Any person who violates the controlled substance provisions of the Food Security Act of 1985, as amended, shall be ineligible to participate in any program administered under the Act.

(c) Has been disqualified under section 506(n) of the Act and 7 CFR part 400, subpart R. Any person who is disqualified in any administrative proceeding shall be ineligible to participate in any program administered under the Act. Ineligibility determinations resulting from administrative proceedings will not be stayed pending review. However, reversal of the determination will date back to the time of determination.

§ 400.680 Determination and notification of ineligibility.

(a) The insurance provider must send a written notice of the debt to the person, including the time frame in which the debt must be paid, and provide the person with a meaningful opportunity to contest the amount or existence of the debt. After the insurance provider has evaluated the person's response, if any, and determined that the debt is owed and delinquent, the insurance provider should submit the documentation establishing the existence and amount of the debt to FCIC, including any response by the person.

(b) If an insurance provider or any other authorized person has evidence that a person meets any other criteria set forth in § 400.679, they must submit the evidence to FCIC.

(c) After FCIC verifies that the person has met one or more of the criteria stated in § 400.679, FCIC will issue a Notice of Ineligibility and mail such notice to the person's last known address and to the insurance provider.

(d) The Notice of Ineligibility will state the criteria upon which the determination of ineligibility has been based, a brief statement of the facts to support the determination, the time period of ineligibility, and the persons right to an appeal of the ineligibility determination.

(e) Within 30 days of receiving the Notice of Ineligibility, any person receiving such a notice may appeal the determination of ineligibility to the National Appeals Division in accordance with 7 CFR part 11.

(f) If the person appeals the determination of ineligibility to the National Appeals Division, the insurance provider will be notified and provided with an opportunity to participate in the proceeding if permitted by 7 CFR part 11.

§ 400.681 Effect of ineligibility.

(a) The period of ineligibility will be effective:

(1) For ineligibility as a result of a delinquent debt, the date the debt has been determined to be delinquent until the debt has been paid in full, discharged in bankruptcy, or the person has executed a scheduled installment payment agreement;

(2) For ineligibility as a result of a violation of the controlled substance provisions of the Food Security Act of 1985, at the beginning of the crop year in which the producer was convicted and the four subsequent consecutive crop years; and

(3) For ineligibility as a result of a disqualification under section 506(n) of the Act, the date that the Administrative Law Judge signs the order disqualifying the person until the period specified in the order of disqualification has expired.

(b) Once the person has been determined to be ineligible:

(1) All policies in which the ineligible person is the sole insured will be void for the period specified in § 400.681(a);

(2) If the ineligible person is a general partnership, all partners will be individually ineligible and any policy in which a partner has a 100 percent interest will be void for the period specified in § 400.681(a). The partnership and all partners will be removed from any policy in which they have a substantial beneficial interest, and the policyholder share under the policies will be reduced commensurate with the ineligible person's share;

(3) If the applicant or policyholder is a corporation, partnership, or other business entity, and an ineligible person has a substantial beneficial interest in the applicant or policyholder, the application may be accepted or existing policies remain in effect, although the ineligible person will be removed from the policies and the policyholder share under the policies will be reduced commensurate with the ineligible person's share;

(4) If the applicant or policyholder is a corporation, partnership, or other business entity that was created to conceal the interest of a person in the farming operation or to evade the ineligibility determination of a person with a substantial beneficial interest in the applicant or policyholder, the corporation, partnership or other business entity will be disregarded, the individual shareholders or partners will be personally responsible, and any shareholder or partner that is ineligible will be removed from the policy and the policyholder share under the

policies will be reduced commensurate with the ineligible person's share;

(5) Any indemnities or payments made on a voided policy, or on the portion of the policy reduced because of ineligibility, will be declared overpayments and must be repaid; and

(6) If the policy is voided, all producer paid premiums may be refunded, or if an ineligible person is removed from a policy, the portion of the producer paid premium commensurate with the ineligible person's share may be refunded, less a reasonable amount for expense and handling in accordance with 7 CFR 400.47.

(c) 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 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 (Transfers of interest in a farming operation from one spouse to another will not be considered as a separate farming operation.);

(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 record keeping for the minor's farming operation.

§ 400.682 Criteria for reinstatement of eligibility.

A person who has been determined ineligible may have eligibility reinstated as follows:

(a) A delinquent debt owed on a crop insurance policy insured or reinsured by FCIC or any delinquent debt due FCIC. Eligibility may be reinstated after the debt is paid in full or discharged in bankruptcy, or the person has executed a scheduled installment payment agreement accepted by FCIC or the insurance provider. Eligibility may be reinstated as of the date the debt is paid, the date the agreement is accepted, or the date the debt is discharged in bankruptcy.

(b) Violations of the controlled substance provisions of the Food Security Act of 1985, as amended. Eligibility may be reinstated after the period of ineligibility stated in § 400.681 has expired.

(c) Disqualification under section 506(n) of the Act. Eligibility may be reinstated when the period of disqualification determined in the administrative proceedings has expired and payment of all penalties and overpayments have been completed.

(d) Timing of reinstatement of eligibility. After eligibility has been reinstated, the person must complete a new application for crop insurance coverage on or before the applicable sales closing date. If the date of reinstatement of eligibility occurs after the applicable sales closing date for the crop year, the person may not participate until the following crop year. If the National Appeals Division determines that the person should not have been placed on the Ineligible Tracking System, reinstatement will be effective at the beginning of the crop year for which the producer was listed on the Ineligible Tracking System and the person will be entitled to all applicable benefits under the policy.

§ 400.683 Administration and maintenance.

(a) Ineligible producer data will be maintained in a system of records in accordance with the Privacy Act, 5 U.S.C. 552a.

(1) The Ineligible Tracking System is a record of all persons who have been determined to be ineligible for participation in any program pursuant to this subpart. This system contains identifying information of the ineligible person including, but not limited to, name, address, telephone number, SSN

or EIN, reason for ineligibility, and time period for ineligibility.

(2) Information in the Ineligible Tracking System may be used by Federal agencies, FCIC employees, contractors, and reinsured companies and their personnel who require such information in the performance of their duties in connection with any program administered under the Act. The information may be furnished to other users including, but not limited to, FCIC contracted agencies; credit reporting agencies and collection agencies; in response to judicial orders in the course of litigation; and other users as may be appropriate or required by law or regulation. The individual information will be made available in the form of various reports and notices produced from the Ineligible Tracking System, based on valid requests.

(3) Supporting documentation regarding the determination of ineligibility and reinstatement of eligibility will be maintained by FCIC and FSA, or its contractors, reinsured companies, and Federal and State agencies. This documentation will be maintained consistent with the electronic information contained within the Ineligible Tracking System.

(b) Information may be entered into the Ineligible Tracking System by FCIC or FSA personnel.

(c) All persons applying for or renewing crop insurance contracts issued or reinsured by FCIC will be subject to validation of their eligibility status against the Ineligible Tracking System. Applications or benefits approved and accepted are considered approved or accepted subject to review of eligibility status in accordance with this subpart.

Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium, and Premium Reduction Plans

AUTHORITY: 7 U.S.C. 1506(1), 1506(p).

SOURCE: 66 FR 47951, Sept. 17, 2001, unless otherwise noted.

§ 400.700 Basis, purpose, and applicability.

(a) This subpart establishes guidelines for the submission of policies, plans of insurance, and rates of premium to the Board as authorized under section 508(h) of the Act and for non-reinsured supplemental policies in accordance with the SRA, and the roles and responsibilities of FCIC and the applicant. It also specifies the procedures for requesting reimbursement for research and development costs, and maintenance costs for products and the approval process.

(b) The purpose of the premium reduction plan is to foster competition in the crop insurance program, thereby providing producers with an opportunity to receive a premium discount, as authorized in section 508(e)(3) of the Act. RMA has sought to accomplish this purpose, while still maintaining the financial stability of the delivery system and the integrity of the crop insurance program, by implementing a premium reduction plan where approved insurance providers participate in the premium reduction plan by requesting the opportunity to offer a premium discount and later requesting approval from RMA to pay a premium discount if the insurance provider has achieved an efficiency based on the actual savings it has attained through the reinsurance year.

(1) Since the payment of any premium discount is determined based on actual reported cost information for the reinsurance year, and must be approved by RMA, the disclosure to policyholders of the amount of the premium discount and the payment of the premium discount will not occur until after the close of any given reinsurance year.

(2) This premium reduction plan substantially limits the burden on approved insurance providers and RMA and provides for flexibility for approved insurance providers to choose the States in which they will offer premium discounts and vary the amount of premium discount between States.

(3) Under the premium reduction plan, the payment and amount of premium discounts cannot be guaranteed, or identified as to amount or certainty of payment, in advance of the sale of

an eligible crop insurance contract. However, producers will have the potential to receive monetary assistance in defraying the costs of their future premium.

[66 FR 47951, Sept. 17, 2001, as amended at 70 FR 41918, July 20, 2005; 70 FR 44235, Aug. 2, 2005]

§ 400.701 Definitions.

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

Actuarial documents. The material for the crop or insurance year which is available for public inspection in your agent's office and published on RMA's website at *http://www.rma.usda.gov/*, or a successor website, and which shows available coverage levels, information needed to determine premium rates, premium adjustment percentages, practices, particular types or varieties of the insurable crop or agricultural commodity, insurable acreage or commodities, and other related information regarding crop insurance or other risk management plans of insurance in the county or state.

Actuarially appropriate. Premium rates expected to cover anticipated losses and a reasonable reserve based on valid reasoning, an examination of available risk data, which for new products may be scarce but must still be of sufficient quality and quantity to reasonably determine the anticipated losses, or thorough knowledge or experience of the expected value of future costs associated with the risk to be transferred.

Administrative and Operating (A&O) costs. The costs of the approved insurance provider, and any MGA and TPA, which are directly related to the delivery, loss adjustment and administration of the Federal crop insurance program. Costs associated with the sale or service of catastrophic risk protection (CAT) eligible crop insurance contracts in an amount equal to the loss adjustment expense subsidy for CAT eligible crop insurance contracts, ceding commission received for ceding any portion of the risk associated with any eligible crop insurance contract authorized under the authority of the Act with a reinsurer, and payments for the purchase of reinsurance and related credits are not considered as A&O costs.

Administrative and Operating (A&O) subsidy. The subsidy for the administrative and operating expenses authorized by the Act and paid by FCIC on behalf of the producer to the approved insurance provider. Loss adjustment expense reimbursement paid by FCIC for CAT eligible crop insurance contracts, and any ceding commission received for ceding any portion of the risk associated with any eligible crop insurance contract authorized under the authority of the Act with a reinsurer are not considered as A&O subsidy.

Agent. An individual licensed by the State in which an eligible crop insurance contract is sold and serviced for the reinsurance year, and who is employed by, or under contract with, the approved insurance provider, or its designee, to sell and service such eligible crop insurance contracts.

Applicant. Any person or entity that submits a policy, plan of insurance, provisions of a policy or plan of insurance, or rates of premium to the Board for approval under section 508(h) of the Act.

Approved insurance provider. A private insurance company that has been approved by FCIC to provide insurance coverage to producers participating in programs authorized by the Act.

Approved procedures. The applicable handbooks, manuals, memoranda, bulletins or other directives issued by RMA or the Board. For purposes of §§ 400.714 through 400.722 only, approved procedures include all provisions of the SRA.

Board. The Board of Directors of FCIC.

Compensation. The total amount of any guaranteed salary or payment, commission, or anything that has a quantifiable value or benefit that is not contingent on the existence of an underwriting gain of the approved insurance provider, including, but not limited to, the payment of health or life insurance, deferred compensation (including qualified and unqualified), finders fees, retainers, trip or travel expenses, dues or other membership fees, the use of vehicles, office space, equipment, staff or administrative support paid by the approved insurance provider or its contractor either directly or indirectly through a third party.

Payments conditioned upon something other than the underwriting gains of the approved insurance provider are considered as compensation, such as bonuses or other conditional payments or commission based upon whether an agent timely turns in applications, production reports or acreage reports, etc. A profit sharing arrangement will be considered compensation unless and only to the extent that:

(1) Such profit sharing arrangement contains a provision that would require a pro rata reduction in the amount or percentage of profit contained in such arrangement if the total amount of underwriting gain paid by FCIC for the applicable reinsurance year is not sufficient to cover the amount or percentage of profit; or

(2) At least one of the required triggers for the payment under the profit sharing arrangement is that the approved insurance provider receives from FCIC an underwriting gain for its whole book of Federally reinsured crop insurance business for the applicable reinsurance year.

Complete submission. A submission determined by the Board to contain all necessary and appropriate documentation in accordance with §400.705 and is of sufficient quality to conduct a meaningful review.

Complexity. Complexity takes into consideration such factors as originality, the number and type of factual determinations necessary to establish insurable interest, evaluate risk, and determine whether an indemnity is payable, the number of commodities and areas to which the product is applicable, the rating methodology, the number of risks covered, unique policy provisions or endorsements, the delivery process of the submission, and the process of creating rules, policy terms and conditions, underwriting procedures, rating methodologies, administrative and operating procedures, and supporting materials.

Development. The process of drafting rules, new policy provisions, pricing and rating methodologies, administrative and operating procedures, systems and software, supporting materials, and documentation necessary to create and implement a proposed policy or coverage.

Disinterested third party. A person who does not have any familial relationship (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to have a familial relationship) with anyone employed or contracted by the applicant or who will not benefit financially from the approval of the submission.

Efficiency. Monetary savings realized when the approved insurance provider's A&O costs are less than the amount of the A&O subsidy paid by FCIC. If the approved insurance provider is reducing agent compensation as a means to achieve an efficiency, not all of the efficiency can come from such reduction in agent compensation. Efficiency does not include any actual or projected underwriting gain earned from the SRA, private reinsurance revenues or expenses, or any investment returns on the approved insurance provider's reserves.

Eligible crop insurance contract. An insurance contract for an agricultural commodity authorized by the Act and approved by FCIC, with terms and conditions in effect as of the applicable contract change date, which is sold and serviced consistent with the Act, FCIC regulations, and approved procedures having a sales closing date within the reinsurance year, and with an eligible producer.

Eligible producer. A person who has an insurable interest in an agricultural commodity, who has not been determined ineligible to participate in the Federal crop insurance program, and who possesses a United States issued social security number (SSN), employer identification number (EIN), or such other identification as required by RMA.

Endorsement. A document that amends a policy reinsured under the Act in a manner that supplements or amends the insurance coverage provided by that policy.

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

Maintenance. For the purposes of this subpart only, the process of continual support and improvement, as needed,

for a policy or plan of insurance, including the periodic review of setting prices, updating premium rates or the rating methodology, updating or modifying policy terms and conditions, and any other actions necessary to provide adequate and meaningful protection for producers, ensure actuarial soundness, or to respond to statutory or regulatory changes.

Maintenance costs. Specific expenses associated with the maintenance of a policy during the maintenance period.

Maintenance period. A period of time that begins on the date the Board approves the submission for maintenance and ends on the date that is not more than four reinsurance years after such approval.

Manager. The Manager of FCIC.

Managing General Agent (MGA). An entity that meets the definition of managing general agent under the laws of the State in which such entity is incorporated and in every other State in which it operates, or in the absence of such State law or regulation, meets the definition of a managing general agent or agency in the National Association of Insurance Commissioners Managing General Agents Act, or successor Act.

Marketable. A determination by the Board that a sufficient number of producers will purchase the product and approved insurance providers will sell the product to make it economical, based on credible evidence provided by the applicant and any other relevant information.

Marketing plan. A detailed, written plan that identifies, at a minimum, the expected number of potential buyers, premium, liability, a prescribed insurance year cycle, the data upon which such information is based, such data may include, but is not limited to, focus group results, market research studies, qualitative market estimates, effects upon the delivery system or ancillary participants, correspondence from producers expressing the need for such policy or plan of insurance, responses from a reasonable representative cross-section of producers to be effected by the policy or plan of insurance demonstrating the number of producers likely interested in purchasing the product, and a commitment from at least one approved insurance provider to sell and support such a policy or plan of insurance.

Multiple peril crop insurance (MPCI). All insurance policies reinsured by FCIC that offers coverage for loss of production, loss of revenue, or both.

National Agricultural Statistics Service (NASS). An agency of the United States Department of Agriculture, or a successor agency.

Nonreinsured supplemental policy (NRS). A policy, endorsement or other risk management tool that is not reinsured under the Act, or has not been submitted to FCIC under section 508(h) of the Act, that offers additional coverage, other than loss related to hail, to a policy or plan of insurance that is reinsured by FCIC.

Non-significant changes. Minor changes to the policy or plan of insurance, such as technical corrections, that do not affect the rating or pricing methodologies, the amount of subsidy owed, the amount or type of coverage, the interests of producers, FCIC's reinsurance risk, or any condition that does not affect liability or the amount of loss to be paid under the policy. Statutory or regulatory requirements are included in this category regardless of impact.

Plan of insurance. A class of policies, such as MPCI or Group Risk Plan of Insurance, that offers a specific type of coverage to one or more agricultural commodities.

Plan of Operations. The documents and information the approved insurance provider must submit in accordance with section IV.F.2. and Appendix II of the SRA and applicable approved procedures.

Policy. A contract for insurance that includes an accepted application, Basic Provisions, applicable Commodity Provisions, other applicable options and endorsements, the Special Provisions, related materials, and the applicable regulations published in 7 CFR chapter IV.

Premium discount. A payment made by the approved insurance provider to the policyholder to help defray the cost of premium, in an amount equal to the dollar amount or corresponding percentage of net book premium approved by RMA, as authorized by section 508(e)(3) of the Act.

Profit sharing arrangement. An arrangement to make a payment to an employee, agent, loss adjuster or other contractor conditioned upon whether the approved insurance provider receives an underwriting gain on the crop insurance business. Payments made to commercial reinsurers or ceding commissions paid to the approved insurance provider for the reinsurance year for the crop insurance book of business are not considered as profit sharing arrangements for the purposes of determining A&O costs or A&O subsidy.

Reduction in service. When the approved insurance provider, agent and loss adjuster, or any other contractor or employee of the approved insurance provider that assists in or provides any service for a Federally reinsured eligible crop insurance contract, sells, services or administers such eligible crop insurance contracts at a level of service less than that required under all applicable regulations and approved procedures. A violation of a provision in an approved procedure will be considered to be a reduction in service.

Rate of premium. The dollar amount per insured unit or percentage rate per dollar of liability that is needed to pay anticipated losses and provide a reasonable reserve.

Related material. The actuarial documents for the insured agricultural commodity and any underwriting or loss adjustment manual, handbook, form or other information needed to administer the policy.

Research. For the purposes of development, the gathering of information related to: Producer needs and interests; the marketability of the policy or plan of insurance; the appropriate policy terms, premium rates, price elections, administrative and operating procedures, supporting materials, and the documentation, systems and software necessary to implement a policy or plan of insurance. Gathering of information to determine whether it is feasible to expand a policy or plan of insurance to a new area or to cover a new commodity under the same policy terms and conditions, price, and premium rates is not considered research.

Research and development costs. Specific expenses incurred and directly related to the research and development of a submission, as initially approved by the Board.

Risk Management Agency (RMA). An agency of USDA responsible for the administration of all programs authorized under the Act and other authorities.

Risk subsidy. The portion of the approved premium paid by FCIC on behalf of the insured person.

Sales closing date. The final calendar date on which an approved insurance provider may accept an application by a producer for insurance.

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

Significant change. Any change to the policy or plan of insurance that may affect the rating and pricing methodologies, the amount of subsidy owed, the amount of coverage, the interests of producers, FCIC's reinsurance risk, or any condition that may affect liability or the amount of loss to be paid under the policy.

Special Provisions. The part of the policy that contains specific provisions of insurance for each insured commodity that may vary by geographic area.

Standard Reinsurance Agreement (SRA). The reinsurance agreement between FCIC and the approved insurance provider, under which the approved insurance provider is authorized to sell and service the eligible crop insurance contracts for which the premium discount is proposed. All references to the SRA will also include any other reinsurance agreements entered into with FCIC, including the Livestock Price Reinsurance Agreement, unless otherwise stated in such reinsurance agreement.

Submission. A policy, plan of insurance, provision of a policy or plan of insurance, or rates of premium provided by an applicant to FCIC in accordance with the requirements of this subpart.

Third Party Administrator (TPA). A person or organization that processes claims or performs other administrative services and holds licenses, as applicable, in States in which services are provided with respect to the Federal crop insurance business in accordance with a service contract or an affiliate or any other type of relationship.

Underwriting gain. For the purposes of the premium reduction plan, the amount of gains paid under section II.B.10. of the SRA less any amounts paid from such gains, including but not limited to payments to commercial reinsurers, taxes, licensing fees, payments to parent companies or subsidiaries, etc., and any costs incurred by the approved insurance provider in excess of the A&O subsidy related to the delivery, service, loss adjustment and administration of the Federal crop insurance program.

Unfair discrimination. An approved insurance provider's implementation of the premium reduction plan will be considered unfairly discriminatory to a producer if the availability of eligible crop insurance contracts sold under the premium reduction plan, or the percentage of net book premium upon which the premium discount is paid, is based on the loss history of the producer, the amount of premium earned under the eligible crop insurance contract, the producer's size of the operation or number of acres to be insured, or precludes in any manner producers from participating in the premium reduction plan in a State where an approved insurance provider is eligible for the opportunity to offer a premium reduction plan.

USDA. The United States Department of Agriculture.

User fees. Fees, approved by the Board, that can be charged to approved insurance providers for use of a policy or plan of insurance.

[66 FR 47951, Sept. 17, 2001, as amended at 70 FR 41918, July 20, 2005; 70 FR 44235, Aug. 2, 2005]

§ 400.702 Confidentiality of submission and duration of confidentiality.

(a) Prior to approval by the Board, any submission made to the Board under section 508(h) of the Act, including any information generated from the submission, will be considered confidential commercial or financial information for purposes of 5 U.S.C. 552(b)(4) and will not be released by FCIC to the public, unless the applicant authorizes such release in writing.

(b) Once the Board approves a submission, all information provided with the submission, or generated in the approval process, may be released to the public, including any mathematical modeling and data, unless it remains confidential business information under 5 U.S.C. 552(b).

(c) Any submission disapproved by the Board will remain confidential commercial or financial information in accordance with 5 U.S.C. 552(b) and no information related to such submission will be released by FCIC unless authorized in writing by the applicant.

(d) In the submission, the applicant must state if the name of the submission may be used in Board documents including but not limited to the agenda, minutes, and Board memoranda. The applicant cannot use false names to mislead the public regarding the nature of the submission. If permission is not given to use the name of the submission, the submission will simply be referred to as a ''Section 508(h) submission.''

[66 FR 47951, Sept. 17, 2001, as amended at 70 FR 44236, Aug. 2, 2005]

§ 400.703 Timing of submission.

(a) A submission may only be provided to FCIC, in either a hard copy or electronic format, during the first 5 business days of January, April, July, and October.

(b) Any submission not provided within the first 5 business days of a month stated in paragraph (a) of this section, will be considered to have been provided the next month stated in paragraph (a). For example, if an applicant provides a submission on January 10, it will be considered to have been received on April 1.

(c) Any submission must be provided to the Deputy Administrator, Research and Development (or any successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133–4676, not later than 240 days prior to the earliest proposed sales closing date to be considered for sale in the requested crop year.

(d) The Board, or RMA if authorized by the Board, shall determine when sales can begin for a submission approved by the Board.

[70 FR 44236, Aug. 2, 2005]

§ 400.704 Type of submission.

(a) An applicant may submit to the Board in accordance with § 400.705:

(1) A policy or plan of insurance not currently reinsured by FCIC;

(2) One or more proposed revisions to a policy or plan of insurance authorized under the Act; or

(3) Rates of premium for any policy or plan of insurance authorized under the Act.

(b) An applicant must submit to the Board any significant change to a previously approved submission prior to making the change.

§ 400.705 Contents required for a new submission or changes to a previously approved submission.

(a) A complete submission must contain the following material, as applicable, in the order given, in a three ring binder, with a table of contents, page numbers, and section dividers clearly labeling each section or in an electronic format that when printed will be an exact duplicate of the information that would have been found in the three-ring binder with the exception of section dividers.

(1) If a hard copy of the submission is provided, it must include six identical copies provided to the Deputy Administrator, Research and Development (or successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133–4676, and one identical copy of the submission provided to the Administrator, Risk Management Agency, 1400 Independence Ave., Stop 0801, Room 3053 South Building, Washington, DC 20250–0801.

(2) Electronic submissions must be sent to the Deputy Administrator, Research and Development (or successor) at *DeputyAdministrator@rma.usda.gov* and the Administrator at *Administrator@rma.usda.gov*.

(b) The first section will contain general information, including, as applicable:

(1) The applicant's name, address or primary business location, phone number, and e-mail address;

(2) The type of submission (see § 400.704);

(3) A statement of whether the applicant is requesting:

(i) Reinsurance, which includes risk subsidy and A&O subsidy;

(ii) Reimbursement for research and development costs, as applicable; or

(iii) Reimbursement for maintenance costs, as applicable;

(4) The proposed agricultural commodities, including types, varieties, and practices covered by the submission;

(5) The crop and reinsurance years in which the submission is proposed to be available for purchase by producers;

(6) The proposed sales closing date, if applicable, or if not applicable, the earliest date the applicant expects to release the product to the public;

(7) The proposed duration and scope of the plan of insurance;

(8) A marketing plan;

(9) Any known or anticipated future expansion plans;

(10) Identification, including names, addresses, telephone numbers, and e-mail addresses, of the persons responsible for:

(i) Addressing questions regarding the policy, underwriting rules, loss adjustment procedures, rate and price methodologies, data processing and record-keeping requirements, and any other questions that may arise in administering the program after it is approved; and

(ii) Annual reviews to ensure compliance with all requirements of the Act, this subpart, and any agreements executed between the applicant and FCIC; and

(11) A statement of whether the submission will be filed with the applicable office responsible for regulating insurance in each state proposed for insurance coverage, and if not, reasons why the submission will not be filed for review.

(c) The second section must contain the benefits of the plan, including, as applicable, a statement about the plan that demonstrates:

(1) How the submission offers coverage or other benefits not currently available from existing public and private programs;

(2) The projected demand for the submission, which must be supported by information from market research, producers or producer groups, agents,

lending institutions, and other interested parties that provide verifiable evidence of demand; and

(3) How the submission meets public policy goals and objectives consistent with the Act and other laws, as well as policy goals supported by USDA and the Federal Government.

(d) Except as provided in this section, the third section must contain the policy, including, as applicable:

(1) If the submission involves a new insurance policy or plan of insurance:

(i) All applicable policy provisions; and

(ii) A list and description of any additional coverage that may be elected by the insured, including how such coverage may be obtained; and

(2) If the submission involves a change to a previously approved policy, plan of insurance, or rates of premium, the proposed revisions, rationale for each change, data and analysis supporting each change, the impact of each change, and the impact of all changes in aggregate.

(e) The fourth section must contain the information related to the marketing of the policy or plan of insurance, including, as applicable:

(1) A list of counties and states where the submission is proposed to be offered;

(2) The amount of commodity (acres, head, board feet, etc.), the amount of production, and the value of each agricultural commodity proposed to be covered in each proposed county and state;

(3) The expected liability and premium for each proposed county and state;

(4) If available, any insurance experience for each year and in each proposed county and state in which the policy has been previously offered for sale including an evaluation of the policy's performance and, if data are available, a comparison with other similar insurance policies reinsured under the Act;

(5) Focus group results;

(6) Market research studies;

(7) Qualitative market estimates;

(8) Affects upon the delivery system or ancillary participants;

(9) Correspondence from producers expressing the need for such policy or plan of insurance;

(10) Responses from a reasonable representative cross-section of producers to be affected by the policy or plan of insurance; and

(11) Commitment in writing from at least one approved insurance provider to sell and support the policy or plan of insurance.

(f) The fifth section must contain the information related to the underwriting and loss adjustment of the submission, including as applicable:

(1) Detailed rules for determining insurance eligibility, including all producer reporting requirements;

(2) Relevant dates, if not included in the proposed policy;

(3) Detailed examples of the data and calculations needed to establish the insurance guarantee, liability, and premium per acre or other unit of measure, including worksheets that provide the calculations in sufficient detail and in the same order as presented in the policy to allow verification that the premiums charged for the coverage are consistent with policy provisions;

(4) Detailed examples of calculations used to determine indemnity payments for all probable situations where a partial or total loss may occur;

(5) A detailed description of the causes of loss covered by the policy or plan of insurance and any causes of loss excluded;

(6) Any statements to be included in the actuarial documents; and

(7) The loss adjustment standards handbook for the policy or plan of insurance that includes:

(i) A table of contents and introduction;

(ii) A section containing abbreviations, acronyms, and definitions;

(iii) A section containing insurance contract information (insurability requirements; crop provisions not applicable to catastrophic risk protection; specific unit division guidelines, if applicable; notice of damage or loss provisions; quality adjustment provisions; etc);

(iv) A section that thoroughly explains appraisal methods, if applicable;

(v) Illustrative samples of all the applicable forms needed for insuring and adjusting losses in regards to the product plus detailed instructions for their use and completion;

(vi) Instructions, examples of calculations, and loss adjustment procedures that are necessary to establish the amounts of coverage and loss;

(vii) A section containing any special coverage information (i.e., replanting, tree replacement or rehabilitation, prevented planting, etc.), as applicable; and

(viii) A section containing all applicable reference material (i.e., minimum sample requirements, row width factors, etc.).

(g) The sixth section must contain information related to prices and rates of premium, including, as applicable:

(1) A list of all assumptions made in the premium rating and commodity pricing methodologies, and the basis for these assumptions;

(2) A detailed description of the pricing and rating methodologies, including supporting documentation, all mathematical formulas, equations, and data sources used in determining rates and prices and an explanation of premium components that detail how rates were determined for each component, that demonstrate the rate is appropriate;

(3) An example of both a rate calculation and a price calculation;

(4) A discussion of the applicant's objective evaluation of the reliability of the data;

(5) An analysis of the results of simulations or modeling showing the performance of proposed rates and commodity prices, as applicable, based on one or more of the following (Such simulations must use all years of experience available to the applicant);

(i) A recalculation of total premium and losses compared to a similar or comparable insurance plan offered under the authority of the Act with modifications, as needed, to represent the components of the submission;

(ii) A simulation based on the probability distributions used to develop the rates and commodity prices, as applicable, including sensitivity tests that demonstrate price or yield extremes, and the impact of inappropriate assumptions; or

(iii) Any other comparable simulation that provides results indicating both aggregate and individual performance of the submission under various scenarios depicting good and poor actuarial experience; and

(6) A simulation of expected losses capturing both a probable loss and a total loss.

(h) The seventh section must contain an evaluation and certification from a disinterested third party who is an accredited associate or fellow of the Casualty Actuarial Society, or other similarly qualified professional, who certifies the submission is actuarially appropriate and consistent with appropriate insurance principles and practices.

(i) The eighth section must contain all forms applicable to the submission, including:

(1) An application for insurance and procedures for accepting the application; and

(2) All applicable policy forms, instructions and procedures that are necessary to establish the amounts of coverage or loss.

(j) The ninth section must contain the following:

(1) A statement specifying sales will not commence for any new or revised submission until at least 60 days after all policy provisions and related material are released to the public by RMA, unless otherwise specified by the Board;

(2) An explanation of any provision of the policy not authorized under the Act and identification of the portion of the rate of premium due to these provisions;

(3) Agent and loss adjuster training plans; and

(4) A certification from the applicant's legal counsel that the submission meets and complies with all requirements of the Act, applicable regulations, and any reinsurance agreement.

(k) The tenth section must contain a written plan, including specifications and details for the systems and software development necessary for the implementation of the submission, if applicable, and the documents that demonstrate the submitter has the capability and resources to develop systems that comply in all respects with the standards established for processing and acceptance of data by the

FCIC Data Acceptance System, or successor system, unless otherwise authorized by FCIC. Unless otherwise determined by FCIC, the applicant must consult with FCIC to determine whether their submission can be implemented and administered through the current system;

(1) If FCIC approves the submission and determines that its system has the capacity to implement and administer the submission, the applicant must provide acceptable computer requirements, code and software, consistent with that used by FCIC, to facilitate the acceptance of producer applications and all related data;

(2) If FCIC approves the submission and determines that its system lacks the capacity to implement and administer the submission, the applicant must provide acceptable computer systems, requirements, code and software necessary to implement and administer the policy or plan of insurance;

(3) Any computer systems, requirements, code and software must be consistent with that used by FCIC and comply with the standards established in Appendix III, or any successor document, of the Standard Reinsurance Agreement or other reinsurance agreement as specified by FCIC; and

(4) These requirements are available from the Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO, 64133–4676 or on RMA's Web site at *http://www.rma.usda.gov/data/#m13*, or a successor website.

(l) The eleventh section must contain a training package. The training package must include a thorough discussion, explanations, written exercises, and examples covering the following topics:

(1) Basic and catastrophic risk protection policy provisions;

(2) The commodity provisions and any endorsements;

(3) Underwriting under the underwriting guide;

(4) Eligibility requirements;

(5) Guarantee, indemnity, and premium calculations;

(6) Special Provisions of Insurance;

(7) Actuarial documents;

(8) Loss adjustment under the loss adjustment standards handbook;

(9) Applicable additions to the Crop Insurance Handbook (CIH); and

(10) Applicable additions to the Loss Adjustment Manual (LAM).

(m) The twelfth section submitted on separate pages and in accordance with § 400.712 must specify:

(1) On one page, the total estimated amount that will be requested for reimbursement of research and development costs (for new products only) or the estimated amount for maintenance costs for the year for which the submission will be effective (for products that are within the maintenance period); and

(2) On another page, a comprehensive estimate of maintenance costs for each future year of the maintenance period and the basis for which such maintenance costs will be incurred, including, but not limited to:

(i) Any anticipated expansion;

(ii) The generation of rates, Special Provisions, underwriting rules, etc;

(iii) The determination of prices; and

(iv) Any other costs that the applicant anticipates will be requested for reimbursement.

(n) The thirteenth section must contain executed certification statements in accordance with the following:

(1) ''{Applicant's Name} hereby claim that the amounts set forth in this section and § 400.712 are correct and due and owing to {Applicant's Name} by FCIC under the Federal Crop Insurance Act''; and

(2) ''{Applicant's Name} understands that, in addition to criminal fines and imprisonment, the submission of false or fraudulent statements or claims may result in civil and administrative sanctions.''

[70 FR 44236, Aug. 2, 2005]

§ 400.706 Review of submission.

(a) Prior to providing the submission to the Board to determine whether it is a complete submission, RMA will:

(1) Review the submission to determine if all necessary and appropriate documentation is included in accordance with § 400.705;

(2) Review the submission to determine whether the submission is of sufficient quality to conduct a meaningful review;

(3) Inform the applicant of the information RMA deems necessary for the

submission to comply with paragraphs (a)(1) and (2) of this section; and

(4) Forward the submission and the results of RMA's initial review to the Board.

(b) Upon the Board's receipt of the submission, the Board will:

(1) Determine if the submission is a complete submission (The date the Board votes to contract with independent reviewers is the date the submission is deemed to be a complete submission for the start of the 120 day time-period for approval);

(2) Forward the complete submission to at least five independent persons with underwriting or actuarial experience to review the submission:

(i) Of the five reviewers, no more than one will be employed by the Federal Government, and none may be employed by any approved insurance provider or their representative; and

(ii) The reviewers will each provide their assessment of whether the submission protects the interest of agricultural producers and taxpayers, is actuarially appropriate, follows appropriate insurance principles, meets the requirements of the Act, does not contain excessive risks, follows sound, reasonable, and appropriate underwriting principles, as well as other items the Board may deem necessary;

(3) Return to the applicant any submission the Board determines is not a complete submission, and provide documentation to the applicant explaining such. If the submission is resubmitted at a later date, it will be considered a new submission;

(4) For all complete submissions:

(i) Request review of the submission by RMA to provide its assessment of whether:

(A) The submission protects the interests of agricultural producers and taxpayers, is actuarially appropriate, follows appropriate insurance principles, meets the requirements of the Act, does not contain excessive risks, is consistent with USDA's public policy goals, does not increase or shift risk to any other FCIC reinsured policy, offers coverage that is similar to another policy or plan of insurance and if the producer would further benefit from the submission and can be administered and delivered efficiently and effectively;

(B) The marketing plan is reasonable;

(C) RMA has the resources to consider, implement, and administer the submission; and

(D) The requested amount of government reinsurance, risk subsidy, and administrative and operating subsidies is reasonable and appropriate for the type of coverage provided by the policy submission; and

(ii) Seek review from the Office of the General Counsel (OGC) to determine if the submission conforms to the requirements of the Act and all applicable Federal regulations.

(c) All comments and evaluations will be provided to the Board by a date determined by the Board to allow the Board adequate time for review.

(d) The Board will consider all comments, evaluations, and recommendations in its review process. Prior to making a decision, the Board may request additional information from RMA, OGC, the independent reviewers, or the applicant.

(e) An applicant may request, at any time, a time delay before the Board provides a notice of intent to disapprove the submission. The Board is not required to agree to such an extension.

(1) Any requested time delay will not be limited in the length of time or the number of delays. However, delays may make implementation of the submission for the targeted crop year impractical or impossible.

(2) The time period during which the Board must make a decision to approve or disapprove shall be extended commensurately with any time delay requested by the applicant.

(3) If the Board agrees to an extension of time, the Board and the applicant must agree to a time period in which the Board must make its decision to approve or disapprove after the expiration of any requested time delay.

(f) The applicant may withdraw a submission or a portion of a submission at any time by written request to the Board. A withdrawn submission that is resubmitted will result in the submission being deemed a new submission for the purpose of determining the amount

of time that the Board must act on such submission.

(g) The Board will render a decision to approve the submission with or without revision or give notice of intent to disapprove within 90 days after the date the submission is considered complete by the Board in accordance with paragraph (b)(1) of this section, unless the applicant and Board agree to a time delay in accordance with paragraph (e) of this section.

(h) The Board may disapprove a submission if it determines that:

(1) The interests of producers and taxpayers are not protected, including but not limited to:

(i) The submission does not provide adequate coverage or treats producers disparately;

(ii) The applicant has not presented sufficient documentation that the submission is marketable;

(iii) Coverage would be similar to another policy or plan of insurance and the producer would not further benefit from the submission; or

(iv) The resources of FCIC or RMA are not sufficient to support the review and implementation of the product;

(2) The premium rates are not actuarially appropriate;

(3) The submission does not conform to sound insurance and underwriting principles;

(4) The risks associated with the submission are excessive or it increases or shifts risk to any other FCIC reinsured policy;

(5) The submission does not meet the requirements of the Act or is not in accordance with USDA's public policy goals; or

(6) There is insufficient time before the submission would become effective under section 508(h) of the Act for the Board to make an informed decision with respect to whether the interests of producers are protected, the premium rates are actuarially appropriate, or the risks associated with the submission are excessive;

(i) If the Board intends to disapprove the submission, the applicant will be notified in writing at least 30 days prior to the Board taking such action. The Board will provide the applicant with a written explanation for the intent to disapprove the submission.

(j) After written notice of intent to disapprove all or part of a submission has been provided by the Board, the applicant must provide written notice to the Board not later than 30 days after the Board provided such notice, if the submission will be modified. Except as provided in paragraph (j)(3) of this section, the applicant must also include an anticipated date that the modification will be provided to the Board. If the applicant does not respond within the 30-day period, the Board will send the applicant a letter stating the submission is disapproved.

(1) If the modification is in direct response to reviewer comments, the Board may act on the modification immediately or seek further review within the 30-day time period allowed.

(2) The Board will approve or disapprove a modified submission not later than 30 days after receiving a modified submission from the applicant, unless the applicant and the Board agree to a time delay. If a time delay is agreed upon, the time period during which the Board must act on the modified submission will not be in effect during the delay.

(3) The Board will disapprove a modified submission if:

(i) All causes for disapproval stated by the Board in its notification of intent to disapprove the submission are not satisfactorily addressed;

(ii) Insufficient time is available for review of the modified submission to determine whether all causes for disapproval have been satisfactorily addressed; or

(iii) Modification is so substantial that the Board determines that additional independent review is required and a time delay can not be agreed upon to allow for such review.

(k) A submission will be disapproved if the applicant does not present a modification of the submission to the Board on the date the applicant anticipated presenting the modification or does not request an additional time delay.

(l) If the Board fails to take action on a new submission within the prescribed 90-day period in paragraph (g) of this section, or within the time period in accordance with paragraph (e)(3) of this

section after receiving the revised submission, such submission will be deemed approved by the Board for the initial reinsurance year designated for the submission. The Board must approve the submission for it to be available for any subsequent reinsurance year.

[70 FR 44238, Aug. 2, 2005]

§ 400.707 Presentation to the Board for approval or disapproval.

(a) The Board will inform the applicant of the date, time, and place of the Board meeting.

(b) The applicant will be given the opportunity and is encouraged to present the submission to the Board in person. The applicant must confirm, in writing, whether the applicant will present the submission to the Board.

(c) If the applicant elects, at any time, not to present the submission to the Board, the Board will make its decision based on the submission and the reviews provided in accordance with § 400.706(b).

[66 FR 47951, Sept. 17, 2001, as amended at 70 FR 44239, Aug. 2, 2005]

§ 400.708 Approved submission.

(a) After a submission is approved by the Board, and prior to it being made available for sale to producers, the following items, as applicable, must be completed:

(1) If FCIC requires, an agreement between the applicant and FCIC that specifies:

(i) The responsibilities of each with respect to the implementation, delivery and oversight of the submission; and

(ii) That the property rights to the submission automatically transfers to FCIC if the applicant elects not to maintain the submission and FCIC has paid any amounts under § 400.712.

(2) A reinsurance agreement if terms and conditions differ from the available existing reinsurance agreements.

(b) A submission approved by the Board under this subpart will be made available to all approved insurance providers under the same reinsurance and subsidy terms and conditions as received by the applicant.

(c) Any solicitation, sales, marketing, or advertising of the approved submission by the applicant before FCIC has made the submission and related materials available to all interested parties through its official issuance system will result in the denial of reinsurance, risk subsidy, and A&O subsidy for those policies affected.

[66 FR 47951, Sept. 17, 2001, as amended at 70 FR 44239, Aug. 2, 2005]

§ 400.709 Roles and responsibilities.

(a) With respect to the applicant:

(1) The applicant is responsible for:

(i) Preparing and ensuring that all policy documents, rates of premium, and supporting materials, including actuarial documents, are submitted to FCIC in the form approved by the Board;

(ii) Annually updating and providing maintenance changes no later than 180 days prior to the earliest contract change date for the commodity in all counties or states in which the policy or plan of insurance is sold, unless FCIC assumes maintenance of the product;

(iii) Addressing responses to procedural issues, questions, problems or clarifications in regard to a policy or plan of insurance (all such resolutions will be communicated to all approved insurance providers through FCIC's official issuance system); and

(iv) Annually reviewing the policy's performance and providing a report on the policy's performance to the Board by each anniversary date of when the product was first available to be purchased by the public;

(2) Only the applicant may make changes to the policy, plan of insurance, or rates of premium approved by the Board (Any changes, both non-significant and significant, must be submitted to FCIC no later than 180 days prior to the earliest contract change date for the commodity in all counties or states in which the policy of plan of insurance is sold. Significant changes must be submitted to the Board for review in accordance with this subpart and will be considered as a new submission);

(3) Except as provided in paragraph (a)(4) of this section, the applicant is solely liable for any mistakes, errors,

or flaws in the submitted policy, plan of insurance, their related materials, or the rates of premium that have been approved by the Board unless the policy or plan of insurance is transferred to FCIC. The applicant remains liable for any mistakes, errors, or flaws that occurred prior to transfer of the policy or plan of insurance to FCIC;

(4) If the mistake, error, or flaw in the policy, plan of insurance, their related materials, or the rates of premium is discovered not less than 45 days prior to the cancellation or termination date for the policy or plan of insurance, the applicant may request in writing that FCIC withdraw the approved policy, plan of insurance, or rates of premium:

(i) Such request must state the discovered mistake, error, or flaw in the policy, plan of insurance, or rates of premium, and the expected impact on the program; and

(ii) For all timely received requests for withdrawal, no liability will attach to such policies, plans of insurance, or rates of premium that have been withdrawn and no producer, approved insurance provider or any other person will have a right of action against the applicant; and

(5) Notwithstanding the policy provisions regarding cancellation, any policy, plan of insurance, or rates of premium that have been withdrawn by the applicant in accordance with paragraph (a)(4) of this section is deemed canceled and applications deemed not accepted as of the date that FCIC publishes the notice of withdrawal on its website at *www.rma.usda.gov;* and

(i) Approved insurance providers will be notified in writing by FCIC that the policy, plan of insurance, or premium rates have been withdrawn; and

(ii) Producers will have the option of selecting any other policy or plan of insurance authorized under the Act that is available in the area by the sales closing date for such policy or plan of insurance; and

(6) Failure of the applicant to perform the applicant's responsibilities may result in the denial of reinsurance for the policy or plan of insurance.

(b) With respect to FCIC:

(1) FCIC is responsible for:

(i) Conducting the best review of the submission possible in the time allowed;

(ii) Ensuring that all approved insurance providers receive the approved policy or plan of insurance, and related material, for sale to producers in a timely manner (All such information shall be communicated to all approved insurance providers through FCIC's official issuance system);

(iii) Ensuring that all approved insurance providers receive reinsurance under the same terms and conditions as the applicant (approved insurance providers should contact FCIC to obtain and execute a copy of the reinsurance agreement) if required; and

(iv) Reviewing the activities of approved insurance providers, agents, loss adjusters, and producers to ensure that they are in accordance with the terms of the policy or plan of insurance, the reinsurance agreement, and all applicable procedures;

(2) The Board may limit the availability of coverage, for any product developed under the authority of the Act and this regulation, on any farm or in any county or area;

(3) FCIC will not be liable for any mistakes, errors, or flaws in the policy, plan of insurance, their related materials, or the rates of premium and no cause of action will exist against FCIC as a result of such mistake, error, or flaw in a submission submitted under this subpart;

(4) If at any time prior to the cancellation date, FCIC discovers there is a mistake, error, or flaw in the policy, plan of insurance, their related materials, or the rates of premium, or any other reason for denial of reinsurance contained in § 400.706(h) exists, FCIC will deny reinsurance to such policy or plan of insurance. If reinsurance is denied, a written notice of the denial of reinsurance will be provided to the approved insurance providers;

(5) If reinsurance is denied under paragraph (b)(4) of this section, the approved insurance provider will have the option of:

(i) Selling and servicing the policy or plan of insurance at its own risk and without any subsidy; or

(ii) Canceling the policy or plan of insurance in accordance with its terms; and

(6) After maintenance of the policy or plan of insurance is transferred to FCIC, FCIC will be liable for any mistakes, errors, or flaws that occur after the date the policy or plan of insurance was transferred.

[70 FR 44239, Aug. 2, 2005]

§400.710 Preemption and premium taxation.

A policy or plan of insurance that is approved by the Board for FCIC reinsurance is preempted from state and local taxation.

§400.711 Right of review, modification, and the withdrawal of reinsurance.

At any time after approval, the Board may review any policy, plan of insurance, related material, and rates of premium approved under this subpart and request additional information to determine whether the policy, plan of insurance, related material, and rates of premium comply with statutory or regulatory changes or court orders, are still actuarially appropriate, and protect program integrity and the interests of producers. The Board will notify the applicant of any problem or issue that may arise and allow the applicant an opportunity to make any needed change. The Board may deny reinsurance for the applicable policy, plan of insurance or rate of premium if the applicant:

(a) Fails to perform the responsibilities stated under §400.709(a); or

(b) Does not satisfactorily provide materials or resolve any issue so that necessary changes can be made prior to the earliest contract change date.

[70 FR 44240, Aug. 2, 2005]

§400.712 Research and development reimbursement, maintenance reimbursement, and user fees.

(a) For submissions approved by the Board for reinsurance under section 508(h) of the Act:

(1) If it is determined to be marketable by the Board, the submission may be eligible for a one-time payment of research and development costs and reimbursement of maintenance costs for up to four reinsurance years, as determined by the Board, after the date such costs have been approved by the Board.

(2) Reimbursement of research and development costs or maintenance costs will be considered as payment in full by FCIC for the submission.

(3) If the applicant elects at any time not to continue to maintain the submission, it will automatically become the property of FCIC and the applicant will no longer have any property rights to the submission.

(b) For submissions submitted to the Board for reinsurance after publication of the interim rule on September 17, 2001, an estimated amount of the total cost for reimbursement of research and development costs and maintenance costs must be included with the original submission to the Board in accordance with this section. These estimates will be used by FCIC to evaluate if the interests of producers are protected and to track potential expenditures and will not provide a basis for making any reimbursements under this section. Documentation of actual costs allowed under this section will be used to determine any reimbursement.

(c) To be eligible for any reimbursement under this section, FCIC must determine that a submission is marketable.

(d) To be considered for reimbursement of:

(1) Research and development costs, the total of the amount requested, and all supporting documentation, must be submitted to FCIC by electronic method or by hard copy and received by FCIC by August 1 immediately following the date the submission was first available to be purchased by producers;

(2) Maintenance costs, the total of the amount requested, and all supporting documentation, must be submitted to FCIC by electronic method or by hard copy and received by FCIC by August 1 of each year of the maintenance period;

(3) The procedure and time-frame in paragraphs (d)(1) or (2) of this section, as applicable, must be followed or research and development costs and maintenance costs may not be reimbursed; and

(4) Given the limitation on funds, regardless of when the request is received, no payment will be made prior to September 15 of the applicable fiscal year.

(e) There are limited funds available on an annual fiscal year basis as contained in the Act. Therefore, requests for reimbursement will not be considered in the order in which they are received. Consistent with paragraphs (f), (g), (h), and (k) of this section, if all applicants' requests for reimbursement of research and development costs and maintenance costs in any fiscal year:

(1) Do not exceed the maximum amount authorized by law, the applicants may receive the full amount of reimbursement authorized under these paragraphs; and

(2) Exceed the amount authorized by law, each applicant's reimbursement will be determined by dividing the total amount of each individual applicants' reimbursable costs authorized in paragraphs (f), (g), (h), and (k) of this section by the total amount of the aggregate of all applicants' reimbursable costs authorized in paragraphs (f), (g), (h), and (k) of this section for that year and multiplying the result by the amount of reimbursement authorized under the Act.

(f) The amount of reimbursement for research and development costs, will be determined based on the amount of reimbursement authorized under paragraph (e) of this section, adjusted for the complexity of the policy, plan of insurance, or rates of premium, as determined by FCIC, and the size of the area in which the policy, plan of insurance, or rates of premium may be offered.

(1) Policies or plans of insurance that offer new and innovative coverages that are not currently available will be eligible for a higher reimbursement than policies or plans of insurance that are, or have components that are, based on existing policies or plans of insurance.

(2) Policies or plans of insurance that offer new premium rating or market price methodologies will be eligible for a higher reimbursement than policies or plans of insurance that use existing premium rating or market price methodologies.

(3) Policies or plans of insurance that cover new commodities that are not otherwise covered by crop insurance or that offer innovative coverage and original policy language will be eligible for a higher reimbursement than policies or plans of insurance for commodities for which insurance is currently available.

(4) Policies or plans of insurance that may be offered for sale nationwide or in large geographical regions will be eligible for higher reimbursement than those that are applicable to only a few counties or states or a small geographical region.

(5) Any reimbursement under this subpart will be scored as follows:

(i) Complexity scores:

(A) Basic or Common Provisions:

(*1*) Uses existing policies or plans of insurance: 0.05

(*2*) Contains modifications to existing policies or plans of insurance: 0.10

(*3*) Original (See paragraph (f)(3) of this section): 0.20

(B) Commodity Provisions and Special Provisions:

(*1*) Uses existing policies or plans of insurance: 0.05

(*2*) Contains modifications to existing policies or plans of insurance: 0.10

(*3*) Original (See paragraph (f)(3) of this section): 0.20

(C) Market prices:

(*1*) Uses existing policies or plans of insurance: 0.05

(*2*) Contains modifications to existing policies or plans of insurance: 0.10

(*3*) Original (See paragraph (f)(3) of this section): 0.20

(D) Rates of Premium:

(*1*) Uses existing policies or plans of insurance: 0.05

(*2*) Contains modifications to existing policies or plans of insurance: 0.10

(*3*) Original (See paragraph (f)(3) of this section): 0.20

(E) Underwriting:

(*1*) Uses existing policies or plans of insurance: 0.05

(*2*) Contains modifications to existing policies or plans of insurance: 0.10

(*3*) Original (See paragraph (f)(3) of this section): 0.20

(ii) Geographic scope scores:

(A) Potential national availability: 0.10

(B) Potential county, state or regional availability: 0.05

(6) Policies or plans of insurance that receive a summed total score for both complexity and geographic scope that is:

(i) Equal to or greater than 0.6 may receive the full amount of reimbursement approved by the Board under paragraph (g) of this section;

(ii) Greater than 0.25 but lower than 0.60 will receive a reimbursement that is not greater than 75 percent of the full amount of reimbursement approved by the Board under paragraph (g) of this section; and

(iii) Equal to or less than 0.25 will receive a reimbursement that is not greater than 50 percent of the full amount of reimbursement approved by the Board under paragraph (g) of this section.

(g) For those submissions submitted to the Board for approval after September 17, 2001, research and development costs must be supported by itemized statements and supporting documentation (copies of contracts, billing statements, time sheets, travel vouchers, accounting ledgers, etc.). Actual costs submitted will be examined for reasonableness and may be adjusted at the sole discretion of the Board.

(1) Allowable research and development expense items (directly related to research and development of the submission only) may include the following:

(i) Straight-time hourly wage, exclusive of bonuses, overtime pay, or shift differentials (One line per employee, include job title, total hours, and total dollars. Compensation amounts will be compared with the Occupational Employment Statistics Survey (published each January by the U.S. Department of Labor, Bureau of Labor Statistics) or other substantial wage information as deemed appropriate by the Board);

(ii) Benefit cost per employee (Benefit costs are considered overhead and will be compared with the Employment Cost Index Annual Employer Cost Survey published each March by the U.S. Department of Labor, Bureau of Labor Statistics); and

(iii) Contracted expenses if fully disclosed, documented, and:

(A) The applicant provides a copy of the contract, billing statements, accounting records, etc;

(B) The applicant provides the relationship, if any, between the applicant and the contractor, such as parent company, subsidiary, etc. (Reimbursement may be limited or denied if the contractor is closely associated to the applicant so that they could be considered as one and the same, such as a separate entity being created by the applicant to conduct research and development);

(C) The applicant provides any and all other involvement of the contractor with the applicant, such as being a director, officer, employee, etc., or having common directors, officers, employers, employees, etc. (Reimbursement may be reduced or denied if the contractor is paid a salary or other compensation from the applicant based on this other involvement); and

(D) The contracted expenses are broken out by line item (including all persons who make up the contracted party who had a substantive involvement in the development of the submission), such as:

(*1*) Individual names;

(*2*) Rate of pay;

(*3*) Hours allocated to the submission;

(*4*) Benefit rate; and

(*5*) Overhead;

(iv) Professional fees if fully disclosed, documented, and:

(A) The applicant provides the job title, straight-time hourly wage, total hours, and total dollars;

(B) The applicant provides the relationship, if any, between the applicant and the professional, such as parent company, subsidiary, etc. (Reimbursement may be limited or denied if the contractor is closely associated to the applicant so that they could be considered as one and the same, such as a separate entity being created by the applicant to conduct research and development);

(C) The applicant provides any other involvement of the professional with the applicant, such as being a director, officer, employee, etc., or having common directors, officers, employers, employees, etc. (Reimbursement may be reduced or denied if the contractor is paid a salary or other compensation

from the applicant based on this other involvement); and

(D) The professional fees are broken out by line item (including all persons who make up the professional party who had a substantive involvement in the development of the submission), such as;

(*1*) Individual names;

(*2*) Rate of pay;

(*3*) Hours allocated to the submission;

(*4*) Benefit rate; and

(*5*) Overhead;

(v) Travel and transportation (One line per event, include the job title, destination, purpose of travel, lodging cost, mileage, air or other identified transportation costs, food and miscellaneous expenses, other costs, and the total cost);

(vi) Software and computer programming developed specifically to determine appropriate rates, prices, or coverage amounts (Identify the item, include the purpose, and provide receipts or contract or straight-time hourly wage, hours, and total cost.) Software developed to send or receive data between the producer, agent, approved insurance provider or RMA or such other similar software may not be included as an allowable cost); and

(vii) Miscellaneous expenses such as postage, telephone, express mail, and printing (Identify the item, cost per unit, number of items, and total dollars); and

(2) The following expenses are specifically not eligible for research and development and maintenance cost reimbursement:

(i) Copyright or patent fees;

(ii) Training costs;

(iii) State filing fees and expenses;

(iv) Normal ongoing administrative expenses;

(v) Paid or incurred losses;

(vi) Loss adjustment expenses;

(vii) Sales commission;

(viii) Marketing costs;

(ix) Indirect overhead costs;

(x) Lobbying costs;

(xi) Product or applicant liability resulting from the research, development, preparation or marketing of the policy;

(xii) Copyright infringement claims resulting from the research, development, preparation or marketing of the policy;

(xiii) Costs of making program changes as a result of any mistakes, errors or flaws in the policy or plan of insurance; and

(xiv) Costs associated with building rents or space allocation.

(h) Requests for reimbursement of maintenance costs for submissions approved after September 17, 2001, must be supported by itemized statements and supporting documentary evidence for each reinsurance year in the maintenance period. Actual costs submitted will be examined for reasonableness and may be adjusted at the sole discretion of the Board. Maintenance costs for the following activities may be reimbursed:

(1) Expansion of the original submission into additional counties or states;

(2) Non-significant changes to the policy and any related material;

(3) Non-significant or significant changes to the policy as necessary to protect program integrity or as required by Congress; and

(4) Any other activity that qualifies as maintenance.

(i) If the applicant does not reasonably demonstrate that the submission meets the marketing plan or does not follow the criteria set forth in this regulation, the product may be withdrawn at the discretion of the Board and no further maintenance reimbursement will be paid.

(j) Not later than six months prior to the end of the last reinsurance year in which a maintenance reimbursement will be paid, as approved by the Board, the applicant must notify FCIC regarding its election of the treatment of the policy or plan of insurance for subsequent reinsurance years.

(1) The applicant must notify FCIC whether it intends to:

(i) Continue to maintain the policy or plan of insurance and charge approved insurance providers a user fee to cover maintenance expenses for all policies earning premium. It is the sole responsibility of the applicant to collect such fees from the approved insurance providers and any indebtedness for such fees must be resolved by the applicant and approved insurance provider. Applicants may request that

FCIC provide the number of policies sold by each approved insurance provider. Such information will be provided not later than 90 days after such request is made or not later than 90 days after the requisite information has been provided to FCIC by the approved insurance provider, whichever is later; or

(ii) Transfer responsibility for maintenance to FCIC.

(2) If the applicant elects to:

(i) Continue to maintain the policy or plan of insurance, the applicant must submit a request for approval of the user fee by the Board at the time of the election; or

(ii) Transfer the policy or plan of insurance to FCIC, FCIC may at its sole discretion, continue to maintain the policy or plan or insurance or elect to withdraw the availability of the policy or plan of insurance.

(3) Requests for approval of the user fee must be accompanied by written documentation to support that the amount requested will only cover maintenance costs.

(4) The Board will approve the amount of user fee that is payable to the applicant by approved insurance providers unless the Board determines that the user fee charged:

(i) Is unreasonable in relation to the maintenance costs associated with the policy or plan of insurance; or

(ii) Unnecessarily inhibits the use of the policy or plan of insurance by other approved insurance providers.

(5) Reasonableness of the user fees will be determined by the Board based on a comparison with the amount of reimbursement for maintenance previously received, the number of policies, the number of approved insurance providers, and the expected total amount of user fees to be received in any reinsurance year.

(6) A user fee unnecessarily inhibits the use of a policy or plan of insurance if it is so high that other approved insurance providers are unable to pay such fees because of the volume of business currently underwritten by the approved insurance provider.

(7) The user fee charged to each approved insurance provider will be considered payment in full for the use of such policy, plan of insurance or rate of premium for the reinsurance year in which payment is made.

(8) If the applicant does not notify FCIC at least six months prior to the last day of the last reinsurance year in which a maintenance reimbursement will be paid, as approved by the Board, ownership of the policy or plan of insurance will be automatically transferred to FCIC beginning with the next reinsurance year.

(k) The Board may consider information from the Equal Access to Justice Act, 5 U.S.C. 504, the Bureau of Labor Statistic's Occupational Employment Statistics Survey, the Bureau of Labor Statistic's Employment Cost Index, and any other information determined applicable by the Board, in making a determination whether to approve a submission for reimbursement of research and development costs, or maintenance costs under this section or the amount of reimbursement.

(l) For the purposes of this section, rights to, or obligations of, research and development cost reimbursement, maintenance cost reimbursement, or user fees cannot be transferred from any individual or entity unless specifically approved in writing by the Board.

(m) Notwithstanding the definition in §400.701, the maintenance period ends for an approved submission once the applicant no longer performs the maintenance responsibilities, as determined by FCIC, or the applicant gives FCIC notice they no longer wish to maintain the submission.

(n) Applicants requesting reimbursement for research and development costs, maintenance costs, or user fees, may present their request in person to the Board prior to consideration for approval.

[66 FR 47951, Sept. 17, 2001, as amended at 70 FR 44241, Aug. 2, 2005]

§400.713 Nonreinsured supplemental (NRS) policy.

(a) Unless notified by FCIC, three hard copies, or an electronic copy in a format approved by RMA, of the new or revised NRS policy and related materials must be submitted to the Deputy Administrator, Research and Development (or successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133-4676, at least 120

days prior to the first sales closing date applicable to the policy.

(b) FCIC will review the NRS policy to determine that it does not materially increase or shift risk to the underlying policy or plan of insurance reinsured by FCIC, reduce or limit the rights of the insured with respect to the underlying policy or plan of insurance, or cause disruption in the marketplace for products reinsured by FCIC.

(1) An NRS policy will be considered to disrupt the marketplace if it adversely affects the sales or administration of reinsured policies, undermines producers' confidence in the Federal crop insurance program, decreases the producer's willingness or ability to use Federally reinsured risk management products, or harms public perception of the Federal crop insurance program.

(2) The applicant, at a minimum, must provide worksheets and examples that establish liability and determine indemnities that demonstrate the performance of the NRS policy under differing scenarios. When the review is complete, FCIC will forward their findings to the applicant.

(c) If the approved insurance provider sells an NRS policy that RMA determines materially increases or shifts risk to the underlying FCIC reinsured policy, reduces or limits the rights of the insured with respect to the underlying policy, or causes disruption in themarketplace for products reinsured by FCIC, reinsurance, A&O subsidy and risk subsidy will be denied on the underlying FCIC reinsured policy for which such NRS policy was sold.

(d) FCIC will respond to the submitter not less than 60 days before the first sales closing date or provide notice why FCIC is unable to respond within the time frame allotted.

[70 FR 44242, Aug. 2, 2005]

§ 400.714 Requests for the opportunity to offer a premium discount.

(a) To participate in the premium reduction plan, approved insurance providers must make a request to RMA for the opportunity to offer a premium discount for the reinsurance year in accordance with § 400.716.

(b) If RMA determines that the approved insurance provider is eligible for the opportunity to offer a premium discount under the premium reduction plan for the reinsurance year, the approved insurance provider will only be allowed to pay a premium discount if:

(1) The approved insurance provider has submitted the required information applicable for that reinsurance year in accordance with § 400.720;

(2) The approved insurance provider has demonstrated to RMA that it has operated sufficiently below its A & O subsidy to support the payment of such discount; and

(3) RMA has approved the dollar amount, and the corresponding percentage of net book premium, for the premium discount.

(c) For the 2006 reinsurance year:

(1) For an approved insurance provider with an approved SRA for the 2005 reinsurance year, requests for the opportunity to offer a premium discount must be received by RMA not later than August 4, 2005; and

(2) For an approved insurance provider that did not have an approved SRA for the 2005 reinsurance year and did not request such agreement until after the deadline contained in paragraph (c)(1) of this section, requests for the opportunity to offer a premium discount must be provided with the application for approval of a SRA.

(d) For all subsequent reinsurance years:

(1) For an approved insurance provider with an approved SRA for the previous reinsurance year, requests for the opportunity to offer a premium discount must be received by RMA not later than April 1 before the reinsurance year, or the date RMA otherwise determines the Plan of Operations is due; and

(2) For an approved insurance provider that did not have an approved SRA for the previous reinsurance year and did not request such agreement until after the deadline contained in paragraph (d)(1) of this section, requests for the opportunity to offer a premium discount under the premium reduction plan must be provided with the application for approval of a SRA.

(e) Any request for the opportunity to offer a premium discount under the premium reduction plan that is not submitted by the applicable deadlines

contained in paragraphs (c) and (d) will not be considered until the next reinsurance year.

(f) The request for the opportunity to offer a premium discount under the premium reduction plan must be sent to the Director, Reinsurance Services Division (or designee).

[70 FR 41919, July 20, 2005]

§400.715 Limitations and prohibitions.

(a) For the first two reinsurance years that RMA approves the payment of a premium discount, the approved insurance provider may not pay a premium discount under the premium reduction plan to a producer greater than 4.0 percent of the net book premium for the eligible crop insurance contract. For subsequent reinsurance years, the 4.0 percent of the net book premium for the eligible crop insurance contract will remain the maximum amount of premium discount authorized to be approved by RMA unless otherwise stated by RMA.

(b) All premium discounts must be based on an actual accounting of efficiencies achieved by the approved insurance provider for the reinsurance year and may not be distributed to policyholders until the payment and the amount of such discounts have been approved by RMA in writing in accordance with §400.720.

(c) The approved insurance provider may not impose any term or condition upon the distribution or amount of any premium discount (such as conditioning the premium discount based upon the renewal of the eligible crop insurance contract with the approved insurance provider or not having a loss for the crop year), except those included in §§400.714 through 400.722.

(d) Premium discounts under the premium reduction plan are not available for:

(1) Eligible crop insurance contracts at CAT level of coverage; and

(2) Ineligible producers.

(e) No approved insurance provider or its representatives, agents, employees or contractors may advertise or otherwise communicate to any producer the availability, potential availability, or existence of:

(1) The opportunity to offer a premium discount under the premium reduction plan until the approved insurance provider receives written notice from RMA that it is eligible for the opportunity to offer a premium discount;

(2) A specific amount of premium discount prior to such amount being approved in writing by RMA in accordance with §400.720; and

(3) Past or projected ability of the approved insurance provider to operate at less than the approved insurance provider's A&O subsidy.

(f) After RMA has determined that the approved insurance provider is eligible for the opportunity to offer a premium discount in a State, the approved insurance provider and its representatives, agents, employees or contractors may advertise and communicate to producers that there is an opportunity for the approved insurance provider to offer a premium discount in that State and:

(1) If they advertise or otherwise communicate that there is an opportunity to offer a premium discount in that State, such advertisements or other communications:

(i) Can only state the dollar amounts or corresponding percentage of net book premium of premium discount actually paid to producers in the State for each reinsurance year for which the approved insurance provider paid a premium discount; and

(ii) Must contain a prominently displayed disclaimer that:

(A) States ''The past payments of premium discounts are not a guarantee that future payments will be made or an indication of the amount of future premium discounts''; or

(B) States a similar statement that must be approved in writing by RMA; and

(2) RMA may impose a sanction authorized in §400.719(j) if:

(i) RMA determines that the approved insurance provider or its representative, agent, employee or contractor is not in compliance with the provisions of this section; or

(ii) Any State regulatory authority determines that an approved insurance provider or its representatives, agents, employees or contractors has violated any State law regarding the advertising, marketing or solicitation of customers with respect to a premium

discount under the premium reduction plan.

(g) The approved insurance provider shall not distribute any premium discount payment:

(1) Until the dollar amount, and corresponding percentage of net book premium, for the premium discount have been approved by RMA in writing (For example, RMA may approve a dollar amount of premium discount in a State of $500,000, which corresponds to a percentage of premium discount of 3% of the net book premium for the State); and

(2) In an amount that is greater than the dollar amount, and corresponding percentage of net book premium, for the premium discount approved by RMA.

(h) If RMA approves a dollar amount, and corresponding percentage of net book premium, for the premium discount in a State:

(1) All producers insured by the approved insurance provider in that State for the corresponding reinsurance year will automatically receive that percentage of net book premium of premium discount (For example, if an approved insurance provider is approved to pay a percentage of premium discount of 3% of the net book premium for efficiencies attained during the 2006 reinsurance year in a State, all producers insured with that approved insurance provider during the 2006 reinsurance year in that State will receive a premium discount that is 3% of the net book premium for their eligible crop insurance contract); and

(2) That same RMA approved premium discount percentage of net book premium must be paid for all crops, coverage levels except the CAT coverage level, and plans of insurance written by the approved insurance provider in that State.

(i) The approved insurance provider must be in compliance with all requirements of the approved procedures to be able to pay a premium discount.

[70 FR 41920, July 20, 2005]

§ 400.716 Contents of the request for the opportunity to offer a premium discount.

Each request for the opportunity to offer a premium discount under the premium reduction plan must include all of the following:

(a) The name of the approved insurance provider; the person who may be contacted for further information regarding the request for an opportunity to offer a premium discount under the premium reduction plan; and the person who will be responsible for the administration of the premium reduction plan.

(b) A list of the States where the approved insurance provider wants the opportunity to offer a premium discount under the premium reduction plan.

(c) A detailed marketing plan that describes how the approved insurance provider will promote the premium reduction plan to all producers, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers. With respect to the marketing plan, it must:

(1) Identify and utilize the appropriate media with the capacity to reach all producers, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers, in the State in which the premium reduction plan will be offered, such as advertising through farm journals, farm radio, community based organizations, etc.;

(2) Be in addition to any solicitation or advertising done by agents of the approved insurance provider; and

(3) Contain a certification by the person responsible for signing the SRA that any cost saving measures will not result in a reduction in service to any producers, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers in the State in which the premium reduction plan will be offered.

(d) A report of the total dollar amount of premium discount and the corresponding premium discount percentage by State paid for the previous reinsurance year (Such report must be provided to RMA not later than 15 days after making the premium discount payments); and

(e) Such other information as deemed necessary by RMA.

[70 FR 41921, July 20, 2005]

§400.717 New approved insurance providers.

There may be instances where a new approved insurance provider is entering the crop insurance program for the first time and such approved insurance provider is not affiliated with an MGA, a TPA, another approved insurance provider, or any other entity that possesses the infrastructure necessary to deliver the crop insurance program, that is currently or has previously participated in the crop insurance program.

(a) In such instances, the one time start-up costs that are associated with entering the crop insurance business (*e.g.*, creation of a claims system, interface with RMA's data acceptance system, initial marketing costs, set up charges) must be included in the Expense Exhibits required by the SRA, or the applicable regulations or approved procedures, but the costs may be amortized in equal annual amounts for a period of up to three years for the purpose of determining the efficiency on the documents described in §400.720, in a manner determined by RMA.

(b) If the approved insurance provider is affiliated with a MGA, a TPA, another approved insurance provider that previously participated in the crop insurance program but such MGA, TPA, or other approved insurance provider can demonstrate that it no longer has the infrastructure to operate the program, the FCIC Board of Directors, in its sole discretion, can authorize the amortization of start-up costs in accordance with paragraph (a) of this section.

[70 FR 41921, July 20, 2005]

§400.718 RMA Review

If an insurance provider requests eligibility for the opportunity to offer a premium discount under the premium reduction plan:

(a) For the 2006 reinsurance year, RMA will notify the approved insurance provider not later than 30 days after the date the approved insurance provider submits its request for eligibility for the opportunity to offer a premium discount under a premium reduction plan, whether it is eligible.

(b) For all subsequent reinsurance years, RMA will notify the approved insurance provider at the same time it approves the Plan of Operations whether it is eligible.

(c) An approved insurance provider may be determined to be eligible for the opportunity to offer a premium discount under the premium reduction plan if, in the sole determination of RMA, all of the following criteria are met:

(1) All information required in §400.716 is included in the request for the opportunity to offer a premium discount under the premium reduction plan;

(2) The marketing plan is designed to be effective at reaching all producers in the State, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers;

(3) The implementation of any activities to enable the approved insurance provider to pay a premium discount does not impede the approved insurance provider's ability to comply with all requirements of the approved procedures, law, and regulation;

(4) There must be a reasonable assurance that producers, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers, insured by the approved insurance provider will not experience a reduction in service;

(5) The insurance provider can demonstrate that it is operationally and financially capable and ready to serve, all producers in that State; and

(6) The approved insurance provider's resources, procedures, and internal controls are adequate to provide a premium discount under the premium reduction plan, make approved premium discount payments in a timely manner, prevent unfair discrimination, and comply with all applicable laws, regulations and approved procedures.

(d) If the approved insurance provider is determined by RMA to be eligible for the opportunity to provide a premium discount under the premium reduction

plan, the approved insurance provider will be notified in writing by the Director, Reinsurance Services Division, or a designee or successor.

(e) Notification that an approved insurance provider is eligible for the opportunity to offer a premium discount under the premium reduction plan is not a guarantee that a premium discount payment will be approved by RMA for the reinsurance year. Approval of a premium discount cannot be provided by RMA until the actual A&O costs and A&O subsidy are reported for the reinsurance year and RMA determines that all the requirements of §§ 400.714 through 400.722 have been met.

[70 FR 41921, July 20, 2005]

§ 400.719 Terms and conditions for the Premium Reduction Plan.

The following terms and conditions apply to all approved insurance providers that RMA has determined are eligible for the opportunity to offer a premium discount under the premium reduction plan:

(a) RMA's determination that the approved insurance provider is eligible for the opportunity to offer a premium discount under the premium reduction plan will only be effective for one reinsurance year. Approved insurance providers must reapply each reinsurance year in accordance with §§ 400.714 through 400.716.

(b) All procedural issues, questions, problems or clarifications with respect to implementation of the premium reduction plan must be addressed by the approved insurance provider by the deadline determined by RMA.

(c) The agents employed or under contract with an approved insurance provider that RMA has determined is eligible for the opportunity to offer a premium discount under the premium reduction plan must disclose to all producers, insured with the agent or inquiring about insuring with the agent, in writing the names of all approved insurance providers that the agent represents that RMA has determined are eligible for the opportunity to offer a premium discount under the premium reduction plan.

(d) The approved insurance provider must provide to the Director, Reinsurance Services Division semi-annual reports, or more frequent reports as determined by RMA, that, along with other information obtained by RMA, permit RMA to accurately evaluate the effectiveness of the approved insurance provider's implementation of the premium reduction plan, in the manner specified by RMA. At a minimum, each report must contain for each State listed by the approved insurance provider under § 400.716(b):

(1) The number of small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers making application; and

(2) The number, substance, and final or pending resolution of complaints from producers regarding the service received under the premium reduction plan.

(e) RMA will monitor the approved insurance provider's efforts to market the premium reduction plan to small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers.

(1) RMA may compare the composition of the approved insurance provider's book of business in a State with the composition of the books of business of other approved insurance providers in that State to assist in determining whether the marketing plan has been effective or there is credible evidence of unfair discrimination by the approved insurance provider or its agents.

(2) If at any time RMA determines that the marketing activities of the approved insurance provider are not effective in reaching small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers or there is credible evidence of unfair discrimination by the approved insurance provider or its agents in any State listed by the approved insurance provider under § 400.716(b), RMA will take the appropriate action authorized in paragraph (j) of this section (Remedial measures may include additional targeted advertising by the approved insurance provider or other appropriate

measures to ensure the insurance provider is adequately serving small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers or that such unfair discrimination has been discontinued and corrective action taken).

(f) In no event shall RMA, FCIC or any other agency of the United States Government be liable for any damages caused by any mistakes, errors, misrepresentations, or flaws in the premium reduction plan or its implementation.

(g) If RMA approves a dollar amount, and corresponding percentage of net book premium, for the premium discount for a State in accordance with § 400.720, it will be applicable to the reinsurance year in which the efficiencies were attained and the approved insurance provider must pay that dollar amount, and corresponding percentage of net book premium, for the premium discount to its policyholders in that State for that reinsurance year. If the approved insurance provider fails to pay this amount, the approved insurance provider:

(1) Will not be eligible for the opportunity to offer a premium discount for the reinsurance year immediately following RMA's approval of the payment of a premium discount; and

(2) Must disclose in all its promotional and advertising material that it was approved to pay a premium discount by RMA but elected not to pay such discount, unless approval to pay the premium discount was withdrawn by RMA, for the next two reinsurance years subsequent to the failure to pay the premium discount.

(h) For policyholders that were insured with the approved insurance provider in the reinsurance year from which the approved premium discount is applicable but are not currently insured with the approved insurance provider, any premium discount payments must be sent to the last known address of the policyholder.

(i) The approved insurance provider and its representatives, agents, employees and contractors must fully cooperate with RMA and any State or Federal government agencies in any review of the operations or activities of the approved insurance provider and its representatives, agents, employees and contractors, with respect to the premium reduction plan.

(j) At its sole discretion and upon written notice, RMA may withdraw a determination of eligibility for the opportunity to offer a premium discount under the premium reduction plan or approval of all or a part of a premium discount payment, preclude eligibility for the opportunity to offer a premium discount, or otherwise participate, under the premium reduction plan for a period determined by RMA commensurate with offense, take such other actions as authorized under the SRA, or require appropriate remedial measures as determined by RMA, if RMA determines that:

(1) Any approved insurance provider or its representative, agent, employee or contractor has failed to comply with any term or condition contained in 7 CFR 400.714 through 400.721; or

(2) The payment of a premium discount could adversely affect the financial or operational stability of the approved insurance provider, its MGA or TPA as required by applicable regulations or approved procedures.

(k) The insurance provider may be held solely responsible for the actions of its representatives, agents, employees or contractors with respect to any violation of any term or condition contained in §§ 400.714 through 400.721 or action under paragraph (j) of this section may be taken individually against the insurance provider or its representatives, agents, employees or contractors.

[70 FR 41922, July 21, 2005]

§ 400.720 Standards for approval of a premium discount.

For approval of a premium discount:

(a) If the approved insurance provider intends to offer a premium discount in a State listed by the approved insurance provider under § 400.716(b) based on efficiencies attained during the reinsurance year, the approved insurance provider must, not later than December 31 after the annual settlement for the reinsurance year, submit to RMA:

(1) An audit, in a format approved by RMA, of the Expense Exhibits provided with the Plan of Operations, and the

estimated A&O costs for the reinsurance year that were not included in such Expense Exhibits, certified by an independent certified public accountant with experience in insurance accounting, who must certify to the accuracy and completeness of the costs stated therein and the Expense Exhibits' conformance with the requirements of the SRA (The costs associated with such audit and certification will be at the approved insurance provider's expense and must be included in the approved insurance provider's A&O costs for the purposes of determining an efficiency);

(2) A detailed description of all profit sharing arrangements that the approved insurance provider claims are not to be included as compensation (RMA reserves the right to request copies of such profit sharing contracts or other agreements); and

(3) The dollar amount, and corresponding percentage of net book premium, for the premium discount that the approved insurance provider will pay in the State.

(b) RMA will use the Expense Exhibits required to be submitted as part of the Plan of Operations to determine:

(1) Whether the approved insurance provider's A&O costs were less than its A&O subsidy for the reinsurance year for the entire book of business; and

(2) The actual dollar amount of efficiency attained by the approved insurance provider for the reinsurance year for each State where the approved insurance provider was eligible for the opportunity to offer a premium discount under the premium reduction plan. The dollar amount of efficiency and the dollar amount, and corresponding percentage of net book premium, for the premium discount must be prepared and submitted in accordance with approved procedures.

(i) For the 2006 reinsurance year, such approved procedures will be issued within 5 days after July 20, 2005; and

(ii) For all subsequent reinsurance years, such procedures will remain in effect unless revised and if such approved procedures will be revised, these approved procedures will be issued not later than January 1 before the start of the reinsurance year.

(c) For each State listed by the approved insurance provider under § 400.716(b) for which the insurance provider requests approval to pay a premium discount, RMA will compare the dollar amount, and corresponding percentage of net book premium, for the premium discount determined in accordance with applicable approved procedures with the dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider.

(d) RMA may approve the dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider if and to the extent that:

(1) The dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider does not exceed the dollar amount, and corresponding percentage of net book premium, for the premium discount determined by RMA in accordance with paragraph (b) of this section; and

(2) If all other requirements of §§ 400.714 through 400.722 have been met.

(e) If the dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider exceeds the dollar amount, and corresponding percentage of net book premium, for the premium discount determined by RMA in accordance with paragraph (b) of this section, the approved insurance provider will be limited to paying the dollar amount, and corresponding percentage of net book premium, for the premium discount determined by RMA.

[70 FR 41923, July 20, 2005]

§ 400.721 Determinations and reconsiderations.

(a) If RMA takes any action authorized in § 400.719(j), the Director, Reinsurance Services Division, or a designee or successor will notify the approved insurance provider or its representatives, agents, employees or contractors against whom such action is taken, as applicable, in writing:

(1) Of the action taken;

(2) The date such action is effective; and

(3) The basis for such action.

(b) If eligibility for the opportunity to offer a premium discount, or to participate, under the premium reduction plan is withdrawn, the approved insurance provider or agent, as applicable, must notify its policyholders it is no longer eligible to offer a premium discount, cease any advertising or other communication regarding a premium discount effective for the next sales closing date, and no premium discount may be distributed to any producer of the insurance provider or agent, as applicable, for the reinsurance year.

(c) If notice is provided under paragraph (a) of this section to an approved insurance provider or its representatives, agents, employees or contractors:

(1) The approved insurance provider or its representatives, agents, employees or contractors, as applicable, may request, in writing, reconsideration of the decision with the Deputy Administrator of Insurance Services, or a designee or successor, within 30 days of the date stated on the notice provided in paragraph (a) of this section;

(2) Such request must provide a detailed narrative of the basis for reconsideration; and

(3) The Deputy Administrator of Insurance Services, or a designee or successor will issue its reconsideration decision not later than 45 days after receipt of the request for reconsideration.

(d) Reconsideration decisions issued in accordance with paragraph (c) of this section are considered as final administrative determinations rendered under § 400.169(a) and if the approved insurance provider or its representatives, agents, employees or contractors who received such reconsideration decision disagrees with this final administrative determination, it may appeal in accordance with § 400.169(d).

(e) If eligibility to offer a premium discount plan has been withdrawn by RMA under § 400.719(j), the approved insurance provider may request eligibility for the opportunity to offer a premium discount for the next applicable reinsurance year if the condition which was the basis for such withdrawal has been remedied.

[70 FR 41923, July 20, 2005]

§ 400.722 Consumer complaints.

Consumer complaints regarding an approved insurance provider's violation of the requirements of §§ 400.714 through 400.721 should be sent in confidence to RMA, attention: The Director of the Reinsurance Services Division, or a designee or successor.

(a) Consumer complaints must include:

(1) A specific citation of the requirement in §§ 400.714 through 400.721 that has allegedly been violated;

(2) A detailed listing of the actions alleged to have taken place that violate the requirement;

(3) Specific identification of persons involved in the violation, and

(4) The date, place and circumstances under which such violation allegedly occurred.

(b) Any complaint that does not meet the requirements in paragraph (a) of this section may be returned to the sender for further details before RMA can pursue investigation of the complaint.

(c) RMA may seek additional information to assist in investigating the complaint.

(d) If RMA's investigation determines there has been a violation of a requirement in §§ 400.714 through 400.721, it may take the appropriate action authorized under § 400.719(j).

[70 FR 41924, July 20, 2005]

Subpart W [Reserved]

Subpart X—Interpretations of Statutory and Regulatory Provisions

SOURCE: 63 FR 70313, Dec. 21, 1998, unless otherwise noted.

§ 400.765 Basis and applicability.

(a) The regulations contained in this subpart prescribe the rules and criteria for obtaining a final agency determination of the interpretation of any provision of the Act or the regulations promulgated thereunder.

(b) Requesters may seek interpretations of those provisions of the Act and the regulations promulgated thereunder that are in effect for the crop year in which the request under this subpart is being made and the three previous crop years.

(c) All final agency determinations issued by FCIC, and published in accordance with § 400.768(f), will be binding on all participants in the Federal crop insurance program.

[63 FR 70313, Dec. 21, 1998, as amended at 64 FR 50246, Sept. 16, 1999]

§ 400.766 Definitions.

Act. The Federal Crop Insurance Act, 7 U.S.C. 1501 *et seq*.

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within the United States Department of Agriculture.

Participant. Any applicant for crop insurance, a producer with a valid crop insurance policy, or a private insurance company with a reinsurance agreement with FCIC or their agents, loss adjusters, employees or contractors.

Regulations. All provisions contained in 7 CFR chapter IV.

§ 400.767 Requester obligations.

(a) All requests for a final agency determination under this subpart must:

(1) Be submitted, in writing by certified mail to the Associate Administrator, Risk Management Agency, United States Department of Agriculture, Stop Code 0801, 1400 Independence Avenue, SW., Washington, DC 20250–0801, facsimile at (202) 690–5879 or by electronic mail at *RMA533@wdc.fsa.usda.gov;*

(2) State that it is being submitted under section 506(s) of the Act;

(3) Identify and quote the specific provision in the Act or regulations for which a final agency determination is requested;

(4) State the crop year for which the interpretation is sought;

(5) State the name, address, and telephone number of a contact person affiliated with the request; and

(6) Contain the requester's detailed interpretation of the regulation.

(b) The requestor must advise FCIC if the request for a final agency determination will be used in a lawsuit or the settlement of a claim.

(c) Each request for final agency determination under this subpart must contain no more than one request for an agency interpretation.

[63 FR 70313, Dec. 21, 1998, as amended at 64 FR 50246, Sept. 16, 1999]

§ 400.768 FCIC obligations.

(a) FCIC will not interpret any specific factual situation or case, such as actions of any participant under the terms of a policy or any reinsurance agreement.

(b) If, in the sole judgement of FCIC, the request is unclear, ambiguous, or incomplete, FCIC will not provide an interpretation, but will notify the requester that the request is unclear, ambiguous or incomplete, within 30 days of such request.

(c) FCIC will provide a final determination of the interpretation to a request that meets all the conditions stated herein to the requester in writing, and at FCIC's discretion in the format in which it was received, within 90 days of the date of receipt by FCIC.

(d) If a requestor is notified that a request is unclear, ambiguous or incomplete under section 400.768(b), the time to respond will be tolled from the date FCIC notifies the requestor until the date that FCIC receives a clear, complete, and unambiguous request.

(e) If a response is not provided within 90 days, the requestor may assume the interpretation provided is correct for the applicable crop year.

(f) All agency final determinations will be published by FCIC as specially numbered documents on the RMA Internet website.

(g) All final agency determinations are considered matters of general applicability that are not appealable to the National Appeals Division. Before obtaining judicial review of any final agency determination, the person must obtain an administratively final determination from the Director of the National Appeals division on the issue of whether the final agency determination is a matter of general applicability.

PART 401 [RESERVED]

PART 402—CATASTROPHIC RISK PROTECTION ENDORSEMENT

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 0563–0053.

[61 FR 42985, Aug. 20, 1996, as amended at 69 FR 48730, Aug. 10, 2004]

§402.4 Catastrophic Risk Protection Endorsement Provisions.

The Catastrophic Risk Protection Endorsement Provisions for the 2005 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

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, and any adjustments elected in accordance with section 36 of the Basic Provisions.

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.

Household. A domestic establishment including the members of a family (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to be family members) and others who live under the same roof.

Insurance is available. When crop information is contained in the county actuarial documents for a particular crop.

Limited resource farmer. A person with:

(1) Direct or indirect gross farm sales not more than $100,000.00 in each of the previous two years (to be increased starting in fiscal year 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS)); and

(2) A total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data).

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.

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 coverage, you must pay an administrative fee to the insurance provider within 30 days after you have been billed by us, unless otherwise specified in 7 CFR part 400 (You will be billed by the date stated in the Special Provisions);

(1) The administrative fee owed is $100 for each crop in the county.

(2) Payment of an administrative fee will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop (if you falsely file a zero acreage report you may be subject to criminal and administrative sanctions).

(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). The administrative fee will be waived if you request it and:

(1) You qualify as a limited resource farmer; or

(2) You were insured prior to the 2005 crop year or for the 2005 crop year and your administrative fee was waived for one or more of those crop years because you qualified as a limited resource farmer under a policy definition previously in effect, and you remain qualified as a limited resource farmer under the definition that was in effect at the time the administrative fee was waived.

(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) If the administrative fee is not paid when due, you, and all persons with an insurable interest in the crop under the same contract, 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.

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 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 additional coverage policy and the catastrophic coverage policy.

(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. Notwithstanding the first sentence of this subsection, farm ownership, operating, and emergency loans may be obtained from the USDA in addition to an indemnity under this endorsement.

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.

[61 FR 42985, Aug. 20, 1996, as amended at 63 FR 40631, July 30, 1998; 64 FR 40740, July 28, 1999; 65 FR 40484, June 30, 2000; 69 FR 48730, Aug. 10, 2004]

PARTS 403–406 [RESERVED]

PART 407—GROUP RISK PLAN OF INSURANCE REGULATIONS FOR THE 2005 AND SUCCEEDING CROP YEARS

Sec.

407.1 Applicability.
407.2 Availability of Federal crop insurance.
407.3 Premium rates, amounts of protection, and coverage levels.
407.4 OMB control numbers.
407.5 Creditors.
407.6 [Reserved]
407.7 The contract.
407.8 The application and policy.
407.9 Group risk plan common policy.
407.10 Group risk plan for barley.
407.11 Group risk plan for corn.
407.12 Group risk plan for cotton.
407.13 Group risk plan for forage.
407.14 Group risk plan for peanuts.
407.15 Group risk plan for sorghum.
407.16 Group risk plan for soybean.
407.17 Group risk plan for wheat.

AUTHORITY: 7 U.S.C. 1506(1), 1506(p).

SOURCE: 64 FR 30219, June 7, 1999, unless otherwise noted.

§407.1 Applicability.

The provisions of this part are applicable only to those crops and crop years for which a Crop Provision is contained in this part.

§ 407.2 Availability of Federal crop insurance.

(a) Insurance shall be offered under the provisions of this part on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, (7 U.S.C. 1501 *et seq.*) (the Act). The crops and counties shall be designated by the Manager of the Federal Crop Insurance Corporation (FCIC) from those approved by the Board of Directors of FCIC.

(b) The insurance will be offered through companies reinsured by FCIC under the same terms and conditions as the contract contained in this part. These contracts are clearly identified as being reinsured by FCIC. Additionally, the contract contained in this part may be offered directly to producers through agents of the United States Department of Agriculture. Those contracts are specifically identified as being offered by FCIC.

(c) No person may have in force more than one insurance policy issued or reinsured by FCIC on the same crop for the same crop year, in the same county, unless specifically approved in writing by FCIC.

(d) Except as specified in paragraph (c) of this section, if a person has more than one contract authorized under the Act that provides coverage for the same loss 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 multiple contracts of insurance were without the fault of the person.

(1) If the multiple contracts of insurance are shown to be without the fault of the person and:

(i) One contract is an additional coverage policy and the other contract is a Catastrophic Risk Protection policy, the additional coverage policy will apply if both policies are with the same insurance provider, or if not, both insurance providers agree, and the Catastrophic Risk Protection policy will be canceled (If the insurance providers do not agree, the policy with the earliest date of application will be in force and the other contract will be canceled); or

(ii) Both contracts are additional coverage policies or both are Catastrophic Risk Protection policies, the contract with the earliest signature date on the application will be valid and the other contract on that crop in the county for that crop year will be canceled, unless both policies are with the same insurance provider and the insurance provider agrees otherwise or both policies are with different insurance providers and both insurance providers agree otherwise.

(2) No liability for indemnity or premium will attach to the contracts canceled as specified in paragraphs (d)(1)(i) and (ii) of this section.

(e) The person must repay all amounts received in violation of this section with interest at the rate contained in the contract (see § 407.9, section 15).

(f) A person whose contract with FCIC or with a company reinsured by FCIC under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain crop insurance under the Act with FCIC or with a company reinsured by FCIC unless the person can show that the termination was improper and should not result in subsequent ineligibility.

(g) All applicants for insurance under the Act must advise the insurance provider, in writing at the time of application, of any previous applications for insurance or contracts of insurance under the Act within the last 5 years and the present status of any such applications or insurance.

[64 FR 30219, June 7, 1999, as amended at 69 FR 48731, Aug. 10, 2004]

§ 407.3 Premium rates, amounts of protection, and coverage levels.

(a) The Manager of FCIC shall establish premium rates, amounts of protection, and coverage levels for the insured crop that will be included in the actuarial documents on file in the insurance provider's office. Premium rates, amounts of protection, and coverage levels may be changed from year to year.

(b) At the time the application for insurance is made, the person must elect

an amount of protection and a coverage level from among those contained in the actuarial documents for the crop year.

§407.4 OMB control numbers.

The information collection activity associated with this rule has been previously approved by the Office of Management and Budget (OMB) under control number 0563–0053.

§407.5 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.

§407.6 [Reserved]

§407.7 The contract.

The insurance contract shall become effective upon the acceptance by FCIC or the reinsured company of a complete, duly executed application for insurance on a form prescribed or approved by FCIC. The contract shall consist of the accepted application, Group Risk Plan of Insurance Basic Provisions, Crop Provisions, Special Provisions, Actuarial Table, and any amendments, endorsements, or options thereto. Changes made in the contract shall not affect its continuity from year to year. No indemnity shall be paid unless the person complies with all terms and conditions of the contract. The forms required under this part and by the contract are available at the office of the insurance provider, or the local FSA office, if applicable.

[64 FR 30219, June 7, 1999, as amended at 69 FR 48731, Aug. 10, 2004]

§407.8 The application and policy.

(a) Application for insurance, on a form prescribed or approved by FCIC, must be made by any person who wishes to participate in the program in order to cover such person's share in the insured crop as landlord, owner-operator, tenant, or other crop ownership interest. No other person's interest in the crop may be insured under the application. The application must be submitted to the insurance provider on or before the applicable sales closing date on file in the insurance provider's local office.

(b) FCIC or the reinsured company may reject or no longer accept applications upon the FCIC's 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 for fall planted crops, unless prohibited by law, upon determining that the probability and severity of claims will not increase because of the extension, by placing the extended date on file in the insurance provider's office and publishing a notice in the FEDERAL REGISTER. If adverse conditions should develop during the extended period, the Corporation will require the insurance provider to immediately discontinue acceptance of applications.

(c) Since this Group Risk Plan differs significantly from traditional Multiple Peril Crop Insurance, persons who purchase the Group Risk Plan and their crop insurance agents will be required to execute an ''Acknowledgment of Differences'' that explains that the terms and conditions of the Group Risk Plan are different from traditional crop insurance in that:

(1) The Group Risk Plan indemnity payment, if any, will be made after the Group Risk Plan premium is received;

(2) A person may have a low yield on his or her individual farm and not receive a payment under Group Risk Plan; and

(3) A person may not have any loss of production and still collect under the policy if a loss of production is general in the area.

(4) By executing the ''Acknowledgment of Differences,'' the insured certifies that:

(i) He or she understands the terms of the Group Risk Plan;

(ii) An MPCI policy may be available in the county; and

(iii) Both a Group Risk Plan and a MPCI Plan cannot be purchased on the same crop by the same insured in the same county.

§ 407.9 Group risk plan common policy.

The provisions of the Group Risk Plan Common Policy for the 2005 and succeeding crop years are as follows:

[FCIC policies]

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Group Risk Plan Common Policy

[Reinsured policies]
(Appropriate title for insurance provider)
(This is a continuous policy. Refer to Section 18.)

[FCIC policies]

This insurance policy establishes a risk management program developed by the Federal Crop Insurance Corporation (FCIC), an agency of the United States Government, under the authority of the Federal Crop Insurance Act (Act), as amended (7 U.S.C. 1501 *et seq.*). All terms of the policy and rights and responsibilities of the parties thereto are subject to the Act and all regulations under the Act published in 7 CFR chapter IV. The provisions of this policy may not be waived or modified in any way by us, your insurance agent or any employee of USDA unless the policy specifically authorizes a waiver or modification by written agreement. Procedures (handbooks, manuals, memoranda, and bulletins), issued by us and published on the RMA Web site at *http://www.rma.usda.gov/* or a successor Web site will be used in the administration of this policy. All provisions of state and local laws in conflict with the provisions of this policy as published at 7 CFR part 407 are preempted and the provisions of this policy control.

Throughout this policy, ''you'' and ''your'' refer to the person shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to the Federal Crop Insurance Corporation. Unless the context indicates otherwise, the use of the plural form of a word includes the singular use and 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 there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures issued by us, the order of priority is as follows: (1) The Act; (2) the regulations; and (3) the procedures issued by us, with (1) controlling (2), etc. If there is a conflict between the policy provisions published at 7 CFR part 407 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 407 control. If a conflict exists among the policy provisions, the order of priority is: (1) The Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Crop Provisions; and (4) these Basic Provisions, with (1) controlling (2), etc.

[Reinsured policies]

This insurance policy establishes a risk management program developed by the Federal Crop Insurance Corporation (FCIC), an agency of the United States Government, under the authority of the Federal Crop Insurance Act (Act), as amended (7 U.S.C. 1501 *et seq.*).

This insurance policy is reinsured by FCIC under the provisions of the Act. All terms of the policy and rights and responsibilities of the parties are subject to the Act and all regulations under the Act published in 7 CFR chapter IV. The provisions of this policy may not be waived or modified in any way by us, our insurance agent or any other contractor or employee of ours or any employee of USDA unless the policy specifically authorizes a waiver or modification by written agreement. We will use the procedures (handbooks, manuals, memoranda, and bulletins), as issued by FCIC and published on the RMA Web site at *http://www.rma.usda.gov/* or a successor Web site, in the administration of this policy. All provisions of state and local laws in conflict with the provisions of this policy as published at 7 CFR part 407 are preempted and the provisions of this policy will control. In the event that we cannot pay your loss because we are insolvent or are otherwise unable to perform our duties under our reinsurance agreement with FCIC, your claim will be settled in accordance with the provisions of this policy and FCIC will be responsible for any amounts owed. No state guarantee fund will be liable for your loss.

Throughout this policy, ''you'' and ''your'' refer to the person shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to the reinsured company issuing this policy. Unless the context indicates otherwise, the use of the plural form of a word includes the singular use and the singular form of the word includes the plural.

AGREEMENT TO INSURE: In return for the payment of premium and subject to all of the provisions of this policy, we agree with you to provide risk protection as stated in this policy. If there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures as issued by FCIC, the order of priority is as follows: (1) The Act; (2) the regulations; and (3) the procedures as issued by FCIC, with (1) controlling (2), etc. If there is a conflict between the policy provisions published at 7 CFR part 407 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 407 control. If a conflict exists among the policy provisions, the order of priority is: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) the

Special Provisions; (3) the Crop Provisions; and (4) these Basic Provisions, with (1) controlling (2), etc.

[Both policies]

The Group Risk Plan of Insurance (GRP) is designed as a risk management tool to insure against widespread loss of production of the insured crop in a county. It is primarily intended for use by those producers whose farm yields tend to follow the average county yield. It is possible for you to have a low yield on the acreage that you insure and still not receive a payment under this plan.

For additional coverage you may select any percent coverage level shown on the actuarial documents. Multiplying your coverage level percent by the expected county yield shown on the actuarial documents gives your trigger yield. If the payment yield that FCIC publishes for the insured crop year falls below your trigger yield, you will receive a payment.

On or before the sales closing date, you may select any dollar amount of protection between 60 and 100 percent (except for Catastrophic Risk Protection (CAT) which is 45 percent) of the maximum protection per acre shown on the actuarial documents. This protection will be provided for each acre of the crop planted by the acreage reporting date and shown on your acreage report (unless otherwise provided in the crop provisions) in which you have a share.

In accordance with the Act, FCIC will pay a portion of your premium, as published in the actuarial documents. The premium rates, practices, types, maximum protection per acre, and maximum subsidy per acre are also shown on the actuarial documents.

FCIC will issue the payment yield in the calendar year following the crop year insured. This yield will be the official estimated yield published by the National Agricultural Statistics Service (NASS). You will be paid if the payment yield falls below your trigger yield. The amount of your payment per net insured acre will be calculated by subtracting the payment yield from the trigger yield, dividing that quantity by the trigger yield, and multiplying that result by your protection per acre for each net acre that you have insured.

To be eligible to participate in the Group Risk Plan of Insurance for any crop in any county, and to receive an indemnity thereunder, you must have an insurable interest in an insured crop that is planted in the county shown on the approved application. The crop must be planted for harvest and be reported to us by the acreage reporting date. You may only purchase coverage under the Group Risk Plan of Insurance on your net acres of the insured crop.

The insurance contract shall become effective upon the acceptance by us of a duly executed application for insurance on our form. The policy will consist of the accepted application, these Basic Provisions, the Crop Provisions, the Special Provisions, other applicable amendments, endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Insurance for each agricultural commodity in each county will constitute a separate policy.

Terms and Conditions

Group Risk Plan of Insurance Basic Provisions

1. Definitions

Acreage report. A report required by section 7 of these Basic Provisions that contains, in addition to other information, your report of your share of all acreage of an insured crop in the county, whether insurable or not insurable.

Acreage reporting date. The date contained in the Special Provisions by which you must submit your acreage report in order to be eligible for Group Risk Insurance.

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

Actuarial documents. The material for the crop year which is available for public inspection in your agent's office and published on RMA's Web site at *http://www.rma.usda.gov/* or a successor Web site, and which shows the maximum protection per acre, expected county yield, coverage levels, information needed to determine the premium rates, practices, program dates, and other related information regarding crop insurance in the county.

Additional coverage. For GRP, an amount of protection greater than catastrophic risk protection. The protection is on a per acre basis as specified in the actuarial documents for the crop, practice, and type.

Agricultural commodity. Any crop or other commodity produced, regardless of whether or not it is insurable.

Agricultural experts. Persons who are employed by the Cooperative State Research, Education and Extension Service or the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific crop or practice for which such expertise is sought.

Area. Land surrounding the insured acreage with geographic characteristics, topography, soil types and climatic conditions similar to the insured acreage.

Billing date. The date, contained in the actuarial documents, by which we will bill you for the premium and administrative fee on the insured crop.

Cancellation date. The calendar date specified in the Crop Provisions on which insurance for the next crop year will automatically renew unless the policy is canceled in

writing by either you or us or terminated in accordance with policy terms.

Catastrophic risk protection. The minimum level of coverage offered by FCIC. For GRP, an amount of protection equal to 65 percent of the expected county yield indemnified at 45 percent of the maximum protection per acre specified in the actuarial documents for the crop, practice, and type.

County. Any county, parish, or other political subdivision of a state shown on your accepted application.

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

Code of Federal Regulations (CFR). The codification of general and permanent rules published in the FEDERAL REGISTER by the Executive departments and agencies of the Federal Government. Rules published in the FEDERAL REGISTER by FCIC are contained in 7 CFR chapter IV. The full text of the CFR is available in electronic format at *http://www.access.gpo.gov/* or a successor Web site.

Contract change date. The calendar date by which changes to the policy, if any, will be made available in accordance with section 19 of these Basic Provisions.

Conventional farming practice. A system or process for producing an agricultural commodity, excluding organic farming practices, that is necessary to produce the crop that may be, but is not required to be, generally recognized by agricultural experts for the area to conserve or enhance natural resources and the environment.

Cover crop. A crop generally recognized by agricultural experts as agronomically sound for the area for erosion control or other reasons related to conservation or soil improvement. A cover crop may be considered to be a second crop (see the definition of ''second crop'').

Crop practice. The combination of inputs such as fertilizer, herbicide, and pesticide, and operations such as planting, cultivation, and irrigation, used to produce the insured crop. The insurable practices are contained in the actuarial documents.

Crop Provisions. The part of the policy that contains the specific provisions of insurance for each insured crop.

Crop year. The period of time within which the insured crop is normally grown and designated by the calendar year in which the crop is normally harvested.

Delinquent debt. Any administrative fees or premiums for insurance issued under the authority of the Act, and the interest on those amounts, if applicable, that are not postmarked or received by us or our agent on or before the termination date unless you have entered into an agreement acceptable to us to pay such amounts or have filed for bankruptcy on or before the termination date; any other amounts due us for insurance issued under the authority of the Act (including, but not limited to, indemnities found not to have been earned or that were overpaid), and the interest on such amounts, if applicable, which are not postmarked or received by us or our agent by the due date specified in the notice to you of the amount due; or any amounts due under an agreement with you to pay the debt, which are not postmarked or received by us or our agent by the due dates specified in such agreement.

Dollar amount of protection per acre. The percentage of coverage selected by you multiplied by the maximum protection per acre specified in the actuarial documents for the crop, practice, and type. The dollar amount of protection per acre is shown on your Summary of Protection.

Double crop. Producing two or more crops for harvest on the same acreage in the same crop year.

Expected county yield. The yield contained in the actuarial documents, on which your coverage for the crop year is based. This yield is determined using historical NASS county average yields, as adjusted by FCIC.

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

First insured crop. With respect to a single crop year and any specific crop acreage, the first instance that an agricultural commodity is planted for harvest or prevented from being planted and is insured under the authority of the Act. For example, if winter wheat that is not insured is planted on acreage that is later planted to soybeans that are insured, the first insured crop would be soybeans. If the winter wheat was insured, it would be the first insured crop.

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

Generally recognized. When agricultural experts or the organic agricultural industry, as applicable, are aware of the production method or practice and there is no genuine dispute regarding whether the production method or practice allows the crop to make normal progress toward maturity.

Good farming practices. The production methods utilized to produce the insured crop and allow it to make normal progress toward maturity, which are: (1) For conventional or sustainable farming practices, those generally recognized by agricultural experts for the area; or (2) for organic farming practices, those generally recognized by the organic agricultural industry for the area or contained in the organic plan that is in accordance with the National Organic Program published in 7 CFR part 205. We may, or you may request us to, contact FCIC to determine whether or not production methods will be considered to be ''good farming practices.''

GRP. Group Risk Plan of Insurance.

Household. A domestic establishment including the members of a family (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to be family members) and others who live under the same roof.

Insurable loss. Damage for which coverage is provided under the terms of your policy, and for which you accept an indemnity payment.

Insurance provider. The FSA or a private insurance company approved by FCIC which provides crop insurance coverage to producers participating in any Federal crop insurance program administered under the Act.

Limited resource farmer. A person with:

(1) Direct or indirect gross farm sales not more than $100,000.00 in each of the previous two years (to be increased starting in fiscal year 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by NASS); and

(2) A total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data).

Maximum protection per acre. The highest amount of protection specified in the actuarial documents.

MPCI. Multiple peril crop insurance, an insurance product based on an individual yield or amount of insurance.

NASS. National Agricultural Statistics Service, an agency within USDA, or its successor, that publishes the official United States Government yield estimates.

Net acres. The planted acreage of the insured crop multiplied by your share.

Offset. The act of deducting one amount from another amount.

Organic agricultural industry. Persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education or the Cooperative State Research, Education and Extension Service, the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific organic crop or practice for which such expertise is sought.

Organic farming practice. A system of plant production practices approved by a certifying agent in accordance with 7 CFR part 205.

Payment yield. The yield determined by FCIC based on NASS yields for each insurable crop's type and practice, as adjusted by FCIC, and used to determine whether an indemnity will be due.

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.

Replanted crop. The same agricultural commodity replanted on the same acreage as the first insured crop for harvest in the same crop year if the replanting is specifically made optional by the policy and you elect to replant the crop and insure it under the policy covering the first insured crop, or replanting is required by the policy.

Sales closing date. The date contained in the Special Provisions by which an application must be filed. The last date by which you may change your crop insurance coverage for a crop year.

Second crop. With respect to a single crop year, the next occurrence of planting any agricultural commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first insured crop, except the term does not include a replanted crop. A cover crop, planted after a first insured crop and planted for the purpose of haying, grazing or otherwise harvesting in any manner or that is hayed or grazed during the crop year, or that is otherwise harvested is considered to be a second crop. A cover crop that is covered by FSA's noninsured crop disaster assistance program (NAP) or receives other USDA benefits associated with forage crops will be considered as planted for the purpose of haying, grazing or otherwise harvesting. A crop meeting the conditions stated herein will be considered to be a second crop regardless of whether or not it is insured.

Share. Your percentage of interest in the insured crop, as an owner, operator, or tenant at the time insurance attaches. Premium will be determined on your share as of the acreage reporting date. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the acreage reporting date or on the date of harvest, whichever is less.

Special provisions. The part of the policy that contains specific provisions of insurance for each crop that may vary by geographic area.

Subsidy. The portion of your premium, shown on the actuarial documents, that FCIC will pay in accordance with the Act.

Substantial beneficial interest. An interest held by any person of at least 10 percent in you. The spouse of any individual applicant or individual insured will be considered to have a substantial beneficial interest in the applicant or insured unless the spouses can prove they are legally separated or otherwise legally separate under state law. Any child of an individual applicant or individual insured will not be considered to have a substantial beneficial interest in the applicant or insured unless the child has a separate legal interest in such person. For example,

there are two partnerships that each have a 50 percent interest in you and each partnership is made up of two individuals, each with a 50 percent share in the partnership. In this case, each individual would be considered to have a 25 percent interest in you, and both the partnerships and the individuals would have a substantial beneficial interest in you (The spouses of the individuals would not be considered to have a substantial beneficial interest unless the spouse was one of the individuals that made up the partnership). However, if each partnership is made up of six individuals with equal interests, then each would only have an 8.33 percent interest in you and although the partnership would still have a substantial beneficial interest in you, the individuals would not for the purposes of reporting in section 18.

Summary of protection. Our statement to you of the crop insured, dollar amount of protection per acre, premiums, and other information obtained from your accepted application, acreage report, and the actuarial documents.

Sustainable farming practice. A system or process for producing an agricultural commodity, excluding organic farming practices, that is necessary to produce the crop and is generally recognized by agricultural experts for the area to conserve or enhance natural resources and the environment.

Termination date. The calendar date contained in the Crop Provisions upon which insurance ceases to be in effect because of nonpayment of any amount due us under the policy, including premium and administrative fees.

Trigger yield. The result of multiplying the expected county yield by the coverage level percentage chosen by you. When the payment yield falls below the trigger yield, an indemnity is due.

Type. Plants of the insured crop having common traits or characteristics that distinguish them as a group or class, and which are designated in the actuarial documents.

USDA. United States Department of Agriculture.

2. Insured Crop

The insured crop will be the crop shown on your accepted application, as specified in the applicable Crop Provisions, and must be grown on insurable acres.

3. Insured and Insurable Acreage

(a) The insurable acreage is all of the acreage of the insured crop for which premium rates are provided by the actuarial documents and in which you have a share and which is in the county listed in your accepted application. The dollar amount of protection per acre, amount of premium, and indemnity will be calculated separately for each county, type, and practice.

(b) Only the acreage seeded to the insured crop on or before the acreage reporting date (unless otherwise provided in the Crop Provisions) and physically located in the county listed on your accepted application will be insured. Crops grown on acreage physically located in another county must be reported and insured separately.

(c) We will not insure any acreage:

(1) Where the crop was destroyed or put to another use during the crop year for the purpose of conforming with, or obtaining a payment under, any other program administered by the USDA;

(2) Where you have failed to follow good farming practices for the insured crop; or

(i) Planted to a type, class or variety not generally recognized for the area; or

(ii) Where the conditions under which the crop is planted are not generally recognized for the area (For example, where agricultural experts determine that planting a nonirrigated corn crop after a failed small grain crop on the same acreage in the same crop year is not appropriate for the area);

(3) Of a second crop, if you elect not to insure such acreage when an indemnity for a first insured crop may be subject to reduction in accordance with the provisions of section 21 and you intend to collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop acreage. This election must be made for all first insured crop acreage that may be subject to an indemnity reduction if the first insured crop is insured under this policy, or on a first insured crop unit basis if the first insured crop is not insured under this policy. For example, if the first insured crop under this policy consists of 40 acres, or the first insured crop unit insured under another policy contains 40 planted acres, then no second crop can be insured on any of the 40 acres. In this case:

(i) If the first insured crop is insured under this policy, you must provide written notice to us of your election not to insure acreage of a second crop by the acreage reporting date for the second crop if it is insured under this policy, or before planting the second crop if it is insured under any other policy, or, if the first insured crop is not insured under this policy, at the time the first insured crop acreage is released by us (if no acreage in the first insured crop unit is released, this election must be made by the earlier of the acreage reporting date for the second crop or when you sign the claim for the first insured crop), and if you fail to provide such notice, the second crop acreage will be insured in accordance with applicable policy provisions and you must repay any overpaid indemnity for the first insured crop;

(ii) In the event a second crop is planted and insured with a different insurance provider, or planted and insured by a different

person, you must provide written notice to each insurance provider that a second crop was planted on acreage on which you had a first insured crop; and

(iii) You must report the crop acreage that will not be insured on the applicable acreage report; or

(4) Of a crop planted following a second crop or following an insured crop that is prevented from being planted after a first insured crop, unless it is a practice that is generally recognized by agricultural experts or the organic agricultural industry for the area to plant three or more crops for harvest on the same acreage in the same crop year, and additional coverage insurance provided under the authority of the Act is offered for the third or subsequent crop in the same crop year. Insurance will only be provided for a third or subsequent crop as follows:

(i) You must provide records acceptable to us that show:

(A) You have produced and harvested the insured crop following two other crops harvested on the same acreage in the same crop year in at least two of the last four years in which you produced the insured crop; or

(B) The applicable acreage has had three or more crops produced and harvested on it in at least two of the last four years in which the insured crop was grown on it; and

(ii) The amount of insurable acreage will not exceed 100 percent of the greatest number of acres for which you provide the records required in section 3(c)(4)(i)(A) or (B).

4. Policy Protection

(a) For catastrophic risk protection GRP policies, the dollar amount of protection per acre will be 45 percent of the maximum protection per acre specified on the actuarial documents for each insured crop, practice, and type. For additional coverage GRP policies, you may select any dollar amount of protection from 60 percent through 100 percent of the maximum protection per acre shown on the actuarial documents for the crop, practice, and type.

(b) The dollar amount of protection per acre, multiplied by your net insured acreage, is your policy protection for each insured crop, practice, and type specified in the actuarial documents.

(c) All yields are based on NASS determinations, and such determinations for the county will be conclusively presumed to be accurate.

5. Coverage Levels

(a) For catastrophic risk protection GRP policies, the coverage level is shown on the actuarial documents for each insured crop, practice, and type. For additional coverage GRP policies, you may select any percentage of coverage shown on the actuarial documents for the crop, practice, and type.

(b) Your coverage level multiplied by the expected county yield shown on the actuarial documents is your trigger yield. If the payment yield published by FCIC for the insured crop, practice, and type for the insured crop year falls below your trigger yield, you will receive an indemnity payment.

(c) You may change the coverage level or amount of protection for each insured crop on or before the sales closing date. Changes must be in writing and received by us by the sales closing date.

6. Payment Calculation Factor

Your payment calculation factor will be ((your trigger yield − payment yield) ÷ your trigger yield) for the purposes of calculating an indemnity payment.

7. Report of Acreage and Share

(a) You must report on our form all acreage for each insured crop in which you have a share (insurable and not insured) by practice and type specified in the actuarial documents in each county listed on your accepted application. This report must be submitted each year on or before the acreage reporting date for the insured crop contained in the actuarial documents. If you do not submit an acreage report by the acreage reporting date, we will determine your acreage and share or deny liability on the policy.

(b) We will not insure any acreage of the insured crop planted after the acreage reporting date, unless otherwise provided in the Crop Provisions.

(c) The premium amount and payment of an indemnity will be based on your insurable acreage on the acreage reporting date subject to section 7(d).

(d) You must provide all required reports and you are responsible for the accuracy of all information contained in those reports. You should verify the information on all such reports prior to submitting them to us.

(1) If you submit information on any report that is different than what is determined to be correct and such information results in:

(i) A lower amount of policy protection than the correct amount, the amount of policy protection will be reduced to an amount consistent with the reported information; or

(ii) A higher amount of policy protection than the correct amount, the information contained in the acreage report will be revised to be consistent with the correct information.

(2) In addition to the other adjustments specified in section 7(d)(1), if you misreport any information that results in an amount of policy protection greater than 110.0 percent or lower than 90.0 percent of the correct amount of policy protection, any indemnity

will be based on the amount of policy protection determined in accordance with section 7(d)(1)(i) or (ii) and will be reduced in an amount proportionate with the amount of policy protection that is misreported in excess of the tolerances stated in this paragraph (For example, if the correct amount of policy protection is determined to be $100.00, but you reported a policy protection amount of $120.00, any indemnity will be reduced by 10.0 percent ($120.00 / $100.00 = 1.20, and 1.20 −1.10 = 0.10)).

(e) If you request an acreage measurement prior to the acreage reporting date and submit documentation of such request and an acreage report with estimated acreage by the acreage reporting date, you must provide the measurement to us, we will revise your acreage report if there is a discrepancy, and no indemnity will be paid until the acreage measurement has been received by us (Failure to provide the measurement to us will result in the application of section 7(d) if the estimated acreage is not correct, and estimated acreage under this paragraph will no longer be accepted for any subsequent acreage report).

(f) If there is an irreconcilable difference between:

(1) The acreage measured by FSA or a measuring service and our on-farm measurement, our on-farm measurement will be used; or

(2) The acreage measured by a measuring service, other than our on-farm measurement, and FSA, the FSA measurement will be used.

(g) Information on the initial acreage report will not be considered misreported for the purposes of section 7(d) if the acreage report is revised:

(1) In accordance with section 7(e) or (f);

(2) Because information is clearly transposed;

(3) When you provide adequate evidence that we or someone from USDA have committed an error regarding the information; or

(4) As expressly permitted by the policy.

(h) If we discover you have incorrectly reported any information on the acreage report for any crop year, you may be required to provide documentation in subsequent crop years substantiating your report of acreage for those crop years, including, but not limited to, an acreage measurement service at your own expense. If the correction of any misreported information would affect an indemnity that was paid in a prior crop year, such claim will be adjusted and you will be required to repay any overpaid amounts.

(i) You may insure only your share of the crop, which includes any share of your spouse and dependent children unless it is demonstrated to our satisfaction, prior to the sales closing date, that you and your spouse maintain completely separate farming operations and that each spouse is the operator of his or her own separate operation. Any commingling of any part of the operations will cause shares of you and your spouse to be combined.

8. Administrative Fees and Annual Premium

(a) If you obtain a catastrophic risk protection GRP policy, you will pay an administrative fee, unless otherwise specified in 7 CFR part 400:

(1) Of $100 per crop per county;

(2) Payable to the insurance provider on the billing date for the crop.

(b) If you obtain an additional coverage GRP policy, you will pay an administrative fee:

(1) Of $30 per crop per county;

(2) Payable to the insurance provider on the billing date for the crop.

(c) The administrative fee will be waived if you request it and:

(1) You qualify as a limited resource farmer; or

(2) You were insured prior to the 2005 crop year or for the 2005 crop year and your administrative fee was waived for one or more of those crop years because you qualified as a limited resource farmer under a policy definition previously in effect, and you remain qualified as a limited resource farmer under the definition that was in effect at the time the administrative fee was waived.

(d) For additional coverage GRP policies, your premium is determined by multiplying your policy protection by the premium rate per hundred dollars of protection for your coverage level contained in the actuarial documents, by 0.01, and subtracting the applicable subsidy.

(e) For catastrophic risk protection and additional coverage GRP policies, payment of an administrative fee will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop (if you falsely file a zero acreage report you may be subject to criminal and administrative sanctions).

(f) The annual premium is earned and payable at the time the insured crop is planted. For each insured crop, you will be billed for premium and the administrative fee not earlier than the billing date specified in the Special Provisions. Premium, administrative fee, and any other amount owed us is due on the billing date and interest will accrue if the premium, administrative fee, or any other amount owed is not received by us before the first day of the month following the premium billing date.

(g) If the amount of premium (gross premium less premium subsidy paid on your behalf by FCIC) and administrative fee you are required to pay for any acreage exceeds the amount of protection for the acreage, coverage for those acres will not be provided (no premium or administrative fee will be due

and no indemnity will be paid for such acreage).

9. Written Agreements

Terms of this policy which are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement or for renewal of any written agreement no later than the sales closing date, unless you demonstrate your physical inability to submit the request prior to the sales closing date (For example, you have been hospitalized or a blizzard has made it impossible to submit the written agreement request in person or by mail);

(b) The application for 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 FCIC, the written agreement will include all variable terms of the contract, including, but not limited to, crop practice, and type or variety;

(d) Each written agreement will only be valid for the number of crop years specified in the written agreement and a multi-year written agreement:

(1) Will only apply for any particular crop year designated in the written agreement if all terms and conditions in the written agreement are still applicable for the crop year and the conditions under which the written agreement has been provided have not changed prior to the beginning of the crop year (If conditions change during or prior to a crop year, the written agreement will not be effective for that crop year but may still be effective for a subsequent crop year if conditions under which the written agreement has been provided exist for such year);

(2) May be canceled in writing by:

(i) FCIC not less than 30 days before the cancellation date if it discovers that any term or condition of the written agreement, including the premium rate, is not appropriate for the crop; or

(ii) You or us on or before the cancellation date;

(3) That is not renewed in writing after it expires, is not applicable for a crop year, or is canceled, then insurance coverage will be in accordance with the terms and conditions stated in this policy, without regard to the written agreement; and

(4) Will be automatically cancelled if you transfer your policy to another insurance provider (No notice will be provided to you and for any subsequent crop year, for a written agreement to be effective, you must timely request renewal of the written agreement in accordance with this section);

(e) A request for any written agreement must contain:

(1) A completed ''Request for Actuarial Change'' form;

(2) Evidence from agricultural experts or the organic agricultural industry, as applicable, that the crop can be produced in the area if the request is to provide insurance for practices, types, or varieties that are not insurable, unless we are notified in writing by FCIC that such evidence is not required;

(3) The legal description of the land (in areas where legal descriptions are available), FSA Farm Serial Number including tract number, and a FSA aerial photograph, acceptable Geographic Information System or Global Positioning System maps, or other legible maps delineating field boundaries where you intend to plant the crop for which insurance is requested; and

(4) Such other information as specified in the Special Provisions or required by FCIC;

(f) A request for written agreement will not be accepted if:

(1) The request is submitted to us after the deadline contained in section 9(a);

(2) All the information required in section 9(e) is not submitted to us with the request for a written agreement (The request for a written agreement may be accepted if any missing information is available from other acceptable sources); or

(3) The request is to add land or crops to an existing written agreement or to add land or crops to a request for a written agreement and the request is not submitted by the deadlines specified in section 9(a);

(g) A request for a written agreement will be denied if:

(1) FCIC determines the risk is excessive;

(2) There is not adequate information available to establish an actuarially sound premium rate and insurance coverage for the crop and acreage; or

(3) Agricultural experts or the organic agricultural industry determines the crop practices, types, or varieties are not generally recognized for the county;

(h) A written agreement will be denied unless FCIC approves the written agreement and the original written agreement is signed by you and sent to us not later than the expiration date;

(i) With respect to your and our ability to reject an offer for a written agreement:

(1) When a single Request for Actuarial Change form is submitted, regardless of how many requests for changes are contained on the form, you and we can only accept or reject the written agreement in its entirety (you cannot reject specific terms of the written agreement and accept others);

(2) When multiple Request for Actuarial Change forms are submitted, regardless of when the forms are submitted, for the same condition, all these forms may be treated as one request and you and we will only have

the option of accepting or rejecting the written agreement in its entirety (you cannot reject specific terms of the written agreement and accept others);

(3) When multiple Request for Actuarial Change forms are submitted, regardless of when the forms are submitted, for the different conditions or for different crops, separate agreements may be issued and you and we will have the option to accept or reject each written agreement; and

(4) If we reject an offer for a written agreement approved by FCIC, you may seek arbitration or mediation of our decision to reject the offer in accordance with section 16;

(j) Any information that is submitted by you after the applicable deadlines in section 9(a) will not be considered, unless such information is specifically requested in accordance with section 9(e)(4);

(k) If the written agreement or the policy is canceled for any reason, or the period for which an existing written agreement is in effect ends, a request for renewal of the written agreement must contain all the information required by this section and be submitted in accordance with section 9(a), unless otherwise specified by FCIC; and

(l) If a request for a written agreement is not approved by FCIC, a request for a written agreement for any subsequent crop year that fails to address the stated basis for the denial will not be accepted (If the request for a written agreement contains the same information that was previously rejected or denied, you will not have any right to arbitrate, mediate or appeal the non-acceptance of your request).

10. Access to Insured Crop and Record Retention

(a) We, and any employee of USDA authorized to investigate or review any matter relating to crop insurance, have the right to examine the insured crop, any records relating to the crop and this insurance, and any records regarding mediation, arbitration or litigation involving the insured crop, at any location where such crop or records may be found or maintained, as often as reasonably required during the record retention period.

(b) You must retain, and provide upon our request, or the request of any employee of USDA authorized to investigate or review any matter relating to crop insurance, complete records pertaining to the planting of the insured crop and your net acres for a period of three years after the end of the crop year or three years after the date of final payment of the indemnity, whichever is later. This requirement also applies to all such records for acreage that is not insured.

(c) We, or any employee of USDA authorized to investigate or review any matter relating to crop insurance, may extend the record retention period beyond three years by notifying you of such extension in writing.

(d) By signing the application for insurance authorized under the Act or by continuing insurance for which you have previously applied, you authorize us or USDA, or any person acting for us or USDA authorized to investigate or review any matter relating to crop insurance, to obtain records relating to the planting, replanting, inputs, production, harvesting, and disposition of the insured crop from any person who may have custody of such records, including but not limited to, FSA offices, banks, warehouses, gins, cooperatives, marketing associations, and accountants. You must assist in obtaining all records we or any employee of USDA authorized to investigate or review any matter relating to crop insurance request from third parties.

(e) Failure to provide access to the insured crop or the farm, maintain or provide any required records, authorize access to the records maintained by third parties, or assist in obtaining all such records will result in a determination that no indemnity is due for the crop year in which such failure occurred.

11. 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, if the transferee is eligible for crop insurance. We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred. The transfer of coverage rights must be on our form and will not be effective until approved by us in writing. Both you and the transferee are jointly and severally liable for payment of the premium. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

12. Assignment of Indemnity

You may assign to another person 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.

13. Other Insurance.

Nothing in this section prevents you from obtaining other insurance not authorized under the Act. However, unless specifically required by policy provisions, you must not obtain any other crop insurance authorized under the Act on your share of the insured crop. If you cannot demonstrate that you did not intend to have more than one policy in effect, you may be subject to the consequences authorized under this policy, the Act, or any other applicable statute. If you can demonstrate that you did not intend to have more than one policy in effect (For example, an application to transfer your policy

or written notification to an insurance provider that states you want to purchase, or transfer, insurance and you want any other policies for the crop canceled would demonstrate you did not intend to have duplicate policies), and:

(a) One is an additional coverage policy and the other is a Catastrophic Risk Protection policy:

(1) The additional coverage policy will apply if both policies are with the same insurance provider or, if not, both insurance providers agree; or

(2) The policy with the earliest date of application will be in force if both insurance providers do not agree; or

(b) Both are additional coverage policies or both are Catastrophic Risk Protection policies, the policy with the earliest date of application will be in force and the other policy will be void, unless both policies are with:

(1) The same insurance provider and the insurance provider agrees otherwise; or

(2) Different insurance providers and both insurance providers agree otherwise.

14. [Reserved]

[FCIC policy]

15. Restrictions, Limitations, and Amounts Due Us

(a) We may restrict the amount of acreage we will insure to the amount allowed under any acreage limitation program established by USDA.

(b) Violation of Federal statutes including, but not limited to, the Act; the controlled substance provisions of the Food Security Act of 1985; the Food, Agriculture, Conservation, and Trade Act of 1990; and the Omnibus Budget Reconciliation Act of 1993, and any regulation promulgated thereunder, will result in cancellation, termination, or voidance of your crop insurance contract. We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less an amount for expenses and handling not to exceed 20 percent of the premium paid or to be paid by you.

(c) Our maximum liability under this policy will be limited to the policy protection specified in section 4 of this policy.

(d) We will pay simple interest computed on the net indemnity ultimately found to be due by us or determined by a final judgment of a court of competent jurisdiction or a final administrative determination from, and including, the 61st day after the date we receive the NASS county yield estimates for the insured crop year. 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 *et seq.*), and published in the FEDERAL REGISTER.

(e) Any amount illegally or erroneously paid to you or that is owed to us but is delinquent may be recovered by us through offset by deducting it from any loan or payment due you under any Act of Congress or program administered by any United States Government Agency, or by other collection action.

(f) Interest will accrue at the rate not to exceed 1.25 percent simple interest per calendar month, or any part thereof, on any unpaid premium or administrative fee balance. For the purpose of premium and administrative fee amounts due us, interest will begin to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

(g) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned:

(1) Interest will start to accrue on the date that notice is issued to you for the collection of the unearned amount;

(2) Amounts found due under this paragraph will not be charged interest if payment is made in full within 30 days of issuance of the notice by us;

(3) The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us;

(4) Penalties and interest will be charged in accordance with 31 U.S.C. 3717 and 4 CFR part 102; and

(5) The penalty for accounts more than 90 days delinquent is an additional 6 percent per annum.

(h) 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 additional 6 percent 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.

(i) If we determine that it is necessary to contract with a collection agency, refer the debt to governmental collection centers, the Department of Treasury Offset Program, or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection.

(j) All amounts paid by you will be applied first to expenses of collection if any, second to reduction of any penalties which may have been assessed, then to reduction of accrued interest, and finally, to reduction of the principal balance.

[Reinsured policy]

15. Restrictions, Limitations, and Amounts Due Us

(a) We may restrict the amount of acreage we will insure to the amount allowed under any acreage limitation program established by USDA.

(b) Violation of Federal statutes including, but not limited to, the Act; the controlled substance provisions of the Food Security Act of 1985; the Food, Agriculture, Conservation, and Trade Act of 1990; and the Omnibus Budget Reconciliation Act of 1993, and any regulation promulgated thereunder, will result in cancellation, termination, or voidance of your crop insurance contract. We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid or to be paid by you.

(c) Our maximum liability under this policy will be limited to the policy protection specified in section 4 of this policy.

(d) Interest will accrue at the rate not to exceed 1.25 percent simple interest per calendar month, or any part thereof, on any unpaid premium or administrative fee balance. For the purpose of premium and administrative fee amounts due us, interest will begin to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

(e) For the purpose of any amounts due us, such as repayment of indemnities found not to have been earned, interest will start to accrue 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 in full is made within 30 days of issuance of notice by us. The amount will be considered delinquent if not paid in full within 30 days of the date the notice is issued by us.

(f) All amounts paid will be applied first to expenses of collection (see subsection (g) of this section) if any, second to reduction of accrued interest, and then to reduction of the principal balance.

(g) 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.

(h) A portion of the amount paid to you to which you were not entitled may be collected through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37.

(i) We will pay simple interest computed on the net indemnity ultimately found to be due by us or determined by a final judgment of a court of competent jurisdiction or a final administrative determination from, and including, the 61st day after the date we receive the NASS county yield estimates for the insured crop year. 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 *et seq.*), and published in the FEDERAL REGISTER.

[FCIC policy]

16. Appeals, Administrative and Judicial Review

(a) All determinations required by the policy will be made by us.

(b) If you disagree with our determinations, you may:

(1) Except for determinations specified in section 16(b)(2), obtain an administrative review in accordance with 7 CFR part 400, subpart J or appeal in accordance with 7 CFR part 11; or

(2) For determinations regarding whether you have used good farming practices, request reconsideration in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J.

(c) If you fail to exhaust your administrative remedies under 7 CFR part 11 or the reconsideration process for determinations of good farming practices described in section 16(b)(2), as applicable, you will not be able to resolve the dispute through judicial review.

(d) If reconsideration for good farming practices under 7 CFR part 400, subpart J or appeal under 7 CFR part 11 has been initiated within the time frames specified in those sections and judicial review is sought, any suit against us must be:

(1) Filed not later than one year after the date of the decision rendered in the reconsideration process for good farming practices or administrative review process under 7 CFR part 11; and

(2) Brought in the United States district court for the district in which the insured farm involved in the decision is located.

(e) You may only recover contractual damages from us. Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from us in administrative review, appeal or litigation.

[Reinsured policy]

16. Mediation, Arbitration, Appeals, and Administrative and Judicial Review

(a) If you and we fail to agree on any determination made by us except those specified in section 16(d), the disagreement may be resolved through mediation in accordance with section 16(g). If resolution cannot be reached through mediation, or you and we do not agree to mediation, the disagreement must

be resolved through arbitration in accordance with the rules of the American Arbitration Association (AAA), except as provided in sections 16(c) and (f), and unless rules are established by FCIC for this purpose. Any mediator or arbitrator with a familial, financial or other business relationship to you or us, or our agent or loss adjuster, is disqualified from hearing the dispute.

(1) All disputes involving determinations made by us, except those specified in section 16(d), are subject to mediation or arbitration. However, if the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, either you or we must obtain an interpretation from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC.

(i) Any interpretation by FCIC will be binding in any mediation or arbitration.

(ii) Failure to obtain any required interpretation from FCIC will result in the nullification of any agreement or award.

(iii) An interpretation by FCIC of a policy provision is considered a rule of general applicability and is not appealable. If you disagree with an interpretation of a policy provision by FCIC, you must obtain a Director's review from the National Appeals Division in accordance with 7 CFR 11.6 before obtaining judicial review in accordance with subsection (e).

(iv) An interpretation by FCIC of a procedure may be appealed to the National Appeals Division in accordance with 7 CFR part 11.

(2) Unless the dispute is resolved through mediation, the arbitrator must provide to you and us a written statement describing the issues in dispute, the factual findings, the determinations and the amount and basis for any award and breakdown by claim for any award. The statement must also include any amounts awarded for interest. Failure of the arbitrator to provide such written statement will result in the nullification of all determinations of the arbitrator. All agreements reached through settlement, including those resulting from mediation, must be in writing and contain at a minimum a statement of the issues in dispute and the amount of the settlement.

(b) Regardless of whether mediation is elected:

(1) The initiation of arbitration proceedings must occur within one year of the date we denied your claim or rendered the determination with which you disagree, whichever is later;

(2) If you fail to initiate arbitration in accordance with section 16(b)(1) and complete the process, you will not be able to resolve the dispute through judicial review;

(3) If arbitration has been initiated in accordance with section 16(b)(1) and completed, and judicial review is sought, suit must be filed not later than one year after the date the arbitration decision was rendered; and

(4) In any suit, if the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, an interpretation must be obtained from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC. Such interpretation will be binding.

(c) Any decision rendered in arbitration is binding on you and us unless judicial review is sought in accordance with section 16(b)(3). Notwithstanding any provision in the rules of the AAA, you and we have the right to judicial review of any decision rendered in arbitration.

(d) If you do not agree with any determination made by us or FCIC regarding whether you have used a good farming practice, you may request reconsideration by FCIC of this determination in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J (reconsideration).

(1) You must complete reconsideration before filing suit against FCIC and any such suit must be brought in the United States district court for the district in which the insured farm is located.

(2) Suit must be filed not later than one year after the date of the decision rendered in the reconsideration.

(3) You cannot sue us for determinations of whether good farming practices were used by you.

(e) Except as provided in section 16(d), if you disagree with any other determination made by FCIC, you may obtain an administrative review in accordance with 7 CFR part 400, subpart J (administrative review) or appeal in accordance with 7 CFR part 11 (appeal). If you elect to bring suit after completion of any appeal, such suit must be filed against FCIC not later than one year after the date of the decision rendered in such appeal. Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from FCIC.

(f) In any mediation, arbitration, appeal, administrative review, reconsideration or judicial process, the terms of this policy, the Act, and the regulations published at 7 CFR chapter IV, including the provisions of 7 CFR part 400, subpart P, are binding. Conflicts between this policy and any state or local laws will be resolved in accordance with section 31. If there are conflicts between any rules of the AAA and the provisions of your policy, the provisions of your policy will control.

(g) To resolve any dispute through mediation, you and we must both:

(1) Agree to mediate the dispute;

(2) Agree on a mediator; and

(3) Be present, or have a designated representative who has authority to settle the case present, at the mediation.

(h) Except as provided in section 16(i), no award or settlement in mediation, arbitration, appeal, administrative review or reconsideration process or judicial review can exceed the amount of liability established or which should have been established under the policy, except for interest awarded in accordance with section 15(i).

(i) In a judicial review only, you may recover attorneys fees or other expenses, or any punitive, compensatory or any other damages from us only if you obtain a determination from FCIC that we, our agent or loss adjuster failed to comply with the terms of this policy or procedures issued by FCIC and such failure resulted in you receiving a payment in an amount that is less than the amount to which you were entitled. Requests for such a determination should be addressed to the following: USDA/RMA/Deputy Administrator of Compliance/Stop 0806, 1400 Independence Avenue, SW., Washington, DC 20250–0806.

(j) If FCIC elects to participate in the adjustment of your claim, or modifies, revises or corrects your claim, prior to payment, you may not bring an arbitration, mediation or litigation action against us. You must request administrative review or appeal in accordance with section 16(e).

17. Holidays and Weekends

If any date specified in this program falls on Saturday, Sunday, or a legal Federal holiday, that date will be extended to the next business day.

18. 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 until canceled by you in accordance with the terms of the policy or terminated by operation of the terms of the policy or by us.

(b) Your application for insurance must contain your social security number (SSN) if you are an individual or employer identification number (EIN) if you are a person other than an individual, and all SSNs and EINs, as applicable, of all persons with a substantial beneficial interest in you, the coverage level, price election, crop, type, variety, or class, plan of insurance, and any other material information required on the application to insure the crop. If you or someone with a substantial beneficial interest is not legally required to have a SSN or EIN, you must request and receive an identification number for the purposes of this policy from us or the Internal Revenue Service (IRS) if such identification number is available from the IRS. If any of the information regarding persons with a substantial beneficial interest changes during the crop year, you must revise your application by the next sales closing date applicable under your policy to reflect the correct information.

(1) Applications that do not contain your SSN, EIN or identification number, or any of the other information required in section 18(b) are not acceptable and insurance will not be provided (Except if you fail to report the SSNs, EINs or identification numbers of persons with a substantial beneficial interest in you, the provisions in section 18(b)(2) will apply);

(2) If the application does not contain the SSNs, EINs or identification numbers of all persons with a substantial beneficial interest in you, you fail to revise your application in accordance with section 18(b), or the reported SSNs, EINs or identification numbers are incorrect and the incorrect SSN, EIN or identification number has not been corrected by the acreage reporting date, and:

(i) Such persons are eligible for insurance, the amount of coverage for all crops included on this application will be reduced proportionately by the percentage interest in you of such persons, you must repay the amount of indemnity that is proportionate to the interest of the persons whose SSN, EIN or identification number was unreported or incorrect for such crops, and your premium will be reduced commensurately; or

(ii) Such persons are not eligible for insurance, except as provided in section 18(b)(3), the policy is void and no indemnity will be owed for any crop included on this application, and you must repay any indemnity that may have been paid for such crops. If previously paid, the balance of any premium and any administrative fees will be returned to you, less twenty percent of the premium that would otherwise be due from you for such crops. If not previously paid, no premium or administrative fees will be due for such crops.

(3) The consequences described in section 18(b)(2)(ii) will not apply if you have included an ineligible person's SSN, EIN or identification number on your application and do not include the ineligible person's share on the acreage report.

(c) After acceptance of the application, you may not cancel this policy for the initial crop year. Thereafter, the policy will continue in force for each succeeding crop year unless canceled or terminated as provided below.

(d) 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.

(e) Any amount due to us for any policy authorized under the Act will be offset from any indemnity due you for this or any other crop insured with us.

(1) Even if your claim has not yet been paid, you must still pay the premium and administrative fee on or before the termination date for you to remain eligible for insurance.

(2) If we offset any amount due us from an indemnity owed to you, the date of payment for the purpose of determining whether you have a delinquent debt will be the date FCIC publishes the payment yield for the applicable crop year.

(f) A delinquent debt for any policy will make you ineligible to obtain crop insurance authorized under the Act for any subsequent crop year and result in termination of all policies in accordance with section 18(f)(2).

(1) With respect to ineligibility:

(i) Ineligibility for crop insurance will be effective on:

(A) The date that a policy was terminated in accordance with section 18(f)(2) for the crop for which you failed to pay premium, an administrative fee, or any related interest owed, as applicable;

(B) The payment due date contained in any notification of indebtedness for any overpaid indemnity, if you fail to pay the amount owed, including any related interest owed, as applicable, by such due date;

(C) The termination date for the crop year prior to the crop year in which a scheduled payment is due under a payment agreement if you fail to pay the amount owed by any payment date in any agreement to pay the debt; or

(D) The termination date the policy was or would have been terminated under sections 18(f)(2)(i)(A), (B) or (C) if your bankruptcy petition is dismissed before discharge.

(ii) If you are ineligible and a policy has been terminated in accordance with section 18(f)(2), you will not receive any indemnity, and such ineligibility and termination of the policy may affect your eligibility for benefits under other USDA programs. Any indemnity that may be owed for the policy before it has been terminated will remain owed to you, but may be offset in accordance with section 18(e), unless your policy was terminated in accordance with sections 18(f)(2)(i)(D) or (E).

(2) With respect to termination:

(i) Termination will be effective on:

(A) For a policy with unpaid administrative fees or premiums, the termination date immediately subsequent to the billing date for the crop year;

(B) For a policy with other amounts due, the termination date immediately following the date you have a delinquent debt;

(C) For each policy for which the termination date has passed before you become ineligible, the termination date immediately following the date you become ineligible;

(D) For execution of an agreement to pay any amounts owed and failure to make any scheduled payment, the termination date for the crop year prior to the crop year in which you failed to make the scheduled payment; or

(E) For dismissal of a bankruptcy petition before discharge, the termination date the policy was or would have been terminated under sections 18(f)(2)(i)(A), (B) or (C).

(ii) For all policies terminated under sections 18(f)(2)(i)(D) and (E), any indemnities paid subsequent to the termination date must be repaid.

(iii) Once the policy is terminated, it cannot be reinstated for the current crop year unless the termination was in error. Failure to timely pay because of illness, bad weather, or other such extenuating circumstances is not grounds for reinstatement in the current crop year.

(3) To regain eligibility, you must:

(i) Repay the delinquent debt in full;

(ii) Execute an agreement to pay any amounts owed and make payments in accordance with the agreement (We will not enter into an agreement with you to pay the amounts owed if you have previously failed to make a scheduled payment under the terms of any other agreement to pay with us or any other insurance provider); or

(iii) File a petition to have your debts discharged in bankruptcy (Dismissal of the bankruptcy petition before discharge will terminate all policies in effect retroactive to the date your policy would have been terminated in accordance with section 18(f)(2)(i));

(4) After you become eligible for crop insurance, if you want to obtain coverage for your crops, you must submit a new application on or before the sales closing date for the crop (Since applications for crop insurance cannot be accepted after the sales closing date, if you make any payment after the sales closing date, you cannot apply for insurance until the next crop year);

(5) For example, for the 2003 crop year, if crop A, with a termination date of October 31, 2003, and crop B, with a termination date of March 15, 2004, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 2003, and crop A's policy is terminated as of that date. Crop B's policy does not terminate until March 15, 2004, and an indemnity for the 2003 crop year may still be owed. If you enter an agreement to repay amounts owed on September 25, 2004, the earliest date by which you can obtain crop insurance for crop A is to apply for crop insurance by the October 31, 2004, sales closing date and for crop B is to apply for crop insurance by the March 15, 2005, sales closing date. If you fail to make a payment that was scheduled to be made on April 1, 2005, your policy will terminate as of October 31, 2004, for crop A, and March 15, 2005, for

crop B, and no indemnity will be due for that crop year for either crop. You will not be eligible to apply for crop insurance for any crop until after the amounts owed are paid in full or you file a petition to discharge the debt in bankruptcy.

(6) If you are determined to be ineligible under section 18(f), persons with a substantial beneficial interest in you may also be ineligible until you become eligible again.

(g) 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. The premium will be deducted from the indemnity or collected from the estate. 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.

(h) We may cancel your policy if no premium is earned for 3 consecutive years.

(i) The cancellation and termination dates are contained in the Crop Provisions.

19. Contract Changes

(a) We may change any terms and conditions of this policy from year to year.

(b) Any changes in policy provisions, expected county yields, maximum amounts of protection, premium rates, and program dates (except as allowed herein) can be viewed on the RMA Web site at *http://www.rma.usda.gov/* or a successor Web site not later than the contract change date contained in the Crop Provisions. We may only revise this information after the contract change date to correct clear errors (For example, the maximum amount of protection was announced at $2500.00 per acre instead of $250.00 per acre).

(c) After the contract change date, all changes specified in section 19(b) will also be available upon request from your crop insurance agent. You will be provided, in writing, a copy of the changes to the Basic Provisions and Crop Provisions and a copy of the Special Provisions not later than 30 days prior to the cancellation date for the insured crop. Acceptance of the changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

20. Eligibility for Other Farm Program Benefits

To remain eligible for benefits under the Agriculture Marketing Transition Act, the conservation reserve program, or certain farm loans, you are required to obtain at least the catastrophic level of coverage for either GRP or any other plan of insurance that is available in the county, for all crops of economic significance, or execute a waiver of your rights to any emergency crop assistance on or before the sales closing date for the crop.

21. Indemnity and Premium Limitations.

(a) With respect to acreage where you are due a loss for your first insured crop in the crop year, except in the case of double cropping described in section 21(c):

(1) You may elect to not plant or to plant and not insure a second crop on the same acreage for harvest in the same crop year and collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop; or

(2) You may elect to plant and insure a second crop on the same acreage for harvest in the same crop year (you will pay the full premium and if there is an insurable loss to the second crop, receive the full amount of indemnity that may be due for the second crop, regardless of whether there is a subsequent crop planted on the same acreage) and:

(i) Collect an indemnity payment that is 35 percent of the insurable loss for the first insured crop;

(ii) Be responsible for a premium that is 35 percent of the premium that you would otherwise owe for the first insured crop; and

(iii) If the second crop does not suffer an insurable loss:

(A) Collect an indemnity payment for the other 65 percent of insurable loss that was not previously paid under section 21(a)(2)(i); and

(B) Be responsible for the remainder of the premium for the first insured crop that you did not pay under section 21(a)(2)(ii).

(b) The reduction in the amount of indemnity and premium specified in section 21(a), as applicable, will apply:

(1) Notwithstanding the priority contained in the Agreement to Insure section, which states that the Crop Provisions have priority over the Basic Provisions when a conflict exists, to any premium owed or indemnity paid in accordance with the Crop Provisions, and any applicable endorsement.

(2) Even if another person plants the second crop on any acreage where the first insured crop was planted.

(3) If you fail to provide any records we require to determine whether an insurable loss occurred for the second crop.

(c) You may receive a full indemnity for a first insured crop when a second crop is

planted on the same acreage in the same crop year, regardless of whether or not the second crop is insured or sustains an insurable loss, if each of the following conditions are met:

(1) It is a practice that is generally recognized by agricultural experts or the organic agricultural industry for the area to plant two or more crops for harvest in the same crop year;

(2) The second or more crops are customarily planted after the first insured crop for harvest on the same acreage in the same crop year in the area;

(3) Additional coverage insurance offered under the authority of the Act is available in the county on the two or more crops that are double cropped; and

(4) You provide records acceptable to us of acreage and production that show you have double cropped acreage in at least two of the last four crop years in which the first insured crop was planted, or that show the applicable acreage was double cropped in at least two of the last four crop years in which the first insured crop was grown on it.

(d) The receipt of a full indemnity on both crops that are double cropped is limited to the number of acres for which you can demonstrate you have double cropped or that have been historically double cropped as specified in section 21(c).

An Example To Demonstrate How GRP Works

Producer A buys 90 percent coverage and selects $160 protection per acre. Producer B buys 75 percent coverage and selects $185 protection per acre. Both producers have 100 percent share and both plant 200 acres of a crop in the county. The expected county yield is 45 bushels per acre. The premium rate for 90 percent coverage is $6.14 per hundred dollars of protection and the premium rate for 75 percent coverage is $3.30 per hundred dollars of protection.

A's trigger yield is 40.5 bushels per acre (90% × 45), and the total premium due is $1,965 ($160 × $6.14 × 200 acres × 0.01). Of that amount, FCIC pays $614 (200 acres × the maximum subsidy of $3.07 per acre). A's policy protection is $32,000 ($160 × 200 acres).

B's trigger yield is 33.8 bushels per acre (75% of 45), and the total premium due is $1,221 ($185 × $3.30 × 200 acres × 0.01). Of that amount, FCIC pays $442 (200 acres × the subsidy amount of $2.21 per acre). B's policy protection is $37,000 ($185 × 200 acres).

Scenario 1 (likely)

FCIC issues a payment yield of 46 bushels per acre. This is above both producers' trigger yields, so no indemnity payment is made, even if one or both have individual yields that are below the trigger yield.

Scenario 2 (less likely)

FCIC issues a payment yield of 38 bushels per acre. A's payment calculation factor is 0.062 ((40.5 − 38) ÷ 40.5). This number multiplied by the policy protection yields an indemnity payment of $1,984 (.062 × $32,000). B's trigger yield is less than the payment yield, so no indemnity payment is made.

Scenario 3 (least likely)

FCIC issues a payment yield of 22 bushels per acre. A's payment calculation factor is 0.457 ((40.5 − 22) ÷ 40.5). The payment is $14,624 (0.457 × $32,000). B's payment calculation factor is 0.349 ((33.8 − 22) ÷ 33.8), and the final indemnity payment is $12,913 (0.349 × $37,000).

[64 FR 30219, June 7, 1999, as amended at 65 FR 40485, June 30, 2000; 68 FR 37721, June 25, 2003; 69 FR 48731, Aug. 10, 2004]

§ 407.10 Group risk plan for barley.

The provisions of the Group Risk Plan for Barley for the 2000 and succeeding crop years are as follows:

1. Definitions

Harvest. Combining or threshing the barley for grain.

NASS yield. The yield calculated by dividing the NASS estimate of the barley production in the county, by the NASS estimate of the acres of barley in the county, as specified in the actuarial documents. The actuarial documents will specify whether harvested or planted acreage is used to calculate the yield used to establish the expected county yield and calculate indemnities.

Planted acreage. Land in which the barley 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. Land on which seed is initially spread onto the soil surface by any method and which subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth, will also be considered planted.

2. Crop Insured

The insured crop will be all barley:

(a) Grown on insurable acreage in the county or counties listed in the accepted application;

(b) Properly planted and reported by the acreage reporting date;

(c) Planted with the intent to be harvested as grain; and

(d) Not planted into an established grass or legume, interplanted with another crop, or planted as a nurse crop, unless seeded at the normal rate and intended for harvest as grain.

3. Payment

(a) A payment will be made only if the payment yield for the insured crop year is less than your trigger yield.

(b) Payment yields will be determined prior to the April 1 following the crop year.

(c) We will issue any payment to you prior to the May 1 immediately following our determination of the payment yield.

(d) The payment is equal to the payment calculation factor multiplied by your policy protection for each insured crop practice and type specified in the actuarial documents.

(e) The payment will not be recalculated even though the NASS yield may be subsequently revised.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Kit Carson, Lincoln, Elbert, El Paso, Pueblo, Las Animas Counties, Colorado and all Colorado Counties south and east thereof; all New Mexico counties except Taos County; Kansas; Missouri; Illinois; Indiana; Ohio; Pennsylvania; New York; Massachusetts; and all states south and east thereof.	September 30	June 30.
Arizona; California; and Clark and Nye Counties, Nevada	October 31	June 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, and (except) Kansas, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New York, and Massachusetts and all States south and east thereof.	March 15	November 30.

§ 407.11 Group risk plan for corn.

The provisions of the Group Risk Plan for Corn for the 2000 and succeeding crop years are as follows:

1. Definitions

Harvest. Combining or picking corn for grain, or severing the stalk from the land and chopping the stalk and ear for the purpose of livestock feed.

NASS yield. The yield calculated by dividing the NASS estimate of the corn for grain production in the county, by the NASS estimate of the acres of corn for grain in the county, as specified in the actuarial documents. The actuarial documents will specify whether harvested or planted acreage is used to calculate the yield used to establish the expected county yield and calculate indemnities.

Planted acreage. Land in which the corn 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. Broadcast and subsequent mechanical incorporation of the corn seed is not allowed.

2. Crop Insured

(a) The insured crop will be all field corn:

(1) Grown on insurable acreage in the county listed in the accepted application;

(2) Properly planted and reported by the acreage reporting date;

(3) Planted with the intent to be harvested as grain, silage, or green chop; and

(4) Not planted into an established grass or legume or interplanted with another crop.

(b) Hybrid seed corn, popcorn, sweet corn, and other specialty corn may only be insured if a written agreement exists between you and us. Your request to insure such crop must be in writing and submitted to your agent not later than the sales closing date.

3. Payment

(a) A payment will be made only if the payment yield for the insured crop year is less than your trigger yield.

(b) Payment yields will be determined prior to April 16 following the crop year.

(c) We will issue any payment to you prior to the May 16 immediately following our determination of the payment yield.

(d) The payment is equal to the payment calculation factor multiplied by your policy protection for each insured crop practice and type specified in the actuarial documents.

(e) The payment will not be recalculated even though the NASS yield may be subsequently revised.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 15	November 30.

State and county	Cancellation and termination dates	Contract change date
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, 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, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 15	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina.	February 28	November 30.
All other Texas counties and all other states	March 15	November 30.

§ 407.12 Group risk plan for cotton.

The provisions of the Group Risk Plan for Cotton for the 2000 and succeeding crop years are as follows:

1. Definitions

Harvest. Removal of the seed cotton from the stalk.

NASS yield. The yield calculated by dividing the NASS estimate of upland cotton production in the county, by the NASS estimate of the acres of upland cotton in the county, as specified in the actuarial documents. The actuarial documents will specify whether harvested or planted acreage is used to calculate the yield used to establish the expected county yield and calculate indemnities.

Planted acreage. Land in which the cotton 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. Broadcast and subsequent mechanical incorporation of the cotton seed is not allowed.

2. Crop Insured

The insured crop will be all upland cotton:

(a) Grown on insurable acreage in the county or counties listed in the accepted application;

(b) Properly planted and reported by the acreage reporting date;

(c) Planted with the intent to be harvested; and

(d) 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 in 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 50 percent of the small grain plants reach the heading stage.

3. Payment.

(a) A payment will be made only if the payment yield for the insured crop year is less than your trigger yield.

(b) Payment yields will be determined prior to July 16 following the crop year.

(c) We will issue any payment to you prior to the August 16 immediately following our determination of the payment yield.

(d) The payment is equal to the payment calculation factor multiplied by your policy protection for each insured crop practice and type specified in the actuarial documents.

(e) The payment will not be recalculated even though the NASS yield may be subsequently revised.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 15	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, 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, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28	November 30.
All other Texas counties and all other States	March 15	November 30.

§ 407.13 Group risk plan for forage.

The provisions of the Group Risk Plan for Forage for the 2000 and succeeding crop years are as follows:

1. Definitions

Harvest. Removal of the forage from the field, and rotational grazing.

NASS yield. The yield calculated by dividing the NASS estimate of the production of hay in the county by the NASS estimate of the acres of hay in the county, as specified in the actuarial documents. The actuarial documents will specify whether the harvested or planted acreage is used to calculate the yield used to establish the expected county yield and calculate indemnities.

Planted acreage. Land seeded to forage, by a planting method appropriate for forage, into a properly prepared seedbed.

Rotational grazing. The defoliation of the insured forage by livestock, within a pasturing system whereby the forage field is subdivided into smaller parcels and livestock are moved from one area to another, allowing a period of grazing followed by a period for forage regrowth.

2. Crop Insured

The insured crop will be the forage types shown on the Special Provisions:

(a) Grown on insurable acreage in the county or counties listed in the accepted application;

(b) Properly planted and reported by the acreage reporting date;

(c) Intended for harvest; and

(d) Not grown with another crop.

3. Insurable Acreage

In addition to section 3 of the Basic Provisions of the Group Risk Plan Common Policy, acreage seeded to forage after July 1 of the previous crop year will not be insurable. Acreage physically located in another county not listed on the accepted application is not insured under this policy.

4. Payment

(a) A payment will be made only if the payment yield for the insured crop year is less than your trigger yield.

(b) Payment yields will be determined prior to May 1 following the crop year.

(c) We will issue any payment to you prior to the May 31 immediately following our determination of the payment yield.

(d) The payment is equal to the payment calculation factor multiplied by your policy protection for each insured crop practice and type specified in the actuarial documents.

(e) The payment will not be recalculated even though the NASS yield may be subsequently revised.

5. Program Dates

November 30 is the Cancellation and Termination Date for all states. The Contract Change Date is August 31 for all states.

6. Annual Premium

In lieu of section 8(g) of the Basic Provisions of the Group Risk Plan Common Policy, the annual premium is earned and payable on the acreage reporting date. You will be billed for premium due on the date shown in the Special Provisions. The premium will be determined based on the rate shown on the actuarial documents.

§ 407.14 Group risk plan for peanuts.

The provisions of the Group Risk Plan for Peanuts for the 2000 and succeeding crop years are as follows:

1. Definitions

Harvest. Combining or threshing the peanuts.

NASS yield. The yield calculated by dividing the NASS estimate of peanut production in the county, by the NASS estimate of the acres of peanuts in the county, as specified in the actuarial documents. The actuarial documents will specify whether the harvested or planted acreage is used to calculate the yield used to establish the expected county yield and calculate indemnities.

Planted acreage. Land in which the peanut 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.

2. Crop Insured

The insured crop will be all peanuts:

(a) Grown on insurable acreage in the county or counties listed in the accepted application;

(b) Properly planted and reported by the acreage reporting date;

(c) Planted with the intent to be harvested as peanuts; and

(d) Not interplanted with an established grass or legume or interplanted with another crop.

3. Payment

(a) A payment will be made only if the payment yield for the insured crop year is less than your trigger yield.

(b) Payment yields will be determined prior to June 16 following the crop year.

(c) We will issue any payment to you prior to the July 16 immediately following our determination of the payment yield.

(d) The payment is equal to the payment calculation factor multiplied by your policy protection for each insured crop practice and type specified in the actuarial documents.

(e) The payment will not be recalculated even though the NASS yield may be subsequently revised.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas and all Texas Counties lying south thereof.	January 15	November 30.
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 south and east thereof; and all other states except New Mexico, Oklahoma, and Virginia.	February 28	November 30.
New Mexico; Oklahoma; Virginia; and all other Texas Counties	March 15	November 30.

§ 407.15 Group risk plan for sorghum.

The provisions of the Group Risk Plan for Sorghum for the 2000 and succeeding crop years are as follows:

1. Definitions

Harvest. Combining or threshing the sorghum for grain, or severing the stalk from the land and chopping the stalk and head for the purpose of livestock feed.

NASS yield. The yield calculated by dividing the NASS estimate of sorghum for grain production in the county, by the NASS estimate of the acres of sorghum for grain in the county, as specified in the actuarial documents. The actuarial documents will specify whether the harvested or planted acreage is used to calculate the yield used to establish the expected county yield and calculate indemnities.

Planted acreage. Land in which the sorghum 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. Broadcast and subsequent mechanical incorporation of the sorghum seed is not allowed.

2. Crop Insured

(a) The insured crop will be all sorghum:

(1) Grown on insurable acreage in the county or counties listed in the accepted application;

(2) Properly planted and reported by the acreage reporting date;

(3) Planted with the intent to be harvested as grain or silage; and

(4) Not interplanted with an established grass or legume or interplanted with another crop.

(b) Hybrid sorghum seed may only be insured if a written agreement exists between you and us. Your request to insure such crop must be in writing and submitted to your agent not later than the sales closing date.

3. Payment

(a) A payment will be made only if the payment yield for the insured crop year is less than your trigger yield.

(b) Payment yields will be determined prior to April 16 following the crop year.

(c) We will issue any payment to you prior to the May 16 immediately following our determination of the payment yield.

(d) The payment is equal to the payment calculation factor multiplied by your policy protection for each insured crop practice and type specified in the actuarial documents.

(e) The payment will not be recalculated even though the NASS yield may be subsequently revised.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 15	November 30.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and 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.	February 15	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina.	February 28	November 30.
All other Texas counties and all other states	March 15	November 30.

§ 407.16 Group risk plan for soybean.

The provisions of the Group Risk Plan for Soybeans for the 2000 and succeeding crop years are as follows:

1. Definitions

Harvest. Combining or threshing the soybeans.

NASS yield. The yield calculated by dividing the NASS estimate of soybean production in the county, by the NASS estimate of the acres of soybeans in the county, as specified in the actuarial documents. The actuarial documents will specify whether the harvested or planted acreage is used to calculate the yield used to establish the expected county yield and calculate indemnities.

Planted acreage. Land in which the soybean 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. Land on which seed is initially spread onto the soil surface by any method and which subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth, will also be considered planted.

2. Crop Insured

The insured crop will be all soybeans:

(a) Grown on insurable acreage in the county or counties listed in the accepted application;

(b) Properly planted and reported by the acreage reporting date;

(c) Planted with the intent to be harvested as soybeans; and

(d) Not planted into an established grass or legume or interplanted with another crop.

3. Payment

(a) A payment will be made only if the payment yield for the insured crop year is less than your trigger yield.

(b) Payment yields will be determined prior to April 16 following the crop year.

(c) We will issue any payment to you prior to the May 16 immediately following our determination of the payment yield.

(d) The payment is equal to the payment calculation factor multiplied by your policy protection for each insured crop practice and type specified on the actuarial documents.

(e) The payment will not be recalculated even though the NASS yield may be subsequently revised.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas and all Texas counties lying south thereof.	February 15	November 30.
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, and 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	November 30.
All other Texas counties and all other States	March 15	November.
All other Texas counties and all other states.	March 15	November 30.

§ 407.17 Group risk plan for wheat.

The provisions of the Group Risk Plan for Wheat for the 2000 and succeeding crop years are as follows:

1. Definitions

Harvest. Combining or threshing the wheat for grain.

NASS yield. The yield calculated by dividing the NASS estimate of the wheat production in the county, by the NASS estimate of the acres of wheat in the county, as specified in the actuarial documents. The actuarial documents will specify whether the harvested or planted acreage is used to calculate the yield used to establish the expected county yield and calculate indemnities.

Planted acreage. Land in which the wheat seed has been planted 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. Land on which seed is initially spread onto the soil surface by any method and which subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth, will also be considered planted.

2. Crop Insured

The insured crop will be all wheat:

(a) Grown on insurable acreage in the county or counties listed in the accepted application;

(b) Properly planted and reported by the acreage reporting date;

(c) Planted with the intent to be harvested as grain; and

(d) Not planted into an established grass or legume, interplanted with another crop, or planted as a nurse crop, unless seeded at the normal rate and intended for harvest as grain.

3. Payment

(a) A payment will be made only if the payment yield for the insured crop year is less than your trigger yield.

(b) Payment yields will be determined prior to April 1 following the crop year.

(c) We will issue any payment to you prior to the May 1 immediately following our determination of the payment yield.

(d) The payment is equal to the payment calculation factor multiplied by your policy protection for each insured crop practice and type specified in the actuarial documents.

(e) The payment will not be recalculated even though the NASS yield may be subsequently revised.

State and county	Cancellation and termination dates	Contract change date
All Colorado counties except Alamosa, Conejos, Costilla, Rio Grande, and Saguache; all Montana counties except Daniels and Sheridan Counties; all South Dakota counties except Corson, Walworth, Edmonds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton Counties and all South Dakota counties east thereof; all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie Counties; and all other states except Alaska, Arizona, California, Maine, Minnesota, Nevada, New Hampshire, North Dakota, Utah, and Vermont..	September 30	June 30.
Arizona; California; Nevada; and Utah	October 31	June 30.
Alaska; Alamosa, Conejos, Costilla, Rio Grande, and Saguache Counties, Colorado; Maine; Minnesota; Daniels and Sheridan Counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton Counties South Dakota, and all South Dakota counties east thereof; Vermont; and Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming..	March 15	November 30.

PARTS 408–411 [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 Timing of responses to requests.

AUTHORITY: 5 U.S.C. 552 and 7 U.S.C. 1506.

SOURCE: 62 FR 67694, Dec. 30, 1997, unless otherwise noted.

§412.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture published at 7 CFR 1.1–1.23, and appendix A, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by this part, and the Risk Management Agency (RMA) govern availability of records of the Federal Crop Insurance Corporation (FCIC) as administration of the crop insurance program for FCIC.

§412.2 Public inspection and copying.

(a) Members of the public may request access to the information specified in §412.2(d) for inspection and copying.

(b) To obtain access to specified information, the public should submit a written request, in accordance with 7 CFR 1.6, to the Appeals, Litigation and Legal Liaison Staff, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, SW, STOP 0807, room 6618–S, Washington, DC 20250–0807, from 9:00 a.m.-4:00 pm., EDT Monday through Friday, except holidays.

(c) When the information requested is not located at the office of the Appeals, Litigation and Legal Liaison Staff, the Appeals, Litigation and Legal Liaison Staff will direct the request to the appropriate office where the information can be obtained. The requester will be informed that the request has been forwarded to the appropriate office.

(d) FCIC will make available for inspection and copying, unless otherwise exempt from publication under sections 552(a)(2)(C) and 552(b):

(1) Final opinions, including concurring and dissenting opinions and orders made in the adjudication of cases; and

(2) Those statements of policy and interpretations that have been adopted by FCIC and RMA and are not published in the FEDERAL REGISTER; and

(3) Administrative staff manuals and instructions to staff that affect a member of the public.

§ 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. RMA and FCIC will maintain a current index providing identifying information for the public as to any material issued, adopted, or promulgated by the Agency since July 4, 1967, and required by section 552(a)(2). Pursuant to the Freedom of Information Act provisions, RMA and FCIC have 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 at the address stated in § 412.2(b).

§ 412.4 Requests for records.

The Director of the Appeals, Litigation and Legal Liaison staff, RMA located at the above stated address, is the person authorized to receive Freedom of Information Act and to determine whether to grant or deny such requests in accordance with 7 CFR 1.8.

§ 412.5 Appeals.

Any person whose request under § 412.4 is denied shall have the right to appeal such denial. This appeal shall be submitted in accordance with 7 CFR 1.13 and addressed to the Manager, Federal Crop Insurance Corporation, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 0807, room 6618-S, Washington, DC 20250–0807.

§ 412.6 Timing of responses to requests.

(a) In general, FCIC will respond to requests according to their order of receipt.

(b) Existing responsive documents or information may be maintained in RMA's field offices. Therefore, extra time may be necessary to search and collect the documents.

PARTS 413–456 [RESERVED]

PART 457—COMMON CROP INSURANCE REGULATIONS

Sec.

457.1 Applicability.
457.2 Availability of Federal crop insurance.
457.3 Premium rates, production guarantees or amounts of insurance, coverage levels, and prices at which indemnities shall be computed.
457.4 OMB control numbers.
457.5 Creditors.
457.6 [Reserved]
457.7 The contract.
457.8 The application and policy.
457.9 Appropriation contingency.
457.10–457.100 [Reserved]
457.101 Small grains crop insurance.
457.102 Wheat or barley winter coverage endorsement.
457.103 [Reserved]
457.104 Cotton crop insurance provisions.
457.105 Extra long staple cotton crop insurance provisions.
457.106 Texas citrus tree crop insurance provisions.
457.107 Florida citrus fruit crop insurance provisions.
457.108 Sunflower seed crop insurance provisions.
457.109 Sugar beet crop insurance provisions.
457.110 Fig crop insurance provisions.
457.111 Pear crop insurance provisions.
457.112 Hybrid sorghum seed crop insurance provisions.
457.113 Coarse grains crop insurance provisions.
457.114–457.115 [Reserved]
457.115 Nursery frost, freeze, and cold damage exclusion option.
457.116 Sugarcane crop insurance provisions.
457.117 Forage production crop insurance provisions.
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.
457.122 Walnut crop insurance provisions.
457.123 Almond crop insurance provisions.
457.124 Raisin crop insurance provisions.
457.125 Safflower crop insurance provisions.
457.126 Popcorn crop insurance provisions.
457.127 [Reserved]

457.128 Guaranteed production plan of fresh market tomato crop insurance provisions.
457.129 Fresh market sweet corn crop insurance provisions.
457.130 Madacamia tree crop insurance provisions.
457.131 Macadamia nut crop insurance provisions.
457.132 Cranberry crop insurance provisions.
457.133 Prune crop insurance provisions.
457.134 Peanut crop insurance provisions.
457.135 Onion crop insurance provisions.
457.136 Guaranteed tobacco crop insurance provisions.
457.137 Green pea crop insurance provisions.
457.138 Grape crop insurance provisions.
457.139 Fresh market tomato (dollar plan) crop insurance provisions.
457.140 Dry pea crop insurance provisions.
457.141 Rice crop insurance provisions.
457.142 Northern potato crop insurance provisions.
457.143 Northern potato crop insurance—quality endorsement.
457.144 Northern potato crop insurance—processing quality endorsement.
457.145 Potato crop insurance—certified seed endorsement.
457.146 Northern potato crop insurance—storage coverage endorsement.
457.147 Central and Southern potato crop insurance provisions.
457.148 Fresh market pepper crop insurance provisions.
457.149 Table grape crop insurance provisions.
457.150 Dry bean crop insurance provisions.
457.151 Forage seeding crop insurance provisions.
457.152 Hybrid seed corn crop insurance provisions.
457.153 Peach crop insurance provisions.
457.154 Processing sweet corn crop insurance provisions.
457.155 Processing bean crop insurance provisions.
457.156 Quota tobacco crop insurance provisions.
457.157 Plum crop insurance provisions.
457.158 Apple crop insurance provisions.
457.159 Stonefruit crop insurance provisions.
457.160 Processing tomato crop insurance provisions.
457.161 Canola and rapeseed crop insurance provisions.
457.162 Nursery crop insurance provisions.
457.163 Nursery peak inventory endorsement.
457.164 Nursery rehabilitation endorsement.
457.165 Millet crop insurance provisions.
457.166 Blueberry crop insurance provisions.
457.167 Pecan revenue 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 companies reinsured by the Federal Crop Insurance Corporation (FCIC) that 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 FCIC. FCIC may offer the contract for the catastrophic level of coverage contained in this part and part 402 directly to the insured through local offices of the Department of Agriculture only if the Secretary determines that the availability of local agents is not adequate. Those contracts are specifically identified as being offered by FCIC.

(c) Except as specified in the Crop Provisions, the Catastrophic Risk Protection Endorsement (part 402 of this chapter) and part 400, subpart T of this chapter, no person may have in force more than one contract on the same crop for the same crop year in the same county.

(d) Except as specified in paragraph (c) of this section, if a person has more than one contract authorized under the Act that provides coverage for the same loss 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

multiple contracts of insurance were without the fault of the person.

(1) If the multiple contracts of insurance are shown to be without the fault of the person and:

(i) One contract is an additional coverage policy and the other contract is a Catastrophic Risk Protection policy, the additional coverage policy will apply if both policies are with the same insurance provider, or if not, both insurance providers agree, and the Catastrophic Risk Protection policy will be canceled (If the insurance providers do not agree, the policy with the earliest date of application will be in force and the other contract will be canceled); or

(ii) Both contracts are additional coverage policies or both are Catastrophic Risk Protection policies, the contract with the earliest signature date on the application will be valid and the other contract on that crop in the county for that crop year will be canceled, unless both policies are with the same insurance provider and the insurance provider agrees otherwise or both policies are with different insurance providers and both insurance providers agree otherwise.

(2) No liability for any indemnity, prevented planting payment, replanting payment or premium will attach to the contracts canceled as specified in paragraphs (d)(1)(i) and (ii) of this section.

(e) 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 24).

(f) 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.

(g) 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; 62 FR 65154, Dec. 10, 1997; 63 FR 66712, Dec. 3, 1998; 69 FR 48738, Aug. 10, 2004]

§ 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 number 0563–0053.

[62 FR 65154, Dec. 10, 1997]

§ 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 [Reserved]

§ 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. 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, except as provided in the policy. The forms referred to in the contract are available at the offices of the crop insurance agent.

[56 FR 1351, Jan. 14, 1991, as amended at 69 FR 48739, Aug. 10, 2004]

§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) FCIC or the reinsured company may reject or discontinue the acceptance of applications in any country or of any individual application upon FCIC's determination that the insurance risk is excessive.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

[or policy issuing company name]

Common Crop Insurance Policy

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

FCIC Policies

This is an insurance policy issued by the Federal Crop Insurance Corporation (FCIC), a United States government agency. The provisions of the policy may not be waived or modified in any way by us, your insurance agent or any employee of USDA unless the policy specifically authorizes a waiver or modification by written agreement. Procedures (handbooks, manuals, memoranda, and bulletins), issued by us and published on the RMA Web site at *http://www.rma.usda.gov/* or a successor Web site will be used in the administration of this policy, including the adjustment of any loss or claim submitted hereunder.

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

AGREEMENT TO INSURE: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures issued by us, the order of priority is as follows: (1) The Act; (2) the regulations; and (3) the procedures issued by us, with (1) controlling (2), etc. If there is a conflict between the policy provisions published at 7 CFR part 457 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 457 control. If a conflict exists among the policy provisions, the order of priority is: (1) The Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Crop Provisions; and (4) these Basic Provisions, with (1) controlling (2), etc.

Reinsured Policies

This insurance policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the provisions of the Federal Crop Insurance Act (Act) (7 U.S.C. 1501 *et seq.*). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act. The provisions of the policy may not be waived or varied in any way by us, our insurance agent or any other contractor or employee of ours or any employee of USDA unless the policy specifically authorizes a waiver or modification by written agreement. We will use the procedures (handbooks, manuals, memoranda and bulletins), as issued by FCIC and published on the RMA Web site at *http://www.rma.usda.gov/* or a successor Web site, in the administration of this policy, including the adjustment of any loss or claim submitted hereunder. In the event that we cannot pay your loss because we are insolvent or are otherwise unable to perform our duties under our reinsurance agreement with FCIC, your claim will be settled in accordance with the provisions of this policy and FCIC will be responsible for any amounts owed. No state guarantee fund will be liable for 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 insurance company providing 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 there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures as issued by FCIC, the order of priority is as follows: (1) The Act; (2) the regulations; and (3) the procedures as issued by FCIC, with (1) controlling (2), etc. If there is a conflict between the policy provisions published at 7 CFR part 457 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 457 control. If a conflict exists among the policy provisions, the order of priority is: (1) The Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Crop Provisions; and (4) these Basic Provisions, with (1) controlling (2), etc.

TERMS AND CONDITIONS

Basic Provisions

1. Definitions

Abandon. Failure to continue to care for the crop, providing care so insignificant as to provide no benefit to the crop, or failure to harvest in a timely manner, unless an insured cause of loss prevents you from properly caring for or harvesting the crop or causes damage to it to the extent that most producers of the crop on acreage with similar characteristics in the area would not normally further care for or harvest it.

Acreage report. A report required by section 6 of these Basic Provisions that 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.

Acreage reporting date. The date contained in the Special Provisions or as provided in section 6 by which you are required to submit your acreage report.

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

Actual Production History (APH). A process used to determine production guarantees in accordance with 7 CFR part 400, subpart (G).

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.

Actuarial documents. The material for the crop year which is available for public inspection in your agent's office and published on RMA's Web site at *http://www.rma.usda.gov/* or a successor Web site, and which shows available coverage levels, information needed to determine amounts of insurance, premium rates, premium adjustment percentages, practices, particular types or varieties of the insurable crop, insurable acreage, and other related information regarding crop insurance in the county.

Additional coverage. A level of coverage greater than catastrophic risk protection.

Administrative fee. An amount you must pay for catastrophic risk protection, and additional coverage for each crop year as specified in section 7 and the Catastrophic Risk Protection Endorsement.

Agricultural commodity. Any crop or other commodity produced, regardless of whether or not it is insurable.

Agricultural experts. Persons who are employed by the Cooperative State Research, Education and Extension Service or the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific crop or practice for which such expertise is sought.

Annual crop. An agricultural commodity that normally must be planted each year.

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 cancellation or termination of insurance coverage occurs for any reason, including but not limited to indebtedness, suspension, debarment, disqualification, cancellation by you or us or violation of the controlled substance provisions of the Food Security Act of 1985, a new application must be filed for the crop. Insurance coverage will not be provided if you are ineligible under the contract or under any Federal statute or regulation.

Approved yield. The actual production history (APH) yield, calculated and approved by the verifier, used to determine the production guarantee by summing the yearly actual, assigned, adjusted or unadjusted transitional yields and dividing the sum by the number of yields contained in the database, which will always contain at least four yields. The database may contain up to 10 consecutive crop years of actual or assigned yields. The approved yield may have yield adjustments elected under section 36, revisions according to section 3, or other limitations according to FCIC approved procedures applied when calculating the approved yield.

Area. Land surrounding the insured acreage with geographic characteristics, topography, soil types and climatic conditions similar to the insured acreage.

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.

Average yield. The yield, calculated by summing the yearly actual, assigned, adjusted or unadjusted transitional yields and dividing the sum by the number of yields contained in the database, prior to any adjustments, including those elected under section 36, revisions according to section 3, or other limitations according to FCIC approved procedures.

Basic 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 100 percent 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.) Land which would otherwise be one unit may, in certain instances, be divided according to guidelines contained in section 34 of these Basic Provisions and in the applicable Crop Provisions.

Buffer zone. A parcel of land, as designated in your organic plan, that separates agricultural commodities grown under organic practices from agricultural commodities grown under non-organic practices, and used to minimize the possibility of unintended contact by prohibited substances or organisms.

Cancellation date. The calendar date specified in the Crop Provisions on which coverage for the crop will automatically renew unless canceled in writing by either you or us or terminated in accordance with the policy terms.

Catastrophic risk protection. The minimum level of coverage offered by FCIC that is required before you may qualify for certain other USDA program benefits unless you execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

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

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

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

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).

Consent. Approval in writing by us allowing you to take a specific action.

Code of Federal Regulations (CFR). The codification of general and permanent rules published in the FEDERAL REGISTER by the Executive departments and agencies of the Federal Government. Rules published in the FEDERAL REGISTER by FCIC are contained in 7 CFR chapter IV. The full text of the CFR is available in electronic format at *http://www.access.gpo.gov/* or a successor Web site.

Contract. (See ''policy'').

Contract change date. The calendar date by which changes to the policy, if any, will be made available in accordance with section 4 of these Basic Provisions.

Conventional farming practice. A system or process for producing an agricultural commodity, excluding organic farming practices, that is necessary to produce the crop that may be, but is not required to be, generally recognized by agricultural experts for the area to conserve or enhance natural resources and the environment.

County. Any county, parish, or other political subdivision of a state shown on your accepted application, including acreage in a field that extends into an adjoining county if the county boundary is not readily discernible.

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

Coverage begins, date. The calendar date insurance begins on the insured crop, as contained in the Crop Provisions, or the date planting begins on the unit (see section 11 of these Basic Provisions for specific provisions relating to prevented planting).

Cover crop. A crop generally recognized by agricultural experts as agronomically sound for the area for erosion control or other purposes related to conservation or soil improvement. A cover crop may be considered to be a second crop (see the definition of ''second crop'').

Crop Provisions. The part of the policy that contains the specific provisions of insurance for each insured crop.

Crop year. The period within which the insured crop is normally grown, regardless of whether or not it is actually grown, and designated by the calendar year in which the insured crop is normally harvested, unless otherwise specified in the Crop Provisions.

Damage. Injury, deterioration, or loss of production of the insured crop due to insured or uninsured causes.

Days. Calendar days.

Deductible. The amount determined by subtracting the coverage level percentage you choose from 100 percent. For example, if you

elected a 65 percent coverage level, your deductible would be 35 percent (100% − 65% = 35%).

Delinquent debt. Any administrative fees or premiums for insurance issued under the authority of the Act, and the interest on those amounts, if applicable, that are not postmarked or received by us or our agent on or before the termination date unless you have entered into an agreement acceptable to us to pay such amounts or have filed for bankruptcy on or before the termination date; any other amounts due us for insurance issued under the authority of the Act (including, but not limited to, indemnities, prevented planting payments or replanting payments found not to have been earned or that were overpaid), and the interest on such amounts, if applicable, which are not postmarked or received by us or our agent by the due date specified in the notice to you of the amount due; or any amounts due under an agreement with you to pay the debt, which are not postmarked or received by us or our agent by the due dates specified in such agreement.

Disinterested third party. A person that does not have any familial relationship (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to have a familial relationship) with you or who will not benefit financially from the sale of the insured crop. Persons who are authorized to conduct quality analysis in accordance with the Crop Provisions are considered disinterested third parties unless there is a familial relationship.

Double crop. Producing two or more crops for harvest on the same acreage in the same crop year.

Earliest planting date. The initial planting date contained in the Special Provisions, which is the earliest date you may plant an insured agricultural commodity and qualify for a replanting payment if such payments are authorized by the Crop Provisions.

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).

Enterprise unit. All insurable acreage of the insured crop in the county in which you have a share on the date coverage begins for the crop year. To qualify, an enterprise unit must contain all of the insurable acreage of the same insured crop in:

(1) One or more basic units that are located in two or more separate sections, section equivalents, FSA farm serial numbers, or units established by written agreement, with at least some planted acreage in two or more separate sections, section equivalents, FSA farm serial numbers, or two or more separate units as established by written agreement; or

(2) Two or more optional units established by separate sections, section equivalents, FSA farm serial numbers, or as established by written agreement, with at least two optional units containing some planted acreage.

Field. All acreage of tillable land within a natural or artificial boundary (*e.g.*, roads, waterways, fences, etc.). Different planting patterns or planting different crops do not create separate fields.

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 or amount of insurance per acre.

First insured crop. With respect to a single crop year and any specific crop acreage, the first instance that an agricultural commodity is planted for harvest or prevented from being planted and is insured under the authority of the Act. For example, if winter wheat that is not insured is planted on acreage that is later planted to soybeans that are insured, the first insured crop would be soybeans. If the winter wheat was insured, it would be the first insured crop.

FSA. The Farm Service Agency, an agency of the USDA, or a successor agency.

FSA farm serial number. The number assigned to the farm by the local FSA office.

Generally recognized. When agricultural experts or the organic agricultural industry, as applicable, are aware of the production method or practice and there is no genuine dispute regarding whether the production method or practice allows the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance.

Good farming practices. The production methods utilized to produce the insured crop and allow it to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance, including any adjustments for late planted acreage, which are: (1) For conventional or sustainable farming practices, those generally recognized by agricultural experts for the area; or (2) for organic farming practices, those generally recognized by the organic agricultural industry for the area or contained in the organic plan. We may, or you may request us to, contact FCIC to determine whether or not production methods will be considered to be ''good farming practices.''

Household. A domestic establishment including the members of a family (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to be family members) and others who live under the same roof.

Insurable loss. Damage for which coverage is provided under the terms of your policy, and for which you accept an indemnity payment.

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.

Insured crop. The crop in the county for which coverage is available under your policy as shown on the application accepted by us.

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 or amount of insurance on the irrigated acreage planted to the insured crop.

Late planted. Acreage initially planted to the insured crop after the final planting date.

Late planting period. The period that begins the day after the final planting date for the insured crop and ends 25 days after the final planting date, unless otherwise specified in the Crop Provisions or Special Provisions.

Liability. The dollar amount of insurance coverage used in the premium computation for the insured agricultural commodity.

Limited resource farmer. A person with:

(1) Direct or indirect gross farm sales not more than $100,000.00 in each of the previous two years (to be increased starting in fiscal year 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS)); and

(2) A total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data).

Negligence. The failure to use such care as a reasonably prudent and careful person would use under similar circumstances.

Non-contiguous. Acreage of an insured crop that is separated from other acreage of the same insured crop by land that is neither owned by you nor rented by you for cash or a crop share. However, acreage separated by only a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Offset. The act of deducting one amount from another amount.

Organic agricultural industry. Persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education or the Cooperative State Research, Education and Extension Service, the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific organic crop or practice for which such expertise is sought.

Organic farming practice. A system of plant production practices approved by a certifying agent in accordance with 7 CFR part 205.

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

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

Perennial crop. A plant, bush, tree or vine crop that has a life span of more than one year.

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. ''Person'' does not include the United States Government or any agency thereof.

Planted acreage. Land in which seed, plants, or trees have been placed, 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.

Policy. The agreement between you and us to insure an agricultural commodity and consisting of the accepted application, these Basic Provisions, the Crop Provisions, the Special Provisions, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Insurance for each agricultural commodity in each county will constitute a separate policy.

Practical to replant. Our determination, after loss or damage to the insured crop, based on all factors, including, but not limited to moisture availability, marketing window, 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 be considered to be practical to replant regardless of availability of seed or plants, or the input costs necessary to produce the insured crop such as those that would be incurred for seed or plants, irrigation water, etc.

Premium billing date. The earliest date upon which you will be billed for insurance coverage based on your acreage report. The premium billing date is contained in the Special Provisions.

Prevented planting. Failure 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 may also be eligible for a prevented planting payment if you failed to plant the insured crop with the proper equipment within the late planting period. You must have been prevented from planting the insured crop due to an insured cause of loss that is general in the surrounding area and that prevents other producers from planting acreage with similar characteristics.

Price election. The amounts contained in the Special Provisions, or an addendum thereto, that is the value per pound, bushel, ton, carton, or other applicable unit of measure for the purposes of determining premium and indemnity under the policy.

Production guarantee (per acre). The number of pounds, bushels, tons, cartons, or other applicable units of measure determined by multiplying the approved yield per acre by the coverage level percentage you elect.

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 yield information for previous years, 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.

Prohibited substance. Any biological, chemical, or other agent that is prohibited from use or is not included in the organic standards for use on any certified organic, transitional or buffer zone acreage. Lists of such substances are contained at 7 CFR part 205.

Replanted crop. The same agricultural commodity replanted on the same acreage as the first insured crop for harvest in the same crop year if the replanting is specifically made optional by the policy and you elect to replant the crop and insure it under the policy covering the first insured crop, or replanting is required by the policy.

Replanting. Performing the cultural practices necessary to prepare the land to replace the seed or plants of the damaged or destroyed insured crop and then replacing the seed or plants of the same crop in the same insured acreage. The same crop does not necessarily mean the same type or variety of the crop unless different types or varieties constitute separate crops or it is otherwise specified in the policy.

Representative sample. Portions of the insured crop that must remain in the field for examination and review by our loss adjuster when making a crop appraisal, as specified in the Crop Provisions. In certain instances we may allow you to harvest the crop and require only that samples of the crop residue be left in the field.

Sales closing date. A date contained in the Special Provisions by which an application must be filed. The last date by which you may change your crop insurance coverage for a crop year.

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.

Second crop. With respect to a single crop year, the next occurrence of planting any agricultural commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first insured crop, except the term does not include a replanted crop. A cover crop, planted after a first insured crop and planted for the purpose of haying, grazing or otherwise harvesting in any manner or that is hayed or grazed during the crop year, or that is otherwise harvested is considered to be a second crop. A cover crop that is covered by FSA's noninsured crop disaster assistance program (NAP) or receives other USDA benefits associated with forage crops will be considered as planted for the purpose of haying, grazing or otherwise harvesting. A crop meeting the conditions stated herein will be considered to be a second crop regardless of whether or not it is insured. Notwithstanding the references to haying and grazing as harvesting in these Basic Provisions, for the purpose of determining the end of the insurance period, harvest of the crop will be as defined in the applicable Crop Provisions.

Share. Your percentage of interest in the insured crop as an owner, operator, or tenant 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 the time of loss or the beginning of harvest.

Special Provisions. The part of the policy that contains specific provisions of insurance for each insured crop that may vary by geographic area.

State. The state shown on your accepted application.

Substantial beneficial interest. An interest held by any person of at least 10 percent in you. The spouse of any individual applicant or individual insured will be considered to have a substantial beneficial interest in the applicant or insured unless the spouses can prove they are legally separated or otherwise legally separate under state law. Any child of an individual applicant or individual insured will not be considered to have a substantial beneficial interest in the applicant

or insured unless the child has a separate legal interest in such person. For example, there are two partnerships that each have a 50 percent interest in you and each partnership is made up of two individuals, each with a 50 percent share in the partnership. In this case, each individual would be considered to have a 25 percent interest in you, and both the partnerships and the individuals would have a substantial beneficial interest in you (The spouses of the individuals would not be considered to have a substantial beneficial interest unless the spouse was one of the individuals that made up the partnership). However, if each partnership is made up of six individuals with equal interests, then each would only have an 8.33 percent interest in you and although the partnership would still have a substantial beneficial interest in you, the individuals would not for the purposes of reporting in section 2.

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

Sustainable farming practice. A system or process for producing an agricultural commodity, excluding organic farming practices, that is necessary to produce the crop and is generally recognized by agricultural experts for the area to conserve or enhance natural resources and the environment.

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).

Termination date. The calendar date contained in the Crop Provisions upon which your insurance ceases to be in effect because of nonpayment of any amount due us under the policy, including premium.

Timely planted. Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

Transitional acreage. Acreage on which organic farming practices are being followed that does not yet qualify to be designated as organic acreage.

USDA. United States Department of Agriculture.

Void. When the policy is considered not to have existed for a crop year as a result of concealment, fraud or misrepresentation (see section 27).

Whole farm unit. All insurable acreage of two or more insured crops planted in the county in which you have a share on the date coverage begins for each crop for the crop year. All crops for which the whole farm unit structure is available must be included in the whole farm unit. At least two of the insured crops must each constitute at least 10 percent of the total liability of all insured crops in the whole farm unit, and all crops in the unit must be insured under the same plan of insurance and with the same insurance provider.

Written agreement. A document that alters designated terms of a policy as authorized under these Basic Provisions, the Crop Provisions, or the Special Provisions for the insured crop (see section 18).

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 until canceled by you in accordance with the terms of the policy or terminated by operation of the terms of the policy or by us.

(b) Your application for insurance must contain your social security number (SSN) if you are an individual or employer identification number (EIN) if you are a person other than an individual, and all SSNs and EINs, as applicable, of all persons with a substantial beneficial interest in you, the coverage level, price election, crop, type, variety, or class, plan of insurance, and any other material information required on the application to insure the crop. If you or someone with a substantial beneficial interest is not legally required to have a SSN or EIN, you must request and receive an identification number for the purposes of this policy from us or the Internal Revenue Service (IRS) if such identification number is available from the IRS. If any of the information regarding persons with a substantial beneficial interest changes during the crop year, you must revise your application by the next sales closing date applicable under your policy to reflect the correct information.

(1) Applications that do not contain your SSN, EIN or identification number, or any of the other information required in section 2(b) are not acceptable and insurance will not be provided (Except if you fail to report the SSNs, EINs or identification numbers of persons with a substantial beneficial interest in you, the provisions in section 2(b)(2) will apply);

(2) If the application does not contain the SSNs, EINs or identification numbers of all persons with a substantial beneficial interest in you, you fail to revise your application in accordance with section 2(b), or the reported SSNs, EINs or identification numbers are incorrect and the incorrect SSN, EIN or identification number has not been corrected by the acreage reporting date, and:

(i) Such persons are eligible for insurance, the amount of coverage for all crops included on this application will be reduced proportionately by the percentage interest in you of such persons, you must repay the amount of indemnity, prevented planting payment or replanting payment that is proportionate to the interest of the persons whose SSN, EIN or identification number was unreported or

incorrect for such crops, and your premium will be reduced commensurately; or

(ii) Such persons are not eligible for insurance, except as provided in section 2(b)(3), the policy is void and no indemnity, prevented planting payment or replanting payment will be owed for any crop included on this application, and you must repay any indemnity, prevented planting payment or replanting payment that may have been paid for such crops. If previously paid, the balance of any premium and any administrative fees will be returned to you, less twenty percent of the premium that would otherwise be due from you for such crops. If not previously paid, no premium or administrative fees will be due for such crops.

(3) The consequences described in section 2(b)(2)(ii) will not apply if you have included an ineligible person's SSN, EIN or identification number on your application and do not include the ineligible person's share on the acreage report.

(c) After acceptance of the application, you may not cancel this policy for the initial crop year. Thereafter, the policy will continue in force for each succeeding crop year unless canceled or terminated as provided below.

(d) 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.

(e) Any amount due to us for any policy authorized under the Act will be offset from any indemnity or prevented planting payment due you for this or any other crop insured with us under the authority of the Act.

(1) Even if your claim has not yet been paid, you must still pay the premium and administrative fee on or before the termination date for you to remain eligible for insurance.

(2) If we offset any amount due us from an indemnity or prevented planting payment owed to you, the date of payment for the purpose of determining whether you have a delinquent debt will be the date that you submit the claim for indemnity in accordance with section 14(c) (Your Duties).

(f) A delinquent debt for any policy will make you ineligible to obtain crop insurance authorized under the Act for any subsequent crop year and result in termination of all policies in accordance with section 2(f)(2).

(1) With respect to ineligibility:

(i) Ineligibility for crop insurance will be effective on:

(A) The date that a policy was terminated in accordance with section 2(f)(2) for the crop for which you failed to pay premium, an administrative fee, or any related interest owed, as applicable;

(B) The payment due date contained in any notification of indebtedness for any overpaid indemnity, prevented planting payment or replanting payment, if you fail to pay the amount owed, including any related interest owed, as applicable, by such due date;

(C) The termination date for the crop year prior to the crop year in which a scheduled payment is due under a payment agreement if you fail to pay the amount owed by any payment date in any agreement to pay the debt; or

(D) The termination date the policy was or would have been terminated under sections 2(f)(2)(i)(A), (B) or (C) if your bankruptcy petition is dismissed before discharge.

(ii) If you are ineligible and a policy has been terminated in accordance with section 2(f)(2), you will not receive any indemnity, prevented planting payment or replanting payment, if applicable, and such ineligibility and termination of the policy may affect your eligibility for benefits under other USDA programs. Any indemnity, prevented planting payment or replanting payment that may be owed for the policy before it has been terminated will remain owed to you, but may be offset in accordance with section 2(e), unless your policy was terminated in accordance with sections 2(f)(2)(i)(D) or (E).

(2) With respect to termination:

(i) Termination will be effective on:

(A) For a policy with unpaid administrative fees or premiums, the termination date immediately subsequent to the billing date for the crop year;

(B) For a policy with other amounts due, the termination date immediately following the date you have a delinquent debt;

(C) For each policy for which insurance has attached before you become ineligible, the termination date immediately following the date you become ineligible;

(D) For execution of an agreement to pay any amounts owed and failure to make any scheduled payment, the termination date for the crop year prior to the crop year in which you failed to make the scheduled payment; or

(E) For dismissal of a bankruptcy petition before discharge, the termination date the policy was or would have been terminated under sections 2(f)(2)(i)(A), (B) or (C).

(ii) For all policies terminated under sections 2(f)(2)(i)(D) and (E), any indemnities, prevented planting payments or replanting payments paid subsequent to the termination date must be repaid.

(iii) Once the policy is terminated, it cannot be reinstated for the current crop year unless the termination was in error. Failure to timely pay because of illness, bad weather, or other such extenuating circumstances is not grounds for reinstatement in the current year.

(3) To regain eligibility, you must:

(i) Repay the delinquent debt in full;

(ii) Execute an agreement to pay any amounts owed and make payments in accordance with the agreement (We will not enter into an agreement with you to pay the

amounts owed if you have previously failed to make a scheduled payment under the terms of any other agreement to pay with us or any other insurance provider); or

(iii) File a petition to have your debts discharged in bankruptcy (Dismissal of the bankruptcy petition before discharge will terminate all policies in effect retroactive to the date your policy would have been terminated in accordance with section 2(f)(2)(i));

(4) After you become eligible for crop insurance, if you want to obtain coverage for your crops, you must submit a new application on or before the sales closing date for the crop (Since applications for crop insurance cannot be accepted after the sales closing date, if you make any payment after the sales closing date, you cannot apply for insurance until the next crop year);

(5) For example, for the 2003 crop year, if crop A, with a termination date of October 31, 2003, and crop B, with a termination date of March 15, 2004, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 2003, and crop A's policy is terminated as of that date. Crop B's policy does not terminate until March 15, 2004, and an indemnity for the 2003 crop year may still be owed. If you enter an agreement to repay amounts owed on September 25, 2004, the earliest date by which you can obtain crop insurance for crop A is to apply for crop insurance by the October 31, 2004, sales closing date and for crop B is to apply for crop insurance by the March 15, 2005, sales closing date. If you fail to make a payment that was scheduled to be made on April 1, 2005, your policy will terminate as of October 31, 2004, for crop A, and March 15, 2005, for crop B, and no indemnity, prevented planting payment or replanting payment will be due for that crop year for either crop. You will not be eligible to apply for crop insurance for any crop until after the amounts owed are paid in full or you file a petition to discharge the debt in bankruptcy.

(6) If you are determined to be ineligible under section 2(f), persons with a substantial beneficial interest in you may also be ineligible until you become eligible again.

(g) 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. The premium will be deducted from the indemnity or collected from the estate. 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.

(h) We may cancel your policy if no premium is earned for 3 consecutive years.

(i) The cancellation and termination dates are contained in the Crop Provisions.

(j) When obtaining catastrophic, or additional coverage, you 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 of the administrative fee.

(k) 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 such other legally sufficient document authorizing such person to sign. You are still responsible for the accuracy of all information provided on your behalf and may be subject to the consequences in section 6(g), and any applicable consequences, if any information has been misreported.

3. Insurance Guarantees, Coverage Levels, and Prices.

(a) Unless adjusted or limited in accordance with your policy, 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 for each crop year.

(b) You must select the same coverage, catastrophic risk protection or additional coverage, and select one level of additional coverage for all acreage of the crop in the county unless one of the following applies:

(1) The applicable Crop Provisions allow you the option to separately insure individual crop types or varieties. In this case, each individual type or variety insured by you will be subject to separate administrative fees. For example, if two grape varieties in California are insured under the Catastrophic Risk Protection Endorsement and two varieties are insured under an additional 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 you execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(2) If you have additional coverage for the crop in the county and the acreage has been designated as ''high risk'' by FCIC, you will be able to obtain a High Risk Land Exclusion Option for the high risk land under the additional coverage policy and insure the high risk acreage under a separate Catastrophic

Risk Protection Endorsement, provided that the Catastrophic Risk Protection Endorsement is obtained from the same insurance provider from which the additional coverage was obtained.

(c) In addition to the price election or amount of insurance available on the contract change date, we may provide an additional price election or amount of insurance no later than 15 days prior to the sales closing date. You must select the additional price election or amount of insurance on or before the sales closing date for the insured crop. These additional price elections or amounts of insurance will not be less than those available on the contract change date. If you elect the additional price election or amount of insurance, any claim settlement and amount of premium will be based on this amount.

(d) You may change the coverage level, price election, or amount of insurance for the following crop year by giving written notice to us not later than the sales closing date for the insured crop. 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 on or before the sales closing date, we will assign a price election or amount of insurance which bears the same relationship to the price election schedule as the price election or amount of insurance that was in effect for the preceding year. (For example: If you selected 100 percent of the market price for the previous crop year and you do not select a new price election for the current crop year, we will assign 100 percent of the market price for the current crop year.)

(e) 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 unless otherwise stated in the Special Provisions:

(1) 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 percent 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 approved yield for the purpose of determining your coverage for the current crop year.

(2) If you have filed a claim for any crop year, the documents signed by you which state the amount of production used to complete the claim for indemnity will be the production report for that year unless otherwise specified by FCIC.

(3) Production and acreage for the prior crop year must be reported for each proposed optional unit by the production reporting date. If you do not provide the information stated above, the optional units will be combined into the basic unit.

(4) Appraisals obtained from only a portion of the acreage in a field that remains unharvested after the remainder of the crop within the field has been destroyed or put to another use will not be used to establish your actual yield unless representative samples are required to be left by you in accordance with the Crop Provisions.

(f) It is your responsibility to accurately report all information that is used to determine your approved yield. You must certify to the accuracy of this information on your production report.

(1) If you do not have written verifiable records to support the information on your production report, you will receive an assigned yield in accordance with section 3(e)(1) and 7 CFR part 400, subpart G for those crop years for which you do not have such records.

(2) If you misreport any material information used to determine your approved yield:

(i) We will correct the unit structure, if necessary; and

(ii) You will be subject to the provisions regarding misreporting contained in section 6(g), unless we correct the information because the incorrect information was the result of our error or the error of someone from USDA.

(g) In addition to any consequences in section 3(f), at any time the circumstances described below are discovered, your approved yield will be adjusted:

(1) By including an assigned yield determined in accordance with section 3(e)(1) and 7 CFR part 400, subpart G, if the actual yield reported in the database is excessive for any crop year, as determined by FCIC under its procedures, and you do not provide verifiable records to support the yield in the database (If there are verifiable records for the yield in your database, the yield is significantly different from the other yields in the county or your other yields for the crop and you cannot prove there is a valid basis to support the differences in the yields, the yield will be the average of the yields for the crop or the applicable county transitional yield if you have no other yields for the crop, and you may be subject to the provisions of section 27);

(2) By reducing it to an amount consistent with the average of the approved yields for other databases for your farming operation with the same crop, type, and practice or the county transitional yield, as applicable, if:

(i) The approved APH yield is greater than 115 percent of the average of the approved yields of all applicable databases for your farming operation that have actual yields in them or it is greater than 115 percent of the county transitional yield if no applicable databases exist for comparison; and

(ii) The current year's insured acreage (including applicable prevented planting acreage) is greater than 400 percent of the average number of acres in the database or the acres contained in two or more individual years in the database are each less than 10 percent of the current year's insurable acreage in the unit (including applicable prevented planting acreage); or

(3) To an amount consistent with the production methods actually carried out for the crop year if you use a different production method than was previously used and the production method actually carried out is likely to result in a yield lower than the average of your previous actual yields. The yield will be adjusted based on your other units where such production methods were carried out or to the applicable county transitional yield for the production methods if other such units do not exist. You must notify us of changes in your production methods by the acreage reporting date. If you fail to notify us, in addition to the reduction of your approved yield described herein, you will be considered to have misreported information and you will be subject to the consequences in section 6(g). For example, for a non-irrigated unit, your yield is based upon acreage of the crop that is watered once prior to planting, and the crop is not watered prior to planting for the current crop year. Your approved APH yield will be reduced to an amount consistent with the actual production history of your other non-irrigated units where the crop has not been watered prior to planting or limited to the non-irrigated transitional yield for the unit if other such units do not exist.

(h) Unless you meet the double cropping requirements contained in section 17(f)(4), if you elect to plant a second crop on acreage where the first insured crop was prevented from being planted, you will receive a yield equal to 60 percent of the approved yield for the first insured crop to calculate your average yield for subsequent crop years (Not applicable to crops if the APH is not the basis for the insurance guarantee). If the unit contains both prevented planting and planted acreage of the same crop, the yield for such acreage will be determined by:

(1) Multiplying the number of insured prevented planting acres by 60 percent of the approved yield for the first insured crop;

(2) Adding the totals from section 3(h)(1) to the amount of appraised or harvested production for all of the insured planted acreage; and

(3) Dividing the total in section 3(h)(2) by the total number of acres in the unit.

(i) Hail and fire coverage may be excluded from the covered causes of loss for an insured crop only if you select additional coverage of not less than 65 percent of the approved yield indemnified at the 100 percent price election, or an equivalent coverage as established by FCIC, and you have purchased the same or a higher dollar amount of coverage for hail and fire from us or any other source.

(j) The applicable premium rate, or formula to calculate the premium rate, and transitional yield will be those contained in the actuarial documents except, in the case of high risk land, a written agreement may be requested to change such transitional yield or premium rate.

4. Contract Changes

(a) We may change the terms of your coverage under this policy from year to year.

(b) Any changes in policy provisions, amounts of insurance, premium rates, program dates, and price elections (except as allowed herein or as specified in section 3) can be viewed on the RMA Web site at *http://www.rma.usda.gov/* or a successor Web site not later than the contract change date contained in the Crop Provisions. We may only revise this information after the contract change date to correct clear errors (For example, the price election for corn was announced at $25.00 per bushel instead of $2.50 per bushel or the final planting date should be May 10 but the final planting date in the Special Provisions states August 10).

(c) After the contract change date, all changes specified in section 4(b) will also be available upon request from your crop insurance agent. You will be provided, in writing, a copy of the changes to the Basic Provisions and Crop Provisions and a copy of the Special Provisions not later than 30 days prior to the cancellation date for the insured crop. Acceptance of the changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

5. [Reserved]

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 contained in the Special Provisions, except as follows:

(1) If you insure multiple crops with us that have final planting dates on or after August 15 but before December 31, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops; and

(2) If you insure multiple crops with us that have final planting dates on or after December 31 but before August 15, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops.

(3) Notwithstanding the provisions in sections 6(a) (1) and (2):

(i) If the Special Provisions designate separate planting periods for a crop, you must

submit an acreage report for each planting period on or before the acreage reporting date contained in the Special Provisions for the planting period; and

(ii) 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:

(A) The acreage reporting date contained in the Special Provisions;

(B) The date determined in accordance with sections (a)(1) or (2); or

(C) Five (5) days after the end of the late planting period for the insured crop, if applicable.

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

(c) Your acreage report must include the following information, if applicable:

(1) All acreage of the crop in the county (insurable and not insurable) 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.

(d) Regarding the ability to revise an acreage report you have submitted to us:

(1) For planted acreage, you cannot revise any information pertaining to the planted acreage after the acreage reporting date without our consent (Consent may only be provided when no cause of loss has occurred; our appraisal has determined that the insured crop will produce at least 90 percent of the yield used to determine your guarantee or the amount of insurance for the unit (including reported and unreported acreage), except when there are unreported units (see section 6(f)); the information on the acreage report is clearly transposed; you provide adequate evidence that we or someone from USDA have committed an error regarding the information on your acreage report; or if expressly permitted by the policy);

(2) For prevented planting acreage reported on the acreage report, you cannot revise any information pertaining to the prevented planting acreage after the report is initially submitted to us without our consent (Consent may only be provided when information on the acreage report is clearly transposed or you provide adequate evidence that we or someone from USDA have committed an error regarding the information on your acreage report);

(3) For prevented planting acreage not reported on the acreage report, you cannot revise your acreage report to add prevented planting acreage;

(4) If you request an acreage measurement prior to the acreage reporting date and submit documentation of such request and an acreage report with estimated acreage by the acreage reporting date, you must provide the measurement to us, we will revise your acreage report if there is a discrepancy, and no indemnity, prevented planting payment or replant payment will be paid until the acreage measurement has been received by us (Failure to provide the measurement to us will result in the application of section 6(g) if the estimated acreage is not correct and estimated acreage under this section will no longer be accepted for any subsequent acreage report);

(5) If there is an irreconcilable difference between:

(i) The acreage measured by FSA or a measuring service and our on-farm measurement, our on-farm measurement will be used; or

(ii) The acreage measured by a measuring service, other than our on-farm measurement, and FSA, the FSA measurement will be used; and

(6) If the acreage report has been revised in accordance with section 6(d)(1), (2), (4), or (5), the information on the initial acreage report will not be considered misreported for the purposes of section 6(g).

(e) We may elect to determine all premiums and indemnities based on the information you submit on the acreage report or upon the factual circumstances we determine to have existed, subject to the provisions contained in section 6(g).

(f) 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 to deny liability on such units. If we deny liability for the unreported units, your share of any production from the unreported units will be allocated, for loss purposes only, as production to count to the reported units in proportion to the liability on each reported unit. However, such production will not be allocated to prevented planting acreage or otherwise affect any prevented planting payment.

(g) You must provide all required reports and you are responsible for the accuracy of all information contained in those reports. You should verify the information on all such reports prior to submitting them to us.

(1) If you submit information on any report that is different than what is determined to be correct and such information results in:

(i) A lower liability than the actual liability determined, the production guarantee or amount of insurance on the unit will be reduced to an amount consistent with the reported information (In the event the insurable acreage is under-reported for any unit, all production or value from insurable acreage in that unit will be considered production or value to count in determining the indemnity); or

(ii) A higher liability than the actual liability determined, the information contained in the acreage report will be revised to be consistent with the correct information.

(2) In addition to the other adjustments specified in section 6(g)(1), if you misreport any information that results in liability greater than 110.0 percent or lower than 90.0 percent of the actual liability determined for the unit, any indemnity, prevented planting payment, or replanting payment will be based on the amount of liability determined in accordance with section 6(g)(1)(i) or (ii) and will be reduced in an amount proportionate with the amount of liability that is misreported in excess of the tolerances stated in this section (For example, if the actual liability is determined to be $100.00, but you reported liability of $120.00, any indemnity, prevented planting payment or replanting payment will be reduced by 10.0 percent ($120.00 / $100.00 = 1.20, and 1.20 − 1.10 = 0.10)).

(h) If we discover you have incorrectly reported any information on the acreage report for any crop year, you may be required to provide documentation in subsequent crop years substantiating your report of acreage for those crop years, including, but not limited to, an acreage measurement service at your own expense. If the correction of any misreported information would affect an indemnity, prevented planting payment or replant payment that was paid in a prior crop year, such claim will be adjusted and you will be required to repay any overpaid amounts.

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

7. Annual Premium and Administrative Fees

(a) The annual premium is earned and payable at the time coverage begins. You will be billed for the premium and administrative fee not earlier than the premium billing date specified in the Special Provisions.

(b) Premium or administrative fees owed by you will be offset from an indemnity or prevented planting payment due you in accordance with section 2(e).

(c) The annual premium amount is determined, as applicable, 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, and 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, and times any premium adjustment percentages that may apply.

(d) The premium will be computed using the price election or amount of insurance you elect or that we assign in accordance with section 3(d). The information needed to determine the premium rate and any premium adjustment percentages that may apply are contained in the actuarial documents or an approved written agreement.

(e) In addition to the premium charged:

(1) You, unless otherwise authorized in 7 CFR part 400, must pay an administrative fee each crop year of $30 per crop per county for all levels of coverage in excess of catastrophic risk protection.

(2) The administrative fee must be paid no later than the time that premium is due.

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

(4) The administrative fee will be waived if you request it and:

(i) You qualify as a limited resource farmer; or

(ii) You were insured prior to the 2005 crop year or for the 2005 crop year and your administrative fee was waived for one or more of those crop years because you qualified as a limited resource farmer under a policy definition previously in effect, and you remain qualified as a limited resource farmer under the definition that was in effect at the time the administrative fee was waived.

(5)–(6) [Reserved]

(7) Failure to pay the administrative fees when due may make you ineligible for certain other USDA benefits.

(f) If the amount of premium (gross premium less premium subsidy paid on your behalf by FCIC) and administrative fee you are required to pay for any acreage exceeds the liability for the acreage, coverage for those acres will not be provided (no premium or administrative fee will be due and no indemnity will be paid for such acreage).

8. Insured Crop

(a) The insured crop will be that shown on your accepted application and as specified in the Crop Provisions or Special 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) That is not grown on planted acreage (except for the purposes of prevented planting coverage), or that is a type, class or variety or where the conditions under which the crop is planted are not generally recognized for the area (For example, where agricultural experts determine that planting a nonirrigated corn crop after a failed small grain crop on the same acreage in the same crop year is not appropriate for the area);

(2) For which the information necessary for insurance (price election, premium rate,

etc.) is not included in the actuarial documents, unless such information is provided by a written agreement;

(3) That is a volunteer crop;

(4) Planted following the same crop on the same acreage and the first planting of the crop has been harvested in the same crop year unless specifically permitted by the Crop Provisions or the Special Provisions (For example, the second planting of grain sorghum would not be insurable if grain sorghum had already been planted and harvested on the same acreage during the crop year);

(5) That is planted for the development or production of hybrid seed or for experimental purposes, unless permitted by the Crop Provisions or by written agreement to insure such crop; or

(6) That is used solely for wildlife protection or management. If the lease states that specific acreage must remain unharvested, only that acreage is uninsurable. If the lease specifies that a percentage of the crop must be left unharvested, your share will be reduced by such percentage.

(c) Although certain policy documents may state that a crop type, class, variety or practice is not insurable, it does not mean all other crop types, classes, varieties or practices are insurable. To be insurable the crop type, class, variety or practice must meet all the conditions in this section.

9. Insurable Acreage

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

(1) That has not been planted and harvested or insured (including insured acreage that was prevented from being planted) in at least one of the three previous crop years unless you can show that:

(i) Such acreage was not planted:

(A) In at least two of the previous three crop years to comply with any other USDA program;

(B) Because of crop rotation, (*e.g.*, corn, soybeans, alfalfa; and the alfalfa remained for four years before the acreage was planted to corn again); or

(C) Because a perennial tree, vine, or bush crop was grown on the acreage;

(ii) The Crop Provisions or a written agreement specifically allow insurance for such acreage; or

(iii) Such acreage constitutes five percent or less of the insured planted acreage in the unit;

(2) That has been strip-mined, unless otherwise approved by written agreement, or unless an agricultural commodity other than a cover, hay, or forage crop (except corn silage), has been harvested from the acreage for at least five crop years after the strip-mined land was reclaimed;

(3) For which the actuarial documents do not provide the information necessary to determine the premium rate, unless insurance is allowed by a written agreement;

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

(5) That is interplanted, unless allowed by the Crop Provisions;

(6) That is otherwise restricted by the Crop Provisions or Special Provisions;

(7) That is planted in any manner other than as specified in the policy provisions for the crop unless a written agreement to such planting exists;

(8) Of a second crop, if you elect not to insure such acreage when an indemnity for a first insured crop may be subject to reduction in accordance with the provisions of section 15 and you intend to collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop acreage. This election must be made on a first insured crop unit basis. For example, if the first insured crop unit contains 40 planted acres that may be subject to an indemnity reduction, then no second crop can be insured on any of the 40 acres. In this case:

(i) If the first insured crop is insured under this policy, you must provide written notice to us of your election not to insure acreage of a second crop at the time the first insured crop acreage is released by us (if no acreage in the first insured crop unit is released, this election must be made by the earlier of the acreage reporting date for the second crop or when you sign the claim for indemnity for the first insured crop) or, if the first insured crop is insured under the Group Risk Protection Plan of Insurance (7 CFR part 407), this election must be made before the second crop insured under this policy is planted, and if you fail to provide such notice, the second crop acreage will be insured in accordance with the applicable policy provisions and you must repay any overpaid indemnity for the first insured crop;

(ii) In the event a second crop is planted and insured with a different insurance provider, or planted and insured by a different person, you must provide written notice to each insurance provider that a second crop was planted on acreage on which you had a first insured crop; and

(iii) You must report the crop acreage that will not be insured on the applicable acreage report; or

(9) Of a crop planted following a second crop or following an insured crop that is prevented from being planted after a first insured crop, unless it is a practice that is generally recognized by agricultural experts or the organic agricultural industry for the area to plant three or more crops for harvest on the same acreage in the same crop year, and additional coverage insurance provided under the authority of the Act is offered for

the third or subsequent crop in the same crop year. Insurance will only be provided for a third or subsequent crop as follows:

(i) You must provide records acceptable to us that show:

(A) You have produced and harvested the insured crop following two other crops harvested on the same acreage in the same crop year in at least two of the last four years in which you produced the insured crop; or

(B) The applicable acreage has had three or more crops produced and harvested on it in at least two of the last four years in which the insured crop was grown on it; and

(ii) The amount of insurable acreage will not exceed 100 percent of the greatest number of acres for which you provide the records required in section 9(a)(9)(i)(A) or (B).

(b) If insurance is provided for an irrigated practice, you must report as irrigated only that acreage for which you have adequate facilities and adequate water, or the reasonable expectation of receiving adequate water at the time coverage begins, to carry out a good irrigation practice. If you knew or had reason to know that your water may be reduced before coverage begins, no reasonable expectation exists.

(c) Notwithstanding the provisions in section 8(b)(2), 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 ''non-irrigated,'' or report the irrigated acreage as not insured.

(d) We may restrict the amount of acreage that 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) Insurance will attach only to the share of the person completing the application and will not extend to any other person having a share in the crop unless the application clearly states that:

(1) The insurance is requested for an entity such as a partnership or a joint venture; or

(2) You as landlord will insure your tenant's share, or you as tenant will insure your landlord's share. In this event, you must provide evidence of the other party's approval (lease, power of attorney, etc.). Such evidence will be retained by us. You also must clearly set forth the percentage shares of each person on the acreage report. For each landlord or tenant that is an individual, you must report the landlord's or tenant's social security number. For each landlord or tenant that is a person other than an individual or for a trust administered by the Bureau of Indian Affairs, you must report each landlord's or tenant's social security number, employer identification number, or other identification number assigned for the purposes of this policy.

(b) We may consider any acreage or interest reported by or for your spouse, child or any member of your household to be included in your share.

(c) Acreage rented for a percentage of the crop, or 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.

(d) Acreage rented for cash, or a lease containing provisions for *either* a minimum payment *or* a crop share (such as a 50/50 share or $100.00 per acre, whichever is greater) will be considered a cash lease.

11. Insurance Period

(a) Except for prevented planting coverage (see section 17), coverage begins on each unit or part of a unit at the later of:

(1) The date we accept your application (For the purposes of this paragraph, the date of acceptance is the date that you submit a properly executed application in accordance with section 2);

(2) The date the insured crop is planted; or

(3) The calendar date contained in the Crop Provisions for the beginning of the insurance period.

(b) Coverage ends 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 a unit;

(4) The calendar date contained in the Crop Provisions for the end of the insurance period;

(5) Abandonment of the crop on the unit; or

(6) As otherwise specified in the Crop Provisions.

12. Causes of Loss

The insurance provided is against only unavoidable loss directly caused by specific causes of loss contained in the Crop Provisions. All specified causes of loss, except where the Crop Provisions specifically cover loss of revenue due to a reduced price in the marketplace, must be due to a naturally occurring event. 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) Failure to follow recognized good farming practices for the insured crop;

(c) Water that is contained by or within structures that are designed to contain a specific amount of water, such as dams, locks or reservoir projects, etc., on any acreage when such water stays within the designed limits (For example, a dam is designed to contain water to an elevation of

1,200 feet but you plant a crop on acreage at an elevation of 1,100 feet. A storm causes the water behind the dam to rise to an elevation of 1,200 feet. Under such circumstances, the resulting damage would not be caused by an insurable cause of loss. However, if you planted on acreage that was above 1,200 feet elevation, any damage caused by water that exceeded that elevation would be caused by an insurable cause of loss);

(d) Failure or breakdown of the irrigation equipment or facilities unless the failure or breakdown is due to a cause of loss specified in the Crop Provisions (If damage is due to an insured cause, you must make all reasonable efforts to restore the equipment or facilities to proper working order within a reasonable amount of time unless we determine it is not practical to do so. Cost will not be considered when determining whether it is practical to restore the equipment or facilities);

(e) Failure to carry out a good irrigation practice for the insured crop, if applicable; or

(f) Any cause of loss that results in damage that is not evident or would not have been evident during the insurance period, including, but not limited to, damage that only becomes evident after the end of the insurance period unless expressly authorized in the Crop Provisions. Even though we may not inspect the damaged crop until after the end of the insurance period, damage due to insured causes that would have been evident during the insurance period will be covered.

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 planted acreage for the unit (as determined on the final planting date or within the late planting period if a late planting period is applicable).

(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 earliest planting 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) No replanting payment will be paid if we determine it is not practical to replant.

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

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;

(3) If representative samples are required by the Crop Provisions, leave representative samples intact of the unharvested crop if you report damage less than 15 days before the time you begin harvest or during harvest of the damaged unit (The samples must be left intact until we inspect them or until 15 days after completion of harvest on the unit, whichever is earlier. Unless otherwise specified in the Crop Provisions or Special Provisions, the samples of the crop in each field in the unit must be 10 feet wide and extend the entire length of the row, if the crop is planted in rows, or if the crop is not planted in rows, the longest dimension of the field. The period to retain representative samples may be extended if it is necessary to accurately determine the loss. You will be notified in writing of any such extension); and

(4) Cooperate with us in the investigation or settlement of the claim, and, as often as we reasonably require:

(i) Show us the damaged crop;

(ii) Allow us to remove samples of the insured crop; and

(iii) Provide us with records and documents we request and permit us to make copies.

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

(1) Destroy any of the insured crop that 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 consent for any of the actions in sections 14(b) (1) through (4) 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 the 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 unless you request an extension in writing and we agree to such extension. Extensions will only be granted if the amount of the loss cannot be determined within such time period because the information needed to determine the amount of the loss is not available. The claim for indemnity must include all information we require to settle the claim. Failure to submit a

claim or provide the required information will result in no indemnity, prevented planting payment or replant payment (Even though no indemnity or other payment is due, you will still be required to pay the premium due under the policy for the unit).

(d) 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. In addition, if you insure any acreage that may be subject to an indemnity reduction as specified in section 15(e)(2) (for example, you planted a second crop on acreage where a first insured crop had an insurable loss and you do not qualify for the double cropping exemption), you must provide separate records of production from such acreage for all insured crops planted on the acreage. For example, if you have an insurable loss on 10 acres of wheat and subsequently plant cotton on the same 10 acres, you must provide records of the wheat and cotton production on the 10 acres separate from any other wheat and cotton production that may be planted in the same unit. If you fail to provide such separate records, we will allocate the production of each crop to the acreage in proportion to our liability for the acreage; and

(2) Upon our request, or that of any USDA employee authorized to conduct investigations of the crop insurance program, submit to an examination under oath.

(e) You must establish the total production or value received for the insured crop on the unit, that any loss of production or value occurred during the insurance period, and that the loss of production or value was directly caused by one or more of the insured causes specified in the Crop Provisions.

(f) In the event you are prevented from planting an insured crop which has prevented planting coverage, you must notify us within 72 hours after:

(1) The final planting date, if you do not intend to plant the insured crop during the late planting period or if a late planting period is not applicable; or

(2) You determine you will not be able to plant the insured crop within any applicable late planting period.

(g) All notices required in this section 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.

(h) It is your duty to prove you have complied with all provisions of this policy.

(1) Failure to comply with the requirements of section 14(c) (Your Duties) will result in denial of your claim for indemnity or prevented planting or replant payment for the acreage for which the failure occurred. Failure to comply with all other requirements of this section will result in denial of your claim for indemnity or prevented planting or replant payment for the acreage for which the failure occurred, unless we still have the ability to accurately adjust the loss (Even though no indemnity or other payment is due, you will still be required to pay the premium due under the policy for the unit); and

(2) Failure to comply with other sections of the policy will subject you to the consequences specified in those sections.

Our Duties—

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

(1) We reach agreement with you;

(2) Completion of arbitration, reconsideration of determinations regarding good farming practices or any other appeal that results in an award in your favor, unless we exercise our right to appeal such decision;

(3) Completion of any investigation by USDA, if applicable, of your current or any past claim for indemnity if no evidence of wrongdoing has been found (If any evidence of wrongdoing has been discovered, the amount of any indemnity, prevented planting or replant overpayment as a result of such wrongdoing may be offset from any indemnity or prevented planting payment owed to you); or

(4) 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 an Indemnity and Payment Reductions.

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

(b) Appraised production will be used to calculate your claim if you are not going to harvest your acreage. Such appraisals may be conducted after the end of the insurance period. If you harvest the crop after the crop has been appraised:

(1) You must provide us with the amount of harvested production; and

(2) If the harvested production exceeds the appraised production, claims will be adjusted using the harvested production, and you will be required to repay any overpaid indemnity; or

(3) If the harvested production is less than the appraised production, and:

(i) You harvest after the end of the insurance period, your appraised production will be used to adjust the loss unless you can prove that no additional causes of loss or deterioration of the crop occurred after the end of the insurance period; or

(ii) You harvest before the end of the insurance period, your harvested production will be used to adjust the loss.

(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 as described in the applicable Form FCI–78 ''Request To Exclude Hail and Fire'' or a form containing the same terms approved by the Federal Crop Insurance Corporation.

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

(e) With respect to acreage where you have suffered an insurable loss to planted acreage of your first insured crop in the crop year, except in the case of double cropping described in section 15(h):

(1) You may elect to not plant or to plant and not insure a second crop on the same acreage for harvest in the same crop year and collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop; or

(2) You may elect to plant and insure a second crop on the same acreage for harvest in the same crop year (you will pay the full premium and, if there is an insurable loss to the second crop, receive the full amount of indemnity that may be due for the second crop, regardless of whether there is a subsequent crop planted on the same acreage) and:

(i) Collect an indemnity payment that is 35 percent of the insurable loss for the first insured crop;

(ii) Be responsible for premium that is 35 percent of the premium that you would otherwise owe for the first insured crop; and

(iii) If the second crop does not suffer an insurable loss:

(A) Collect an indemnity payment for the other 65 percent of insurable loss that was not previously paid under section 15(e)(2)(i); and

(B) Be responsible for the remainder of the premium for the first insured crop that you did not pay under section 15(e)(2)(ii).

(f) With respect to acreage where you were prevented from planting the first insured crop in the crop year, except in the case of double cropping described in section 15(h):

(1) If a second crop is not planted on the same acreage for harvest in the same crop year, you may collect a prevented planting payment that is equal to 100 percent of the prevented planting payment for the acreage for the first insured crop; or

(2) If a second crop is planted on the same acreage for harvest in the same crop year (you will pay the full premium and, if there is an insurable loss to the second crop, receive the full amount of indemnity that may be due for the second crop, regardless of whether there is a subsequent crop planted on the same acreage) and:

(i) Provided the second crop is not planted on or before the final planting date or during the late planting period (as applicable) for the first insured crop, you may collect a prevented planting payment that is 35 percent of the prevented planting payment for the first insured crop; and

(ii) Be responsible for premium that is 35 percent of the premium that you would otherwise owe for the first insured crop.

(g) The reduction in the amount of indemnity or prevented planting payment and premium specified in sections 15(e) and 15(f), as applicable, will apply:

(1) Notwithstanding the priority contained in the Agreement to Insure section, which states that the Crop Provisions have priority over the Basic Provisions when a conflict exists, to any premium owed or indemnity or prevented planting payment made in accordance with the Crop Provisions, and any applicable endorsement.

(2) Even if another person plants the second crop on any acreage where the first insured crop was planted or was prevented from being planted, as applicable.

(3) For prevented planting only:

(i) If a volunteer crop or cover crop is hayed or grazed from the same acreage, after the late planting period (or after the final planting date if a late planting period is not applicable) for the first insured crop in the same crop year, or is otherwise harvested anytime after the late planting period (or after the final planting date if a late planting period is not applicable); or

(ii) If you receive cash rent for any acreage on which you were prevented from planting.

(h) You may receive a full indemnity, or a full prevented planting payment for a first insured crop when a second crop is planted on the same acreage in the same crop year, regardless of whether or not the second crop is insured or sustains an insurable loss, if each of the following conditions are met:

(1) It is a practice that is generally recognized by agricultural experts or the organic agricultural industry for the area to plant two or more crops for harvest in the same crop year;

(2) The second or more crops are customarily planted after the first insured crop for harvest on the same acreage in the same crop year in the area;

(3) Additional coverage insurance offered under the authority of the Act is available in the county on the two or more crops that are double cropped;

(4) You provide records acceptable to us of acreage and production that show you have double cropped acreage in at least two of the last four crop years in which the first insured crop was planted, or that show the applicable acreage was double cropped in at least two of the last four crop years in which the first insured crop was grown on it; and

(5) In the case of prevented planting, the second crop is not planted on or prior to the final planting date or, if applicable, prior to the end of the late planting period for the first insured crop.

(i) The receipt of a full indemnity or prevented planting payment on both crops that are double cropped is limited to the number of acres for which you can demonstrate you have double cropped or that have been historically double cropped as specified in section 15(h).

(j) If any Federal or State agency requires destruction of any insured crop or crop production, as applicable, because it contains levels of a substance, or has a condition, that is injurious to human or animal health in excess of the maximum amounts allowed by the Food and Drug Administration, other public health organizations of the United States or an agency of the applicable State, you must destroy the insured crop or crop production, as applicable, and certify that such insured crop or crop production has been destroyed prior to receiving an indemnity payment. Failure to destroy the insured crop or crop production, as applicable, will result in you having to repay any indemnity paid and you may be subject to administrative sanctions in accordance with section 515(h) of the Act and 7 CFR part 400, subpart R, and any applicable civil or criminal sanctions.

16. Late Planting

Unless limited by the Crop Provisions, insurance will be provided for acreage planted to the insured crop after the final planting date in accordance with the following:

(a) The production guarantee or amount of insurance for each acre planted to the insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date.

(b) Acreage planted after the late planting period (or after the final planting date for crops that do not have a late planting period) may be insured as follows:

(1) The production guarantee or amount of insurance for each acre planted as specified in this subsection will be determined by multiplying the production guarantee or amount of insurance that is provided for acreage of the insured crop that is timely planted by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Planting on such acreage must have been prevented by the final planting date (or during the late planting period, if applicable) by an insurable cause occurring within the insurance period for prevented planting coverage; and

(3) All production from insured acreage as specified in this section will be included as production to count for the unit.

(c) The premium amount for insurable acreage specified in this section 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 such acreage exceeds the liability, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid).

(d) Any acreage on which an insured cause of loss is a material factor in preventing completion of planting, as specified in the definition of ''planted acreage'' (*e.g.*, seed is broadcast on the soil surface but cannot be incorporated) will be considered as acreage planted after the final planting date and the production guarantee will be calculated in accordance with section 16(b)(1).

17. Prevented Planting

(a) Unless limited by the policy provisions, a prevented planting payment may be made to you for eligible acreage if:

(1) You were prevented from planting the insured crop (Failure to plant when other producers in the area were planting will result in the denial of the prevented planting claim) by an insured cause that occurs:

(i) On or after 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 or after the sales closing date for the previous crop year for the insured crop in the county, provided insurance has been in force continuously since that date. Cancellation for the purpose of transferring the policy to a different insurance provider for the subsequent crop year will not be considered a break in continuity for the purpose of the preceding sentence;

(2) You include any acreage of the insured crop that was prevented from being planted on your acreage report; and

(3) You did not plant the insured crop during or after the late planting period. If such acreage was planted to the insured crop during or after the late planting period, it is covered under the late planting provisions.

(b) The actuarial documents may contain additional levels of prevented planting coverage that you may purchase for the insured crop:

(1) Such purchase must be made on or before the sales closing date.

(2) If you do not purchase one of those additional levels by the sales closing date, you will receive the prevented planting coverage specified in the Crop Provisions.

(3) If you have a Catastrophic Risk Protection Endorsement for any crop, the additional levels of prevented planting coverage will not be available for that crop.

(4) You may not increase your elected or assigned prevented planting coverage level for any crop year if a cause of loss that will or could prevent planting is evident prior to the time you wish to change your prevented planting coverage level.

(c) The premium amount for acreage that is prevented from being planted will be the same as that for timely planted acreage except as specified in section 15(f). If the amount of premium you are required to pay (gross premium less our subsidy) for acreage that is prevented from being planted 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).

(d) Drought or failure of the irrigation water supply will be considered to be an insurable cause of loss for the purposes of prevented planting only if on the final planting date (or within the late planting period if you elect to try to plant the crop):

(1) For non-irrigated acreage, the area that is prevented from being planted has insufficient soil moisture for germination of seed or progress toward crop maturity due to a prolonged period of dry weather. Prolonged precipitation deficiencies must be verifiable using information collected by sources whose business it is to record and study the weather, including, but not limited to, local weather reporting stations of the National Weather Service; or

(2) For irrigated acreage, there is not a reasonable expectation of having adequate water to carry out an irrigated practice. If you knew or had reason to know that your water is reduced before the final planting date, no reasonable expectation existed.

(e) The maximum number of acres that may be eligible for a prevented planting payment for any crop will be determined as follows:

(1) The total number of acres eligible for prevented planting coverage for all crops cannot exceed the number of acres of cropland in your farming operation for the crop year, unless you are eligible for prevented planting coverage on double cropped acreage in accordance with section 17(f) (4). The eligible acres for each insured crop will be determined in accordance with the following table.

Type of crop	Eligible acres if, in any of the 4 most recent crop years, you have planted any crop in the county for which prevented planting insurance was available or have received a prevented planting insurance guarantee	Eligible acres if, in any of the 4 most recent crop years, you have not planted any crop in the county for which prevented planting insurance was available or have not received a prevented planting insurance guarantee
(i) The crop is not required to be contracted with a processor to be insured.	(A) The maximum number of acres certified for APH purposes, or insured acres reported, for the crop in any one of the 4 most recent crop years (not including reported prevented planting acreage that was planted to a second crop unless you meet the double cropping requirements in section 17(f)(4)). The number of acres determined above for a crop may be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the total cropland acres that you farmed in the previous year, provided that you submit proof to us that for the current crop year you have purchased or leased additional land or that acreage will be released from any USDA program which prohibits harvest of a crop. Such acreage must have been purchased, leased, or released from the USDA program, in time to plant it for the current crop year using good farming practices. No cause of loss that would prevent planting may be evident at the time you lease the acreage (except acreage you leased the previous year and continue to lease in the current crop year); you buy the acreage; the acreage is released from a USDA program which prohibits harvest of a crop; you request a written agreement to insure the acreage; or you otherwise acquire the acreage (such as inherited or gifted acreage)..	(B) The number of acres specified on your intended acreage report which is submitted to us by the sales closing date for all crops you insure for the crop year and that is accepted by us. The total number of acres listed may not exceed the number of acres of cropland in your farming operation at the time you submit the intended acreage report. The number of acres determined above for a crop may only be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the number of acres listed on your intended acreage report, if you meet the conditions stated in section 17(e)(1)(i)(A).

Type of crop	Eligible acres if, in any of the 4 most recent crop years, you have planted any crop in the county for which prevented planting insurance was available or have received a prevented planting insurance guarantee	Eligible acres if, in any of the 4 most recent crop years, you have not planted any crop in the county for which prevented planting insurance was available or have not received a prevented planting insurance guarantee
(ii)The crop must be contracted with a processor to be insured.	(A) The number of acres of the crop specified in the processor contract, if the contract specifies a number of acres contracted for the crop year; or the result of dividing the quantity of production stated in the processor contract by your approved yield, if the processor contract specifies a quantity of production that will be accepted. If a minimum number of acres or amount of production is specified in the processor contract, this amount will be used to determine the eligible acres. If a processor cancels or does not provide contracts, or reduces the contracted acreage or production from what would have otherwise been allowed, solely because the acreage was prevented from being planted due to an insured cause of loss, we may elect to determine the number of acres eligible based on the number of acres or amount of production you had contracted in the county in the previous crop year. If you did not have a processor contract in place for the previous crop year, you will not have any eligible prevented planting acreage for the applicable processor crop. The total eligible prevented planting acres in all counties cannot exceed the total number of acres or amount of production contracted in all counties in the previous crop year. If the applicable crop provisions require that the price election be based on a contract price, and a contract is not in force for the current year, the price election may be based on the contract price in place for the previous crop year..	(B) The number of acres of the crop as determined in section 17(e)(1)(ii)(A).

(2) Any eligible acreage determined in accordance with the table contained in section 17(e)(1) will be reduced by subtracting the number of acres of the crop (insured and uninsured) that are timely and late planted, including acreage specified in section 16(b).

(f) Regardless of the number of eligible acres determined in section 17(e), prevented planting coverage will not be provided for any acreage:

(1) That does not constitute at least 20 acres or 20 percent of the insurable crop acreage in the unit, whichever is less, and any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop, type, and practice that is planted in the field except that the prevented planting acreage may be considered to be acreage of a crop, type, and practice other than that which is planted in the field if:

(i) The acreage that was prevented from being planted constitutes at least 20 acres or 20 percent of the total insurable acreage in the field and you produced both crops, crop types, or followed both practices in the same field in the same crop year within any one of the four most recent crop years;

(ii) You were prevented from planting a first insured crop and you planted a second crop in the field (There can only be one first insured crop in a field unless the requirements in section 17(f)(1)(i) or (iii) are met); or

(iii) The insured crop planted in the field would not have been planted on the remaining prevented planting acreage (For example, where rotation requirements would not be met or you already planted the total number of acres specified in the processor contract);

(2) For which the actuarial documents do not provide the information needed to determine a premium rate unless a written agreement designates such premium rate;

(3) Used for conservation purposes, intended to be left unplanted under any program administered by the USDA or other government agency, or required to be left unharvested under the terms of the lease or any other agreement (The number of acres eligible for prevented planting will be limited to the number of acres specified in the lease for which you are required to pay either cash or share rent);

(4) On which the insured crop is prevented from being planted, if you or any other person receives a prevented planting payment for any crop for the same acreage in the same crop year (It is your responsibility to

determine whether a prevented planting payment had previously been made for the crop year on the acreage for which you are now claiming a prevented planting payment and report such information to us before any prevented planting payment can be made), excluding share arrangements, unless:

(5) On which the insured crop is prevented from being planted, if:

(i) Any crop is planted within or prior to the late planting period or on or prior to the final planting date if no late planting period is applicable, unless:

(A) You meet the double cropping requirements in section 17(f)(4);

(B) The crop planted was a cover crop; or

(C) No benefit, including any benefit under any USDA program, was derived from the crop; or

(ii) Any volunteer or cover crop is hayed, grazed or otherwise harvested within or prior to the late planting period or on or prior to the final planting date if no late planting period is applicable;

(6) For which planting history or conservation plans indicate that the acreage would remain fallow for crop rotation purposes or on which any pasture or other forage crop is in place on the acreage during the time that planting of the insured crop generally occurs in the area;

(7) That exceeds the number of acres eligible for a prevented planting payment;

(8) That exceeds the number of eligible acres physically available for planting;

(9) For which you cannot provide proof that you had the inputs available to plant and produce a crop with the expectation of at least producing the yield used to determine the production guarantee or amount of insurance (Evidence that you have previously planted the crop on the unit will be considered adequate proof unless your planting practices or rotational requirements show that the acreage would have remained fallow or been planted to another crop);

(10) Based on an irrigated practice production guarantee or amount of insurance unless adequate irrigation facilities were in place to carry out an irrigated practice on the acreage prior to the insured cause of loss that prevented you from planting. Acreage with an irrigated practice production guarantee will be limited to the number of acres allowed for that practice under sections 17(e) and (f);

(11) Based on a crop type that you did not plant, or did not receive a prevented planting insurance guarantee for, in at least one of the four most recent crop years. Types for which separate price elections, amounts of insurance, or production guarantees are available must be included in your APH database in at least one of the four most recent crop years, or crops that do not require yield certification (crops for which the insurance guarantee is not based on APH) must be reported on your acreage report in at least one of the four most recent crop years except as allowed in section 17(e)(1)(i)(B). We will limit prevented planting payments based on a specific crop type to the number of acres allowed for that crop type as specified in sections 17(e) and (f); or

(12) If a cause of loss has occurred that would prevent planting at the time:

(i) You lease the acreage (except acreage you leased the previous crop year and continue to lease in the current crop year);

(ii) You buy the acreage;

(iii) The acreage is released from a USDA program which prohibits harvest of a crop;

(iv) You request a written agreement to insure the acreage; or

(v) You acquire the acreage through means other than lease or purchase (such as inherited or gifted acreage).

(g) If you purchased an additional coverage policy for a crop, and you executed a High Risk Land Exclusion Option that separately insures acreage which has been designated as ''high-risk'' land by FCIC under a Catastrophic Risk Protection Endorsement for that crop, the maximum number of acres eligible for a prevented planting payment will be limited for each policy as specified in sections 17(e) and (f).

(h) If you are prevented from planting a crop for which you do not have an adequate base of eligible prevented planting acreage, as determined in accordance with section 17(e)(1), your prevented planting production guarantee or amount of insurance, premium, and prevented planting payment will be based on the crops insured for the current crop year, for which you have remaining eligible prevented planting acreage. The crops used for this purpose will be those that result in a prevented planting payment most similar to the prevented planting payment that would have been made for the crop that was prevented from being planted.

(1) For example, assume you were prevented from planting 200 acres of corn and have 100 acres eligible for a corn prevented planting guarantee that would result in a payment of $40 per acre. You also had 50 acres of potato eligibility that would result in a $100 per acre payment, 90 acres of grain sorghum eligibility that would result in a $30 per acre payment, and 100 acres of soybean eligibility that would result in a $25 per acre payment. Your prevented planting coverage for the 200 acres would be based on 100 acres of corn ($40 per acre), 90 acres of grain sorghum ($30 per acre), and 10 acres of soybeans ($25 per acre).

(2) Prevented planting coverage will be allowed as specified in this section (17(h)) only if the crop that was prevented from being planted meets all policy provisions, except for having an adequate base of eligible prevented planting acreage. Payment may be made based on crops other than those that

were prevented from being planted even though other policy provisions, including but not limited to, processor contract and rotation requirements, have not been met for the crop on which payment is being based. However, if you were prevented from planting any non-irrigated crop acreage and you do not have any remaining eligible acreage for that crop and you do not have any other crop remaining with eligible acres under a non-irrigated practice, no prevented planting payment will be made for the acreage.

(i) The prevented planting payment for any eligible acreage within a unit will be determined by:

(1) Multiplying the liability per acre for timely planted acreage of the insured crop (the amount of insurance per acre or the production guarantee per acre multiplied by the price election for the crop, or type if applicable) by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Multiplying the result of section 17(i)(1) by the number of eligible prevented planting acres in the unit; and

(3) Multiplying the result of section 17(i)(2) by your share.

18. Written Agreements

Terms of this policy which are specifically designated for the use of written agreements 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 18(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 FCIC, the written agreement will include all variable terms of the contract, including, but not limited to, crop practice, type or variety, the guarantee (except for a written agreement in effect for more than one year) and premium rate or information needed to determine the guarantee and premium rate, and price election (Price elections will not exceed the price election contained in the Special Provisions, or an addendum thereto, for the county that is used to establish the other terms of the written agreement. If no price election can be provided, the written agreement will not be approved by FCIC);

(d) Each written agreement will only be valid for the number of crop years specified in the written agreement, and a multi-year written agreement:

(1) Will only apply for any particular crop year designated in the written agreement if all terms and conditions in the written agreement are still applicable for the crop year and the conditions under which the written agreement has been provided have not changed prior to the beginning of the insurance period (If conditions change during or prior to the crop year, the written agreement will not be effective for that crop year but may still be effective for a subsequent crop year if conditions under which the written agreement has been provided exist for such year);

(2) May be canceled in writing by:

(i) FCIC not less than 30 days before the cancellation date if it discovers that any term or condition of the written agreement, including the premium rate, is not appropriate for the crop; or

(ii) You or us on or before the cancellation date;

(3) That is not renewed in writing after it expires, is not applicable for a crop year, or is canceled, then insurance coverage will be in accordance with the terms and conditions stated in this policy, without regard to the written agreement; and

(4) Will be automatically cancelled if you transfer your policy to another insurance provider (No notice will be provided to you and for any subsequent crop year, for a written agreement to be effective, you must timely request renewal of the written agreement in accordance with this section);

(e) A request for a written agreement may be submitted:

(1) After the sales closing date, but on or before the acreage reporting date, if you demonstrate your physical inability to submit the request prior to the sales closing date (For example, you have been hospitalized or a blizzard has made it impossible to submit the written agreement request in person or by mail);

(2) For the first year the written agreement will be in effect only:

(i) On or before the acreage reporting date, to:

(A) Insure unrated land, or an unrated practice, type or variety of a crop (Such written agreements may be approved only after inspection of the acreage by us and the written agreement may only be approved by FCIC if the crop's potential is equal to or exceeds 90 percent of the yield used to determine the production guarantee or the amount of insurance and you sign the agreement on the same day the appraisal is made); or

(B) Establish optional units in accordance with FCIC procedures that otherwise would not be allowed, change the premium rate or transitional yield for designated high risk land, change a tobacco classification, or insure acreage that is greater than five percent of the planted acreage in the unit where the acreage has not been planted and harvested or insured in any of the three previous crop years; or

(ii) On or before the cancellation date, to insure a crop in a county that does not have actuarial documents for the crop (If the Crop Provisions do not provide a cancellation date for the county, the cancellation date for other insurable crops in the same state that have similar final planting and harvesting dates will be applicable); or

(iii) On or before the date specified in the Crop Provisions or Special Provisions;

(3) On or before the sales closing date, for all requests for renewal of written agreements, except as provided in section 18(e)(1);

(4) To add land or a crop to an existing written agreement or to add land or a crop to a request for a written agreement provided the request is submitted by the deadlines specified in this subsection;

(f) A request for a written agreement must contain:

(1) For all written agreement requests:

(i) A completed ''Request for Actuarial Change'' form;

(ii) An APH form (except for policies that do not require APH) containing all the information needed to determine the approved yield for the current crop year (completed APH form), signed by you, or an unsigned, completed APH form with the applicable production reports signed and dated by you that are based on verifiable records of actual yields for the crop and county for which the written agreement is being requested (the actual yields do not necessarily have to be from the same physical acreage for which you are requesting a written agreement) for at least the most recent crop year during the base period and verifiable records of actual yields if required by FCIC;

(iii) Evidence from agricultural experts or the organic agricultural industry, as applicable, that the crop can be produced in the area if the request is to provide insurance for practices, types, or varieties that are not insurable, unless we are notified in writing by FCIC that such evidence is not required by FCIC;

(iv) The legal description of the land (in areas where legal descriptions are available), FSA Farm Serial Number including tract number, and a FSA aerial photograph, acceptable Geographic Information System or Global Positioning System maps, or other legible maps delineating field boundaries where you intend to plant the crop for which insurance is requested;

(v) For any perennial crop, an inspection report completed by us; and

(vi) All other information that supports your request for a written agreement (including but not limited to records pertaining to levees, drainage systems, flood frequency data, soil types, elevation, etc.);

(2) For written agreement requests for counties without actuarial documents for the crop, the requirements in section 18(f)(1) (except section 18(f)(1)(ii)) and:

(i) A completed APH form (except for policies that do not require APH) based on verifiable records of actual yields for:

(A) The crop and county for which the written agreement is being requested (the actual yields do not necessarily have to be from the same physical acreage for which you are requesting a written agreement) for at least the most recent three crop years in which the crop was planted during the base period; or

(B) A similar crop in the county, or a combination of actual yields for a similar crop in the county and the crop in the county for which the written agreement is being requested if you have not produced the crop for which the written agreement is being requested for at least three crop years.

(*1*) To be considered a similar crop to the crop for which a written agreement is being requested, such crop must:

(*i*) Be included in the same category of crops, e.g., row crops (including, but not limited to, small grains, coarse grains, and oil seed crops), vegetable crops grown in rows, tree crops, vine crops, bush crops, etc., as defined by FCIC;

(*ii*) Have substantially the same growing season (i.e., normally planted around the same dates and harvested around the same dates);

(*iii*) Require comparable agronomic conditions (e.g., comparable water, soil, etc. needs); and

(*iv*) Be subject to substantially the same risks (frequency and severity of loss would be expected to be comparable from the same cause of loss);

(*2*) The actual yields for the similar crop do not necessarily have to be from the same physical acreage for which you are requesting a written agreement;

(ii) Acceptable production records for at least the most recent three crop years in which the crop or a similar crop was planted;

(iii) The dates you and other growers in the area normally plant and harvest the crop, if applicable;

(iv) The name, location of, and approximate distance to the place the crop will be sold or used by you;

(v) For any irrigated practice, the water source, method of irrigation, and the amount of water needed for an irrigated practice for the crop; and

(vi) All other information that supports your request for a written agreement (such as publications regarding yields, practices, risks, climatic data, etc.); and

(3) Such other information as specified in the Special Provisions or required by FCIC;

(g) A request for a written agreement will not be accepted if:

(1) The request is submitted to us after the deadline contained in sections 18(a) or (e);

(2) All the information required in section 18(f) is not submitted to us with the request

for a written agreement (The request for a written agreement may be accepted if any missing information is available from other acceptable sources); or

(3) The request is to add land to an existing written agreement or to add land to a request for a written agreement and the request to add the land is not submitted by the deadlines specified in sections (a) or (e);

(h) A request for a written agreement will be denied if:

(1) FCIC determines the risk is excessive;

(2) Your APH history demonstrates you have not produced at least 50 percent of the transitional yield for the crop, type, and practice obtained from a county with similar agronomic conditions and risk exposure;

(3) There is not adequate information available to establish an actuarially sound premium rate and insurance coverage for the crop and acreage;

(4) The crop was not previously grown in the county or there is no evidence of a market for the crop based on sales receipts, contemporaneous feeding records or a contract for the crop (applicable only for counties without actuarial documents); or

(5) Agricultural experts or the organic agricultural industry determines the crop is not adapted to the county;

(i) A written agreement will be denied unless:

(1) FCIC approves the written agreement;

(2) The original written agreement is signed by you and sent to us not later than the expiration date; and

(3) The crop meets the minimum appraisal amount specified in section 18(e)(2)(i)(A), if applicable;

(j) Multiyear written agreements may be canceled and requests for renewal may be rejected if the severity or frequency of your loss experience under the written agreement is significantly worse than expected based on the information provided by you or used to establish your premium rate and the loss experience of other crops with similar risks in the area;

(k) With respect to your and our ability to reject an offer for a written agreement:

(1) When a single Request for Actuarial Change form is submitted, regardless of how many requests for changes are contained on the form, you and we can only accept or reject the written agreement in its entirety (you cannot reject specific terms of the written agreement and accept others);

(2) When multiple Request for Actuarial Change forms are submitted, regardless of when the forms are submitted, for the same condition or for the same crop (*i.e.*, to insure corn on ten legal descriptions where there are no actuarial documents in the county or the request is to change the premium rates from the high risk rates) all these forms may be treated as one request and you and we will only have the option of accepting or rejecting the written agreement in its entirety (you cannot reject specific terms of the written agreement and accept others);

(3) When multiple Request for Actuarial Change forms are submitted, regardless of when the forms are submitted, for the different conditions or for different crops, separate agreements may be issued and you and we will have the option to accept or reject each written agreement; and

(4) If we reject an offer for a written agreement approved by FCIC, you may seek arbitration or mediation of our decision to reject the offer in accordance with section 20;

(l) Any information that is submitted by you after the applicable deadlines in sections 18(a) and (e) will not be considered, unless such information is specifically requested in accordance with section 18(f)(3);

(m) If the written agreement or the policy is canceled for any reason, or the period for which an existing written agreement is in effect ends, a request for renewal of the written agreement must contain all the information required by this section and be submitted in accordance with section 18(e), unless otherwise specified by FCIC; and

(n) If a request for a written agreement is not approved by FCIC, a request for a written agreement for any subsequent crop year that fails to address the stated basis for the denial will not be accepted (If the request for a written agreement contains the same information that was previously rejected or denied, you will not have any right to arbitrate, mediate or appeal the non-acceptance of your request).

19. 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]

20. Appeal, Reconsideration, Administrative and Judicial Review.

(a) All determinations required by the policy will be made by us.

(b) If you disagree with our determinations, you may:

(1) Except for determinations specified in section 20(b)(2), obtain an administrative review in accordance with 7 CFR part 400, subpart J (administrative review) or appeal in accordance with 7 CFR part 11 (appeal); or

(2) For determinations regarding whether you have used good farming practices (excluding determinations of the amount of assigned production for uninsured causes for your failure to use good farming practices), request reconsideration in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J (reconsideration). To appeal or request administrative review of determinations of the amount of assigned production,

you must use the appeal or administrative review process.

(c) If you fail to exhaust your right to appeal or for reconsideration, as applicable, you will not be able to resolve the dispute through judicial review.

(d) If reconsideration or appeal has been initiated within the time frames specified in those sections and judicial review is sought, any suit against us must be:

(1) Filed not later than one year after the date of the decision rendered in the reconsideration or appeal; and

(2) Brought in the United States district court for the district in which the insured farm involved in the decision is located.

(e) You may only recover contractual damages from us. Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from us in administrative review, appeal, reconsideration or litigation.

[For Reinsured Policies]

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review.

(a) If you and we fail to agree on any determination made by us except those specified in section 20(d), the disagreement may be resolved through mediation in accordance with section 20(g). If resolution cannot be reached through mediation, or you and we do not agree to mediation, the disagreement must be resolved through arbitration in accordance with the rules of the American Arbitration Association (AAA), except as provided in sections 20(c) and (f), and unless rules are established by FCIC for this purpose. Any mediator or arbitrator with a familial, financial or other business relationship to you or us, or our agent or loss adjuster, is disqualified from hearing the dispute.

(1) All disputes involving determinations made by us, except those specified in section 20(d), are subject to mediation or arbitration. However, if the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, either you or we must obtain an interpretation from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC.

(i) Any interpretation by FCIC will be binding in any mediation or arbitration.

(ii) Failure to obtain any required interpretation from FCIC will result in the nullification of any agreement or award.

(iii) An interpretation by FCIC of a policy provision is considered a rule of general applicability and is not appealable. If you disagree with an interpretation of a policy provision by FCIC, you must obtain a Director's review from the National Appeals Division in accordance with 7 CFR 11.6 before obtaining judicial review in accordance with subsection (e).

(iv) An interpretation by FCIC of a procedure may be appealed to the National Appeals Division in accordance with 7 CFR part 11.

(2) Unless the dispute is resolved through mediation, the arbitrator must provide to you and us a written statement describing the issues in dispute, the factual findings, the determinations and the amount and basis for any award and breakdown by claim for any award. The statement must also include any amounts awarded for interest. Failure of the arbitrator to provide such written statement will result in the nullification of all determinations of the arbitrator. All agreements reached through settlement, including those resulting from mediation, must be in writing and contain at a minimum a statement of the issues in dispute and the amount of the settlement.

(b) Regardless of whether mediation is elected:

(1) The initiation of arbitration proceedings must occur within one year of the date we denied your claim or rendered the determination with which you disagree, whichever is later;

(2) If you fail to initiate arbitration in accordance with section 20(b)(1) and complete the process, you will not be able to resolve the dispute through judicial review;

(3) If arbitration has been initiated in accordance with section 20(b)(1) and completed, and judicial review is sought, suit must be filed not later than one year after the date the arbitration decision was rendered; and

(4) In any suit, if the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, an interpretation must be obtained from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC. Such interpretation will be binding.

(c) Any decision rendered in arbitration is binding on you and us unless judicial review is sought in accordance with section 20(b)(3). Notwithstanding any provision in the rules of the AAA, you and we have the right to judicial review of any decision rendered in arbitration.

(d) If you do not agree with any determination made by us or FCIC regarding whether you have used a good farming practice (excluding determinations by us of the amount of assigned production for uninsured causes for your failure to use good farming practices), you may request reconsideration by FCIC of this determination in accordance with the reconsideration process established for this purpose and published at 7 CFR part

400, subpart J (reconsideration). To resolve disputes regarding determinations of the amount of assigned production, you must use the arbitration or mediation process contained in this section.

(1) You must complete reconsideration before filing suit against FCIC and any such suit must be brought in the United States district court for the district in which the insured farm is located.

(2) Suit must be filed not later than one year after the date of the decision rendered in the reconsideration.

(3) You cannot sue us for determinations of whether good farming practices were used by you.

(e) Except as provided in section 20(d), if you disagree with any other determination made by FCIC, you may obtain an administrative review in accordance with 7 CFR part 400, subpart J (administrative review) or appeal in accordance with 7 CFR part 11 (appeal). If you elect to bring suit after completion of any appeal, such suit must be filed against FCIC not later than one year after the date of the decision rendered in such appeal. Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from FCIC.

(f) In any mediation, arbitration, appeal, administrative review, reconsideration or judicial process, the terms of this policy, the Act, and the regulations published at 7 CFR chapter IV, including the provisions of 7 CFR part 400, subpart P, are binding. Conflicts between this policy and any state or local laws will be resolved in accordance with section 31. If there are conflicts between any rules of the AAA and the provisions of your policy, the provisions of your policy will control.

(g) To resolve any dispute through mediation, you and we must both:

(1) Agree to mediate the dispute;

(2) Agree on a mediator; and

(3) Be present, or have a designated representative who has authority to settle the case present, at the mediation.

(h) Except as provided in section 20(i), no award or settlement in mediation, arbitration, appeal, administrative review or reconsideration process or judicial review can exceed the amount of liability established or which should have been established under the policy, except for interest awarded in accordance with section 26.

(i) In a judicial review only, you may recover attorneys fees or other expenses, or any punitive, compensatory or any other damages from us only if you obtain a determination from FCIC that we, our agent or loss adjuster failed to comply with the terms of this policy or procedures issued by FCIC and such failure resulted in you receiving a payment in an amount that is less than the amount to which you were entitled. Requests for such a determination should be addressed to the following: USDA/RMA/Deputy Administrator of Compliance/Stop 0806, 1400 Independence Avenue, SW., Washington, DC 20250–0806.

(j) If FCIC elects to participate in the adjustment of your claim, or modifies, revises or corrects your claim, prior to payment, you may not bring an arbitration, mediation or litigation action against us. You must request administrative review or appeal in accordance with section 20(e).

21. Access to Insured Crop and Records, and Record Retention.

(a) We, and any employee of USDA authorized to investigate or review any matter relating to crop insurance, have the right to examine the insured crop and all records related to the insured crop and any mediation, arbitration or litigation involving the insured crop as often as reasonably required during the record retention period.

(b) You must retain, and provide upon our request, or the request of any employee of USDA authorized to investigate or review any matter relating to crop insurance:

(1) Complete records of the planting, replanting, inputs, production, harvesting, and disposition of the insured crop on each unit for three years after the end of the crop year (This requirement also applies to all such records for acreage that is not insured); and

(2) All records used to establish the amount of production you certified on your production reports used to compute your approved yield for three years after the end of the crop year for which you initially certified such records, unless such records have already been provided to us (For example, if your approved yield for the 2003 crop year was based on production records you certified for the 1997 through 2002 crop years, you must retain all such records through the 2006 crop year, unless such records have already been provided to us).

(c) We, or any employee of USDA authorized to investigate or review any matter relating to crop insurance, may extend the record retention period beyond three years by notifying you of such extension in writing.

(d) By signing the application for insurance authorized under the Act or by continuing insurance for which you have previously applied, you authorize us or USDA, or any person acting for us or USDA authorized to investigate or review any matter relating to crop insurance, to obtain records relating to the planting, replanting, inputs, production, harvesting, and disposition of the insured crop from any person who may have custody of such records, including but not limited to, FSA offices, banks, warehouses, gins, cooperatives, marketing associations, and accountants. You must assist in obtaining all records we or any employee of USDA authorized to investigate or review

any matter relating to crop insurance request from third parties.

(e) Failure to provide access to the insured crop or the farm, authorize access to the records maintained by third parties or assist in obtaining such records will result in a determination that no indemnity is due for the crop year in which such failure occurred.

(f) Failure to maintain or provide records will result in:

(1) The imposition of an assigned yield in accordance with section 3(e)(1) and 7 CFR part 400, subpart G for those crop years for which you do not have the required production records to support a certified yield;

(2) A determination that no indemnity is due if you fail to provide records necessary to determine your loss;

(3) Combination of the optional units into the applicable basic unit;

(4) Assignment of production to the units by us if you fail to maintain separate records:

(i) For your basic units; or

(ii) For any uninsurable acreage; and

(5) The imposition of consequences specified in section 6(g), as applicable.

(g) If the imposition of an assigned yield under section 21(f)(1) would affect an indemnity, prevented planting payment or replant payment that was paid in a prior crop year, such claim will be adjusted and you will be required to repay any overpaid amounts.

22. Other Insurance

(a) Other Like Insurance—Nothing in this section prevents you from obtaining other insurance not authorized under the Act. However, unless specifically required by policy provisions, you must not obtain any other crop insurance authorized under the Act on your share of the insured crop. If you cannot demonstrate that you did not intend to have more than one policy in effect, you may be subject to the consequences authorized under this policy, the Act, or any other applicable statute. If you can demonstrate that you did not intend to have more than one policy in effect (For example, an application to transfer your policy or written notification to an insurance provider that states you want to purchase, or transfer, insurance and you want any other policies for the crop canceled would demonstrate you did not intend to have duplicate policies), and:

(1) One is an additional coverage policy and the other is a Catastrophic Risk Protection policy:

(i) The additional coverage policy will apply if both policies are with the same insurance provider or, if not, both insurance providers agree; or

(ii) The policy with the earliest date of application will be in force if both insurance providers do not agree; or

(2) Both are additional coverage policies or both are Catastrophic Risk Protection policies, the policy with the earliest date of application will be in force and the other policy will be void, unless both policies are with:

(i) The same insurance provider and the insurance provider agrees otherwise; or

(ii) Different insurance providers and both insurance providers agree otherwise.

(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 caused by a naturally occurring event only for the smaller of:

(1) The amount of indemnity determined pursuant to this policy without regard to such 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.

(c) For the purpose of subsection (b) of this section 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.

23. Conformity to Food Security Act

Although your violation of a number of federal statutes, including the Act, may cause cancellation, termination, or voidance of your insurance contract, you should be specifically aware that your policy will be canceled if you are determined to be ineligible to receive benefits under the Act due to violation of the controlled substance provisions (title XVII) of the Food Security Act of 1985 (Pub. L. 99–198) and the regulations promulgated under the Act by USDA. Your insurance policy will be canceled if you are determined, by the appropriate Agency, to be in violation of these provisions. We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid or to be paid by you.

For FCIC policies

24. Amounts Due Us

(a) Any amount illegally or erroneously paid to you or that is owed to us but is delinquent may be recovered by us through offset by deducting it from any loan or payment due you under any Act of Congress or program administered by any United States Government Agency, or by other collection action.

(b) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any part thereof, on any unpaid premium amount or administrative fee due us. With

respect to any premiums or administrative fees owed, interest will start to accrue 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:

(1) Interest will start on the date that notice is issued to you for the collection of the unearned amount;

(2) 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;

(3) The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us;

(4) Penalties and interest will be charged in accordance with 31 U.S.C. 3717 and 4 CFR part 102; and

(5) The penalty for accounts more than 90 days delinquent is an additional 6 percent per annum.

(d) 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 additional 6 percent 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.

If we determine that it is necessary to contract with a collection agency, refer the debt to government collection centers, the Department of Treasury Offset Program, or to employ an attorney to assist in collection, you agree to pay all the expenses of collection.

(f) All amounts paid will be applied first to expenses of collection if any, second to the reduction of any penalties which may have been assessed, then to reduction of accrued interest, and finally to reduction of the principal balance.

For reinsured policies

24. Amounts Due Us

(a) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any portion thereof, on any unpaid amount owed to us or on any unpaid administrative fees owed to FCIC. For the purpose of premium amounts owed to us or administrative fees owed to FCIC, interest will start to accrue on the first day of the month following the premium billing date specified in the Special Provisions. We will collect any unpaid amounts owed to us and any interest owed thereon and, prior to the termination date, we will collect any administrative fees and interest owed thereon to FCIC. After the termination date, FCIC will collect any unpaid administrative fees and any interest owed thereon.

(b) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned, interest will start to accrue 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 subsection (d) of this section) if any, second to the reduction of accrued interest, and then to the 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.

(e) The portion of the amounts owed by you for a policy authorized under the Act that are owed to FCIC may be collected in part through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37. Such amounts include all administrative fees, and the share of the overpaid indemnities and premiums retained by FCIC plus any interest owed thereon.

25. [Reserved]

26. Interest Limitations

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.

27. Concealment, Misrepresentation or Fraud

(a) If you have falsely or fraudulently concealed the fact that you are ineligible to receive benefits under the Act or if you or anyone assisting you has intentionally concealed or misrepresented any material fact relating to this policy:

(1) This policy will be voided; and

(2) You may be subject to remedial sanctions in accordance with 7 CFR part 400, subpart R.

(b) Even though the policy is void, you may still be required to pay 20 percent of the premium due under the policy to offset costs incurred by us in the service of this policy. If previously paid, the balance of the premium will be returned.

(c) Voidance of this policy will result in you having to reimburse all indemnities paid for the crop year in which the voidance was effective.

(d) Voidance will be effective on the first day of the insurance period for the crop year in which the act occurred and will not affect the policy for subsequent crop years unless a violation of this section also occurred in such crop years.

28. 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, if the transferee is eligible for crop insurance. We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred. The transfer of coverage rights must be on our form and will not be effective until approved by us in writing. Both you and the transferee are jointly and severally liable for the payment of the premium and administrative fees. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

29. 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. If you have suffered a loss from an insurable cause and fail to file a claim for indemnity within 60 days after the end of the insurance period, the assignee may submit the claim for indemnity not later than 15 days after the 60-day period has expired. We will honor the terms of the assignment only if we can accurately determine the amount of the claim. However, no action will lie against us for failure to do so.

30. Subrogation (Recovery of Loss From a Third Party)

Since 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 you receive any compensation for your loss, excluding private hail insurance payments and payments covered by section 35, and the indemnity due under this policy plus the amount you receive from the person exceeds the amount of your actual loss, the indemnity will be reduced by the excess amount, or if the indemnity has already been paid, you will be required to repay the excess amount, not to exceed the amount of the indemnity. The total amount of the actual loss is the difference between the value of the insured crop before and after the loss, based on your production records and the highest price election or amount of insurance available for the crop. 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 or expenses, the excess will be paid to you.

31. Applicability of State and Local Statutes

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

32. 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.

33. Notices

(a) 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 a 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.

(b) 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. Notice sent to such address will be conclusively presumed to have been received by you. You should advise us immediately of any change of address.

34. Unit Division

(a) You may elect an enterprise unit or a whole farm unit if the Special Provisions allow such unit structure, subject to the following:

(1) You must make such election on or before the earliest sales closing date for the insured crops and report such unit structure to us in writing. Your unit selection will remain in effect from year to year unless you notify us in writing by the earliest sales

closing date for the crop year for which you wish to change this election. These units may not be further divided except as specified herein;

(2) For an enterprise unit:

(i) You must report the acreage for each optional or basic unit on your acreage report that comprises the enterprise unit;

(ii) These basic units or optional units that comprise the enterprise unit must each have insurable planted acreage of the same crop in the crop year insured;

(iii) You must comply with all reporting requirements for the enterprise unit (While separate records of acreage and production for basic or optional units must be maintained, if you want to change your unit structure in subsequent crop years, it is not required to qualify for an enterprise unit);

(iv) The qualifying basic units or optional units may not be combined into an enterprise unit on any basis other than as described herein;

(v) If you do not comply with the production reporting provisions for the enterprise unit, your yield for the enterprise unit will be determined in accordance with section 3(e)(1);

(vi) At any time we discover you do not qualify for an enterprise unit, we will assign the basic unit structure; and

(vii) The discount contained in the actuarial documents will only apply to acreage in the enterprise unit that has been planted.

(3) For a whole farm unit:

(i) You must report on your acreage report the acreage for each optional or basic unit for each crop produced in the county that comprises the whole farm unit;

(ii) Although you may insure all of your crops under a whole farm unit, you will be required to pay separate applicable administrative fees for each crop included in the whole farm unit; and

(iii) At any time we discover you do not qualify for a whole farm unit, we will assign the basic unit structure.

(b) Unless limited by the Crop Provisions or Special Provisions, a basic unit as defined in section 1 of the Basic Provisions may be divided into optional units if, for each optional unit, you meet the following:

(1) 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;

(2) All optional units you select for the crop year are identified on the acreage report for that crop year (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. No further unit division may be made after the acreage reporting date for any reason);

(3) You have records, that are acceptable to us, for at least the previous crop year for all optional units that you will report in the current crop year (You may be required to produce the records for all optional units for the previous crop year);

(4) You have records of marketed 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 optional unit is kept separate until loss adjustment is completed by us; and

(c) Each optional unit must meet one or more of the following, unless otherwise specified in the Crop Provisions or allowed by written agreement:

(1) 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 such as Spanish grants, as the equivalents of sections for unit purposes. In areas which have not been surveyed using sections, section equivalents or in areas where boundaries are not readily discernible, each optional unit must be located in a separate FSA farm serial number;

(2) 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 and non-irrigated acreage. 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, except the corners of a field in which a center-pivot irrigation system is used may be considered as irrigated acreage 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. In this case, production from both practices will be used to determine your approved yield; and

(3) In addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number, or irrigated and non-irrigated acreage, separate optional units may be established for acreage of the insured crop grown and insured under an organic farming practice. Certified organic, transitional and buffer zone acreages do not individually qualify as separate units. (See section 37 for additional provisions regarding acreage insured under an organic farming practice).

(d) Optional units are not available for crops insured under a Catastrophic Risk Protection Endorsement.

(e) If you do not comply fully with the provisions in this section, 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 by us 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.

35. Multiple Benefits

(a) If you are eligible to receive an indemnity under anadditional coverage plan of insurance and are also eligible to receive benefits for the same loss under any other USDA program, you may receive benefits under both programs, unless specifically limited by the crop insurance contract or by law.

(b) The total amount received from all such sources may not exceed the amount of your actual loss. 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 on your production records and the highest price election or amount of insurance available for the crop.

(c) FSA will determine and pay the additional amount due you for any applicable USDA program after first considering the amount of any crop insurance indemnity.

36. Substitution of Yields.

(a) When you have actual yields in your production history database that, due to an insurable cause of loss, are less than 60 percent of the applicable transitional yield (T-yield) you may elect, on an individual actual yield basis, to exclude and replace one or more of any such yields within each database.

(b) Each election made in section 36(a) must be made on or before the production reporting date for the insured crop and each such election will remain in effect for succeeding years unless cancelled by the production reporting date for the succeeding crop year. If you cancel an election, the actual yield will be used in the database. For example, if you elected to substitute yields in your database for the 1998 and 2000 crop year, for any subsequent crop year, you can elect to cancel the substitution for either or both years.

(c) Each excluded actual yield will be replaced with a yield equal to 60 percent of the applicable T-yield for the crop year in which the yield is being replaced (For example, if you elect to exclude a 2001 crop year actual yield, the T-yield in effect for the 2001 crop year in the county will be used. If you also elect to exclude a 2002 crop year actual yield, the T-yield in effect for the 2002 crop year in the county will be used). The replacement yields will be used in the same manner as actual yields for the purpose of calculating the approved yield.

(d) Once you have elected to exclude an actual yield from the database, the replacement yield will remain in effect until such time as that crop year is no longer included in the database unless this election is cancelled in accordance with section 36(b).

(e) Although your approved yield will be used to determine your amount of premium owed, the premium rate will be increased to cover the additional risk associated with the substitution of higher yields.

37. Organic Farming Practices.

(a) In accordance with section 8(b)(2), insurance will not be provided for any crop grown using an organic farming practice, unless the information needed to determine a premium rate for an organic farming practice is specified on the actuarial table, or insurance is allowed by a written agreement.

(b) If insurance is provided for an organic farming practice as specified in section 37(a), only the following acreage will be insured under such practice:

(1) Certified organic acreage;

(2) Transitional acreage being converted to certified organic acreage in accordance with an organic plan; and

(3) Buffer zone acreage.

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

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

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

(3) Records from the certifying agent showing the specific location of each field of certified organic, transitional,

buffer zone, and acreage not maintained under organic management.

(d) If you claim a loss on any acreage insured under an organic farming practice, you must provide us with copies of the records required in section 37(c).

(e) If any acreage qualifies as certified organic or transitional acreage on the date you report such acreage, and such certification is subsequently revoked by the certifying agent, or the certifying agent no longer considers the acreage as transitional acreage for the remainder of the crop year, that acreage will remain insured under the reported practice for which it qualified at the time the acreage was reported. Any loss due to failure to comply with organic standards will be considered an uninsured cause of loss.

(f) Contamination by application or drift of prohibited substances onto land on which crops are grown using organic farming practices will not be an insured peril on any certified organic, transitional or buffer zone acreage.

(g) In addition to the provisions contained in section 17(f), prevented planting coverage will not be provided for any acreage based on an organic farming practice in excess of the number of acres that will be grown under an organic farming practice and shown as such in the records required in section 37(c).

(h) In lieu of the provisions contained in section 17(f)(1) that specify prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same practice that is planted in the field, prevented planting acreage will be considered as organic practice acreage if it is identified as certified organic, transitional, or buffer zone acreage in the organic plan.

[56 FR 1351, Jan. 14, 1991, as amended at 58 FR 58262, 58263, Nov. 1, 1993; 59 FR 42751, Aug. 19, 1994; 62 FR 65154, Dec. 10, 1997; 63 FR 40634, July 30, 1998; 63 FR 66712, Dec. 3, 1998; 64 FR 40742, July 28, 1999; 65 FR 40485, June 30, 2000; 68 FR 37723, June 25, 2003; 68 FR 43457, July 23, 2003; 69 FR 48738, Aug. 10, 2004; 69 FR 74405, Dec. 14, 2004; 70 FR 71751, Nov. 30, 2005]

§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 2004 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Small Grains Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Adequate stand—A population of live plants per unit of acreage which will produce at least the yield used to establish your production guarantee.

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.

Initially planted—The first occurrence of planting the insured crop on insurable acreage for the crop year.

Khorasan. The common name for a variety of wheat (*Triticum turanicum*) that is marketed under trademarks such as Kamut. Khorasan is considered to be spring wheat for the purposes of this policy.

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.

Local market price. The cash grain price per bushel for the applicable quality level indicated below and 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 applicable quality level indicated below. Factors not associated with the specified quality levels, including but not

limited to protein, oil or moisture content, or milling quality will not be considered.

(1) U.S. No. 2 for Wheat (subclass hard amber durum for durum wheat and subclass northern spring for hard red spring wheat), except Khorasan; barley (including hull-less barley); oats (including hull-less oats); rye; and flax.

(2) The quality factor levels required for durum wheat to grade U.S. No. 2 for Khorasan.

(3) No. 2 grade buckwheat determined in accordance with the applicable state grading standards.

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.

Planted acreage—In addition to the definition contained in the Basic Provisions, 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 planted in rows to be considered planted, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Prevented planting. In lieu of the definition contained in the Basic Provisions, failure 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. You may also be eligible for a prevented planting payment if you failed to plant the insured crop with the proper equipment within the applicable late planting period following the latest final planting date. You must have been prevented from planting the insured crop due to an insured cause of loss that is general in the surrounding area and that prevents other producers from planting acreage with similar characteristics.

Sales closing date—In lieu of the definition contained in the Basic Provisions, a date contained in the Special Provisions by which an application must be filed and by which you may change your crop insurance coverage for a crop year. If the Special Provisions provide a sales closing date for both winter and spring types of the insured crop and you plant any insurable acreage of the winter type, you may not change your crop insurance coverage after the sales closing date for the winter type.

Small grains. Wheat, including only common wheat (*Triticum aestivum*), club wheat (*T. compactum*), durum wheat (*T. durum*) and Khorasan (*T. turanicum*); barley (*Hordeum vulgare*), including hull-less barley and excluding black barley; oats (*Avena sativa*, and *A. byzantina*), and hull-less oats (*A. Nuda*); rye (*Secale cereale*); flax (*Linum usitatissimum*); and buckwheat (*Fagopyrum esculentum*).

Swathed— Severance of the stem and grain head from the ground without removal of the seed from the head and placing into a windrow.

2. Unit Division

In addition to the requirements of section 34(b) of the Basic Provisions, for wheat only, in addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated practices, optional units may be established if each optional unit contains only initially planted winter wheat, only initially planted spring wheat, only initially planted club wheat or only initially planted durum wheat. Separate optional units for initially planted winter wheat and initially planted spring wheat may be established only in counties having both winter and spring type final planting dates as designated in the Special Provisions. A separate optional unit for club wheat may be established only in counties for which the Special Provisions designate club wheat as a wheat type (separate optional units may be established for initially planted winter club and initially planted spring club wheat if the Special Provisions specify both as wheat types). A separate optional unit for durum wheat may be established only in counties for which the Special Provisions designate durum wheat as a separate wheat type (separate optional units may be established for initially planted winter durum wheat and initially planted spring durum wheat if the Special Provisions specify both as wheat types).

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

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for each crop in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case each type must be insured using the price election for the respective type. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) In addition to the requirements of section 3 of the Basic Provisions, in counties with both fall and spring sales closing dates for the insured crop, you may only change your coverage level or price election until the spring sales closing date if you do not have any insured fall planted acreage of the insured crop. If you have any insured fall

planted acreage of the insured crop, you may not change your coverage level or price election after the fall sales closing date.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date for counties with a March 15 cancellation date and June 30 preceding the cancellation date for all other counties.

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; all Iowa counties except Plymouth, Cherokee, Buena Vista, Pocahontas, Humbolt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, Dubuque and all Iowa counties north thereof; all Wisconsin counties except Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, Kewaunee and all Wisconsin counties north thereof; 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.
Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity Counties, California; 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, Humbolt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware and Dubuque Counties, Iowa, and all Iowa counties north thereof; Massachusetts; all Montana counties except Daniels and Sheridan; New York; Oregon; Rhode Island; all South Dakota counties except Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, Yankton and all South Dakota counties north and east thereof; Washington; Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown and Kewaunee Counties, Wisconsin, and all Wisconsin counties north thereof; all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie.	September 30	November 30.
Arizona; all California counties except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity; Nevada; and Utah.	October 31	November 30.
Alaska; Alamosa, Conejos, Costilla, Rio Grande and Saguache Counties, Colorado; Maine; Minnesota; Daniels and Sheridan Counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton Counties, South Dakota, and all South Dakota counties north and east thereof; Vermont; and Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.	March 15	March 15.
Barley:		
All New Mexico counties except Taos; Texas, 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 and Las Animas Counties, Colorado, and all Colorado counties south and east thereof; Connecticut; Kansas; Massachusetts; New York; and Rhode Island.	September 30	November 30.
Arizona; all California counties except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity; Clark, Humboldt, Nye and Pershing Counties, Nevada; and Box Elder, Millard and Utah Counties, Utah.	October 31	November 30.
Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity Counties, California; All Colorado counties except Kit Carson, Lincoln, Elbert, El Paso, Pueblo and Las Animas, and all Colorado counties south and east thereof; all Nevada counties except Clark, Humboldt, Nye and Pershing; Taos County, New Mexico; all Utah counties except Box Elder, Millard and Utah; and all other states except Arizona, and (except) Texas, Oklahoma, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New Jersey and all states south and east thereof.	March 15	March 15.
Oats:		

Crop, state and county	Cancellation date	Termination date
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.	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, and all Virginia counties east thereof; and all other states except Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.	March 15	March 15.
Rye:		
All states	September 30	September 30.
Flax:		
All states	March 15	March 15.
Buckwheat:		
All states	March 15	March 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 documents:

(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 section 6 of the Basic Provisions); or

(2) May report all planted acreage as insurable when you report your acreage for the crop year. Premium will be due on all the acreage except as set forth herein. If the Special Provisions allow a reduced premium amount for acreage intentionally destroyed prior to harvest, you may qualify for such reduction only if you notify us in writing on or before the date designated in the Special Provisions of the intended destruction, and do not claim an indemnity on the acreage. No premium reduction will be allowed if the required notice is not given or if you claim an indemnity for the acreage. Upon receiving timely notice, insurance coverage on the acreage you do not intend to harvest will cease and we will revise your acreage report to indicate the applicable reduction in premium. If you do not destroy the crop as intended, you will be subject to the under-reporting provisions contained in section 6 of the Basic Provisions.

(c) In counties for which the actuarial table provides premium rates for the Wheat or Barley Winter Coverage Endorsement (7 CFR 457.102), additional coverage is available for wheat or barley damaged between the time coverage begins and the spring final planting date. Coverage under the endorsement is effective only if you qualify under the terms of the endorsement and you execute the endorsement by the sales closing date.

(d) In counties for which the actuarial table provides premium rates for malting barley coverage, an endorsement is available (7 CFR 457.118) that provides additional insurance protection for malting barley. This endorsement provides coverage for producers who grow malting barley under contract and

for those who do not have a contract. Coverage under the endorsement is effective only if you qualify under the terms of the endorsement and you execute the endorsement by the sales closing date.

7. Insurance Period

In lieu of the requirements under section 11 (Insurance Period) of the Basic Provisions (§457.8), and subject to any provisions provided by the Wheat or Barley 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, flax and buckwheat, 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 section 12 of these Crop Provisions and section 16 of the Basic Provisions.

(ii) Any acreage of the insured crop damaged before the final planting date, to the extent that producers in the surrounding area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

(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 section 12 of these Crop Provisions and section 16 of the Basic Provisions.

(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, any winter barley or winter wheat that is damaged 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 a winter type of the insured crop to maintain insurance based on the winter type unless we agree that replanting is not practical. If it is not practical to replant to the winter type of wheat or barley but is practical to replant to a spring type, you must replant to a spring type to keep your insurance based on the winter type in force. Any winter barley or winter wheat acreage that is replanted to a spring type of the same crop when it was practical to replant the winter type will be insured as the spring type and the production guarantee, premium and price election applicable to the spring type will be used. In this case, the acreage will be considered to be initially planted to the spring type. If you have elected coverage under a barley or wheat winter coverage endorsement (if available in the county), insurance will be in accordance with the option.

(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 fall planted wheat is not insured unless you request such coverage on or before the spring sales closing date, 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. The fall planted barley or fall planted wheat will be insured as a spring type for the purpose of the production guarantee, premium and price election. Insurance will attach to such acreage on the date we determine an adequate stand exists or on the spring final planting date if we do not determine adequacy of the stand by the spring final planting date. Any acreage of such fall planted barley or fall planted wheat that is damaged after it is accepted for insurance 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 a spring type of the insured crop unless we agree it is not practical to replant. If fall planted acreage is not to be insured it must be recorded on the acreage report as uninsured fall planted acreage.

(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) The following applicable date of the calendar year in which the crop is normally harvested:

(i) September 25 following planting in Alaska;

(ii) July 31 in Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, North Carolina, South Carolina and Tennessee; or

(iii) October 31 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 Basic Provisions, 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 replanting payment is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these crop provisions;

(2) You must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions (except as allowed in section 9(a)(1)) and in any winter coverage endorsement for which you are eligible and which you have elected;

(3) The insured crop 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;

(4) The acreage must have been initially planted to a spring type of the insured crop in those counties with only a spring final planting date;

(5) Damage must occur after the fall final planting date in those counties where both a fall and spring final planting date are designated (If the Special Provisions provide more than one fall final planting date, the fall final planting date applicable to policies with the Wheat or Barley Winter Coverage Endorsement will be used for this purpose, regardless of whether or not the endorsement is actually in effect.); and

(6) The replanted crop must be seeded at a rate sufficient to achieve a total (undamaged and new seeding) plant population that will produce at least the yield used to determine your production guarantee.

(b) No replanting payment will be made for acreage initially planted to a winter type of the insured crop (including rye) in any county for which the Special Provisions contain only a fall final planting date (including final planting dates in December, January and February).

(c) The maximum amount of the replanting payment per acre will be the lesser of 20.0 percent of the production guarantee or the number of bushels for the applicable crop specified below, multiplied by your price election and your share:

(1) 2 bushels for flax or buckwheat;

(2) 4 bushels for wheat; or

(3) 5 bushels for barley or oats.

(d) When the crop is replanted using a practice that is uninsurable for an original planting, the liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

(e) Replanting payments will be calculated using the price election and production guarantee for the crop type that is replanted and insured. For example, if damaged spring wheat is replanted to durum wheat, the price election applicable to durum wheat will be used to calculate any replanting payment that may be due. A revised acreage report will be required to reflect the replanted type. Notwithstanding the previous two sentences, the following will have a replanting payment based on the guarantee and price election for the crop type initially planted:

(1) Any damaged winter crop type that is replanted to a spring crop type, but that retains insurance based on the winter crop type guarantee and price election; and

(2) Any acreage replanted at a reduced seeding rate into a partially damaged stand of the insured crop.

10. Duties in the Event of Damage or Loss

In addition to your duties under section 14 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 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 its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election;

(3) Totaling the results of section 11(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable (see sections 11(c), (d), and (e)), by the respective price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting the result of section 11(b)(5) from the result in section 11(b)(3); and

(7) Multiplying the result of section 11(b)(6) 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 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 when 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

(d) Mature wheat, barley, oat, rye, and buckwheat production may be adjusted for excess moisture and quality deficiencies. Flax production may be adjusted for quality deficiencies only. If a moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(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 percent for rye and buckwheat.

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 including the definition of terms used in section 11(d), result in:

(A) Wheat, except Khorasan, not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight; total damaged kernels (heat-damaged kernels will not be considered to be damaged); shrunken or broken kernels; defects (foreign material and heat damage will not be considered to be defects); a musty, sour, or commercially objectionable foreign odor (except smut odor); or grading garlicky, light smutty, smutty or ergoty;

(B) Barley, except hull-less 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 (heat-damaged kernels will be considered to be sound barley); damaged kernels (heat-damaged kernels will not be considered to be damaged); thin barley; black barley; a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or grading blighted, smutty, garlicky or ergoty;

(C) Oats, except hull-less oats, not meeting the grade requirements for U.S. No. 4 (grade U.S. sample grade) because of test weight; percentage of sound oats (heat-damaged kernels will be considered to be sound oats); a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or grading smutty, thin, 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 (heat-damaged kernels will not be considered to be damaged); thin rye; a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or grading light smutty, smutty, light garlicky, garlicky, or ergoty;

(E) Flaxseed not meeting the grade requirements for U.S. No. 2 (grades U.S. sample grade) due to test weight; damaged kernels (heat-damaged kernels will not be considered to be damaged); or a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor);

(ii) Deficiencies in the quality of buckwheat, determined in accordance with applicable state grading standards, result in it not meeting No. 3 grade requirements due to test weight; a musty, sour or commercially objectionable foreign odor (except smut or garlic odor); or grading garlicky, smutty or ergoty if such grades are provided for by the applicable state grading standards;

(iii) Quality factors for Khorasan fall below the levels contained in the Official United States Standards for Grain that cause durum wheat to grade less than U.S.

No. 4. For example, if durum wheat grades less than U.S. No. 4 when its test weight falls below 54.0 pounds per bushel, Khorasan would be eligible for quality adjustment if its test weight falls below 54.0 pounds per bushel. The same quality factors considered for quality adjustment of durum wheat will be applicable and determination of deficiencies will be made in accordance with the Federal Grain Inspection Service directive that establishes procedures for quality factor analysis of Khorasan seed. Quality adjustment discount factors for U.S. grades specified in the Special Provisions will also apply to Khorasan at the same levels applicable to durum wheat;

(iv) Quality factors for hull-less barley fall below the levels contained in the Official United States Standards for Grain that cause barley to grade less than U.S. No. 4. For example, if barley grades less than U.S. No. 4 when its test weight falls below 40.0 pounds per bushel, hull-less barley would be eligible for quality adjustment if its test weight falls below 40.0 pounds per bushel. The same quality factors considered for quality adjustment of barley will be applicable and determination of deficiencies will be made in accordance with the Federal Grain Inspection Service directive that establishes procedures for quality factor analysis of hull-less barley. Quality adjustment discount factors for U.S. grades specified in the Special Provisions will also apply to hull-less barley at the same levels applicable to barley;

(v) Quality factors for hull-less oats fall below the levels contained in the Official United States Standards for Grain that cause oats to grade less than U.S. No. 4. For example, if oats grade less than U.S. No. 4 when its test weight falls below 27.0 pounds per bushel, hull-less oats would be eligible for quality adjustment if the test weight falls below 27.0 pounds per bushel. The same quality factors considered for quality adjustment of oats will be applicable and determination of deficiencies will be made in accordance with the Federal Grain Inspection Service directive that establishes procedures for quality factor analysis of hull-less oats. Quality adjustment discount factors for U.S. grades specified in the Special Provisions will also apply to hull-less oats at the same levels applicable to oats; or

(vi) 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) 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;

(iii) With regard to deficiencies in quality (except test weight, which may be determined by our loss adjustor), the samples are analyzed by:

(A) A grain grader licensed under the United States Grain Standards Act or the United States Warehouse Act;

(B) A grain grader licensed under State law and employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation; or

(C) A grain grader not licensed under State law, but who is employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation and is in compliance with State law regarding warehouses; and

(iv) With regard to substances or conditions injurious to human or animal health, the samples are analyzed by a laboratory approved by us.

(4) Small grain production that is eligible for quality adjustment, as specified in sections 11(d)(2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions.

(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

A late planting period is applicable to small grains, except to any barley or wheat acreage covered under the terms of the Wheat or Barley Winter Coverage Endorsement. Barley or wheat covered under the terms of the Winter Coverage Endorsement must be planted on or prior to the applicable final planting date specified in the Special Provisions. In counties having one fall final planting date for acreage covered under the Wheat or Barley Winter Coverage Endorsement and another fall final planting date for acreage not covered under the endorsement, the fall late planting period will begin after the final planting date for acreage not covered under the endorsement.

13. Prevented Planting

(a) In addition to the provisions contained in section 17 of the Basic Provisions, in counties for which the Special Provisions designate a spring final planting date, your prevented planting production guarantee will be based on your approved yield for spring-planted acreage of the insured crop.

(b) Your prevented planting coverage will be 60 percent of your production guarantee

for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[59 FR 9391, Feb. 28, 1994, as amended at 60 FR 62723, Dec. 7, 1995; 62 FR 65164, Dec. 10, 1997; 67 FR 43526, June 28, 2002; 68 FR 34268, June 9, 2003]

§457.102 Wheat or barley winter coverage endorsement.

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Wheat or Barley Winter Coverage Endorsement

(This is a continuous endorsement)

1. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of the Small Grains Crop Provisions subject to the terms and conditions described herein.

2. This endorsement is available only in counties for which the Special Provisions for the insured crop designate both a fall final planting date and a spring final planting date, and for which the actuarial documents provide a premium rate for this coverage.

3. You must have a Small Grains Crop Insurance Policy in force and elect to insure barley or wheat under that policy.

4. You must select this coverage, by crop, on your application for insurance. Failure to do so means you have rejected this coverage for both wheat and barley and this endorsement is void.

5. In addition to the requirements of section 34(b) of the Basic Provisions and section 2 of the Small Grains Crop Provisions, optional units may be established for barley if each optional unit contains only initially planted winter barley or only initially planted spring barley.

6. If you elect this endorsement for winter barley, the contract change, cancellation, and termination dates applicable to wheat in the county will be applicable to all your spring and winter barley.

7. 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.

8. The provisions of section 14 of the Basic Provisions are amended to require that all notices of damage be provided to us by the spring final planting date designated in the Special Provisions.

9. All eligible acreage of each crop covered under this endorsement must be insured.

10. The amount of any indemnity paid under the terms of this endorsement will be subject to any reduction specified in the Basic Provisions for multiple crop benefits in the same crop year.

11. Whenever any winter wheat or barley is damaged during the insurance period and at least 20 acres or 20 percent of the insured planted 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 Basic Provisions, the Small Grains Crop Insurance Provisions and this endorsement.

(b) Replant the acreage to an appropriate variety of the insured crop, if it is practical, and receive a replanting payment in accordance with the terms of section 9 (Replanting Payments) of the Small Grains Crop Insurance Provisions. By doing so, coverage will continue under the terms of the Basic Provisions, the Small Grains Crop Insurance Provisions and this endorsement, and the production guarantee for winter wheat or barley will remain in effect.

(c) Destroy the remaining crop on such acreage. By doing so, you agree to accept an appraised amount of production determined in accordance with section 11(c)(1) of the Small Grains Crop Insurance Provisions to count against the unit production guarantee. 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 section 11 (Settlement of Claim) of the Small Grains Crop Insurance Provisions. You may use such acreage for any purpose, including planting and separately insuring any other crop if such insurance is available. If you elect to plant and elect to insure a spring type of the same crop (you must elect whether or not you want insurance on the spring type of the same crop at the time we release the winter type acreage), you must pay additional premium for the insurance. Such acreage will be insured in accordance with the policy provisions that are applicable to acreage that is initially planted to a spring type of the insured crop, and you must:

(1) Plant the spring type in a manner which results in a clear and discernable break in the planting pattern at the boundary between it and any remaining acreage of the winter type; and

(2) Store or market the production in a manner which permits us to verify the amount of spring type production separately from any winter type production. In the event you are unable to provide records of production that are acceptable to us, the

spring type acreage will be considered to be a part of the original winter type unit.

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, as amended at 68 FR 34272, June 9, 2003]]

§457.103 [Reserved]

§457.104 Cotton crop insurance provisions.

The cotton crop insurance provisions for the 1998 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 policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Cotton—Varieties identified as American Upland Cotton.

Growth area—A geographic area designated by the Secretary of Agriculture for the purpose of reporting cotton prices.

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.

Mature cotton—Cotton that can be harvested either manually or mechanically.

Planted acreage—In addition to the definition contained in the Basic Provisions, cotton must be planted in rows, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement. 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 other spring planted crop.

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.

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 Farm Service Agency (FSA) or a successor agency.

2. 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 cotton in the county insured under this policy.

3. Contract Changes

The contract change date is November 30 (December 17 for the 1998 crop year only) preceding the cancellation date (see the provisions of section 4 (Contract Changes) of the Basic Provisions).

4. 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 and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 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, Matagorda Counties, Texas..	February 28.
All other Texas counties and all other States	March 15.

5. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§457.8), the crop insured will be all the cotton lint, in the county for which premium rates are provided by the actuarial documents:

(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.

6. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 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 a majority of the producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

7. Insurance Period

(a) In lieu of section 11(b)(2) of the Basic Provisions, 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 Basic Provisions (§ 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.

8. 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 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.

9. 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 Basic Provisions (§ 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.

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:

(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 9;

(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 10(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.

11. Prevented Planting

(a) In addition to the provisions contained in section 17 of the Basic Provisions, your prevented planting production guarantee will be based on your approved yield without adjustment for skip-row planting patterns.

(b) Your prevented planting coverage will be 50 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[59 FR 49154, Sept. 27, 1994, as amended at 60 FR 62725, Dec. 7, 1995; 62 FR 7134, Feb. 18, 1997; 62 FR 63633, Dec. 2, 1997; 62 FR 65164, Dec. 10, 1997; 63 FR 55497, Oct. 16, 1998; 63 FR 66717, Dec. 3, 1998]

§457.105 Extra long staple cotton crop insurance provisions.

The extra long staple cotton crop insurance provisions for the 1998 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

ELS Cotton Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement; (2) the Special Provisions; (3) these Crop Provisions; (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

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.

ELS cotton—Extra Long Staple cotton (also called Pima cotton, American-Egyptian cotton, and American Pima cotton).

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.

Mature ELS cotton—ELS cotton that can be harvested either manually or mechanically.

Planted acreage—In addition to the definition contained in the Basic Provisions, cotton must be planted in rows, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement. 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 other spring planted crop.

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.

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.

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 Farm Service Agency (FSA) or a successor agency.

2. 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 cotton in the county insured under this policy.

3. Contract Changes

The contract change date is November 30 (December 17 for the 1998 crop year only) preceding the cancellation date (see the provisions of section 4 (Contract Changes) of the Basic Provisions).

4. 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
New Mexico	March 15.
All other States	Feb. 28.

5. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the cotton lint in the county for which premium rates are provided by the actuarial documents:

(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.

6. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 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 a majority of producers in the area would not be replanted unless we agree that it is not practical to replant.

7. Insurance Period

(a) In lieu of section 11(b)(b)(2) of the Basic Provisions, 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 Basic Provisions (§ 457.8), the calendar date for the end of the insurance period is January 31 immediately following planting.

8. 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) Failure of irrigation water supply, if applicable, due to an unavoidable cause of loss occurring within the insurance period.

9. 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 Basic Provisions (§ 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.

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:

(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 9;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies in accordance with subsection:

(A) 10(d) and (e) if it is mature ELS cotton; or

(B) 10(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'') for the applicable growth area is less than 75 percent of price quotation ''B.'' Price quotation ''B'' is defined as the price quotation for the applicable growth area for ELS cotton of the 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 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 eligible for quality 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 75 percent of price quotation ''B.''

(e) For ELS cotton to be eligible for quality adjustment as shown in subsection 10(d), ginning must have been completed at a gin using roller equipment.

(f) Any AUP cotton harvested or appraised from the 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 the ELS cotton of the grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. The prices used for the AUP and ELS cotton 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 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 producer's 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.

11. Late Planting

A late planting period is not applicable to ELS cotton. Any ELS cotton that is planted after the final planting date will not be insured unless you were prevented from planting it by the final planting date. Such acreage will be insurable, and the production guarantee and premium for the acreage will be determined in accordance with section 16 of the Basic Provisions.

12. Prevented Planting

(a) In addition to the provisions contained in section 17 of the Basic Provisions, your prevented planting production guarantee will be based on your approved yield without adjustment for skip-row planting patterns.

(b) Your prevented planting coverage will be 50 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[59 FR 49169, Sept. 27, 1994, as amended at 60 FR 62726, Dec. 7, 1995; 62 FR 6704, Feb. 13, 1997; 62 FR 63633, Dec. 2, 1997; 62 FR 65165, Dec. 10, 1997; 63 FR 55497, Oct. 16, 1998; 63 FR 66717, Dec. 3, 1998]

§ 457.106 Texas citrus tree crop insurance provisions.

The Texas Citrus Tree Crop Insurance Provisions for the 1999 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies

(Appropriate title for insurance provider)

Both FCIC and Reinsured Policies

Texas Citrus Tree Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Bud union—The location on the tree trunk where a bud from one tree variety is grafted onto root stock of another variety.

Crop—Specific groups of citrus fruit trees as listed in the Special Provisions.

Crop year—For the 1998 crop year only, a period of time that begins on June 1, 1997, and ends on November 20, 1998. For all other crop years, a period of time that begins on November 21 of the calendar year prior to the year the trees normally bloom, and ends on November 20 of the following calendar year. The crop year is designated by the year in which the insurance period ends.

Dehorning—Cutting all scaffold limbs to a length not longer than ¼ the height of the tree before such cutting.

Destroyed—Trees damaged to the extent that removal is necessary.

Excess precipitation—An amount of precipitation sufficient to directly damage the tree.

Excess wind—A natural movement of air that 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.

Freeze—The formation of ice in the cells of the trees caused by low air temperatures.

Good farming practices—The cultural practices generally in use in the county for the trees to have normal growth and vigor and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Interplanted—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice—A method by which the normal growth and vigor of the insured trees is maintained by artificially applying adequate quantities of water during the growing season using the appropriate irrigation systems at the proper times.

Root stock—A root or a piece of a root of one tree variety onto which a bud from another tree variety is grafted.

Scaffold limbs—Major limbs attached directly to the trunk.

Set out—Transplanting the tree into the grove.

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each citrus crop designated in the Special Provisions.

(b) Sections 34(a) (1), (3), and (4) of the Basic Provisions are not applicable.

(c) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

(d)Instead 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 noncontiguous land.

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

(a) In lieu of the requirement of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), that prohibits you from selecting more than one coverage level

for each insured crop, you may select a different coverage level for each crop designated in the Special Provisions that you elect to insure.

(b) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§457.8):

(1) If you insure trees within a crop which are either of a different variety or are planted at a different population density, the per acre amount of insurance for each variety or population density for the crop must bear the same relationship to the maximum amount of insurance available for each variety and population density of the crop as specified in the Actuarial documents. For example, if you elect 100 percent of the maximum amount of insurance for a variety within a population density for the crop, you must select 100 percent of the maximum amount of insurance for that variety for all population densities for the crop. The amount of insurance for each variety and population density must be multiplied by any applicable factor contained in section 3(b)(2).

(2) The amount of insurance per acre will be the product obtained by multiplying the reference maximum dollar amount of insurance that is shown in the actuarial documents for the applicable population density by the percentage for the level of coverage you select and by:

(i) Thirty-three percent (0.33) for the year of set out, the year following dehorning, or the year following grafting of a set out tree. (Insurance will be limited to this amount until trees that are set out are one year of age or older on the first day of the crop year);

(ii) Sixty percent (0.60) for the first growing season after being set out, the second year following dehorning, or the second year following grafting of a set out tree;

(iii) Eighty percent (0.80) for the second growing season after being set out, the third year following dehorning, or the third year following grafting of a set out tree; or

(iv) Ninety percent (0.90) for the third growing season after being set out, the fourth year following dehorning, or the fourth year following grafting of a set out tree.

(3) The amount of insurance per acre for each population density, or factor as appropriate, will be multiplied by the applicable number of insured acres. These results will then be added together to determine the amount of insurance for the unit.

(4) 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. For example, if the amount of insurance you selected is $2,000 and the remaining stand is 85 percent of the original stand, the amount of insurance on which the premium and any indemnity will be based is $1,700 ($2,000 multiplied by 0.85).

(5) If any insurable acreage of trees is set out after the first day of the crop year, and you elect to insure such acreage during that crop year, you must report the acreage, practice, crop, number of trees, date set out is completed, and your share to us within 72 hours after set out is completed for the unit.

(6) 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.

(7) You must report, by the sales closing date contained in the Special Provisions, by type if applicable:

(i) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the amount of insurance, and the number of affected acres;

(ii) The number of trees on insurable and uninsurable acreage;

(iii) The date of original set out and the planting pattern;

(iv) 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; and

(v) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(A) The age of the interplanted crop, and type if applicable;

(B) The planting pattern; and

(C) Any other information that we request in order to establish your amount of insurance.

We will reduce the amount of insurance as necessary, based on our estimate of the effect of interplanting a perennial crop; removal of trees; damage; change in practices and any other circumstance on the potential of the insured crop. If you fail to notify us of any circumstance that may reduce the potential for the insured crop, we will reduce your amount of insurance 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. Annual Premium

In addition to the provisions of section 5 (Annual Premium) of the Basic Provisions (§ 457.8), for the 1998 crop year, the premium amount otherwise payable for the 1998 crop year will be increased by 46 percent as a result of the additional six months of coverage for that crop year.

7. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all of each citrus tree crop designated in the Special Provisions in the county for which a premium rate is provided by the actuarial documents and that you elect to insure:

(1) In which you have an ownership share;

(2) That is adapted to the area;

(3) That is set out for the purpose of growing fruit to be harvested for the commercial production of fresh fruit or for juice;

(4) That is irrigated; and

(5) That have the potential to produce at least 70 percent of the county average yield for the crop and age, unless a written agreement is approved to insure the trees with lesser potential.

(b) In addition to section 8 (Insured Crop) of the Basic Provisions (§ 457.8), we do not insure any citrus trees:

(1) During the crop year the application for insurance is filed, unless we inspect the acreage and consider it acceptable; or

(2) That have been grafted onto existing root stock or nursery stock within the one-year period prior to the date insurance attaches.

(c) We may exclude from insurance or limit the amount of insurance on any acreage that was not insured the previous year.

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 trees 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.

9. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(a) The insurance period is as follows:

(1) For the 1998 crop year only, coverage will begin on June 1, 1997, and will end on November 20, 1998.

(2) For all subsequent crop years, coverage begins on November 21 of the calendar year prior to the year the insured crop normally blooms, 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 the requirements for insurability contained in your policy. You must provide any information that we require for the crop or to determine the condition of the grove.

(3) The calendar date for the end of the insurance period for each crop year is November 20.

(b) 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.

(c) If you relinquish your insurable share on any insurable acreage of citrus trees on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to and no premium or indemnity will be due for such acreage for that crop year unless:

(1) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(2) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(3) The transferee is eligible for crop insurance.

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) Excess precipitation;

(b) Excess wind;

(c) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the grove;

(d) Freeze;

(e) Hail;

(f) Tornado; or

(g) Failure of the irrigation water supply if caused by an insured peril or drought that occurs during the insurance period.

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), in case of damage or probable loss, if you intend to claim an indemnity on any unit, you must allow us to inspect all insured acreage before pruning, dehorning, or removal of any damaged trees.

12. Settlement of Claim

(a) In the event of damage covered by this policy, we will settle your claim on a unit basis by:

(1) Determining the actual percent of damage for the unit in accordance with sections 12 (b), (c), and (d);

(2) Subtracting your deductible from the percent of damage for the unit (this result must be greater than zero to receive an indemnity);

(3) Dividing the result of section 12(a)(2) by your coverage level percentage;

(4) Multiplying the result of section 12(a)(3) by the amount of insurance per acre determined in accordance with section 3(b)(2);

(5) Multiplying the result of section 12(a)(4) by the number of insured acres; and

(6) Multiplying the result of section 12(a)(5) by your share.

(b) The percent of damage for any tree will be determined as follows:

(1) For damage occurring during the year of set out (trees that have not been set out for at least one year at the time insurance attaches):

(i) One-hundred percent (100%) whenever there is no live wood above the bud union;

(ii) Ninety percent (90%) whenever there is less than 12 inches of live wood above the bud union; or

(iii) The tree will be considered undamaged whenever there is more than 12 inches of live wood above the bud union; or

(2) For damage occurring in any year following the year of set out:

(i) The percentage of damage will be determined by dividing the number of scaffold limbs 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. Whenever this percentage exceeds 80 percent, the tree will be considered as 100 percent damaged.

(ii) The percent of damage for the unit will be determined by computing the average of the determinations made for the individual trees. If this percent of damage exceeds 80 percent, the unit will be considered 100 percent damaged.

(c) The percent of damage on the unit will be reduced by the percentage of damage due to uninsured causes.

13. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 4117, Jan. 29, 1997, as amended at 62 FR 65166, Dec. 10, 1997; 63 FR 55779, Oct. 19, 1998]

§457.107 Florida citrus fruit crop insurance provisions.

The Florida citrus fruit crop insurance provisions for the 1999 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 policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Amount of insurance (acre). The dollar amount determined by multiplying the Reference Maximum Dollar Amount shown on the actuarial documents 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.

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.

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.

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each citrus crop designated in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

(c)Instead 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 noncontiguous 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 documents.

(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 (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. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[61 FR 69002, Dec. 31, 1996, as amended at 62 FR 65166, Dec. 10, 1997]

§ 457.108 Sunflower seed crop insurance provisions.

The sunflower seed crop insurance provisions for the 2003 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Sunflower Seed Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Harvest—Combining or threshing the sunflowers for seed.

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.

Planted acreage—In addition to the definition contained in the Basic Provisions, sunflower seed must initially be planted ini rows far enough apart to permit mechanical cultivation, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

2. 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.

3. Contract Changes

The contract change date is November 30 (December 17 for the 1998 crop year only) preceding the cancellation date (see the provisions of Section 4 (Contract Changes) of the Basic Provisions).

4. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions (§457.8), the cancellation and termination dates are March 15.

5. 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 documents:

(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.

6. 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 a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

7. 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.

8. 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.

9. Replanting Payments

(a) In accordance with section 13 of the Basic Provisions, 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 of the 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 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 section 9(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.

10. 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.

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 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 11(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;

(iii) With regard to deficiencies in quality (except test weight, which may be determined by our loss adjustor), the samples are analyzed by:

(A) A grain grader licensed under the United States Grain Standards Act or the United States Warehouse Act;

(B) A grain grader licensed under State law and employed by a warehouse operator who has a storage agreement with the Commodity Credit Corporation; or

(C) A grain grader not licensed under State law, but who is employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation and is in compliance with State law regarding warehouses; and

(iv) With regard to substances or conditions injurious to human or animal health, the samples are analyzed by a laboratory approved by us.

(4) Sunflower seed production that is eligible for quality adjustment, as specified in paragraphs 11(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.

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase you prevented planting coverage to a level specified in the actuarial documents.

[59 FR 67136, Dec. 29, 1994, as amended at 60 FR 62727, Dec. 7, 1995; 62 FR 63633, Dec. 2, 1997; 62 FR 65166, Dec. 10, 1997; 67 FR 55690, Aug. 30, 2002]

§457.109 Sugar Beet Crop Insurance Provisions.

The Sugar Beet Crop Insurance Provisions for the 1998 and succeeding crop years in countries with a contract change date of November 30, and for the 1999 and succeeding crop years in countries with a contract change date of April 30, 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 policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

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.

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.

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.—In addition to the definition contained in the Basic Provisions, sugar beets must initially be planted in rows, unless otherwise provided by the Special Provisions, actuarial documents, 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.

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.

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.

Ton. Two thousand (2,000) pounds avoirdupois.

2. Unit Division

In addition to the requirements of section 34 of the Basic Provisions, basic units may be divided into optional units only if you have a sugar beet processor contract that requires the processor to accept all production from a number of acres specified in the sugar beet processor contract. Acreage insured to fulfil a sugar beet contract which provides that the processor will accept a designated amount of production or a combination of acreage and production will not be eligible for optional units.

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, 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 (December 17 for the 1998

crop year only) 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 documents:

(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

The late planting provisions contained in section 16 of the Basic Provisions are not applicable in California counties with a July 15, cancellation date.

15. Prevented Planting

(a) The prevented planting provision contained in sectino 17 of the Basic Provisions are not applicable in Califronia counties with a July 15, cancellation date.

(b) Except in those counties indicated in section 15(a), your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[61 FR 58775, Nov. 19, 1996, as amended at 62 FR 63633, Dec. 2, 1997; 62 FR 65167, Dec. 10, 1997]

§457.110 Fig crop insurance provisions.

The Fig Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Fig Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Harvest—The picking of the figs from the trees or ground by hand or machine for the purpose of removal from the orchard.

Interplanted—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

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.

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.

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

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each fig type designated in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

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

(a) In addition to the requirements under section 3 of the Basic Provisions, you may select only one price election for each fig type designated in the Special Provisions and insured in the county under this policy.

(b) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time you request the increase.

(c) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type if applicable:

(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;

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed, the age of the crop that is interplanted with the figs, and type if applicable, and the planting pattern; and

(5) 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 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

The contract change date is October 31 preceding the cancellation date (see the provisions under section 4 (Contract Changes) of the Basic Provisions (§ 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 documents:

(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. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions, that prohibit insurance attaching to a crop planted with another crop, figs 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.

9. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) Coverage begins on March 1, except that for the year of application, if your application is received after February 19 but prior to March 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.

(2) The calendar date for the end of the insurance period for each crop year is October

31 or the date harvest of the figs (by type) should have started on any acreage that will not be harvested (Exceptions, if any, for specific counties or varieties or varietal group are contained in the Special Provisions).

(b) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(c) If your fig policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

10. Causes of Loss

(a) In addition to the provisions under section 12 (Causes of Loss) of the Basic Provisions (§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 Basic Provisions (§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.

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

(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.

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[59 FR 9615, Mar. 1, 1994, as amended at 62 FR 65167, Dec. 10, 1997; 65 FR 47836, Aug. 4, 2000]

§ 457.111 Pear crop insurance provisions.

The Pear Crop Insurance Provisions for the 2001 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 policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

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.

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.

Marketable. Pear production acceptable for processing or other human consumption even if failing to meet any U.S. or applicable state grading standard.

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.

2. Unit Division

(a) Provisions in the Basic Provision that allow optional units by irrigated and non-irrigated practices are not applicable.

(b) Instead of establishing optional units by section, section equivalents, or FSA farm serial number optional units may be established if each optional unit is located on non-contiguous.

(c) In addition to, or instead of, establishing optional units by section, section equivalents, FSA farm serial number, or on non-contiguous land, optional units may be established by varietal group when provided for in the Special Provisions. The requirements of section 34(a)(1) of the Basic Provisions are not applicable for this method of unit division.

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.

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

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 documents:

(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.

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your pear policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

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. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

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 documents designate 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 documents 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:

(1) 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

(2) 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; 62 FR 2007, Jan. 15, 1997; 62 FR 65167, Dec. 10, 1997; 65 FR 47837, Aug. 4, 2000]

§457.112 Hybrid sorghum seed crop insurance provisions.

The Hybrid Sorghum Seed Crop Insurance Provisions for the 1998 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

Hybrid Sorghum Seed Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows:

(1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, (§ 457.8) with (1) controlling (2), etc.

1. Definitions

Adjusted yield. An amount determined by multiplying the county yield by the coverage level factor.

Amount of insurance per acre. A dollar amount determined by multiplying the adjusted yield by the price election you select and subtracting any minimum guaranteed payment, not to exceed the total compensation specified in the hybrid sorghum seed processor contract. If your hybrid sorghum seed processor contract contains a minimum guaranteed payment that is stated in bushels, we will convert that value to dollars by multiplying it by the price election you selected.

Approved yield. In lieu of the definition contained in the Basic Provisions, an amount FCIC determines to be representative of the yield that the female parent plants are expected to produce when grown under a specific production practice. FCIC will establish the approved yield based upon records provided by the seed company and other information it deems appropriate.

Bushel. Fifty-six pounds avoirdupois of the insured crop.

Certified seed test. A warm germination test performed on clean seed according to specifications of the ''Rules for Testing Seeds'' of the Association of Official Seed Analysts.

Commercial hybrid sorghum seed. The offspring produced by crossing a male and female parent plant, each having a different genetic character. This offspring is the product intended for use by an agricultural producer to produce a commercial field sorghum crop for grain or forage.

County yield. An amount contained in the actuarial documents that is established by FCIC to represent the yield that a producer of hybrid sorghum seed would be expected to produce if the acreage had been planted to commercial field sorghum.

Coverage level factor. A factor contained in the Special Provisions to adjust the county yield for commercial field sorghum to reflect the higher value of hybrid sorghum seed.

Dollar value per bushel. An amount that determines the value of any seed production to count. It is determined by dividing the amount of insurance per acre by the result of multiplying the approved yield by the coverage level percentage, expressed as a decimal.

Female parent plants. Sorghum plants that are grown for the purpose of producing commercial hybrid sorghum seed and are male sterile.

Field run. Commercial hybrid sorghum seed production before it has been processed or screened.

Good farming practices. In addition to the definition contained in the Basic Provisions, good farming practices include those practices required by the hybrid sorghum seed processor contract.

Harvest. Combining, threshing or picking of the female parent plants to obtain commercial hybrid sorghum seed.

Hybrid sorghum seed processor contract. An agreement executed in writing between the hybrid sorghum seed crop producer and a seed company containing, at a minimum:

(a) The producer's promise to plant and grow male and female parent plants, and to deliver all commercial hybrid sorghum seed produced from such plants to the seed company;

(b) The seed company's promise to purchase the commercial hybrid sorghum seed produced by the producer; and

(c) Either a fixed price per unit of measure (bushels, hundredweight, etc.) of the commercial hybrid sorghum seed or a formula to determine the value of such seed. Any formula for establishing the value must be based on data provided by a public third party that establishes or provides pricing information to the general public, based on prices paid in the open market (*e.g.*, commodity futures exchanges), to be acceptable for the purpose of this policy.

Inadequate germination. Germination of less than 80 percent of the commercial hybrid sorghum seed as determined by using a certified seed test.

Insurable interest. Your share of the financial loss that occurs in the event seed production is damaged by a cause of loss specified in section 10.

Local market price. The cash price offered by buyers for any production from the female parent plants that is not considered commercial hybrid sorghum seed under the terms of this policy.

Male parent plants. Sorghum plants grown for the purpose of pollinating female parent plants.

Minimum guaranteed payment. A minimum amount (usually stated in dollars or bushels) specified in your hybrid sorghum seed processor contract that will be paid or credited to you by the seed company regardless of the quantity of seed produced.

Non-seed production. Production that does not qualify as seed production because of inadequate germination.

Planted acreage. In addition to the definition contained in the Basic Provisions, the insured crop must be planted in rows wide enough to permit mechanical cultivation, unless provided by the Special Provisions or by written agreement.

Planting pattern. The arrangement of the rows of the male and female parent plants in a field. An example of a planting pattern is four consecutive rows of female parent plants followed by two consecutive rows of male parent plants.

Practical to replant. In addition to the definition contained in the Basic Provisions, practical to replant applies to either the female or male parent plant. It will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the hybrid sorghum seed processor contract, or the seed company agrees that it will accept the production from the replanted acreage.

Prevented planting. In addition to the definition contained in the Basic Provisions, prevented planting applies to the female and male parent plants. The male parent plants must be planted in accordance with the requirements of the hybrid sorghum seed processor contract to be considered planted.

Sample. For the purpose of the certified seed test, at least 3 pounds of randomly selected field run sorghum seed for each type or variety of commercial hybrid sorghum seed grown on the unit.

Seed company. A business enterprise that possesses all licenses for marketing commercial hybrid sorghum seed required by the state in which it is domiciled or operates, and which possesses facilities with enough storage and drying capacity to accept and process the insured crop within a reasonable amount of time after harvest. If the seed company is the insured, it must also be a corporation.

Seed production. All seed produced by female parent plants with a germination rate of at least 80 percent as determined by a certified seed test.

Type. Grain sorghum, forage sorghum, or sorghum sudan parent plants.

Variety. The name, number or code assigned to a specific genetic cross by the seed company or the Special Provisions for the insured crop in the county.

2. Unit Division

(a) For any processor contract that stipulates the amount of production to be delivered:

(1) In lieu of the definition of ''basic unit'' contained in the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill a hybrid sorghum seed processor contract;

(2) There will be no more than one basic unit for all production contracted with each processor contract;

(3) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(4) Optional units will not be established.

(b) For any processor contract that stipulates a number of acres to be planted, the provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

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

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the hybrid sorghum seed in the county insured under this policy unless the Special Provisions provide different price elections by type or variety, in which case you may elect one price election for each hybrid sorghum seed type or variety designated in the Special Provisions. The price election you choose for each type or variety must have the same percentage relationship to the maximum price offered by us for each type or variety. For example, if you choose 100 percent of the maximum price election for one specific type or variety, you must also choose 100 percent of the maximum price election for all other types or varieties.

(b) The production reporting requirements contained in section 3 of the Basic Provisions are not applicable to this contract.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage

In addition to the requirements of section 6 of the Basic Provisions, you must:

(a) Report by type and variety, the location and insurable acreage of the insured crop;

(b) Report any acreage that is uninsured, including that portion of the total acreage occupied by male parent plants; and

(c) Certify that you have a hybrid sorghum seed processor contract and report the amount, if any, of any minimum guaranteed payment.

7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the female parent plants in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are grown under a hybrid sorghum seed processor contract executed before the acreage reporting date;

(3) That are planted for harvest as commercial hybrid sorghum seed in accordance with the requirements of the hybrid sorghum seed processor contract and the production management practices of the seed company; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Planted with a mixture of female and male parent seed in the same row;

(ii) Planted for any purpose other than for commercial hybrid sorghum seed;

(iii) Interplanted with another crop; or

(iv) Planted into an established grass or legume.

(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 that provides for delivery of the crop under substantially the same terms as a hybrid sorghum seed processor contract will be treated as a contract under which you have an insurable interest in the crop.

(c) A commercial hybrid sorghum seed producer who is also a commercial hybrid sorghum seed company may be able to insure the hybrid sorghum seed crop if the following requirements are met:

(1) The seed company has an insurable interest in the hybrid sorghum seed crop;

(2) Prior to the sales closing date, the Board of Directors of the seed company has executed and adopted a corporate resolution containing the same terms as an acceptable hybrid sorghum seed processor contract. This corporate resolution will be considered a contract under the terms of this policy;

(3) Sales records for at least the previous years' seed production must be provided to confirm that the seed company has produced and sold seed. If such records are not available, the crop may be insured under the Coarse Grains Crop Provisions with a written agreement; and

(4) Our inspection reveals that the storage and drying facilities satisfy the definition of a seed company.

(d) Any of the insured crop that is under contract with different seed companies may be insured under separate policies with different insurance providers provided all acreage of the insured crop in the county is insured. If you elect to insure the insured crop with different insurance providers, you agree to pay separate administrative fees for each insurance policy.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage of the insured crop:

(a) Planted and occupied exclusively by male parent plants;

(b) Not in compliance with the rotation requirements contained in the Special Provisions or, if applicable, required by the hybrid sorghum seed processor contract; or

(c) If either the female or male parent plants are damaged before the final planting date and we determine that insured crop is practical to replant but it is not replanted.

9. Insurance Period

(a) In addition to the provisions of section 11 of the Basic Provisions, insurance attaches upon completion of planting of:

(1) The female parent plant seed on or before the final planting date designated in the Special Provisions, except as allowed in section 16 of the Basic Provisions; and

(2) The male parent plant seed.

(b) In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the November 30 immediately following planting.

10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(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; or

(8) Failure of the irrigation water supply, if due to a cause of loss contained in section 10(a) (1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we will not insure against any loss of production due to:

(1) The use of unadapted, incompatible, or genetically deficient male or female parent plant seed;

(2) Frost or freeze after the date set by the Special Provisions;

(3) Failure to follow the requirements stated in the hybrid sorghum seed processor contract and production management practices of the seed company;

(4) Inadequate germination, even if resulting from an insured cause of loss, unless you

have provided adequate notice as required by section 11(b)(1); or

(5) Failure to plant the male parent plant seed at a time or in a manner sufficient to assure adequate pollination of the female parent plants, unless you are prevented from planting the male parent plant seed by an insured cause of loss.

11. Duties in the Event of Damage or Loss

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples of at least one complete planting pattern of the male and female parent plant rows that extend the entire length of each field in the unit. If you are going to destroy any acreage of the insured crop that will not be harvested, the samples must not be destroyed until after our inspection.

(b) In addition to the requirements of section 14 of the Basic Provisions:

(1) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate inadequate germination on any unit; and

(2) You must provide a completed copy of your hybrid sorghum seed processor contract unless we have determined it has already been provided by the seed company, and the seed company certifies that such contract is used for all its producers without any waivers or amendments.

12. 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) You will not receive an indemnity payment on a unit if the seed company refuses to provide us with records we require to determine the dollar value per bushel of production for each variety.

(c) 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 amount of insurance per acre, by type and variety if applicable;

(2) Totaling the results of section 12(c)(1) if there are more than one type or variety;

(3) Multiplying the total seed production to count (see section 12(d)) for each type and variety of commercial hybrid sorghum seed by the applicable dollar value per bushel for that type or variety;

(4) Multiplying the total non-seed production to count (see section 12(e)) for each type and variety by the applicable local market price determined on the earlier of the date the non-seed production is sold or the date of final inspection;

(5) Totaling the results of sections 12(c)(3) and 12(c)(4) by type and variety;

(6) Subtracting the result of section 12(c)(5) from the result of section 12(c)(1) if there is only one type or variety, or subtracting the result of 12(c)(5) from the result of section 12(c)(2) if there are more than one type or variety; and

(7) Multiplying the result of section 12(c)(6) by your share.

For example:

You have a 100 percent share in 50 acres insured for the development of type ''A'' hybrid sorghum seed in the unit, with an amount of insurance per acre guarantee of $361 (county yield of 170 bushels times a coverage level factor of .867 for the 65 percent coverage level, times a price election of $2.45 per bushel, minus the minimum guaranteed payment of zero). Your seed production was 1,400 bushels and the dollar value per bushel was $3.47. Your non-seed production was 100 bushels with a local market value of $2.00 per bushel. Your indemnity would be calculated as follows:

(1) 50 acres × $361 = $18,050 amount of insurance guarantee;

(3) 1,400 bushels × $3.47 = $4,858 value of seed production;

(4) 100 bushels of non-seed × $2.00 = $200 of non-seed production;

(5) $4,858 + $200 = $5,058;

(6) $18,050 − $5,058 = $12,992; and

(7) $12,992 × 100 percent share = $12,992 indemnity payment.

You also have a 100 percent share in 50 acres insured for the development of type ''B'' hybrid sorghum seed in the unit, with an amount of insurance per acre guarantee of $340 (county yield of 160 bushels times a coverage level factor of .867 for the 65 percent coverage level, times a price election of $2.45 per bushel, minus the minimum guaranteed payment of zero). You harvested 1,200 bushels and the dollar value per bushel for the harvested amount was $4.63. You also harvested 200 bushels of non-seed with a market value of $2.00 per bushel. Your indemnity would be calculated as follows:

(1) 50 acres × $361 = $18,050 amount of insurance guarantee for type ''A'' and 50 acres × $340 = $17,000 amount of insurance guarantee for type ''B'';

(2) $18,050 + $17,000 = $35,050 amount of insurance guarantee;

(3) 1,400 bushels × $3.47 = $4,858 value of seed production for type ''A'' and 1,200 bushels × $4.63 = $5,556 value of seed production for type ''B'';

(4) 100 bushels of non-seed×$2.00 = $200 of non-seed production for type ''A'' and 200 bushels of non-seed × $2.00 = $400 of non-seed production for type ''B''

(5) $4,858 + $200 + $5,556 + $400 = $11,014 value of production to count;

(6) $35,050 − $11,014 = $24,036; and

(7) $24,036 × 100 percent share = $24,036 indemnity payment.

(d) Production to be counted as seed production will include:

(1) All appraised production as follows:

(i) Not less than the amount of insurance per acre 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;

(ii) Production lost due to uninsured causes;

(iii) Mature unharvested production with a germination rate of at least 80 percent of the commercial hybrid sorghum seed as determined by a certified seed test. Any such production may be adjusted in accordance with section 12(f);

(iv) Immature appraised production;

(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 when 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 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) Harvested production that you deliver as commercial hybrid sorghum seed to the seed company stated in your hybrid sorghum seed processor contract, regardless of quality, unless the production has inadequate germination.

(e) Production to be counted as non-seed production will include all harvested or mature appraised production that does not qualify as seed production to count as specified in section 12(d). Any such production may be adjusted in accordance with section 12(f).

(f) For the purpose of determining the quantity of mature production:

(1) Commercial hybrid sorghum seed production will be:

(i) Increased 0.12 percent for each 0.1 percentage point of moisture below 13.0 percent; or

(ii) Decreased 0.12 percent for each 0.1 percentage point of moisture in excess of 13.0 percent.

(2) When records of commercial hybrid sorghum seed production provided by the seed company have been adjusted to a basis of 13.0 percent moisture and 56 pound avoirdupois bushels, section 12(f)(1) above will not apply to harvested production. In such cases, records of the seed company will be used to determine the amount of production to count, provided that the moisture and weight of such production are calculated on the same basis as that used to determine the approved yield.

13. Prevented Planting

Your prevented planting coverage will be 60 percent of your amount of insurance for timely planted acreage. If you have limited or additional levels of coverage as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[62 FR 65318, Dec. 12, 1997]

§ 457.113 Coarse grains crop insurance provisions.

The coarse grains crop insurance provisions for the 2003 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Coarse Grains Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Coarse grains— Corn, grain sorghum, and soybeans.

Grain sorghum— The crop defined as sorghum under the United States Grain Standards Act.

Harvest— Combining, threshing, or picking the insured crop for grain, or cutting for hay, silage, or fodder.

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.

Planted acreage—In addition to the definition contained in the Basic Provisions, coarse grains must initially be planted in rows (corn must be planted in rows far enough apart to permit mechanical cultivation), unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Production guarantee(per acre)—In lieu of the definition contained in the Basic Provisions, the number of bushels (tons for corn insured a silage) determined by multiplying the approved actual production history (APH) yield per acre, calculated in accordance with 7 CFR part 400, subpart G, by the coverage level percentage you elect.

Silage— A product that results from severing the plant from the land and chopping it for the purpose of livestock feed.

Ton— Two thousand (2000) pounds avoirdupois.

2. 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:

(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.

3. Contract Changes

The contract change date is November 30 (December 17 for the 1998 crop year only) preceding the cancellation date (see the provisions of Section 4 (Contract Changes) of the Basic Provisions).

4. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions (§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.

State and county	Cancellation and termination dates
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.

5. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be each coarse grain crop you elect to insure for which premium rates are provided by the actuarial documents:

(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 5(b)(1); or

(ii) Planted into an established grass or legume.

(b) For corn only, in addition to the provisions of subsection 5(a), the corn crop insured will be all corn that is:

(1) Planted for harvest either as grain or as silage (see subsection 5(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 documents for the county provide 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 5(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 5(a), the soybean crop insured will be all of the soybeans in the county that are planted for harvest as beans.

6. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agreee that it is not practical to replant.

7. Insurance Period

In accordance with the provisions under section 11 (Insurance Period) of the Basic Provisions (§ 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.

8. 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) Failure of the irrigation water supply, if applicable, due to an unavoidable cause of loss occurring within the insurance period.

9. Replanting Payments

(a) In accordance with section 13 of the Basic Provisions, 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 90 percent of the 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 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 9(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.

10. 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 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 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 Basic Provisions (§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 Basic Provisions (§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.

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:

(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 11(d)) by the price election for that type (see the provisions under section 2 (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 11(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 11(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 11(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 11(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;

(iii) With regard to deficiencies in quality (except test weight, which may be determined by our loss adjuster), the samples are analyzed by:

(A) A grain grader licensed under the United States Grain Standards Act or the United States Warehouse Act;

(B) A grain grader licensed under State law and employed by a warehouse operator who has a storage agreement with the Commodity Credit Corporation; or

(C) A grain grader not licensed under State law, but who is employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation and is in compliance with State law regarding warehouses; and

(iv) With regard to substances or conditions injurious to human or animal health, the samples are analyzed by a laboratory approved by us.

(4) Coarse grain production that is eligible for quality adjustment, as specified in paragraphs 11.(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.

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted aceage. if you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[59 FR 49161, Sept. 27, 1994; 59 FR 60063, Nov. 22, 1994, as amended at 60 FR 62728, 62729, Dec. 7, 1995; 62 FR 63633, Dec. 2, 1997; 62 FR 65168, Dec. 10, 1997; 67 FR 55690, Aug. 30, 2002]

§§ 457.114–457.115 [Reserved]

§ 457.116 Sugarcane crop insurance provisions.

The Sugarcane Crop Insurance Provisions for the 2004 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 policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

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.

Harvest—Cutting and removing the mature sugarcane from the field.

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 price per pound for raw sugar offered by buyers in the area in which you normally market the sugarcane.

Plant cane—The insured crop which grows from seed planted for the crop year.

Stubble cane—The insured crop which grows from the stubble of sugarcane that was harvested the previous crop year.

Sugarcane. The grass, Saccharum officinarum, that is grown to produce sugar.

2. 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.

3. Contract Changes

In accordance with section 4 of the Basic Provisions (§ 457.8), the contract change date is June 30 preceding the cancellation date.

4. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions (§ 457.8), the cancellation and termination dates are September 30.

5. Insured Crop

(a) In accordance with section 8 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 documents:

(1) In which you have a share;

(2) That is grown for processing for sugar or for seed; and

(3) That is not interplanted with another crop, unless allowed by a written agreement.

(b) In addition to the crop listed as not insured in section 8(b) of the Basic Provisions (§ 457.8), we will not insure any sugarcane:

(1) That was damaged the previous crop year to the extent the sugarcane is unable to produce the yield used to establish the production guarantee for the unit for the current crop year; or

(2) That exceeds the age limitations (by variety, if applicable) contained in the Special Provisions , unless we agree in writing to insure such acreage. An agreement in writing will not be provided unless, after an appraisal, we determine that the crop is able to produce at least the yield used to establish the production guarantee for the unit for the current crop year.

6. Insurable Acreage

Section 9(a)(3) of the Basic Provisions (§ 457.8), is not applicable to the Sugarcane Crop Insurance Provisions.

7. Insurance Period

(a) In addition to the provisions of section 11 of the Basic Provisions (§ 457.8), insurance attaches:

(1) On the later of the day we accept your application or at the time of planting for plant cane;

(2) On the first day following harvest of the previous crop for stubble cane except as contained in sections 7(a)(3) and (4);

(3) On the later of April 15 or 30 days following harvest of the previous crop for stubble cane damaged during the previous crop year in all states (except Louisiana); and

(4) On the later of April 30 or 30 days following harvest of the previous crop for stubble cane damaged during the previous crop year in Louisiana.

(b) In accordance with the provisions of section 11 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.

8. 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.

9. Duties in the Event of Damage or Loss or Cutting the Sugarcane for Seed

(a) In addition to your duties under section 14 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. Failure to give us timely notice will cause the acreage cut for seed to be considered as put to another use without consent. The production to count for such acreage will not be less than the production guarantee.

(3) You must request an appraisal if any time during the crop year sugarcane acreage cut for seed will not produce at least the production guarantee so we can determine the production to count. If you do not request an appraisal, the production to count for such acreage will be the production guarantee.

(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.

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:

(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.

Example 1: Assume you have a 100 percent share in a unit of 100 acres of sugarcane, an approved yield of 6,000 pounds of raw sugar per acre, a coverage election of 65 percent, and a price election of $0.12 a pound. The production guarantee would be 3,900 pounds of raw sugar per acre (6,000 × 65%). Further assume that you are only able to harvest 200,000 pounds of raw sugar because the unit was damaged by an insurable cause of loss. Your indemnity would be calculated as follows:

(1) 100 acres × 3,900 pound production guarantee = 390,000 pound production guarantee;

(2) 390,000 pound production guarantee − 200,000 pounds harvested production = 190,000 pound production loss;

(3) 190,000 pound production loss × $0.12 price election = $22,800 loss; and

(4) $22,800 loss × 100 percent share = $22,800 indemnity payment.

Example 2: Assume the same set of facts. Also, assume that you cut 20 acres of this unit for seed without giving notice that you were cutting this acreage for seed and that you are only able to harvest 200,000 pounds from the remaining 80 acres. Your indemnity would be calculated as follows:

(1) 100 acres × 3,900 pound production guarantee = 390,000 pound production guarantee;

(2) 390,000 pound production guarantee − 278,000 (200,000 pounds harvested production + 78,000 pounds production for putting acreage to another use without consent, (20 acres × 3,900 pound production guarantee per acre)) = 112,000 pound production loss;

(3) 112,000 pound production loss × $0.12 price election = $13,440 loss; and

(4) $13,440 loss × 100 percent share = $13,440 indemnity payment.

(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) Potential production on insured acreage harvested for seed (see section 9(a)(3));

(v) 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.

11. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[60 FR 25602, May 12, 1995, as amended at 62 FR 65169, Dec. 10, 1997; 67 FR 46095, July 12, 2002; 67 FR 52841, Aug. 14, 2002]

§ 457.117 Forage production crop insurance provisions.

The Forage Production Crop Insurance Provisions for the 2001 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

Forage Production Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Adequate stand—A population of live forage plants that equals or exceeds the minimum required number of plants per square foot as shown in the Special Provisions.

Air-dry forage—Forage that has dried in windrows by natural means to less than 13 percent moisture before being put into stacks or bales.

Crop year—The period from the date insurance attaches until harvest is normally completed, which is designated by the calendar year in which the majority of the forage is normally harvested.

Cutting. The severance of the forage plant from its roots.

Direct marketing. Sale of the forage crop directly to consumers without the intervention of an intermediary such as a wholesaler, shipper, buyer, or broker. An example of direct marketing is selling directly to other producers.

Fall planted. A forage crop seeded after June 30.

Forage—Planted perennial alfalfa, perennial red clover, perennial grasses, or a mixture thereof, or other species as shown in the Actuarial Documents.

Harvest—Removal of forage from the windrow or field. Grazing will not be considered harvested.

Spring planted. A forage crop seeded before July 1.

Ton—Two thousand (2,000) pounds avoirdupois.

Windrow. Forage that is cut and placed in a row.

Year of establishment—The period between seeding and when the forage crop has developed an adequate stand. Insurance during the year of establishment may be available under the forage seeding policy. Insurance under this policy does not attach until after the year of establishment. The year of establishment is determined by the date of seeding. The year of establishment for spring planted forage is designated by the calendar year in which seeding occurred. The year of establishment for fall planted forage is designated by the calendar year after the year in which the crop was planted.

2. Insurance Guarantees, Coverage Levels, and Prices for Determining overage 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 only select one price election for all the forage in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each forage type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for a specific type, you must also choose 100 percent of the maximum price election for all other types.

(b) You must report the total production harvested from insurable acreage for all cuttings for each unit by the production reporting date.

(c) Separate guarantees will be determined by forage type, as applicable.

3. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§457.8), the contract change date is June 30 preceding the cancellation date.

4. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State	Cancellation/termination date
California, Nevada and Utah	October 31;
All other states	September 30.

5. Report of Acreage.

In lieu of the provisions of section 6(a) of the Basic Provisions, a report of all insured acreage of forage production must be submitted on or before each forage production acreage reporting date specified in the Special Provisions.

6. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the forage in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share; and

(2) That is grown during one or more years after the year of establishment.

(b) In addition to the crop listed as not insured in section 8 (Insured Crop) of the Basic Provisions (§457.8), we will not insure any forage that:

(1) Does not have an adequate stand at the beginning of the insurance period;

(2) Is grown with a non-forage crop; or

(3) Exceeds the age limitations for forage stands contained in the Special Provisions.

7. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§457.8):

(a) Insurance attaches on acreage with an adequate stand on the following dates:

(1) For the calendar year following the year of seeding for:

(i) Spring planted forage in Lassen, Modoc, Mono, Shasta and Siskiyou Counties California, Colorado, Idaho, Nebraska, Nevada, Oregon, Utah and Washington—April 15;

(ii) Spring planted forage in Iowa, Minnesota, Montana, New Hampshire, New York, North Dakota, Pennsylvania, Wisconsin, Wyoming and all other states—May 22;

(iii) Fall planted forage in Lassen, Modoc, Mono, Shasta and Siskiyou Counties California, and all other states—October 16;

(iv) Fall planted forage in all California counties except Lassen, Modoc, Mono, Shasta, and Siskiyou—December 1.

(2) For the calendar year of seeding for spring planted acreage in all California counties except Lassen, Modoc, Mono, Shasta and Siskiyou—December 1.

(3) For calendar years subsequent to the calendar year following the year of seeding for:

(i) Lassen, Modoc, Mono, Shasta and Siskiyou California counties, and all other states—October 16;

(ii) All California counties except Lassen, Modoc, Mono, Shasta and Siskiyou—December 1.

(b) Insurance ends at the earliest of:

(1) Total destruction of the forage crop;

(2) Removal from the windrow or the field for each cutting;

(3) Final adjustment of a loss;

(4) The date grazing commences on the forage crop;

(5) Abandonment of the forage crop; or

(6) The following dates of the crop year:

(i) For Lassen, Modoc, Mono, Shasta, and Siskiyou Counties California and all other states—October 15;

(ii) For all California counties except Lassen, Modoc, Mono, Shasta and Siskiyou—November 30.

(c) In order to obtain year-round coverage for a calendar year, you must purchase the Forage Production Winter Coverage Endorsement (§457.127).

8. 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;

(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; or

(8) 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 specifically excluded in section 12 of the Basic Provisions, we will not insure against damage of loss of production that occurs after removal from the windrow.

9. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the insured 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 unless you have records verifying that the forage was direct marketed. 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 so that we may inspect the damaged production. You must not destroy 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 will be included as production to count; and

(d) You must notify us at least 5 days before grazing of insured forage begins so we can conduct an appraisal to determine production to count. Failure to give timely notice that the acreage will be grazed will result in an appraised amount of production to count of not less than the production guarantee per acre.

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) Multiplying the insured acreage for each type, by its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election you selected;

(3) Totaling the results of each crop type in section 11(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 11(c)) by the respective price election you selected;

(5) Totaling the results of each crop type in section 11(b)(4);

(6) Subtracting the result in section 11(b)(5) from the result in section 11(b)(3); and

(7) Multiplying the result in section 11(b)(6) by your share.

Example 1

Assume you have a 100 percent share in 100 acres of type A forage in the unit, with a guarantee of 3.0 tons per acre and a price election of $65.00 per ton. Due to adverse weather you were only able to harvest 50.0 tons. Your indemnity would be calculated as follows:

1. 100 acres type A × 3 tons = 300 ton guarantee;

2 & 3. 300 tons × $65 price election = $19,500 total value guarantee;

4 & 5. 50 tons production to count × $65 price election = $3,250 total value of production to count;

6. $19,500 value guarantee—$3,250 = $16,250 loss; and

7. $16,250 × 100 percent share = $16,250 indemnity payment.

Example 2

Assume you also have a 100 percent share in 100 acres of type B forage in the same unit, with a guarantee of 1.0 ton per acre and a price election of $50.00 per ton. Due to adverse weather you were only able to harvest 5.0 tons. Your total indemnity for forage production for both types A and B in the same unit would be calculated as follows:

1. 100 acres × 3 tons = 300 ton guarantee for type A; and 100 acres × 1 ton = 100 ton guarantee for type B;

2. 300 ton guarantee × $65 price election = $19,500 total value of the guarantee for type A; and 100 ton guarantee × $50 price election = $5,000 total value of the guarantee for type B;

3. $19,500 + $5,000 = $24,500 total value of the guarantee;

4. 50 tons × $65 price election = $3,250 total value of production to count for type A; and 5 tons × $50 price election = $250 total value of production to count for type B;

5. $3,250 + $250 = $ 3,500 total value of production to count for types A and B;

6. $24,500—$3,500 = $21,000 loss; and

7. $21,000 loss × 100 percent share = $21,000 indemnity payment.

(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) Put to another use without our consent;

(C) 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;

(iv) 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 when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached and:

(A) 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 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) 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) When forage is harvested as other than air-dry forage, the production to count will be adjusted to the equivalent of air-dry forage.

(e) Any harvested production from plants growing in the forage will be counted as forage on a weight basis.

(f) In addition to the provisions of section 15 (Production Included in Determining Indemnities) of the Basic Provisions (§457.8), we may determine the amount of production of any unharvested forage on the basis of our field appraisals conducted after the normal time for each cutting for the area.

11. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 14285, Mar. 26, 1997, as amended at 62 FR 65169, Dec. 10, 1997; 65 FR 3783, Jan. 25, 2000; 65 FR 11457, Mar. 3, 2000]

§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×70 percent coverage)×80 acres). The value of your production guarantee is $1050.00 (1750 bushels×$0.60 per bushel). Your production to count is 200 bushels. The value of your production to count is $110.00 (200 bushels×$0.55 ($0.60—$0.05)). Your indemnity for the malting barley unit is $940.00 (($1050.00 − $110.00)×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 2000 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 policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

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.

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.

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.

Local market price. The applicable citrus price per ton offered by buyers in the area in which you normally market the insured crop.

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.

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each citrus crop designated in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

(c) Instead of establishing optional units by section, section equivalent, or FSA farm serial number, 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 documents:

(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 documents provide, 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. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[61 FR 41300, Aug. 8, 1996; 61 FR 57583, Nov. 7, 1996, as amended at 62 FR 65169, Dec. 10, 1997]

§457.120 [Reserved]

§457.121 Arizona-California citrus crop insurance provisions.

The Arizona-California citrus crop insurance provisions for the 2000 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 policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

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.

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.

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.

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.

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by each citrus crop designated in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

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 documents:

(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. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[61 FR 44147, Aug. 28, 1996, as amended at 62 FR 65170, Dec. 10, 1997]

§ 457.122 Walnut crop insurance provisions.

The Walnut Crop Insurance Provisions for the 2001 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:

Walnut Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Harvest—Removal of the walnuts from the orchard.

Interplanted—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Net delivered weight—Delivered weight (pounds) of dry, hulled, in-shell walnuts, excluding foreign material.

Pound—A unit of weight equal to 16 ounces avoirdupois.

Production guarantee (per acre)—The number of pounds (whole in-shell walnuts), determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

2. Unit Division

Provisions in the Basic Provisions that allow optional units by section, section

equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

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

In addition to the requirements of section 3 of the Basic Provisions (§457.8):

(a) You may select only one price election for all the walnuts in the county insured under this policy unless the Special Provisions provide different price elections by variety or varietal group, in which case you may select one price election for each walnut variety or varietal group designated in the Special Provisions. The price elections you choose for each variety or varietal group must have the same percentage relationship to the maximum price offered by us for each variety or varietal group. For example, if you choose 100 percent of the maximum price election for a specific variety or varietal group, you must also choose 100 percent of the maximum price election for all other varieties or varietal groups.

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions (§457.8), by variety or varietal group if applicable:

(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;

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed, the age of the crop that is interplanted with the walnuts, and type if applicable, and the planting pattern; and

(5) 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 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 circumstances.

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change dates are October 31 for California and August 31 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31 for California and November 20 for all other states.

6. Insured Crop

In accordance with section 8 of the Basic Provisions (§457.8), the crop insured will be all the commercially grown English Walnuts (excluding black walnuts) in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are grown on tree varieties that:

(1) Were commercially available when the trees were set out;

(2) Are adapted to the area; and

(3) Are grown on a root stock that is adapted to the area;

(c) That are grown in an orchard that, if inspected, are considered acceptable by us;

(d) On acreage where at least 90 percent of the trees have reached at least the ninth growing season after being set out, unless we agree in writing to insure trees not meeting this requirement; and

(e) That are in a unit that consists of at least five acres, unless we agree in writing to insure a smaller unit.

7. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions (§457.8), that prohibit insurance attaching to a crop planted with another crop, walnuts 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 of the Basic Provisions:

(1) Coverage begins on February 1 in California and November 21 in all other states of each crop year, except that for the year of application, if your application is received after January 22 but prior to February 1 in California or after November 11 but prior to November 21 in all states, 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 November 15 (Exceptions, if any, for specific counties or varieties or varietal group are contained in the Special Provisions).

(3) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(4) If your walnut policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such 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. Acreage acquired after the acreage reporting date will not be insured.

(2) If you relinquish your insurable share on any insurable acreage of walnuts on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due 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 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 undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(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; or

(8) 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 any damage or loss of production due to the inability to market the walnuts for any reason other than actual physical damage to the walnuts 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.

(a) In addition to the requirements of section 14 of the Basic Provisions, if you intend to claim an indemnity on any unit:

(1) You must notify us prior to the beginning of harvest so that we may inspect the damaged production;

(2) You must give notice when knowledge is obtained of any mold damage or 15 days prior to harvest so that we may inspect the mold damaged production; and

(3) You must not sell or dispose of the damaged crop until we have given you written consent to do so.

(b) 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 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) Multiplying the insured acreage by the respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election for each variety or varietal group;

(3) Totaling the results in section 11(b)(2);

(4) Multiplying the total production to be counted of each variety or varietal group, if

applicable, (see section 11(c)) by the respective price election;

(5) Totaling the results in section 11(b)(4);

(6) Subtracting the result in section 11(b)(5) from the result in section 11(b)(3); and

(7) Multiplying the result in section 11(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of walnuts in the unit, with a guarantee of 2,500 pounds per acre and a price election of $0.61 per pound. You are only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 2,500 pounds = 250,000 pound insurance guarantee;

(2 & 3) 250,000 pounds × $0.61 price election = $152,500 total value of insurance guarantee;

(4 & 5) 200,000 pounds production to count × $0.61 price election = $122,000 total value of production to count;

(6) $152,500 total value guarantee—$122,000 total value of production to count = $30,500 loss; and

(7) $30,500 × 100 percent share = $30,500 indemnity payment.

(c) The total production to count (whole in-shell pounds) 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 damaged solely by uninsured causes; or

(C) For which you fail to provide acceptable production records;

(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) All harvested production from the insurable acreage.

(d) Mature walnut production damaged due to an insurable cause of loss which occurs within the insurance period may be adjusted for quality based on an inspection by the Dried Fruit Association or during our loss adjustment process. Walnut production that has mold damage greater than 8 percent, based on the net delivered weight, will be reduced by the quality adjustment factors contained in the Special Provisions. Walnut production that exceeds 30 percent mold damage and will not be sold, the production to count will be zero.

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 20091, Apr. 25, 1997, as amended at 62 FR 65170, Dec. 10, 1997; 65 FR 47837, Aug. 4, 2000]

§457.123 Almond crop insurance provisions.

The Almond Crop Insurance Provisions for the 2001 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

Almond Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Harvest. The removal of mature almonds from the orchard.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Meat pounds. The total pounds of almond meats (whole, chipped and broken, and in-shell meats). In-shell almonds will be converted to meat pounds in accordance with FCIC approved procedures.

Production guarantee (per acre). The quantity of almonds (total meat pounds per acre) determined by multiplying the approved actual production history (APH) yield per acre by the coverage level percentage you elect.

Set out. Transplanting the tree into the orchard.

2. Unit Division

Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

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

In addition to the requirements of section 3 of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the almonds in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each almond type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions (§ 457.8), by type if applicable:

(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 patterns;

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed, the age of the crop that is interplanted with the almonds, and type if applicable, and the planting pattern; and

(5) 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 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.

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that would or could reduce the yield of the insured crop has occurred prior to the time that you request the increase.

4. Contract Changes

In accordance with section 4 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 of the Basic Provisions (§ 457.8), the cancellation and termination dates are December 31.

6. Insured Crop

In accordance with section 8 of the Basic Provisions (§ 457.8), the crop insured will be all the almonds in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share unless allowed otherwise by section 8(b);

(b) That are grown for harvest as almonds;

(c) That are irrigated;

(d) That are grown in an orchard that, if inspected, is considered acceptable to us; and

(e) On acreage where at least 90 percent of the trees have reached at least the seventh growing season after set out, unless we agree in writing to insure trees not meeting this requirement.

7. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, almonds 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 of the Basic Provisions (§ 457.8):

(1) Coverage begins on January 1 of each crop year, except that for the year of application, if your application is received after December 21, but prior to January 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.

(2) The calendar date for the end of the insurance period for each crop year is November 30.

(3) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(4) If your almond policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates

whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such 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. Acreage acquired after the acreage reporting date will not be insured.

(2) If you relinquish your insurable share on any insurable acreage of almonds on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due 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 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 undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(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) Earthquake;

(6) Volcanic eruption;

(7) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period; or

(8) Wildlife, unless control measures have not been taken.

(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 the inability to market the almonds for any reason other than actual physical damage to the almonds 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 of the Basic Provisions (§457.8), if you intend to claim an indemnity on any unit, you must notify us prior to the beginning of harvest 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, 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 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) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election for the type;

(3) Totaling the results in section 11(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see subsection 11(c)) by the respective price election;

(5) Totaling the results in section 11(b)(4);

(6) Subtracting the result in section 11(b)(5) from the result in section 11(b)(3); and

(7) Multiplying the result in section 11(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of almonds in the unit, with a guarantee of 1,200 pounds per acre and a price election of $1.70 per pound. You are only able to harvest 100,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 1,200 pounds = 120,000 pound insurance guarantee;

(2 & 3) 120,000 pounds × $1.70 price election = $204,000 total value of insurance guarantee;

(4 & 5) 100,000 pounds production to count × $1.70 price election = $170,000 total value of production to count;

(6) $204,000 total of value guarantee—$170,000 total value of production to count = $34,000 loss; and

(7) $34,000 × 100 percent share = $34,000 indemnity payment.

(c) The total production to count, specified in meat pounds, 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 damaged solely by uninsured causes; or

(C) For which you fail to provide acceptable production records;

(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) All harvested meat pounds, including meat pounds damaged due to uninsured causes of loss.

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 25108, May 8, 1997, as amended at 62 FR 65170, Dec. 10, 1997; 65 FR 47838, Aug. 4, 2000]

§ 457.124 Raisin crop insurance provisions.

The raisin 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

Raisin Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Crop year—In lieu of the definition of ''Crop year'' contained in section 1 of the Basic Provisions (§ 457.8), the calendar year in which the raisins are placed on trays for drying.

Delivered ton—A ton of raisins delivered to a packer, processor, buyer or a reconditioner, before any adjustment for U. S. Grade B and better maturity standards, and after adjustments for moisture over 16 percent and substandard raisins over 5 percent.

RAC—The Raisin Administrative Committee, which operates under an order of the United States Department of Agriculture (USDA).

Raisins—The sun-dried fruit of varieties of grapes designated insurable by the actuarial documents. These grapes will be considered raisins for the purpose of this policy when laid on trays in the vineyard to dry.

Reference maximum dollar amount—The value per ton established by FCIC and shown in the actuarial documents.

Substandard—Raisins that fail to meet the requirements of U.S. Grade C, or layer (cluster) raisins with seeds that fail to meet the requirements of U.S. Grade B.

Table grapes—Grapes grown for commercial sale as fresh fruit on acreage where appropriate cultural practices were followed.

Ton—Two thousand (2,000) pounds avoirdupois.

Tonnage report—A report used to annually report, by unit, all the tons of raisins produced in the county in which you have a share.

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by grape variety.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

3. Amounts of Insurance and Production Reporting

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 percentage for all the raisins in the county insured under this policy.

(b) The amount of insurance for the unit will be determined by multiplying the insured tonnage by the reference maximum dollar amount, by the coverage level percentage you elect, and by your share.

(c) Insured tonnage is determined as follows:

(1) For units not damaged by rain—The delivered tons; or

(2) For units damaged by rain—By adding the delivered tons to any verified loss of production due to rain damage. When production from a portion of the acreage within a unit is removed from the vineyard and production from the remaining acreage is lost in the vineyard, the amount of production lost in the vineyard will be determined based on the number of tons of raisins produced on the acreage from which production was removed. When no production has been removed from the vineyard, the amount of production lost in the vineyard will be determined based on an appraisal.

(3) Insured tonnage will be adjusted as follows:

(i) The insured tonnage will be reduced 0.12 percent for each 0.10 percent of moisture in excess of 16.0 percent. For example, 10.0 tons of raisins containing 18.0 percent moisture will be reduced to 9.760 tons of raisins;

(ii) Insured tonnage used for dry edible fruit will be reduced by 0.10 percent for each 0.10 percent of substandard raisins in excess of 5.0 percent; and

(iii) When raisins contain moisture in excess of 24.3 percent at the time of delivery and are released for a use other than dry edible fruit (e.g. distillery material), they will be considered to contain 24.3 percent moisture.

(4) If any raisins are delivered, the moisture content will be determined at the time of delivery.

(d) Section 3(c) of the Basic Provisions is not applicable to this crop.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§457.8), the contract change date is April 30 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 July 31.

6. Acreage Report and Tonnage Report

In lieu of the provisions contained in section 6 of the Basic Provisions (§457.8):

(a) You must report by unit, and on our form, the acreage on which you intend to produce raisins for the crop year. This acreage report must be submitted to us on or before the sales closing date, and contain the following information:

(1) All acreage of the crop (insurable and not insurable) in which you will have a share;

(2) Your anticipated share at the time coverage will begin;

(3) The variety; and

(4) The location of each vineyard.

(b) Acreage of the crop acquired after the acreage was reported, may be included on the acreage report if we agree to accept the additional acreage. Such additional acreage will not be added to the acreage report after you first place raisins from the additional acreage on trays for drying. Failure to report any acreage in which you have a share will result in denial of liability. If you elect not to produce raisins on any part of the acreage included on your acreage report, you must notify us in writing on or before September 21, and provide any records we may require to verify that raisins were not produced on that acreage.

(c) If you fail to file an acreage report in a timely manner, or if the information reported is incorrect, we may deny liability on any unit.

(d) In addition to the acreage report, you must annually submit a tonnage report, on our form, which includes by unit the number of delivered tons of raisins, and, if damage has occurred, the amount of any tonnage we determined was lost due to rain damage in the vineyard for each unit designated in the acreage report.

(e) The tonnage report must be submitted to us as soon as the information is available, but not later than March 1 of the year following the crop year. Indemnities may be determined on the basis of information you submitted on this report. If you do not submit this report by the reporting date, we may, at our option, either determine the insured tonnage and share by unit or we may deny liability on any unit. This report may be revised only upon our approval. Errors in reporting units may be corrected by us at any time we discover the error.

7. 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 determined by multiplying the amount of insurance for the unit at the time insurance attaches by the premium rate and then multiplying that result by any applicable premium adjustment factors that may apply.

8. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§457.8), the crop insured will be all the raisins in the county of grape varieties for which a premium rate is provided by the actuarial documents and in which you have a share.

(b) In addition to the raisins not insurable under section 8 (Insured Crop) of the Basic Provisions (§457.8), 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 counties;

(2) From table grape strippings; or

(3) From vines that received manual, mechanical, or chemical treatment to produce table grape sizing.

9. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), insurance attaches on each unit 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 removed from the trays;

(c) The date the raisins are removed from the vineyard;

(d) Total destruction of all raisins on a unit;

(e) Final adjustment of a loss on a unit; or

(f) Abandonment of the raisins.

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 unavoidable loss of production resulting from rain that occurs during the insurance period and while the raisins are on trays or in rolls in the vineyard for drying.

(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 inability to market the raisins 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 a person to accept production.

11. Reconditioning Requirements and Payment

(a) We may require you to recondition a representative sample of not more than 10 tons of damaged raisins to determine if they meet standards established by the RAC once reconditioned. If such standards are met, we may require you to recondition all the damaged production. If we determine that it is possible to recondition any damaged production and, if you do not do so, we will value the damaged production at the reference maximum dollar amount, except if your damaged production undergoes a USDA inspection and is stored by your packer with other producer's production to be reconditioned at a later date. If we agree, in writing, that it is not practical to recondition the damaged production, we will determine the number of tons meeting RAC standards that could be obtained if the production were reconditioned.

(b) If the representative sample of raisins that we require you to recondition does not meet RAC standards for marketable raisins after reconditioning, the reconditioning payment will be the actual cost you incur to recondition the sample, not to exceed an amount that is reasonable and customary for such reconditioning, regardless of the coverage level selected.

(c) A reconditioning payment, based on the actual (unadjusted) weight of the raisins, will be made if:

(1) Insured raisin production:

(i) Is damaged by rain within the insurance period;

(ii) Is reconditioned by washing with water and then drying;

(iii) Is insured at a coverage level greater than that applicable to the catastrophic risk protection plan of insurance; and either

(2) The damaged production undergoes an inspection by USDA and is found to contain mold, embedded sand, or other rain-caused contamination determined by micro-analysis in excess of standards established by the RAC, or is found to contain moisture in excess of 18 percent; or

(3) We give you consent to recondition the damaged production.

(d) Your request for consent to any wash-and-dry reconditioning must identify the acreage on which the production to be reconditioned was damaged in order to be eligible for a reconditioning payment.

(e) The reconditioning payment for raisins that meet RAC standards for marketable raisins after reconditioning will be the lesser of your actual cost for reconditioning or the amount determined by:

(1) Multiplying the greater of $125.00 or the reconditioning dollar amount per ton contained in the Special Provisions by your coverage level;

(2) Multiplying the result of section 11(e)(1) by the actual number of tons of raisins (unadjusted weight) that are wash-and-dry reconditioned; and

(3) Multiplying the result of section 11(e)(2) by your share.

(f) Only one reconditioning payment will be made for any lot of raisins damaged during the crop year. Multiple reconditioning payments for the same production will not be made.

12. Duties in the Event of Damage or Loss

(a) 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:

(1) If you intend to claim an indemnity on any unit, you must give us notice within 72 hours of the time the rain fell on the raisins. We may reject any claim for indemnity if such notice is later. You must provide us the following information when you give us this notice:

(i) The grape variety;

(ii) The location of the vineyard and number of acres; and

(iii) The number of vines from which the raisins were harvested.

(2) We will not pay any indemnity unless you:

(i) Authorize us in writing to obtain all relevant records from any raisin packer, raisin reconditioner, the RAC, or any other person who may have such records. If you fail to meet the requirements of this subsection, all insured production will be considered undamaged and valued at the reference maximum dollar value.

(ii) Upon our request, provide us with records of previous years'' production and acreage. This information may be used to establish the amount of insured tonnage when insurable damage results in discarded production.

(b) In lieu of the provisions in section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§457.8) that require you to submit a claim for indemnity not later than 60 days after the end of the insurance period, any claim for indemnity must be submitted to us not later than March 31 following the date for the end of the insurance period.

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 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 acreage from which raisins were removed 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 tonnage of raisins by the reference maximum dollar amount and your coverage level percentage;

(2) Subtracting from the total in section 13(b)(1) the total value of all insured damaged and undamaged raisins; and

(3) Multiplying the result of section 13(b)(2) by your share.

(c) For the purpose of determining the amount of indemnity, your share will not exceed the lesser of your share at the time insurance attaches or at the time of loss.

(d) Undamaged raisins or raisins damaged solely by uninsured causes will be valued at the reference maximum dollar amount.

(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 that are damaged by rain, but that are reconditioned and meet RAC standards for raisins, will be valued at the reference maximum dollar amount.

(g) The value to count for any raisins produced on the unit that are damaged by rain and not removed from the vineyard will be the larger of the appraised salvage value or $35.00 per ton, except that any raisins that are damaged and discarded from trays or are lost from trays scattered in the vineyard as part of normal handling will not be considered to have any value. You must box and deliver any raisins that can be removed from the vineyard.

(h) At our sole option, 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 and egress to the extent necessary to take possession, care for, and remove such raisins.

(i) Raisins destroyed, put to another use without our consent, or abandoned will be valued at the reference maximum dollar amount.

14. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 12070, Mar. 14, 1997, as amended at 62 FR 65170, Dec. 10, 1997]

§457.125 Safflower crop insurance provisions.

The safflower crop insurance provisions for the 2003 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:

Safflower Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Harvest. Collecting the safflower seed by combining or threshing.

Local market price. The cash price per pound for undamaged safflower (test weight of 35 pounds per bushel or higher and seed damage less than 25 percent) offered by buyers.

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.

Planted acreage—In addition to the definition contained in the Basic Provisions, safflowers must initially be planted in rows, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Pound. Sixteen ounces avoirdupois.

Value per pound. The cash price per pound for damaged safflower (test weight below 35 pounds per bushel, seed damage in excess of 25 percent, or both).

2. 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 safflower in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each safflower type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

3. 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 for California, and December 31 preceding the cancellation date for all other states.

4. 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	Cancellation and termination dates
California	December 31.
All other states	March 15.

5. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all safflower in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That is planted for harvest as safflower seed;

(c) That is not (unless allowed by the Special Provisions or by written agreement):

(1) Interplanted with another crop; or

(2) Planted into an established grass or legume.

6. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), we will not insure:

(a) Safflower planted on land on which safflower, sunflower seed, any variety of dry beans, soybeans, mustard, rapeseed, or lentils were grown the preceding crop year, unless other rotation requirements are specified in the Special Provisions or we agree in writing to insure such acreage; or

(b) Any acreage of safflower damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, unless the crop is replanted or we agree that it is not practical to replant.

7. 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 October 31 immediately following planting.

8. 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 during 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, unless proper measures to control wildlife have not been taken;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if caused by an insured cause of loss that occurs during the insurance period.

9. Replanting Payment

(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 of the 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 20

percent of the production guarantee or 160 pounds, multiplied by your price election, multiplied by your insured share.

(c) When safflower is replanted using a practice that is uninsurable as an original planting, the liability on 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 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.

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 the 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 its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election;

(3) Totaling the results in section 11(b)(2);

(4) Multiplying the total production to be counted of each type if applicable, (see section 11(c)) by the respective price election;

(5) Totaling the results in section 11(b)(4);

(6) Subtracting the results from the total in section 11(b)(5) from the results in section 11(b)(3); and

(7) Multiplying the result in section 11(b)(6) by your share.

(c) The total production to count (in pounds) 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 the 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;

(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 section 11(d)); and

(iv) 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 when 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 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 safflower 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 8 percent. We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if such production:

(i) Has a test weight below 35 pounds per bushel;

(ii) Has seed damage in excess of 25 percent; or

(iii) Contains substances or conditions 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 that occurred within the insurance period;

(ii) The deficiencies, substances, or conditions result in a value per pound that is less than the local market price;

(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;

(iv) With regard to deficiencies in quality (except test weight, which may be determined by our loss adjuster), the samples are analyzed by:

(A) A grader licensed under the United States Agricultural Marketing Act or the United States Warehouse Act;

(B) A grader licensed under State law and employed by a warehouse operator who has a storage agreement with the Commodity Credit Corporation; or

(C) A grader not licensed under State law, but who is employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation and is in compliance with State law regarding warehouses; and

(v) With regard to substances or conditions injurious to human or animal health, the samples are analyzed by a laboratory approved by us.

(4) Safflower production that is eligible for quality adjustment, as specified in sections 11(d) (2) and (3), will be reduced as follows:

(i) In accordance with the quality adjustment factors contained in the Special Provisions; or

(ii) If quality adjustment factors are not contained in the Special Provisions:

(A) By determining the value per pound and the local market price on the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit. Discounts used to establish the value per pound will be limited to those which are usual, customary, and reasonable. The value per pound 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 safflower. We may obtain values per pound from any buyer of our choice. If we obtain values per pound from one or more buyers located outside your local market area, we will reduce such values per pound by the additional costs required to deliver the production to those buyers.

(B) Divide the value per pound by the local market price to determine the quality adjustment factor; and

(C) Multiply the adjustment factor by the number of pounds of the damaged production remaining after any reduction due to excessive moisture to determine the net production to count.

(e) Any production harvested from other plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

12. Prevented Planting

Your prevented planing coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or aditional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[62 FR 42649, Aug. 8, 1997, as amended at 62 FR 65171, Dec. 10, 1997; 67 FR 55690, Aug. 30, 2002]

§ 457.126 Popcorn cop isurance povisions.

The Popcorn Crop Insurance Provisions for the 1999 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:

Popcorn Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Base contract price. The price stipulated on the contract executed between you and the processor before any adjustments for quality.

Harvest. Removing the grain or ear from the stalk either by hand or by machine.

Merchantable popcorn. Popcorn that meets the provisions of the processor contract.

Planted acreage. In addition to the definition contained in the Basic Provisions, popcorn must initially be planted in rows far enough apart to permit mechanical cultivation, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Pound. Sixteen (16) ounces avoirdupois.

Practical to replant. In addition to the definition contained in the Basic Provisions, it will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the popcorn processor contract, or the processor agrees in writing that it will accept the production from the replanted acreage.

Processor. Any business enterprise regularly engaged in processing popcorn that possesses all licenses, permits or approved inspections for processing popcorn 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 popcorn within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow popcorn, and to deliver the popcorn production to the processor;

(b) The processor's commitment to purchase all the production stated in the processor contract;

(c) A date, if specified on the processor's contract, by which the crop must be harvested to be accepted; and

(d) A base contract price.

Multiple contracts with the same processor, each of which stipulates a specific amount of production to be delivered under the terms of the processor contact, will be considered as a single processor contract.

2. Unit Division

(a) For processor contracts that stipulate the amount of production to be delivered:

(1) In lieu of the definition contained in the Basic Provisions, a basic unit will consist of all the acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor;

(i) There will be no more than one basic unit for all production contracted with each processor contract;

(ii) In accordance with section 13 of these Crop Provisions, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(2) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable.

(b) For any processor contract that stipulates only the number of acres to be planted, the provisions contained in section 34 of the Basic Provisions will apply.

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

In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the popcorn in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each popcorn type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, 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.	January 15.
All other Texas counties and all other states.	March 15.

6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the popcorn in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That is planted for harvest as popcorn;

(3) That is grown under, and in accordance with the requirements of, a processor contract executed on or before the acreage reporting date and is not excluded from the processor contract at any time during the crop year; and

(4) That is not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the popcorn is grown, you have a risk of loss, and the processor contract provides for delivery of popcorn under specified conditions and at a stipulated base contract price.

(c) A popcorn producer who is also a processor may be able to establish an insurable interest if the following requirements are met:

(1) The producer must comply with these Crop Provisions;

(2) The Board of Directors or officers of the processor must, prior to the sales closing date, execute and adopt a resolution that contains the same terms as an acceptable

processor contract. Such resolution will be considered a processor contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant.

9. Insurance Period

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases on each unit or part of a unit at the earliest of:

(a) The date the popcorn:

(1) Was destroyed;

(2) Should have been harvested but was not harvested;

(3) Was abandoned; or

(4) Was harvested;

(b) When the processor contract stipulates a specific amount of production to be delivered, the date the production accepted by the processor equals the contracted amount of production;

(c) Final adjustment of a loss; or

(d) December 10 immediately following planting.

10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(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; or

(8) Failure of the irrigation water supply, if caused by a cause of loss specified in sections 10(a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we do not insure against any loss of production due to:

(1) Damage resulting from frost or freeze after the date designated in the Special Provisions; or

(2) Failure to follow the requirements contained in the processor contract.

11. Replanting Payment

(a) In accordance with section 13 of the Basic Provisions, 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 of the 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 20 percent of the production guarantee or 150 pounds, multiplied by your price election, multiplied by your insured share.

(c) When popcorn is replanted using a practice that is uninsurable as an original planting, our liability for 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 of the Basic Provisions, 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 destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

13. 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 type, if applicable, by its respective production guarantee;

(2) Multiplying the result of section 13(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results of section 13(b)(2) if there is more than one type;

(4) Multiplying the total production to count (see section 13(c)), of each type if applicable, by its respective price election;

(5) Totaling the results of section 13(b)(4) if there is more than one type;

(6) Subtracting the result of section 13(b)(4) from the result in section 13(b)(2) if there is only one type or subtracting the result of section 13(b)(5) from the result of section 13(b)(3) if there is more than one type; and

(7) Multiplying the result of section 13(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of Type A popcorn in the unit, with a guarantee of 2,500 pounds per acre and a price election of $.12 per pound. You are only able to harvest 150,000 pounds. Your indemnity would be calculated as follows:

1 ..... 100 acres × 2,500 pounds = 250,000 pound guarantee;
2 ..... 250,00 pounds × $.12 price election = $30,000 value of guarantee;
4 ..... 150,000 pounds production to count × $.12 price election = $18,000 value of production to count;
6 ..... $30,000 − $18,000 = $12,000 loss; and
7 ..... $12,000 × 100 percent share = $12,000 indemnity payment.

You also have a 100 percent share in 150 acres of type B popcorn in the same unit, with a guarantee of 2,250 pounds per acre and a price election of $.10 per pound. You are only able to harvest 70,000 pounds. Your total indemnity for both popcorn types A and B would be calculated as follows:

1 ..... 100 acres × 2,500 pounds = 250,000 guarantee for type A and 150 acres × 2,250 pounds = 337,500 pound guarantee for type B;
2 ..... 250,000 pound guarantee × $.12 price election = $30,000 value of guarantee for type A and 337,500 pound guarantee × $.10 price election = $33,750 value guarantee for type B;
3 ..... $30,000 + $33,750 = $63,750 total value guarantee;
4 ..... 150,000 pounds × $.12 price election = $18,000 value of production to count for type A and
70,000 pounds × $.10 price election = $7,000 value of production to count for type B;
5 ..... $18,000 + $7,000 = $25,000 total value of production to count;
6 ..... $63,750 − $25,000 = $38,750 loss; and
7 ..... $38,750 × 100 percent = $38,750 indemnity payment.

(c) The total production to count (in pounds) 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 production records;

(ii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 13(d));

(iii) 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 when 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 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;

(2) All harvested production from the insurable acreage in the unit;

(3) All harvested and appraised production lost or damaged by uninsured causes; and

(4) For processor contracts that stipulate the amount of production to be delivered, all harvested popcorn production from any other insurable unit that has been used to fulfill your processor contract applicable to this unit.

(5) Any production from yellow or white dent corn will be counted as popcorn on a weight basis and any production harvested from plants growing in the insured crop may

be counted as popcorn production on a weight basis.

(6) Any ear production for which we cannot determine a shelling factor will be considered to have an 80 percent shelling factor.

(d) Mature popcorn 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 for moisture in excess of 15 percent. We may obtain samples of the production to determine the moisture content.

(2) Popcorn production will be eligible for quality adjustment if, due to an insurable cause of loss that occurs within the insurance period, it is not merchantable popcorn and is rejected by the processor. The production will be adjusted by:

(i) Dividing the value per pound of the damaged popcorn by the base contract price per pound for undamaged popcorn; and

(ii) Multiplying the result by the number of pounds of such popcorn.

14. Late Planting

Late planting provisions in the Basic Provisions are applicable for popcorn if you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest.

15. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[63 FR 33838, June 22, 1998]

§ 457.127 [Reserved]

§ 457.128 Guaranteed production plan of fresh market tomato crop insurance provisions.

The Guaranteed Production Plan of Fresh Market Tomato Crop Insurance

FCIC Policies

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Guarantee Production Plan of Fresh Market Tomato Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Acre—Forty-three thousand five hundred sixty (43,560) square feet of land when row widths do not exceed six feet, or if row widths exceed six feet, the land area on which at least 7,260 linear feet of rows are planted.

Carton—A container that contains 25 pounds of fresh tomatoes unless otherwise provided in the Special Provisions.

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.

First fruit set—The date when 30 percent of the plants on the unit have produced fruit that has reached a minimum size of one inch in diameter.

Harvest—Picking of marketable tomatoes.

Mature green tomato—A tomato that:

(a) Has a heightened gloss due to a waxy skin that cannot be torn by scraping;

(b) Has a well-formed jelly-like substance in the locules;

(c) Has seeds that are sufficiently hard so they are pushed aside and not cut by a sharp knife in slicing; and

(d) Shows no red color.

Planting—Transplanting the tomato plants into the field.

Planting period—The time period designated in the Special Provisions during which the tomatoes must be planted to be insured as either spring-or fall-planted tomatoes.

Plant stand—The number of live plants per acre before any damage occurs.

Potential production—The number of cartons per acre of mature green or ripe tomatoes that the tomato plants would have produced by the end of the insurance period:

(a) With a classification size of 6×7 (2–8/32 inch minimum diameter) or larger for all types except cherry, roma, or plum; or

(b) Meeting the criteria specified in the Special Provisions for cherry, roma, or plum types.

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 windows that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. In counties that do not have both spring and fall planting periods, it will not be considered practical to replant after the final planting date unless replanting is generally occurring in the area. In counties that have spring and fall planting periods, it will not be considered practical to replant after the final planting date for the planting period in which the crop was initially planted.

Ripe tomato—A tomato that meets the definition of a mature green tomato, except the tomato shows some red color and can still be packed for fresh market under the agreement or contract with the packer.

Row width—The distance in feet from the center of one row of plants to the center of an adjacent row.

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by planting period, if separate planting periods are provided for in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

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 tomatoes in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each tomato type designated in the Special Provisions. The price election you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(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 as follows:

(1) For California:

Stage	Percent of stage 3 (final stage) production guarantee	Length of time
1	50	From planting until first fruit set.
2	70	From first fruit set until harvested.
3	100	Harvested acreage.

(2) For all other states, except California:

Stage	Percent of stage 4 (final stage) production guarantee	Length of time
1	50	From planting until qualifying for stage 2.
2	75	From the earlier of stakes driven, one tie and pruning, or 30 days after planting until qualifying for stage 3.
3	90	From the earlier of the end of stage 2 or 60 days after planting until qualifying for stage 4.
4	100	From the earlier of 75 days after planting or the beginning of harvest.

(c) Any acreage of tomatoes damaged to the extent that producers in the area generally would not further care for the tomatoes will be deemed to have been destroyed even though you continue to care for the tomatoes. The production guarantee for such acreage will be the guarantee for the stage in which such damage occurs.

(d) Any production guarantees for cherry, roma, or plum type tomatoes will be specified in the Special Provisions.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§457.8), the contract change date is September 30 preceding the cancellation date for counties with a January 15 cancellation date and December 31 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:

CANCELLATION AND TERMINATION

State	Dates
California, Florida, Georgia, and South Carolina.	January 15.
All other states	March 15.

6. Report of Acreage

(a) In addition to the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report the row width.

(b) If spring and fall planting periods are allowed in the Special Provisions you must report all the information required by section 6 (Report of Acreage) of the Basic Provisions (§ 457.8) and these Crop Provisions by the acreage reporting date for each planting period.

7. Annual Premium

In lieu of provisions contained in the Basic Provisions (§ 457.8), for determining premium amounts, the annual premium is determined by multiplying the final stage production guarantee by the price election, by the premium rate, by the insured acreage, by your share at the time coverage begins, and by any applicable premium adjustment factor contained in the Special Provisions.

8. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the tomatoes in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are transplanted tomatoes that have been planted for harvest as fresh market tomatoes;

(c) That are planted within the spring or fall planting periods, as applicable, specified in the Special Provisions;

(d) That, on or before the acreage reporting date, are subject to any agreement in writing (packing contract) executed between you and a packer, whereby the packer agrees to accept and pack the production specified in the agreement, unless you control a packing facility or an exception exists in the Special Provisions; and

(e) That are not (unless allowed by the Special Provisions):

(1) Grown for direct marketing;

(2) Interplanted with another crop;

(3) Planted into an established grass or legume; or

(4) Cherry, roma, or plum type tomatoes.

9. Insurable Acreage

(a) In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(1) Any acreage of the insured crop damaged before the final planting date, to the extent that the majority of growers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant. Unavailability of plants will not be considered a valid reason for failure to replant.

(2) We do not insure any acreage of tomatoes:

(i) Grown by any person if the person had not previously:

(A) Grown fresh market tomatoes for commercial sales; or

(B) Participated in the management of a fresh market tomato farming operation, in at least one of the three previous years.

(ii) That does not meet the rotation requirements contained in the Special Provisions;

(iii) On which tomatoes, peppers, eggplants, or tobacco have been grown within the previous two years unless the soil was fumigated or nematicide was applied before planting the tomatoes, except that this limitation does not apply to a first planting in Pennsylvania or if otherwise specified in the Special Provisions; or

(b) In lieu of the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance from attaching if a crop has not been planted and harvested in at least one of the three previous calendar years, we will insure newly cleared land or former pasture land planted to fresh market tomatoes.

10. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(a) Coverage begins on each unit or part of a unit on the later of the date you submit your application or when the tomatoes are planted.

(b) Coverage will end on any insured acreage at the earliest of:

(1) Total destruction of the tomatoes;

(2) Discontinuance of harvest;

(3) The date harvest should have started on any acreage that was not harvested;

(4) 120 days after the date of transplanting or replanting;

(5) Completion of harvest;

(6) Final adjustment of a loss; or

(7) October 15 of the crop year in Delaware, Maryland, New Jersey, North Carolina, and Virginia; October 31 of the crop year in California; November 10 of the crop year in Florida, Georgia, and South Carolina; and September 20 of the crop year in all other States.

11. 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;

(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; or

(8) 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 that occurs or becomes evident after the tomatoes have been harvested.

12. Replanting Payment

(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 and the acreage to be replanted has sustained a loss in excess of 50 percent of the plant stand.

(b) The maximum amount of the replanting payment per acre will be:

(1) Seventy (70) cartons multiplied by your price election, multiplied by your insured share for all insured tomatoes except cherry, roma or plum types; and

(2) As specified in the Special Provisions for cherry, roma, or plum types.

(c) In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§457.8) that permit only one replanting payment each crop year, when both spring and fall planting periods are contained in the Special Provisions, you may be eligible for one replanting payment for acreage planted during each planting period within the crop year.

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 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) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee for the stage in which the damage occurred;

(2) Multiplying the results of section 13(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results of section 13(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 13(c)) by the respective price election;

(5) Totaling the results of section 13(b)(4);

(6) Subtracting this result of section 13(b)(5) from the results in section 13(b)(3); and

(7) Multiplying the result of section 13(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 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 production records that are acceptable to us;

(ii) Potential production lost due to uninsured causes;

(iii) Unharvested production of mature green and ripe tomatoes remaining after harvest has ended:

(A) With a classification size of 6 × 7 (2 9/32 inch minimum diameter) or larger and that would grade eighty-five percent (85%) or better U.S. No. 1 for types other than cherry, roma, or plum; or

(B) That grade in accordance with the requirements specified in the Special Provisions for cherry, roma or plum types.

(iv) Potential production on unharvested acreage and potential production on acreage when final harvest has not been completed;

(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 when 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:

(i) That is marketed, regardless of grade; and

(ii) That is unmarketed and:

(A) That grades eighty-five percent (85%) or better U.S. No. 1 with a classification size of 6×7 (2–8/32 inch minimum diameter) or larger for all types except cherry, roma, or plum; or

(B) That grade in accordance with the requirements specified in the Special Provisions for cherry, roma, or plum types.

(d) Only that amount of appraised production that exceeds the difference between the final stage guarantee and the stage guarantee applicable to the acreage will be production to count.

14. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 23631, May 1, 1997; 62 FR 33539, June 20, 1997, as amended at 62 FR 65171, Dec. 10, 1997; 63 FR 36157, July 2, 1998; 63 FR 50753, Sept. 23, 1998]

§ 457.129 Fresh market sweet corn crop insurance provisions.

The fresh market sweet corn crop insurance provisions for the 1999 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

Fresh Market Sweet Corn Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Container—The unit for measurement of the insured crop as specified in the Special Provisions.

Crop year—In lieu of the definition of ''crop year'' contained in section 1 (Definitions) of the Basic Provisions (§ 457.8), crop year is a period of time that begins on the first day of the earliest planting period for fall planted sweet corn and continues through the last day of the insurance period for spring planted sweet corn. The crop year is designated by the calendar year in which spring planted sweet corn is harvested.

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 sufficient to directly damage the crop.

Excess wind—Wind speed strong enough to prevent adequate pollination or cause lodging of stalks and prevent a normal harvest.

Freeze—The formation of ice in the cells of the plant or its fruit, caused by low air temperatures.

Harvest—The picking of sweet corn on the unit.

Marketable sweet corn—Sweet corn that meets the standards for grading U.S. No. 1 or better and will withstand normal handling and shipping.

Plant stand—The number of live plants per acre prior to the occurrence of an insurable cause of loss.

Planted acreage—In addition to the definition contained in the Basic Provisions, for each planting period, sweet corn seed must be planted in rows far enough apart to permit mechanical cultivation, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Planting period—The period of time designated in the actuarial documents in which fresh market sweet corn must be planted to be considered fall, winter, or spring-planted sweet corn.

Potential production—The number of containers of sweet corn that the sweet corn plants will or would have produced per acre by the end of the insurance period, assuming normal growing conditions and practices.

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, marketing windows, 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 (inability to obtain seed will not be considered when determining if it is practical to replant).

Sweet corn—A type of corn with kernels containing a high percentage of sugar that is adapted for human consumption as a vegetable.

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by planting period.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

3. Amounts of Insurance and Production Stages

(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 coverage level (and the corresponding amount of insurance designated in the actuarial documents for the applicable planting period and practice) for all the sweet corn in the county insured under this policy.

(b) The amount of insurance you choose for each planting period and practice must have the same percentage relationship to the maximum price offered by us for each planting period and practice. For example, if you choose 100 percent of the maximum amount of insurance for a specific planting period and practice, you must also choose 100 percent of the maximum amount of insurance for all other planting periods and practices.

(c) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§457.8), do not apply to fresh market sweet corn.

(d) The amounts of insurance are progressive by stages as follows:

Stage	Percent of the amount of insurance per acre that you selected	Length of time
1	65	From planting through the beginning of tasseling (which is when the tassel becomes visible above the whorl).
Final	100	From tasseling until the acreage is harvested.

(e) Any acreage of sweet corn damaged in the first stage to the extent that the majority of producers in the area would not normally further care for it, will be deemed to have been destroyed. The indemnity payable for such acreage will be based on the stage the plants had achieved when the damage occurred.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§457.8), the contract change date shown below is the date preceding the cancellation date:

State and county	Date
All Florida counties; and all Georgia counties for which the Special Provisions designate a fall planting period.	April 30.
All Georgia counties for which the Special Provisions do not designate a fall planting period; and all other States.	November 30.

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 and termination Dates
Florida; Atkinson, Baker, Berrien, Brantley, Camden, Colquitt, Cook, Early, Mitchell, and Ware Counties Georgia and all counties south thereof for which the Special Provisions designate a fall planting period.	July 31.
Alabama; South Carolina; and all Georgia Counties for which the Special Provisions do not designate a fall planting period.	February 15.
All other States	March 15.

6. Report of Acreage

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§457.8), you must report on or before the acreage reporting date contained in the Special Provisions for each planting period, all the acreage of sweet corn in the county insured under this policy in which you have a share.

7. Annual Premium

In lieu of the premium amount determinations contained in section 7 (Annual Premium) of the Basic Provisions (§457.8), the annual premium amount for each cultural practice (*e.g.*, fall-planted irrigated) is determined by multiplying the final stage amount of insurance per acre by the premium rate for the cultural practice as established in the Actuarial Table, by the insured acreage, by your share at the time coverage begins, and

by any applicable premium adjustment factors contained in the actuarial documents.

8. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the sweet corn in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That is:

(1) Planted to be harvested and sold as fresh market sweet corn;

(2) Planted within the planting periods designated in the actuarial documents;

(3) Grown under an irrigated practice, unless otherwise provided in the Special Provisions;

(4) Grown by a person who in at least one of the three previous crop years:

(i) Grew sweet corn for commercial sale; or

(ii) Participated in managing a sweet corn farming operation;

(c) That is not:

(1) Interplanted with another crop;

(2) Planted into an established grass or legume; or

(3) Grown for direct marketing.

9. Insurable Acreage

(a) In lieu of the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching if a crop has not been planted in at least one of the three previous crop years, we will insure newly cleared land or former pasture land planted to fresh market sweet corn.

(b) In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(1) You must replant any acreage of sweet corn damaged during the planting period in which initial planting took place whenever less than 75 percent of the plant stand remains: and

(i) It is practical to replant: and

(ii) If, at the time the crop was damaged, the final day of the planting period has not passed.

(2) Whenever sweet corn initially is planted during the fall or winter planting periods and the condition specified in section 9(b)(1)(ii) is not satisfied, you may elect:

(i) To replant such acreage and collect any replant payment due as specified in section 12. The initial planting period coverage will continue for such replanted acreage.

(ii) Not to replant such acreage and receive an indemnity based on the stage of growth the plants had attained at the time of damage. However, such an election will result in the acreage being uninsurable in the subsequent planting period.

10. 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 the date we accept your application, or when the sweet corn is planted in each planting period. Coverage ends at the earliest of:

(a) Total destruction of the sweet corn on the unit;

(b) Abandonment of the sweet corn on the unit;

(c) The date harvest should have started on the unit on any acreage which will not be harvested;

(d) Final adjustment of a loss on the unit;

(e) Final harvest; or

(f) 100 days after the date of planting or replanting.

11. 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) Excess rain;

(2) Excess wind;

(3) Fire;

(4) Freeze;

(5) Hail;

(6) Tornado; or

(7) Failure of the irrigation water supply, if caused by an insured cause of loss 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 any loss of production due to:

(1) Disease or insect infestation, unless no effective control measure exists for such disease or insect infestation; or

(2) Failure to market the sweet corn, unless such failure is due to actual physical damage caused by an insured cause of loss that occurs during the insurance period.

12. Replanting Payments

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment is allowed if, due to an insured cause of loss, more than 25 percent of the plant stand will not produce sweet corn and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of your actual cost of replanting or the result obtained by multiplying the per acre replanting payment amount contained in the Special Provisions by your insured share.

(c) In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), limiting a replanting payment to one each crop year, only one replanting payment will be made for acreage

planted during each planting period within the crop year.

13. Duties in the Event of Damage or Loss

In addition to the requirements contained in section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§457.8), if you intend to claim an indemnity on any unit you also must give us notice not later than 72 hours after the earliest of:

(a) The time you discontinue harvest of any acreage on the unit;

(b) The date harvest normally would start if any acreage on the unit will not be harvested; or

(c) The calendar date for the end of the insurance period.

14. 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 in each stage by the amount of insurance per acre for the final stage;

(2) Multiplying each result in section 14(b)(1) by the percentage for the applicable stage (see section 3(d));

(3) Total the results of section 14(b)(2);

(4) Subtracting either of the following values from the result of section 14(b)(3):

(i) For other than catastrophic risk protection coverage, the total value of production to be counted (see section 14(c)); or

(ii) For catastrophic risk protection coverage, the result of multiplying the total value of production to be counted (see section 14(c)) times:

(A) Sixty percent for the 1998 crop year; or

(B) Fifty-five percent for 1999 and subsequent crop years; and

(5) Multiplying the result of section 14(b)(4) by your share.

(c) The total value of production to count from all insurable acreage on the unit will include:

(1) Not less than the amount of insurance per acre for the stage for any acreage:

(i) That is abandoned;

(ii) Put to another use without our consent;

(iii) That is damaged solely by uninsured causes; or

(iv) For which you fail to provide acceptable production records;

(2) The value of the following appraised production will not be less than the dollar amount obtained by multiplying the number of containers of appraised sweet corn times the minimum value per container shown in the Special Provisions for the planting period:

(i) Unharvested production (unharvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count);

(ii) Production lost due to uninsured causes; and

(iii) 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 when you put the acreage to another use or 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 (If we require you to continue to care for the crop and you do not do so, the original appraisal will be used); or

(B) You may elect to continue to care for the crop, in which case the amount of production to count for the acreage will be the harvested production, or our reappraisal if the crop is not harvested.

(3) The total value of all harvested production from the insurable acreage will be the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each container of sweet corn (this result may not be less than the minimum value shown in the Special Provisions for any container of sweet corn), and multiplying this result by the number of containers of sweet corn harvested. Harvested mature sweet corn that is damaged or defective due to insurable causes and is not marketable, will not be counted as production to count.

15. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

16. Minimum Value Option

(a) The provisions of this option are continuous and will be attached to and made a part of your insurance policy, if:

(1) You elect the Minimum Value Option on your application, or on a form approved by us, on or before the sales closing date for the initial crop year in which you wish to insure fresh market sweet corn under this option, and pay the additional premium indicated in the actuarial documents for this optional coverage; and

(2) You have not elected coverage under the Catastrophic Risk Protection Endorsement.

(b) In lieu of the provisions contained in section 14(c)(3), the total value of harvested production will be determined as follows:

(1) For sold production, the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each container of sweet corn (this result may not be less than zero for any container of sweet corn), and multiplying this result by the number of containers of sweet corn sold; and

(2) For marketable production that is not sold, the dollar amount obtained by multiplying the number of containers of such sweet corn on the unit by the minimum value shown in the Special Provisions for the planting period (harvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production).

(c) 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 preceding the crop year for which the cancellation of this option is to be effective.

[62 FR 14783, Mar. 28, 1997; 62 FR 26205, May 13, 1997, as amended at 62 FR 65171, Dec. 10, 1997]

§ 457.130 Macadamia tree crop insurance provisions.

The macadamia tree crop insurance provisions for the 1999 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:

Macadamia Tree Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Age. The number of complete 12-month periods that have elapsed since the month the trees were set out or were grafted, whichever is later. Age determination will be made for each unit, or portion thereof, as of January 1 of each crop year.

Crop year. A period beginning with the date insurance attaches to the macadamia tree crop extending through December 31 of the same calendar year. The crop year is designated by the calendar year in which insurance attaches.

Destroyed. Trees damaged to the extent that we determine replacement, including grafts, is required.

Good farming practices. The cultural practices generally in use in the county for the crop to have normal growth and vigor, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the area.

Graft. The uniting of a macadamia shoot to an established macadamia tree rootstock for future production of macadamia nuts.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice. A method by which the normal growth and vigor of the insured trees is maintained by artificially applying adequate quantities of water during the growing season by appropriate systems and at the proper times.

Rootstock. The root and stem portion of a macadamia tree to which a macadamia shoot can be grafted.

2. Unit Division

(a) Sections 34(a) (1), (3), and (4) of the Basic Provisions are not applicable.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Unless otherwise allowed by written agreement, optional units may be established only if each optional unit:

(1) Contains at least 80 acres of insurable age macadamia trees; or

(2) Is located on non-contiguous land.

(c) You must have provided records, which can be independently verified, of acreage and age of trees for each unit for at least the last crop year.

3. Insurance Guarantees, Coverage Levels, and Dollar Amounts 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):

(1) You may select only one dollar amount of insurance for all the macadamia trees in the county in each age group contained in the actuarial table that are insured under this policy. The dollar amount of insurance you choose for each age group must have the same percentage relationship to the maximum dollar amount offered by us for each age group. For example, if you choose 100 percent of the maximum dollar amount of insurance for one age group, you must also choose 100 percent of the maximum dollar amount of insurance for all other age groups.

(2) If the stand is less than 90 percent, based on the original planting pattern, the dollar amount of insurance will be reduced 1 percent for each percent below 90 percent. For example, if the dollar amount of insurance you selected is $2,000 and the stand is 85 percent of the original stand, the dollar amount of insurance on which any indemnity will be based is $1,900 ($2,000 multiplied by 0.95).

(3) You must report, by the sales closing date contained in the Special Provisions, by type if applicable:

(i) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the dollar amount of insurance and the number of affected acres;

(ii) The number of trees on insurable and uninsurable acreage;

(iii) The month and year on which the trees were set out or grafted and the planting pattern;

(iv) For the first year of insurance following replacement, the month and year of replacement if more than 10 percent of the trees on any unit have been replaced in the previous five crop years; and

(v) For the first year of insurance for acreage interplanted with another perennial crop, and any time the planting pattern of such acreage is changed:

(A) The age of the interplanted crop, and type if applicable;

(B) The planting pattern; and

(C) Any other information that we request in order to establish your dollar amount of insurance.

We will reduce the dollar amount of insurance as necessary, based on our estimate of the effect of interplanted perennial crop, removal of trees, damage, change in practices, and any other circumstance that adversely affects the insured crop. If you fail to notify us of any circumstance that may reduce your dollar amount of insurance from previous levels, we will reduce your dollar amount of insurance as necessary at any time we become aware of the circumstance.

(b) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§457.8), do not apply to macadamia trees.

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 December 31.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§457.8), the crop insured will be all macadamia trees in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown for the production of macadamia nuts;

(c) For which the rootstock is adapted to the area;

(d) That are at least one year of age when the insurance period begins; and

(e) That, if the orchard is 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, macadamia trees 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 on January 1 of each crop year, except that for the year of application, if your application is received after December 22 but prior to January 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.

(2) The calendar date for the end of the insurance period for each crop year is December 31.

(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 macadamia trees on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due 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 orchard;

(3) Earthquake;

(4) Volcanic eruption;

(5) Wildlife, unless proper measures to control wildlife have not been taken; or

(6) Failure of irrigation water supply, if caused by an insured cause of loss 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 due to disease or insect infestation, unless adverse weather:

(1) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(2) Causes disease or insect infestation for which no effective control mechanism is available.

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), in case of damage or probable loss, if you intend to claim an indemnity on any unit, you must allow us to inspect all insured acreage before pruning or removing any damaged trees.

11. Settlement of Claim

(a) We will determine your loss on a unit basis.

(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 dollar amount of insurance per acre for each age group;

(2) Totaling the results in section 11(b)(1);

(3) Multiplying the total dollar amount of insurance obtained in section 11(b)(2) by the applicable percent of loss, which is determined as follows:

(i) Subtract the coverage level percent you elected from 100 percent;

(ii) Subtract the result obtained in section 11(b)(3)(i) from the actual percent of loss;

(iii) Divide the result in section 11(b)(3)(ii) by the coverage level you elected (For example, if you elected the 75 percent coverage level and your actual percent of loss was 70 percent, the percent of loss specified in section 11(b)(3) would be calculated as follows: 100% − 75% = 25%; 70% − 25% = 45%; 45% ÷ 75% = 60%.); and

(4) Multiply the result in section 11(b)(3) by your share.

(c) The total amount of loss will include both trees damaged and trees destroyed as follows:

(1) Any orchard with over 80 percent actual damage due to an insured cause of loss will be considered to be 100 percent damaged; and

(2) Any percent of damage by uninsured causes will not be included in the percent of loss.

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 35668, July 2, 1997, as amended at 62 FR 65172, Dec. 10, 1997]

§ 457.131 Macadamia nut crop insurance provisions.

The macadamia nut crop insurance provisions for the 2000 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:

Macadamia Nut Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Age. The number of complete 12-month periods that have elapsed since the month the trees were set out or were grafted, whichever is later. An age determination will be made for each unit, or portion thereof, as of January 1 of each crop year.

Crop year. A period beginning with the date insurance attaches to the macadamia nut crop and extending through the normal harvest time. The crop year is designated by the calendar year in which the insurance period ends.

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 orchard for the purpose of picking all or a portion of the crop.

Graft. The uniting of a macadamia shoot to an established macadamia tree rootstock for future production of macadamia nuts.

Harvest. Picking of mature macadamia nuts from the ground.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Pound. A unit of weight equal to 16 ounces avoirdupois.

Production guarantee (per acre). The number of wet, in-shell pounds determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

Rootstock. The root and stem portion of a macadamia tree to which a macadamia shoot can be grafted.

Wet in-shell. The weight of the macadamia nuts as they are removed from the orchard with the nut meats in the shells after removal of the husk but prior to being dried.

2. Unit Division

(a) Section 34(a)(1) of the Basic Provisions is not applicable.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Unless otherwise allowed by written agreement, optional units may be established only if each optional unit:

(1) Contains at least 80 acres of bearing macadamia trees; or

(2) 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 for all the macadamia nuts in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each macadamia nut type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(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 type if applicable:

(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 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 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.

(c) 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 orchard 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.

(d) Instead of reporting your macadamia nut 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 2001 crop year production report, you will provide your 1999 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 December 31.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§457.8), the crop insured will be all macadamia nuts in the

county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are grown on tree varieties that:

(1) Were commercially available when the trees were set out;

(2) Are adapted to the area; and

(3) Are grown on a rootstock that is adapted to the area.

(c) That are grown in an orchard that, if inspected, is considered acceptable by us;

(d) That are grown on trees that have reached at least the fifth growing season after being set out or grafted. However, we may agree in writing to insure acreage that has not reached this age if it has produced at least 200 pounds of (wet, in-shell) macadamia nuts per acre in a previous crop year; and

(e) That are produced from blooms that normally occur during the calendar year in which insurance attaches and that are normally harvested prior to the end of the insurance period.

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, macadamia nuts 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 on January 1 of each crop year, except that for the year of application, if your application is received after December 22 but prior to January 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.

(2) The calendar date for the end of the insurance period for each crop year is the second June 30th after insurance attaches.

(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 macadamia nuts on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due 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 orchard;

(3) Earthquake;

(4) Volcanic eruption;

(5) Wildlife, unless proper measures to control wildlife have not been taken; 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:

(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 macadamia nuts 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 or immediately if damage is discovered during harvest, so that we may inspect the damaged production. You must not destroy 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, we may consider all such production to be undamaged and include it 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 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) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results in section 11(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 11(c)) by the respective price election;

(5) Totaling the results in section 11(b)(4);

(6) Subtracting the results in section 11(b)(5) from the results in section 11(b)(3); and

(7) Multiplying the result in section 11(b)(6) by your share.

(c) The total production to count (wet, in-shell pounds) 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 acceptable production records;

(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) All harvested production from the insurable acreage.

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 35664, July 2, 1997, as amended at 62 FR 65172, Dec. 10, 1997]

§457.132 Cranberry crop insurance provisions.

The cranberry crop insurance provisions for the 1999 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

Cranberry Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Barrel—100 pounds of cranberries.

Harvest—Removal of the cranberries from the bog.

Market price—The cash price per barrel of cranberries offered by buyers in the area in which you normally market the cranberries.

2. Unit Division

Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are

not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

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 cranberries in the county insured under this policy.

(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):

(1) Any damage, removal of vines, 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 age of the vines; and

(3) Any other information that we request in order to establish your approved yield.

We will adjust the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the removal of vines, damage, change in practices, and any other circumstance that may affect the yield potential of the insured crop. If you fail to notify us of any circumstance that may affect your yields from previous levels, we will adjust 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 cranberries in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are grown for harvest as cranberries;

(c) That are grown in a bog that, if inspected, is considered acceptable by us; and

(d) That are grown on vines that have completed four growing seasons after the vines were set out, unless otherwise provided by the actuarial table or by written agreement.

7. 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 bog.

(2) The calendar date for the end of the insurance period for each crop year is November 20.

(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 cranberries on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due 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.

8. 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 bog;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption;

(6) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period; or

(7) 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 failure or breakdown and repair or replacement was not possible before damage occurred.

(b) In addition to the causes of loss excluded in section 12 (Cause 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; or

(2) Inability to market the cranberries for any reason other than actual physical damage from an insurable cause of loss 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.

9. 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):

(a) If you discover damage, or if you intend to claim an indemnity on any insured unit, you must give us notice of probable loss:

(1) At least 15 days before the beginning of any harvesting, or

(2) Immediately if probable loss is discovered after harvesting has begun.

(b) You must not sell or dispose of any damaged production until the earlier of 15 days from the date of notice of loss or when we give you written consent to do so.

(c) 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.

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 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 by its respective production guarantee;

(2) Multiplying the result of section 10(b)(1) by the price election;

(3) Multiplying the total production to be counted, (see section 10(c)) by the price election;

(4) Subtracting the total in section 10(b)(3) from the total in section 10(b)(2); and

(5) Multiplying the result in section 10(b)(4) by your share.

(c) The total production to count (in barrels) 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) Damaged solely by uninsured causes;

(C) For which you fail to provide acceptable production records; or

(D) Destroyed or put to another use without our consent;

(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 will use the appraised amount of production or defer the claim 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 to 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.

(3) Harvested production which, due to insurable causes, is determined not to meet the United States Standards for Fresh Cranberries if available, or would not meet those standards if properly handled, or does not meet the quality requirements of the receiving handler if the United States Standards for Fresh Cranberries, if not available, and such harvested production has a value less than 75 percent of the market price for cranberries meeting the minimum requirements will be adjusted by:

(i) Dividing the value per barrel of such cranberries by the market price per barrel for cranberries meeting the minimum requirements; and

(ii) Multiplying the result by the number of barrels of such cranberries.

11. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 5905, Feb. 10, 1997, as amended at 62 FR 65172, Dec. 10, 1997]

§ 457.133 Prune crop insurance provisions.

The Prune Crop Insurance Provisions for the 2001 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:

Prune Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

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.

Harvest. Picking of mature prunes from the trees or ground either by hand or machine.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Market price for standard prunes. The price per ton shown on the processor's settlement sheet for each size count of standard prunes.

Natural condition prunes. The condition of prunes in which they are normally delivered from a dehydrator or dry yard.

Prunes. Any type or variety of plums that is grown in the area for the production of prunes and that meets the requirements defined in the applicable Federal Marketing Agreement Dried Prune Order.

Standard prunes. Any natural condition prunes:

(a) That grade ''C'' or better in accordance with the United States Standards for Grades of Fresh Plums and Prunes; or

(b) That meet or exceed the grading standards in effect for the crop year if a Federal Marketing Agreement Dried Prune Order has been established for the area in which the insured crop is grown.

Substandard prunes. Any natural condition prunes failing to meet the applicable grading specifications for standard prunes.

Ton. Two thousand (2,000) pounds avoirdupois.

2. Unit Division

Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable. Instead 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 of the Basic Provisions:

(a) You may select only one price election for all the prunes 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 prune 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 100 percent of the maximum price election for one varietal group, you must also choose 100 percent of the maximum price election for all other varietal groups.

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by varietal group if applicable:

(1) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the expected yields 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 varietal group 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 interplanting the perennial crop; removal of trees; damage; a change in practices, and any other circumstance that may affect 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 at any time we become aware of the circumstance.

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election

if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31.

6. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all the prunes in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are grown for the production of natural condition prunes;

(c) That are grown on tree varieties that:

(1) Were commercially available when the trees were set out;

(2) Are adapted to the area;

(3) Are grown on rootstock that is adapted to the area; and

(4) Are irrigated (except where otherwise provided in the Special Provisions);

(d) That are grown in an orchard that, if inspected, is considered acceptable by us; and

(e) That are grown on trees that have reached at least the seventh growing season after being set out.

7. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance attaching to a crop planted with another crop, prunes interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the insurability requirements contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) Coverage begins for each crop year on March 1.

(2) The calendar date for the end of the insurance period for each crop year is:

(i) October 1 for California; or

(ii) October 15 for Oregon.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(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 prunes on or before the acreage reporting date for the crop year and if the acreage was insured by you the previous crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due 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.

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your prune policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

9. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, 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 undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption; or

(6) Failure of the irrigation water supply, if due to a cause specified in section 9(a)(1) through (5) that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, 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; or

(2) Inability to market the prunes 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 of the Basic Provisions, 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 or sold as fresh fruit. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing or is sold as fresh fruit production. 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 or sold as fresh fruit 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, or immediately if damage is discovered during harvest, so that we may inspect the damaged production.

(d) You must not destroy 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 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 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 result of 11(b)(1) by the respective price election for each varietal group, if applicable;

(3) Totaling the results of section 11(b)(2) if there is more than one varietal group;

(4) Multiplying the total production to count (see section 11(c)), of each varietal group if applicable, by its respective price election;

(5) Totaling the results of section 11(b)(4) if there is more than one varietal group;

(6) Subtracting the result of section 11(b)(4) from the result of section 11(b)(2) if there is only one varietal group or subtracting the result of section 11(b)(5) from the result of section 11(b)(3) if there is more than one varietal group; and

(7) Multiplying the result of section 11(b)(6) by your share.

For Example

You have a 100 percent share in 50 acres of varietal group A prunes in the unit, with a guarantee of 2.5 tons per acre and a price election of $630.00 per ton. You are only able to harvest 10.0 tons. Your indemnity would be calculated as follows:

(1) 50 acres × 2.5 tons = 125.0 ton guarantee;

(2) 125.0 tons × $ 630.00 price election = $78,750.00 value of guarantee;

(4) 10.0 tons × $630.00 price election = $6,300.00 value of production to count;

(6) $78,750.00 − $6,300.00 = $72,450.00 loss; and

(7) $72,450.00 × 100 percent = $72,450 indemnity payment.

You also have a 100 percent share in 50 acres of varietal group B prunes in the same unit, with a guarantee of 2.0 ton per acre and a price election of $550.00 per ton. You are only able to harvest 5.0 tons. Your total indemnity for both varietal groups A and B would be calculated as follows:

(1) 50 acres × 2.5 tons = 125.0 ton guarantee for varietal group A and 50.0 acres × 2.0 tons = 100.0 ton guarantee for varietal group B;

(2) 125.0 ton guarantee × $630.00 price election = $78,750.00 value of guarantee for varietal group A and 100.0 ton guarantee × $550.00 price election = $55,000.00 value guarantee for varietal group B;

(3) $78,750.00 + $55,000.00 = $133,750.00 total value guarantee;

(4) 10.0 tons × $630.00 price election = $6,300.00 value of production to count for varietal group A and 5.0 tons × $550.00 price election = $2,750.00 value of production to count for varietal group B;

(5) $6,300.00 + $2,750.00 = $9,050.00 total value of production to count;

(6) $133,750.00 − $9,050.00 = $124,700.00 loss; and

(7) $124,700.00 loss × 100 percent = $124,700 indemnity payment.

(c) The total production to count (in tons) from all insurable acreage on the unit will include all harvested and appraised production of natural condition prunes that grade

substandard or better and any production that is harvested and intended for use as fresh fruit. The total production to count 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 or sold as fresh fruit 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 acceptable production records;

(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 prune production harvested for fresh fruit will be converted to a dried prune weight basis by dividing the total amount (in tons) of fresh fruit production by 3.0.

(e) Any production of substandard prunes resulting from damage by insurable causes will be adjusted based on the average size count as indicated on the applicable Dried Fruit Association (DFA) Inspection Report and Certification Form. Any insurable damage will be adjusted by:

(1) Dividing the value per ton of such substandard prunes by the market price per ton for standard prunes (of the same size count); and

(2) Multiplying the result by the number of tons of such prunes.

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 58630, Oct. 30, 1997, as amended at 62 FR 65172, Dec. 10, 1997; 65 FR 47839, Aug. 4, 2000]

§457.134 Peanut crop insurance provisions.

The peanut crop insurance provisions for the 2005 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:

Peanut Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

1. Definitions

Approved yield. The yield calculated in accordance with 7 CFR part 400, subpart G, if required by section 3(c) of these provisions.

Average price per pound:

(1) The average CCC support price per pound, by type, for Segregation I peanuts and Segregation II and III peanuts eligible to be valued as quota peanuts; or

(2) The highest non-quota price election contained in the Special Provisions for all Segregation II and III peanuts not eligible to be valued as quota peanuts.

Average support price per pound. The average price per pound for each type of quota peanuts announced by the USDA under the peanut price support program.

CCC. Commodity Credit Corporation, a wholly owned government corporation within USDA.

County. In addition to the definition contained in the Basic Provisions, ''county'' also includes any land identified by a FSA farm serial number for such county but physically located in another county.

Effective poundage marketing quota. The number of pounds reported on the acreage report as eligible for the average support price per pound (including transfers of quota peanuts from one farm serial number to another farm serial number), not to exceed the Marketing Quota established by FSA for the farm serial number.

Farmers' stock peanuts. Peanuts customarily marketed by producers, produced in the United States, and which are not shelled, crushed, cleaned, or otherwise changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the condition in which peanuts are harvested.

Green peanuts. Peanuts that are harvested and marketed prior to maturity without drying or removal of moisture either by natural or artificial means.

Inspection certificate and sales memorandum. A USDA form that records the inspection grading results and marketing record for the net weight of peanuts delivered to a buyer.

Non-quota peanuts. Peanuts other than quota peanuts.

Planted acreage. In addition to the requirement in the definition in the Basic Provisions, peanuts must initially be planted in rows wide enough apart to permit mechanical cultivation. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Production guarantee (per acre). In addition to the definition of ''production guarantee (per acre)'' in the Basic Provisions, the production guarantee (per acre) is the number of pounds determined by multiplying the yield per acre contained in the actuarial documents or the approved yield multiplied by the coverage level percentage you elect.

Quota peanuts. Peanuts that are eligible to be valued at the average support price per pound.

Segregation I, II, or III. Grades designated and defined for peanuts by the Agricultural Marketing Service of USDA.

Value per pound. A price determined by USDA as shown on the USDA ''Inspection Certificate and Sales Memorandum'' or other value accepted by us.

2. [Reserved]

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) The price elections you choose for the quota and non-quota peanuts must have the same percentage relationship to the maximum price election offered by us for quota and non-quota peanuts. For example, if you choose 100 percent of the maximum quota peanut price election, you must also choose 100 percent of the maximum non-quota election.

(b) The maximum pounds that may be insured at the quota price election are the lesser of :

(1) The effective poundage marketing quota; or

(2) The insured acreage multiplied by the production guarantee. If the insured acres multiplied by the production guarantee exceeds the effective poundage marketing quota, the difference will be insured at the non-quota peanut price election.

(c) You may be required to file an annual production report to us, if required by the Special Provisions, to establish an approved yield in lieu of the yield published in the actuarial documents. If we require you to file an annual production report, you must do so in accordance with section 3(c) of the Basic Provisions.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

CANCELLATION AND TERMINATION

State and county	Dates
Jackson, Victoria, Golliad, Bee, Live Oak, McMullen, La Salle, and Dimmit 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 south and east thereof; and all other states.	February 28
New Mexico; Oklahoma; Virginia; and all other Texas counties	March 15

6. Report of Acreage

In addition to the requirements of section 6 of the Basic Provisions, you must report the effective poundage marketing quota, if any, that is applicable to each basic and optional unit for the current crop year.

7. Annual Premium

In lieu of the premium amount determinations contained in section 7(c) of the Basic Provisions, the annual premium will be determined by:

(a) Multiplying the insured effective poundage marketing quota by the price election for quota peanuts;

(b) Multiplying the insured pounds of non-quota peanuts by the price election for non-quota peanuts;

(c) Totaling the results of section 7(a) and 7(b);

(d) Multiplying the total of section 7(c) by the applicable premium rate stated in the actuarial documents;

(e) Multiplying the result of section 7(d) by your share at the time coverage begins; and

(f) Multiplying the result of section 7(e) by any premium adjustment percentages that may apply.

8. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all the peanuts in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are planted for the purpose of marketing as farmers' stock peanuts;

(c) That are a type of peanut designated in the Special Provisions as being insurable; and

(d) That are not (unless allowed by the Special Provisions or by written agreement):

(1) Planted for the purpose of harvesting as green peanuts;

(2) Interplanted with another crop; or

(3) Planted into an established grass or legume.

9. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(a) Any acreage of the insured crop damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that replanting is not practical.

(b) We will not insure any acreage:

(1) On which peanuts are grown using no-till or minimum tillage farming methods unless allowed by the Special Provisions or written agreement; or

(2) Which does not meet the rotation requirements, if any, contained in the Special Provisions.

10. Insurance Period

In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows:

(a) November 30 in all states except New Mexico, Oklahoma, and Texas; and

(b) December 31 in New Mexico, Oklahoma, and Texas.

(c) ''Removal of peanuts from the field'' replaces ''harvest'' as an event marking the end of the insurance period in section 11 of the Basic Provisions.

11. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during 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 due to a cause of loss contained in section 11(a) through (g) that occurs during the insurance period.

12. Replanting Payments

(a) In accordance with section 13 of the Basic Provisions:

(1) 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 of the production guarantee for the acreage and it is practical to replant.

(2) The maximum amount of the replanting payment for the unit will be the lesser of :

(i) Eighty dollars ($80.00) per acre multiplied by the number of acres replanted and multiplied by your insured share;

(ii) The actual cost of replanting per acre multiplied by the number of acres replanted and multiplied by your insured share; or

(iii) Twenty percent (20%) of the production guarantee multiplied by your quota price election, multiplied by the number of acres replanted, and multiplied by your insured share.

(b) When peanuts are 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. The premium amount will not be reduced.

13. Duties in the Event of Damage or Loss

In accordance with the requirements of section 14 of the Basic Provisions, the representative samples of the unharvested crop that we may require must be at least 10 feet wide and extend the entire length of each field in the unit. If you intend to put the acreage to another use or not harvest the crop, the samples must not be harvested or destroyed until our inspection.

14. 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; and

(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) When settling your claim, the effective poundage marketing quota, if any, for each unit will be limited to the lesser of:

(1) The amount of the effective poundage marketing quota reported on the acreage report;

(2) The amount of the FSA effective poundage marketing quota; or

(3) The amount determined at the final settlement of your claim.

(c) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for the unit by the production guarantee per acre, by type if applicable;

(2) Subtracting the insured effective poundage marketing quota from the result of section 14(c)(1) to determine the amount of insured non-quota peanuts;

(3) Multiplying the insured effective poundage marketing quota and the result of section 14(c)(2) by the respective price election by type, if applicable, for quota and non-quota peanuts, respectively;

(4) Totaling the results of section 14(c)(3) (This amount will be the same as (3) if there is only one type);

(5) Multiply the production to count for quota and non-quota peanuts (see section 14(d)), for each type if applicable, by the respective price elections;

(6) Totaling the results of section 14(c)(5) (This amount will be the same as (5) if there is only one type);

(7) Subtracting the result of section 14(c)(6) from section 14(c)(4); and

(8) Multiplying the result in section 14(b)(7) and section 14(b)(8) by your share.

For example:

You have 100 percent share in 25 acres of Valencia peanuts in the unit, with a 2000 pounds per acre guarantee, an effective poundage marketing quota of 40,000 pounds, and a price election of $0.34 per pound for quota and $0.15 per pounds for non-quota. You are able to harvest 43,000 pounds in which 40,000 pounds are quota segregation I and 3,000 pounds are non-quota segregation II and III due to quality adjustment. Your indemnity would be calculated as follows:

(1) 25 acres × 2,000 pounds per acre = 50,000 pounds guarantee;

(2) 50,000 pounds guarantee − 40,000 pounds of effective marketing quota = 10,000 pounds of non-quota guarantee;

(3) 40,000 pounds × $.34 price election for quota = $13,600.00 value of guarantee; 10,000 pounds × $.15 price election for non-quota = $1,500.00 value of guarantee;

(4) $13,600.00 + $1,500.00 = $15,100.00 total of value of guarantee;

(5) 40,000 pounds of quota production to count × .34 = $13,600.00 quota value of production to count;

3,000 pounds of non-quota production to count × .15 = $450.00 non-quota value of production to count;

(6) $13,600.00 + $450.00 = $14,050.00 total value of production to count;

(8) $15,100.00 total value guarantee − $14,050.00 total value of production to count = $1,050.00 loss; and

(9) $1,050.00 value of loss × 100 percent = $1,050.00 indemnity payment.

(d) The total production to count (in pounds) from all insurable acreage on the unit will include all appraised and harvested production.

(e) All appraised production will include:

(1) Not less than the production guarantee for acreage:

(i) That is abandoned;

(ii) Put to another use without our consent;

(iii) Damaged solely by uninsured causes; or

(iv) For which you fail to provide production records that are acceptable to us.

(2) Production lost due to uninsured causes;

(3) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 14(f)); and

(4) 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 when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(i) 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 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

(ii) 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

(5) All harvested production from the insurable acreage.

(f) Mature peanut production that is damaged by insurable causes and for which the value per pound is less than the average support price per pound for the type will be adjusted by:

(1) Dividing the value per pound for the insured type of peanuts by the applicable average price per pound; and

(2) Multiplying this result by the number of pounds of such production.

(g) To enable us to determine the net weight and quality of production of any peanuts for which an ''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.

NOTE: In accordance with the Federal Crop Insurance Act, in the event of a crop loss, policyholders with the Catastrophic Risk Protection level of coverage must elect to either receive benefits under these Crop Provisions or if applicable, the Commodity Credit Corporation Quota Loan Pool Regulations.)

[63 FR 31335, June 9, 1998; 63 FR 52134, Sept. 30, 1998, as amended at 64 FR 33378, June 23, 1999; 69 FR 63043, Oct. 29, 2004]

§457.135 Onion crop insurance provisions.

The onion crop insurance provisions for the 2000 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:

Onion Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2) etc.

1. Definitions

Damaged onion production. Storage type onions that do not grade U.S. No. 1 or do not satisfy any other standards that may be contained in the Special Provisions; or non-storage type onions which do not satisfy standards contained in any applicable marketing order or other standards that may be contained in the Special Provisions.

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 harvesting all or a portion of the crop.

Direct seeded. Placing onion seed by machine or by hand at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

Harvest. Removal of the onions from the field after topping and lifting or digging.

Hundredweight. 100 pounds avoirdupois.

Lifting or digging. A pre-harvest process in which the onion roots are severed from the soil and the onion bulbs laid on the surface of the soil for drying in the field.

Non-storage onions. Generally of a Bermuda, Granex, or Grano variety, or hybrids developed from these varieties, that are harvested as a bulb and dried only a short time, and consequently have a higher moisture content. They are thinner skinned, contain a higher sugar content, and are generally milder in flavor than storage onions. Due to a higher moisture and sugar content, they are subject to deterioration both on the surface and internally if not used shortly after harvest.

Onion production. Onions of recoverable size and condition, with excess dirt and foliage material removed and that are not considered damaged onion production.

Planted acreage—In addition to the definition contained in the Basic Provisions, onions must be planted in rows.

Production Guarantee (per acre):

(a) First stage production guarantee—Thirty-five percent (35%) of the final stage production guarantee for direct seeded storage and non-storage onions and 45 percent of the final stage production guarantee for transplanted storage and non-storage onions, unless otherwise specified in the Special Provisions.

(b) Second stage production guarantee—Seventy percent (70%) of the final stage production guarantee for direct seeded storage onions and 60 percent of the final stage production guarantee for transplanted storage onions and all non-storage onions, unless otherwise specified in the Special Provisions.

(c) Final stage production guarantee—The quantity of onions (in hundredweight) determined by multiplying the approved yield per acre by the coverage level percentage you elect.

Storage onions. Onions other than a Bermuda, Granex, or Grano variety, or hybrids developed from these varieties that are harvested as a bulb and dried to a lower moisture content, are firmer, have more outer layers of paper-like skin, and are darker in

color than non-storage onions. They are generally more pungent, have a lower sugar content, and can normally be stored for several months under proper conditions prior to use without deterioration.

Topping. A pre-harvest process to initiate curing, in which onion foliage is removed or bent over.

Transplanted. Placing of the onion plant or bulb, by machine or by hand at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

Type. A category of onions as identified in the Special Provisions.

2. Unit Division

2. Unit Division.

In addition to, or instead of, establishing optional units as provided in section 34 of the Basic Provisions, optional units may be established by type, if the type is designated in the Special Provisions.

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 onions in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each onion type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) Your production guarantee progresses, in stages, to the final stage production guarantee. Stages will be determined on an acre basis and at least 75% of the plants on such acreage must be at the same stage to qualify for the applicable stage guarantee. The stages are as follows:

(1) First stage extends:

(i) For direct seeded storage and non-storage onions, from planting until the emergence of the fourth leaf; and

(ii) For transplanted storage and non-storage onions, from transplanting of onion plants or sets through the 30th day after transplanting.

(2) Second stage extends:

(i) For direct seeded storage and non-storage onions, from the emergence of the fourth leaf; and

(ii) For transplanted storage and non-storage onions, from the 31st day after transplanting.

(3) Final stage extends from the completion of topping and lifting or digging on the acreage until the end of the insurance period, and is the quantity of onions (in hundredweight) determined by multiplying the approved yield per acre by the coverage level percentage elected.

(c) Any acreage of onions damaged in the first or second stage, to the extent that producers in the area would not normally further care for the onions, will be deemed to have been destroyed even though you may continue to care for the onions. The production guarantee for such acreage will not exceed the production guarantee for the stage in which the damage occurred.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is June 30 preceding the cancellation date for counties with an 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 of the Basic Provisions, the cancellation and termination dates are:

State & County	Termination Date	Cancellation Date
All Georgia Counties; Kinney,.		
Uvalde, Medina, Bexar, Wilson,.		
Karnes, Bee, and San Patrico Counties,.		
Texas, and all Texas Counties lying south thereof.	August 31	August 31.
Umatilla County, Oregon; and Walla.		
Walla County, Washington.	August 31	September 30.
All other states and counties.	February 1	February 1.

6. Annual Premium

In lieu of the provisions of section 7(c) (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 documents.

7. Insured Crop

In accordance with section 8 (Insured Crop of the Basic Provisions (§457.8), the crop insured will be all the storage and non-storage onions (excluding green (bunch) or seed onions, chives, garlic, leeks, and scallions) in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are planted for harvest as either storage onions or non-storage onions;

(c) That are not (unless allowed by the Special Provisions or by written agreement):

(1) Interplanted with another crop, unless the onions are interplanted with a windbreak crop and the windbreak crop is destroyed within 70 days after completion of seeding or transplanting; or

(2) Planted into an established grass or legume.

8. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§457.8), we will not insure any acreage of the insured crop that:

(a) Was planted the previous year to storage or non-storage onions, green (bunch) onions, seed onions, chives, garlic, leeks, shallots, or scallions unless different rotation requirements are specified in the Special Provisions or we agree in writing to insure such acreage; or

(b) Is damaged before the final planting date to the extent that the majority of producers in the area would normally not further care for the crop and is not replanted, unless we agree that it is not practical to replant.

9. Insurance Period

(a) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§457.8), the acreage must be planted on or before the final planting date designated in the Special Provisions except as allowed in section 14(c).

(b) The insurance period ends at the earliest of:

(1) The calendar date for the end of the insurance period as follows:

(i) June 1 for Vidalia, and any other non-storage onions planted in the State of Georgia;

(ii) July 15 for 1015 Super Sweets, and any other non-storage onions in the State of Texas;

(iii) July 31 for Walla Walla Sweets, and any other non-storage onions in the states of Oregon and Washington;

(iv) August 31 for all non-storage onions in any other state; and

(v) October 15 for all storage onions; or

(2) The following event for each unit or portion of a unit:

(i) Removal of the onions from the field; or

(ii) Fourteen days after lifting or digging.

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) Adverse weather conditions;

(2) Fire;

(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, unless control measures have not been taken;

(6) Earthquake;

(7) Volcanic eruption; or

(8) 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 not insured against as listed in section 12 (Causes of Loss) of the Basic Provisions (§457.8), we will not insure against any loss of production due to damage that occurs or becomes evident after the end of the insurance period, including, but not limited to, loss of production that occurs after onions have been placed in storage.

11. Replanting Payment

(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 of the final stage production guarantee for the acreage and we determine that it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be your actual cost for replanting, but will not exceed the lesser of:

(1) 7 percent of the final stage production guarantee multiplied by your price election for the type originally planted and by your insured share; or

(2) 18 hundredweight multiplied by your price election for the type originally planted and by your insured share.

(c) When onions are 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. The premium amount will not be reduced.

12. 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 Basic Provisions (§457.8), any representative samples of the unharvested crop that may be required 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.

(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 that is not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

13. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide production records:

(1) For any optional units, we will combine all optional units for which acceptable 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) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result of section 13(b)(1) by the respective price election;

(3) Totaling the results in section 13(b)(2);

(4) Multiplying the total production to be counted (see section 13(c)) by the respective price elections you chose;

(5) Totaling the results of section 13(b)(4);

(6) Subtracting the result in section 13(b)(5) from the result in 13(b)(3); and

(7) Multiplying the result in section 13(b)(6) by your share.

(c) The total production (in hundredweight) 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) That is direct marketed to consumers if you fail to meet the requirements contained in section 12;

(C) Put to another use without our consent;

(D) That is damaged solely by uninsured causes; or

(E) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested onion production (mature unharvested production may be adjusted based on the percent of damaged onion production in accordance with section 13(d));

(iv) The appraised production that exceeds the difference between the first or second stage (as applicable) and the final stage production guarantee for acreage that does not qualify for the final stage guarantee, if such acreage is not subject to section 13(c)(1) (i) and (ii); 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.

(vi) 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 onion production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or 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 onion production, or our reappraisal if additional damage occurs and the crop is not harvested.

(2) All harvested onion production from the insurable acreage.

(d) If the damage to harvested or unharvested onion production exceeds the percentage shown in the Special Provisions for the type, no production will be counted for that unit or portion of a unit unless such damaged onion production from that acreage is sold. If sold, the hundredweight of production to be counted will be adjusted by dividing the price received for the damaged onion production by the price election and multiplying the resulting factor times the hundredweight sold.

(e) The extent of any damaged onion production must be determined not later than the time onions are placed in storage if the production is stored prior to sale, or the date the onions are delivered to a packer, processor, or other handler if production is not stored.

14. Prevented Planting

Your prevented planting coverage will be 45 percent of your production guarantee for

timely planted acreage. Additional prevented planting coverage levels are not available for onions.

[62 FR 28613, May 27, 1997, as amended at 62 FR 65173, Dec. 10, 1997; 64 FR 33385, June 23, 1999]

§457.136 Guaranteed tobacco crop insurance provisions

The Guaranteed Tobacco Crop Insurance Provisions for the 1999 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:

Guaranteed Tobacco Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Adequate stand. A population of live plants per unit of acreage that can be expected to produce at least your production guarantee.

Approved yield. The yield calculated in accordance with 7 CFR part 400, subpart G, if required by section 3(b) of these provisions.

Average value. For appraised production, the estimated value of all such production divided by the appraised pounds. For harvested production, the total value of such production divided by the harvested pounds.

Basic unit. In lieu of the definition in the Basic Provisions, a basic unit is all insurable acreage of an insurable type of tobacco in the county in which you have a share on the date of planting for the crop year and that is identified by a single FSA farm serial number at the time insurance first attaches under these provisions for the crop year.

Carryover tobacco. Any tobacco produced on the FSA farm serial number in previous years that remained unsold at the end of the most recent marketing year.

Discount variety. Tobacco defined as such under the provisions of the United States Department of Agriculture tobacco price support program.

Fair market value. The current year's tobacco season average market price for the applicable type of tobacco obtained from the average sale of tobacco through a market other than an auction warehouse.

Harvest. Cutting or priming and removing all insured tobacco from the field in which it was grown.

Hydroponic plants. Seedlings grown in liquid nutrient solutions.

Late planting period. In lieu of the definition in section 1 of the Basic Provisions, the period that begins the day after the final planting date for the insured crop and ends 15 days after the final planting date, unless otherwise specified in the Special Provisions.

Market price.

(a) For types 11, 12, 13, 14, 21, 22, 23, 31, 35, 36, 37, 42, 44, 54, and 55:

(1) The support price per pound for the insured type of tobacco as announced by the USDA for its tobacco price support program; or

(2) The current year's season average market price, when available; if not available because the insured type of tobacco has not been marketed in the area, the previous year's season average market price for the applicable insured type tobacco grown in the area for any crop year a tobacco price support program is not in effect.

(b) For types 32, 41, 51, 52, and 61, the current year's season average market price, when available; if not available because the insured type of tobacco has not been marketed in the area, the previous year's season average market price for the applicable insured type of tobacco grown in the area.

Planted acreage. Land in which tobacco seedlings, including hydroponic plants, have been transplanted by hand or machine from the tobacco bed to the field.

Pound. Sixteen ounces avoirdupois.

Priming. A method of harvesting tobacco by which each leaf is severed from the stalk as it matures.

Production guarantee (per acre). Either the number of pounds of tobacco for the tobacco type and classification shown on the county actuarial table, or the approved yield as provided in the Special Provisions, multiplied by the coverage level percentage you elect.

Replanting. In lieu of the definition in section 1 of the Basic Provisions, performing the cultural practices necessary to replace the tobacco plant, and then replacing the tobacco plant in the insured acreage with the expectation of producing at least the guarantee.

Season average market price. The simple average price paid by buyers for a tobacco type for all days sales occur at public markets during the tobacco sales season in the area in which the farm is located.

Support price. The average price per pound for the type of tobacco as announced by the USDA under its tobacco price support program, or, if there is no such program, as announced by FCIC.

Tobacco bed. An area protected from adverse weather in which tobacco seeds are

sown and seedlings are grown until transplanted into the tobacco field by hand or machine.

2. Unit Division

A unit will be determined in accordance with the definition of basic unit contained in section 1 of these Crop Provisions. The provision in the Basic Provisions regarding optional units are not applicable, unless specified by the Special Provisions.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) You must select only one price election and coverage level for each guaranteed tobacco type designated in the Special Provisions that you elect to insure.

(b) A production report, if required by the Special Provisions, must be filed in accordance with section 3(c) of the Basic Provisions.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage

In addition to the requirements of section 6 of the Basic Provisions, you must report any carryover tobacco from previous years on the acreage report.

7. Insured Crop

In accordance with section 8 of the Basic Provisions, the insured crop will be any of the tobacco types designated in the Special Provisions, in which you have a share, that you elect to insure, and for which a premium rate is provided by the actuarial documents.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage under these crop provisions that is:

(a) Planted to a discount variety;

(b) Planted to a tobacco type for which no premium rate is provided by the actuarial documents;

(c) Planted in any manner other than as provided in the definition of ''planted acreage'' in section 1 of these Crop Provisions, unless otherwise provided by the Special Provisions or by written agreement; or

(d) Damaged before the final planting date to the extent that most producers of tobacco acreage with similar characteristics in the area would normally not further care for the crop, unless such crop is replanted or we agree that replanting is not practical.

9. Insurance Period

In accordance with the provisions of section 11 of the Basic Provisions, insurance ceases at the earliest of:

(a) Total destruction of the tobacco on the unit;

(b) Weighing-in at the tobacco warehouse;

(c) Removal of the tobacco from the field where grown except for curing, grading, packing, or immediate delivery to the tobacco warehouse; or

(d) The calendar date for the end of the insurance period, which is:

(i) Types 11 and 12—November 30;

(ii) Type 13—October 31;

(iii) Type 14—October 15;

(iv) Types 31 and 36—February 28;

(v) Types 21, 35 and 37—March 15;

(vi) Types 22 and 23—April 15;

(vii) Type 32—May 15;

(viii) All other types—April 30.

10. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during 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 a peril specified in section 10(a) through (g) that occurs during the insurance period.

11. Duties in the Event of Damage or Loss

(a) In accordance with the requirements of section 14 of the Basic Provisions, any representative samples we may require of each unharvested tobacco type must be at least 5 feet wide (at least two rows), and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until after our inspection.

(b) If tobacco types 11, 12, 13, or 14 are insured and you have filed a notice of damage, you also must leave all tobacco stalks and stubble intact for our inspection. The stalks and stubble must not be destroyed until we give you written consent to do so or until 30 days after the end of the insurance period, whichever is earlier.

12. 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 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) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result in section 12(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results of section 12(b)(2) if there are more than one type;

(4) Multiplying the total production to count (see section 12(c)), for each type if applicable, by its respective price election;

(5) Totaling the results of section 12(b)(4), if there are more than one type;

(6) Subtracting the results of section 12(b)(4) from the results of section 12(b)(2) if there is only one type or subtracting the results of section 12(b)(5) from the result of section 12(b)(3) if there are more than one type; and

(7) Multiplying the result of section 12(b)(6) by your share.

For example:

You have 100 percent share in 1 acre of type 35 (dark air cured) guaranteed tobacco in the unit, with a 2,000 pounds per acre guarantee and a price election of $2.00 per pound. You are only able to harvest 500 pounds. Your indemnity would be calculated as follows:

(1) 1.0 acre × 2,000 pounds = 2,000 pounds guarantee;

(2) 2,000 pounds × $2.00 price election = $4,000.00 value of guarantee;

(4) 500 pounds × $2.00 price election = $1,000.00 value of production to count;

(6) $4,000.00 − $1,000.00 = $3,000.00 loss; and

(7) $3,000 × 100 percent = $3,000 indemnity payment.

(c) The total production to count (pounds of appraised or harvested production multiplied by the applicable price) for all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for the unit for any acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes;

(D) For which you fail to provide production records, if required by the Special Provisions, that are acceptable to us; or

(E) Of types 11, 12, 13, or 14 when the stalks and stubble have been destroyed without our consent;

(ii) Production lost due to uninsured causes.

(iii) Potential production on insured acreage that you intend to put to another use or abandon with our consent, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when 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 value of production to count for such acreage will be the number of pounds harvested or appraised production multiplied by the support price taken from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or 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.

(d) Mature tobacco production that is damaged by insurable causes will be adjusted for quality based on the USDA Official Standard Grades for the insured type if it has an average value less than the market price, as follows:

(1) Divide the average value of the damaged appraised and/or harvested production by the market price;

(2) Multiply the result in section 12(d)(1) (not to exceed 1.0) by the number of pounds of damaged appraised and/or harvested tobacco; and

(3) Multiply the product by your price election.

If no market price has been established for the grade of the damaged tobacco, a market price will be imputed by reducing the lowest available market price by 20 percent for each grade that the production falls below the grade for which such lowest market price is available.

(e) 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. Failure to provide us the opportunity to inspect such tobacco may result in rejection of any claim for indemnity.

(f) If we consider the best offer you receive for any such tobacco to be inadequate, we may obtain additional offers on your behalf.

(g) Once we agree that any carryover or current year's tobacco has no market value due to insured causes, you must destroy it and it will not be considered production to count. If you refuse to destroy such tobacco, we will include it as production to count and value it at the support price.

13. Late Planting

In lieu of late planting provisions in the Basic Provisions regarding acreage initially planted after the final planting date, insurance will be provided for acreage planted to the insured crop after the final planting date as follows:

(a) The production guarantee (per acre) for each type planted during the late planting period will be reduced by:

(1) One percent (1%) for the 1st through the 10th day; and

(2) Two percent (2%) for the 11th through the 15th day;

(b) The premium amount for insurable acreage planted to the insured crop after the final planting date 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 acreage planted after the final planting date 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).

14. Prevented Planting

The prevented planting provisions in the Basic Provisions are not applicable to guaranteed tobacco.

[63 FR 34552, June 25, 1998]

§ 457.137 Green pea crop insurance provisions.

The Green Pea Crop Insurance Provisions for the 1998 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

Green Pea Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Base contract price. The price stipulated in the processor contract for the tenderometer reading, grade factor, or sieve size that is designated in the Special Provisions, if applicable, without regard to discounts or incentives that may apply.

Bypassed acreage. Land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

Combining (*vining*). Separating pods from the vines and, in the case of shell peas, separating the peas from the pod for delivery to the processor.

Dry peas. Green peas that have matured to the dry form for use as food, feed, or seed.

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 required by the green pea processor contract with the processing company, and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Green peas. Shell type and pod type peas that are grown under a processor contract to be canned or frozen and sold for human consumption.

Harvest. Combining (vining) of the peas.

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.

Peas. Green or dry peas.

Planted acreage—In addition to the definition contained in the Basic Provisions, peas must initially be placed 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.

Pod type. Green peas genetically developed to be eaten without shelling (e.g., snap peas, snow peas, and Chinese peas).

Practical to replant. In lieu of the definition of ''practical to replant'' contained in section 1 of the Basic Provisions, 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 unless the replanted acreage can produce at least 75 percent of the approved yield, and the processor agrees in writing

that it will accept the production from the replanted acreage.

Price election. In lieu of the definition of ''Price election'' contained in section 1 of the Basic Provisions, price election is defined as the price per pound stated in the processor contract (contracted price) for the tenderometer reading, grade factor, or sieve size contained in the Special Provisions.

Processor. Any business enterprise regularly engaged in canning or freezing green peas for human consumption, that possesses all licenses and permits for processing green peas 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 contracted green peas within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow green peas, and to deliver the green pea production to the processor;

(b) The processor's commitment to purchase all the production stated in the processor contract; and

(c) A base contract price.

Multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract unless the contracts are for different types of green peas.

Production guarantee (per acre). The number of pounds determined by multiplying the approved actual production history yield per acre by the coverage level percentage you elect. For shell type peas, the weight will be determined after shelling.

Shell type. Green peas genetically developed to be shelled prior to eating, canning or freezing.

2. Unit Division

(a) For any processor contract that stipulates the amount of production to be delivered:

(1) In lieu of the definition contained in the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor;

(i) There will be no more than one basic unit for all production contracted with each processor contract;

(ii) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(2) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may only be established based on shell type and pod type green peas if the shell type acreage does not continue into the pod type acreage in the same rows or planting pattern.

(b) For any processor contract that stipulates the number of acres to be planted, in addition to or instead of, establishing optional units by section, section equivalent or FSA farm serial number, or irrigated and non-irrigated acreage, optional units may be established based on shell type and pod type green peas if the shell type acreage does not continue into the pod type acreage in the same rows or planting pattern.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for all the green peas in the county insured under this policy unless the Special Provisions provide different price elections by type. The percentage of the maximum price election you choose for one type will be applicable to all other types insured under this policy.

(b) The appraised production from bypassed acreage that could have been accepted by the processor will be included when determining your approved yield.

(c) Acreage that is bypassed because it was damaged by an insurable cause of loss will be considered to have a zero yield when determining your approved yield.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

CANCELLATION AND TERMINATION

State	Dates
Delaware and Maryland	Feb. 15.
All other states	Mar. 15.

6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the shell type and pod type green peas in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are grown under, and in accordance with, the requirements of a processor contract executed on or before the acreage reporting date and are not excluded from the processor contract at any time during the crop year; and

(3) 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 as a nurse crop.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the green peas are grown, you are at risk of loss, and the processor contract provides for delivery of green peas under specified conditions and at a stipulated base contract price.

(c) A commercial green pea producer who is also a processor may establish an insurable interest if the following requirements are met:

(1) The producer must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the processor must execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a processor contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure any acreage that does not meet the rotation requirements, if applicable, contained in the Special Provisions.

9. Insurance Period

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases at the earlier of:

(a) The date the green peas:

(1) Were destroyed;

(2) Should have been harvested but were not harvested;

(3) Were abandoned; or

(4) Were harvested;

(b) The date you harvest sufficient production to fulfill your processor contract if the processor contract stipulates a specific amount of production to be delivered;

(c) Final adjustment of a loss; or

(d) September 15 of the calendar year in which the insured green peas would normally be harvested; or

(e) September 30 of the calendar year in which the insured peas would normally be harvested if you provide notice to us that the insured crop will be harvested as dry peas (see section 11(d)).

10. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions:

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions, including:

(i) Excessive moisture that prevents harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures that cause an unexpected number of acres over a large producing area to be ready for harvest at the same time, affecting the timely harvest of a large number of such acres or the processing of such production is beyond the capacity of the processor, either of which causes the acreage to be bypassed.

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease but only on acreage not planted to peas the previous crop year. (In certain instances, contained in the Special Provisions or in a written agreement, acreage planted to peas the previous year may be covered. Damage due to insufficient or improper application of disease control measures is not covered);

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss contained in section 10(a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we will not insure any loss of production due to:

(1) Bypassed acreage because of:

(i) The breakdown or non-operation of equipment or facilities; or

(ii) The availability of a crop insurance payment. We may deny any indemnity immediately in such circumstance or, if an indemnity has been paid, require you to repay it to us with interest at any time acreage was bypassed due to the availability of a crop insurance payment or;

(2) Your failure to follow the requirements contained in the processor contract.

11. Duties in the Event of Damage or Loss

In addition to the notices required by section 14 of the Basic Provisions, you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the green peas on the unit; or

(2) Discontinuance of harvest on a unit on which unharvested production remains.

(b) Within 3 days after the date harvest should have started on any acreage that will not be harvested unless we have previously released the acreage. You must also provide acceptable documentation of the reason the acreage was bypassed. Failure to provide such documentation will result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested and you wish to destroy the crop, 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 each unit. The samples must not be destroyed until the earlier of our inspection or 15 days after notice is given to us;

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during the 15 day period or during harvest, so that we may inspect any damaged production. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You are not required to delay harvest; and

(d) Prior to the time the green peas would normally be harvested if you intend to harvest the green peas as dry peas.

12. 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) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result of section 12(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results of section 12(b)(2) if there are more than one type;

(4) Multiplying the total production to count (see section 12(c)), for each type if applicable, by its respective price election;

(5) Totaling the results of section 12(b)(4) if there are more than one type;

(6) Subtracting the results of section 12(b)(4) from the results of section 12(b)(2) if there is only one type or subtracting the results of section 12(b)(5) from the result of section 12(b)(3) if there are more than one type; and

(7) Multiplying the result of section 12(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of shell type green peas in the unit, with a guarantee of 4,000 pounds per acre and a price election of $0.09 per pound. You are only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000 pounds guarantee;

(2) 400,000 pounds × $0.09 price election = $36,000.00 value of guarantee;

(4) 200,000 pounds × $0.09 price election = $18,000.00 value of production to count;

(6) $36,000.00 − $18,000.00 = $18,000.00 loss; and

(7) $18,000.00 × 100 percent = $18,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of pod type green peas in the same unit, with a guarantee of 5,000 pounds per acre and a price election of $0.13 per pound. You are only able to harvest 450,000 pounds. Your total indemnity for both shell type and pod type green peas would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000 pounds guarantee for the shell type, and 100 acres × 5,000 pounds = 500,000 pounds guarantee for the pod type;

(2) 400,000 pounds guarantee × $0.09 price election = $36,000.00 value of guarantee for the shell type, and 500,000 pounds guarantee × $0.13 price election = $65,000.00 value of guarantee for the pod type;

(3) $36,000.00 + $65,000.00 = $101,000.00 total value of guarantee;

(4) 200,000 pounds × $0.09 price election = $18,000.00 value of production to count for the shell type, and

4450,000 pounds × $0.13 = $58,500.00 value of production to count for the pod type;

(5) $18,000.00 + $58,500.00 = $76,500.00 total value of production to count;

(6) $101,000.00 − $76,500.00 = $24,500.00 loss; and

(7) $24,500.00 loss × 100 percent = $24,500.00 indemnity payment.

(c) The total production to count, specified in pounds, 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) That is put to another use without our consent;

(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) Production on acreage that is bypassed unless the acreage was bypassed due to an insured cause of loss which resulted in production which would not be acceptable under the terms of the processor contract.

(iv) 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 when 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 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.

(2) All harvested green pea production from the insurable acreage. The amount of such production will be determined by dividing the dollar amount paid, payable, or which should have been paid under the terms of the processor contract for the quality and quantity of the peas delivered to the processor by the base contract price per pound;

(3) All harvested green pea production from any of your other insurable units that have been used to fulfill your processor contract for this unit; and

(4) All dry pea production from the insurable acreage if you gave notice in accordance with section 11(d) for any acreage you intended to harvest as dry peas. The harvested or appraised dry pea production will be multiplied by 1.667 for shell types and 3.000 for pod types to determine the green pea production equivalent. No adjustment for quality deficiencies will be allowed for dry pea production.

13. Late Planting

A late planting period is not applicable to green peas unless allowed by the Special Provisions and you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest.

14. Prevented Planting

Your prevented planting coverage will be 40 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[62 FR 61903, Nov. 20, 1997, as amended at 62 FR 65173, Dec. 10, 1997]

§ 457.138 Grape crop insurance provisions.

The grape crop insurance provisions for the 2000 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:

Grape Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Graft. To unite a shoot or bud (scion) with a rootstock or an existing vine in accordance with recommended practices to form a living union.

Harvest. Picking the clusters of grapes from the vines either by hand or machine.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Set out. Physically planting the desired variety of grape plant in the ground in a desired planting pattern.

Ton. Two thousand (2,000) pounds avoirdupois.

Varietal group. Grapes with similar characteristics that are grouped for insurance purposes as specified in the Special Provisions.

2. Unit Division

(a) In California only, a basic unit, as defined in section 1 of the Basic Provisions will

be divided into additional basic units by each variety that you insure.

(b) In California only, provisions in the Basic Provisions that provide for optional units by section, section equivalent, or FSA farm serial number and by irrigated and nonirrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

(c) In all states except California, in addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number and by irrigated and nonirrigated acreage as provided in the unit division provisions contained in the Basic Provisions a separate optional unit may be established if each optional unit:

(1) Is located on non-contiguous land; or

(2) Consists of a separate varietal group when separate varietal groups are specified 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) In California, you may select only one price election and coverage level for each grape variety in the county specified in the Special Provisions.

(b) In Idaho, Oregon, and Washington, you may select only one price election and coverage level for each grape varietal group specified in the Special Provisions.

(c) In all states except California, Idaho, Oregon, and Washington, you may select only one price election and coverage level for all the grapes 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 100 percent of the maximum price election for one varietal group, you must also choose 100 percent of the maximum price election for all other varietal groups.

(d) In California only, if the Special Provisions do not provide a price election for a specific variety you wish to insure, you may apply for a written agreement to establish a price election. Your application for the written agreement must include:

(1) The number of tons sold for at least the two most recent crop years; and

(2) The price received for all production of the variety in the years for which production records are provided.

(e) 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 variety or varietal group, if applicable :

(1) Any damage, removal of bearing vines, 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 vines on insurable and uninsurable acreage;

(3) The age of the vines 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 the type or variety or varietal group, 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, based on our estimate of the effect of the following: Interplanted perennial crop; removal of vines; damage; change in practices and any other circumstance that may affect 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 at any time we become aware of the circumstance.

(f) In California, Idaho, Mississippi, Oregon, Texas, and Washington, you may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

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 for all states except California, and October 31 preceding the cancellation date for California.

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 January 31 in California and November 20 in all other states.

6. Report of Acreage

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§457.8), you must report your acreage by

each grape variety you insure in California, or by varietal group in all other states.

7. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be any insurable variety that you elect to insure in California or all insurable varieties in all other states in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are grown for wine, juice, raisins, or canning;

(c) That are grown in a vineyard that, if inspected, is considered acceptable by us;

(d) That, after being set out or grafted, have reached the number of growing seasons designated by the Special Provisions; and

(e) That have produced an average of two tons of grapes per acre during at least one of the three crop years immediately preceding the insured crop year, unless we inspect and allow insurance on such acreage.

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, grapes 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.

9. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on February 1 in California and November 21 in all other states of each crop year. Notwithstanding the previous sentence, for the year of application, if your application is received after January 22 but prior to February 1 in California, or after November 11 but prior to November 21 in all other states, 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 vineyard.

(2) In California, Idaho, Mississippi, Oregon, Texas, and Washington, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) The calendar date for the end of the insurance period for each crop year is the date during the calendar year in which the grapes are normally harvested, as follows:

(i) October 10 in Mississippi and Texas;

(ii) November 1 in Idaho, Oregon, and Washington;

(iii) November 10 in California; and

(iv) November 20 in all other states.

(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. Acreage acquired after the acreage reporting date will not be insured.

(2) If you relinquish your insurable share on any insurable acreage of grapes on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due 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 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 vineyard;

(3) Insects, except as excluded in 10(b)(1), 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; or

(8) 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) Phylloxera, regardless of cause; or

(2) Inability to market the grapes 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) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(b) If the crop has been damaged during the growing season and you previously gave notice in accordance with section 14 of the Basic Provisions (§457.8), you must also provide notice at least 15 days prior to the beginning of harvest if you intend to claim an indemnity as a result of the damage previously reported. You must not destroy the damaged crop that is marketed in normal commercial channels, 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 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) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result in section 12(b)(1) by the respective price election you selected for each variety or varietal group;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production to count of each variety or varietal group, if applicable, (see section 12 (c) through (e)) by the respective price election you selected;

(5) Totaling the results in section 12(b)(4);

(6) Subtracting the result in section 12(b)(5) from the result in section 12(b)(3); and

(7) Multiplying the result in 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 or destroyed by you without our consent;

(B) That is damaged solely by uninsured causes; or

(C) For which you fail to provide production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies in accordance with subsection 12 (e)); 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) All harvested production from the insurable acreage. Grape production that is harvested and dried for raisins will be converted to a fresh weight basis by multiplying the number of tons of raisin production by 4.5.

(d) If any grapes are harvested before 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.

(e) Mature marketable grape production may be adjusted for quality deficiencies as follows:

(1) Production will be eligible for quality adjustment if, due to insurable causes, it has a value of less than 75 percent of the average market price of undamaged grapes of the same or similar variety. The value per ton of the qualifying damaged production and the average market price of undamaged grapes will be determined on the earlier of the date the damaged production is sold or the date of final inspection for the unit. The average market price of undamaged production will be calculated by averaging the prices being paid by usual marketing outlets for the area during the week in which the damaged grapes were valued.

(2) Grape production that is eligible for quality adjustment, as specified in subsection 12(e)(1) will be reduced by:

(i) Dividing the value per ton of the damaged grapes by the maximum price election

available for such grapes to determine the quality adjustment factor; and

(ii) Multiplying this result (not to exceed 1.000) by the number of tons of the eligible damaged grapes.

13. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 33741, June 23, 1997, as amended at 62 FR 65173, Dec. 10, 1997; 63 FR 31338, June 9, 1998; 64 FR 24932, May 10, 1999]

§ 457.139 Fresh market tomato (dollar plan) crop insurance provisions.

The fresh market tomato (dollar plan) crop insurance provisions for the 1999 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

Fresh market tomato (dollar plan) crop provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Acre—43,560 square feet of land when row widths do not exceed six feet, or if row widths exceed six feet, the land area on which at least 7,260 linear feet of rows are planted.

Carton—Twenty-five (25) pounds of the insured crop.

Crop year—In lieu of the definition of ''crop year'' contained in section 1 (Definitions) of the Basic Provisions (§ 457.8), crop year is a period of time that begins on the first day of the earliest planting period for fall planted tomatoes and continues through the last day of the insurance period for spring planted tomatoes. The crop year is designated by the calendar year in which spring planted tomatoes are harvested.

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 sufficient to directly damage the crop.

Freeze—The formation of ice in the cells of the plant or its fruit, caused by low air temperatures.

Harvest—The picking of tomatoes on the unit.

Mature green tomato—A tomato that:

(1) Has a glossy 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 as to be pushed aside and not cut by a sharp knife in slicing; and

(4) Shows no red color.

Plant stand—The number of live plants per acre prior to the occurrence of an insurable cause of loss.

Planted acreage—In addition to the definition contained in the Basic Provisions, for each planting period, tomato seed or transplants must initially be planted in rows, unless otherwise provided by Special Provisions, actuarial documents, or by written agreement.

Planting period—The period of time designated in the actuarial documents in which the tomatoes must be planted to be considered fall, winter or spring-planted tomatoes.

Potential production—The number of cartons of mature green or ripe tomatoes that the tomato plants will or would have produced per acre, assuming normal growing conditions and practices, by the end of the insurance period:

(a) With a classification size of 6×7 (2 8/32 inch minimum diameter) or larger for all types except cherry or plum tomatoes; or

(b) With a classification size as allowed by written agreement for cherry or plum tomatoes.

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, marketing windows, 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 (inability to obtain plants or seed will not be considered when determining if it is practical to replant).

Ripe tomato—A tomato that has a definite break in color from green to tannish-yellow, pink or red.

Row width—The widest distance from the center of one row of plants to the center of an adjacent row of plants.

Tropical depression—A system identified by the U.S. Weather Service as a tropical depression, and for the period of time so designated, including tropical storms, gales, and hurricanes.

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by planting period.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

3. Amounts of Insurance and Production Stages

(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 coverage level (and the corresponding amount of insurance designated in the actuarial documents for the applicable planting period and practice) for all the tomatoes in the county insured under this policy.

(b) The amount of insurance you choose for each planting period and practice must have the same percentage relationship to the maximum price offered by us for each planting period and practice. For example, if you choose 100 percent of the maximum amount of insurance for a specific planting period and practice, you must also choose 100 percent of the maximum amount of insurance for all other planting periods and practices.

(c) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§457.8), do not apply to fresh market dollar plan tomatoes.

(d) The amounts of insurance per acre are progressive by stages as follows:

Stage	Percent of amount of insurance per acre that you selected	Length of time if direct seeded	Length of time if transplanted
1	50	From planting through the 59th day after planting.	From planting through the 29th day after planting.
2	75	From the 60th day after planting until the beginning of stage 3.	From the 30th day after planting until the beginning of stage 3.
3	90	From the 90th day after planting until the beginning of the final stage.	From the 60th day after planting until the beginning of the final stage.
Final	100	Begins the earlier of 105 days after planting, or the beginning of harvest.	Begins the earlier of 75 days after planting, or the beginning of harvest.

(e) Any acreage of tomatoes damaged in the first, second, or third stage to the extent that the majority of producers in the area would not normally further care for it, will be deemed to have been destroyed. The indemnity payable for such acreage will be based on the stage the plants had achieved when the damage occurred.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§457.8), the contract change date is April 30 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 July 31.

6. Report of Acreage

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§457.8), you must report on or before the acreage reporting date contained in the Special Provisions for each planting period:

(a) All the acreage of tomatoes in the county insured under this policy in which you have a share;

(b) The dates the acreage was planted within each planting period; and

(c) The row width.

7. Annual Premium

In lieu of the premium amount determinations contained in section 7 (Annual Premium) of the Basic Provisions (§457.8), the annual premium amount for each cultural practice (*e.g.*, fall direct-seeded irrigated) is determined by multiplying the final stage amount of insurance per acre by the premium rate for the cultural practice as established in the Actuarial Table, by the insured acreage, by your share at the time coverage begins, and by any applicable premium adjustment factors contained in the actuarial documents.

8. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the tomatoes in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are:

(1) Planted to be harvested and sold as fresh market tomatoes;

(2) Planted within the planting periods designated in the actuarial documents;

(3) Grown under an irrigated practice;

(4) Grown on acreage covered by plastic mulch except where the Special Provisions allows otherwise;

(5) Grown by a person who in at least one of the three previous crop years:

(i) Grew tomatoes for commercial sale; or

(ii) Participated in managing a fresh market tomato farming operation;

(c) That are not:

(1) Interplanted with another crop;

(2) Planted into an established grass or legume;

(3) Grown for direct marketing; or

(4) Plum or cherry type tomatoes, unless allowed by written agreement.

9. Insurable Acreage

(a) In lieu of the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching if a crop has not been planted in at least one of the three previous crop years, we will insure newly cleared land and former pasture land planted to fresh market tomatoes.

(b) In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(1) You must replant any acreage of tomatoes damaged during the planting period in which initial planting took place whenever less than 50 percent of the plant stand remains: and

(i) It is practical to replant;

(ii) If, at the time the crop was damaged, the final day of the planting period has not passed; and

(iii) The damage occurs within 30 days of transplanting or 60 days of direct seeding.

(2) Whenever tomatoes initially are planted during the fall or winter planting periods and the conditions specified in sections 9(b)(1) (ii) and (iii) are not satisfied, you may elect:

(i) To replant such acreage and collect any replant payment due as specified in section 12. The initial planting period coverage will continue for such replanted acreage.

(ii) Not to replant such acreage and receive an indemnity based on the stage of growth the plants had attained at the time of damage. However, such an election will result in the acreage being uninsurable in the subsequent planting period.

(3) We will not insure any acreage on which tomatoes (except for replanted tomatoes in accordance with sections 9(b) (1) and (2)), peppers, eggplants, or tobacco have been grown and the soil was not fumigated or otherwise properly treated before planting tomatoes.

10. 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 the date we accept your application, or when the tomatoes are planted in each planting period. Coverage ends at the earliest of:

(a) Total destruction of the tomatoes on the unit;

(b) Abandonment of the tomatoes on the unit;

(c) The date harvest should have started on the unit on any acreage which will not be harvested;

(d) Final adjustment of a loss on the unit;

(e) Final harvest; or

(f) The calendar date for the end of the insurance period as follows:

(1) 140 days after the date of direct seeding or replanting with seed; and

(2) 125 days after the date of transplanting or replanting with transplants.

11. 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) Excess rain;

(2) Fire;

(3) Freeze;

(4) Hail;

(5) Tornado;

(6) Tropical depression; or

(7) Failure of the irrigation water supply, if caused by an insured cause of loss 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 any loss of production due to:

(1) Disease or insect infestation, unless no effective control measure exists for such disease or insect infestation; or

(2) Failure to market the tomatoes, unless such failure is due to actual physical damage caused by an insured cause of loss that occurs during the insurance period.

12. Replanting Payments

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment is allowed if, due to an insured cause of loss, more than 50 percent of the plant stand will not produce tomatoes and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of your actual cost of replanting or the result obtained by multiplying the per acre replanting payment amount contained in the Special Provisions by your insured share.

(c) In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§457.8), that limit a replanting payment to one each crop year, only one replanting payment will be made for acreage planted during each planting period within the crop year.

13. Duties in the Event of Damage or Loss

In addition to the requirements contained in section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§457.8), if you intend to claim an indemnity on any unit you must also give us notice not later than 72 hours after the earliest of:

(a) The time you discontinue harvest of any acreage on the unit;

(b) The date harvest normally would start if any acreage on the unit will not be harvested; or

(c) The calendar date for the end of the insurance period.

14. 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 in each stage by the amount of insurance per acre for the final stage;

(2) Multiplying each result in section 14(b)(1) by the percentage for the applicable stage (see section 3(d));

(3) Total the results of section 14(b)(2);

(4) Subtracting either of the following values from the result of section 14(b)(3):

(i) For other than catastrophic risk protection coverage, the total value of production to be counted (see section 14(c)); or

(ii) For catastrophic risk protection coverage, the result of multiplying the total value of production to be counted (see section 14(c)) by:

(A) Sixty percent for the 1998 crop year; or

(B) Fifty-five percent for 1999 and subsequent crop years; and

(5) Multiplying the result of section 14(b)(4) by your share.

(c) The total value of production to count from all insurable acreage on the unit will include:

(1) Not less than the amount of insurance per acre for the stage for any acreage:

(i) That is abandoned;

(ii) Put to another use without our consent;

(iii) That is damaged solely by uninsured causes; or

(iv) For which you fail to provide acceptable production records;

(2) The value of the following appraised production will not be less than the dollar amount obtained by multiplying the number of cartons of appraised tomatoes by the minimum value per carton shown in the Special Provisions for the planting period:

(i) Potential production on any acreage that has not been harvested the second time for ground-culture tomatoes (the third time for staked tomatoes);

(ii) Unharvested mature green tomatoes (unharvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count);

(iii) Production lost due to uninsured causes; and

(iv) 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 when you put the acreage to another use or 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. (If we require you to continue to care for the crop and you do not do so, the original appraisal will be used); or

(B) You may elect to continue to care for the crop, in which case the amount of production to count for the acreage will be the harvested production, or our reappraisal if the crop is not harvested.

(3) The total value of all harvested production from the insurable acreage will be the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each carton of tomatoes (this result may not be less than the minimum value shown in the Special Provisions for any carton of tomatoes), and multiplying this result by the number of cartons of tomatoes harvested. Harvested production that is damaged or defective due to insurable causes and is not marketable, will not be counted as production to count.

15. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

16. Minimum Value Option

(a) The provisions of this option are continuous and will be attached to and made a part of your insurance policy, if:

(1) You elect *either* Option I *or* Option II of the Minimum Value Option on your application, or on a form approved by us, on or before the sales closing date for the initial crop year in which you wish to insure fresh market tomatoes (dollar plan) under this option, and pay the additional premium indicated in the actuarial documents for this optional coverage; and

(2) You have not elected coverage under the Catastrophic Risk Protection Endorsement.

(b) In lieu of the provisions contained in section 14(c)(3), the total value of harvested production will be determined as follows:

(1) If you selected Option I of the Minimum Value Option, the total value of harvested production will be as follows:

(i) For sold production, the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each carton of tomatoes (this result may not be less than the minimum value option price contained in the Special Provisions for any cartons of tomatoes), and multiplying this result by the number of carton of tomatoes sold; and

(ii) For marketable production that is not sold, the dollar amount obtained by multiplying the number of cartons of such tomatoes on the unit by the minimum value shown in the Special Provisions for the planting period (harvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production).

(2) If you selected Option II of the Minimum Value Option, the total value of harvested production will be as provided in section 16(b)(1), except that the dollar amount specified in section (16)(b)(1)(i) may not be less than zero.

(c) 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 preceding the crop year for which the cancellation of this option is to be effective.

[62 FR 14777, Mar. 28, 1997; 62 FR 63634, Dec. 2, 1997, as amended at 62 FR 65174, Dec. 10, 1997]

§ 457.140 Dry pea crop insurance provisions.

The dry pea crop insurance provisions for the 2003 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:

Dry Pea Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions.

Adequate stand. A population of live plants per acre that will produce at least the yield used to establish your production guarantee.

Base price. The price per pound stipulated in the processor contract without regard to discounts or incentives that may apply, and that will be paid to the producer for at least 50 percent of the total production under contract with the seed company.

Combining. A mechanical process that separates the peas from the pods and other vegetative matter and place the peas into a temporary storage receptacle.

Conditioning. A process that improves the quality of production by screening or any other operation commonly used in the dry pea industry to remove dry peas that are deficient in quality.

Contract seed peas. Dry peas produced for seed to be planted at a future date and that:

(a) Are grown on acreage enrolled in the seed certification program administered by the state in which the peas are produced;

(b) Are grown on acreage planted in the spring; and

(c) Are under a seed company contract.

Dry peas. Peas of the following types:

(a) All spring-planted smooth green and yellow varieties of commercial dry edible peas, and peas grown to produce seed to be planted at a future date that do not meet the requirements contained in the seed company contract;

(b) All fall-planted varieties of Austrian Winter Peas only if provided for in the Special Provisions;

(c) All spring-planted varieties of lentils; and

(d) All varieties of contract seed peas.

Harvest. Combining of dry peas.

Local market price. The cash price per pound for the U.S. No. 1 grade of dry peas as determined by us. Such price will be the prevailing dollar amount these buyers are willing to pay for dry peas containing the maximum limits of quality deficiencies allowable for the U.S. No. 1 grade. Factors not associated with grading under the United

States Standards for Whole Dry Peas, Split Peas and Lentils will not be considered.

Nurse crop (companion crop). A crop planted into the same acreage as another crop, that is intended to improve the growing conditions for the crop with which it is grown and that is not intended to be harvested with the insured crop.

Planted acreage. In addition to the definition contained in the Basic Provisions, dry peas 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 addition to the definition contained in the Basic Provisions, it will not be considered practical to replant dry peas, except for seed peas, more than 25 days after the final planting date unless replanting is generally occurring in the area. For seed peas, it will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the seed pea processor contract or the seed company agrees in writing to accept such production.

Price election. In addition to the provisions of the definition contained in the Basic Provisions, the price election for contract seed peas will be a percentage (not to exceed 100 percent) of the base price that you elect.

Seed company. Any business enterprise regularly engaged in the processing of contract seed peas, that possesses all licenses and permits for marketing contract seed peas required by the state in which it operates, and that owns, or has contracted, sufficient drying, screening, and bagging or packaging equipment to accept and process the contract seed peas within a reasonable amount of time after harvest.

Seed company contract. A written agreement between the producer and the seed company, executed by the acreage reporting date, containing at a minimum:

(a) The producer's promise to plant and grow one or more specific varieties of contract seed peas, and deliver the production from those varieties to the seed company;

(b) The seed company's promise to purchase all the production stated in the contract; and

(c) A fixed price, or a method to determine such price based on published information compiled by a third party, that will be paid to the producer for at least 50 percent of the production stated in the contract.

2. Unit Division

(a) In addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions, a separate optional unit may be established for each pea type listed in section 1 of these Crop Provisions.

(b) Contract seed peas may qualify for optional units only if the seed company contract specifies the number of acres under contract. Contract seed peas produced under a seed company contract that specifies only an amount of production or a combination of acreage and production, are not eligible for optional units.

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

In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the dry peas, including contract seed peas, in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each dry pea type so designated in the Special Provisions. The price elections you choose for each type are not required to have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you may choose 80 percent of the maximum price election for another type. However, if you elect the Catastrophic Risk Protection level of insurance for any dry pea type, the same level of coverage will be applicable to all insured acreage in the county.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, you must submit a copy of the seed company contract to us on or before the acreage reporting date if you are insuring contract seed peas.

7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the dry pea types in the county (including Austrian Winter Peas if you request insurance for such peas in accordance with section 7(c)) for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are planted for harvest as dry peas and which, if grown under a seed company contract, are not excluded from such contract during the crop year;

(3) That are grown in accordance with the requirements of the seed company contract, if applicable;

(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 as a nurse crop.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the contract seed peas are grown, you are at risk of loss, and the processor contract is in effect.

(c) Austrian Winter Peas are only insurable if you request insurance in writing for such dry peas, and we agree in writing to provide coverage. Your request to insure Austrian Winter Peas must be submitted to us not later than the sales closing date. We will not agree to insure Austrian Winter Peas unless an adequate stand exists in the spring.

(d) Any acreage of dry peas that is destroyed and replanted to a different insurable type of dry peas will be considered insured acreage. The guarantee and premium for acreage replanted to a different insurable type will be based on the replanted type and will be calculated in accordance with sections 3 and 7 of the Basic Provisions and section 3 of these Crop Provisions.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(a) We will not insure any acreage that does not meet the rotation requirements, if applicable, contained in the Special Provisions; or

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that most producers of the crop or acreage with similar characteristics in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant. We will not require you to replant if it is not practical to replant the type of dry peas originally planted.

9. Insurance Period

In addition to the provisions of section 11 of the Basic Provisions:

(a) Coverage for Austrian Winter Peas, will begin on the earlier of March 16 or the date we agree to accept the acreage for insurance, but not before March 1; and

(b) The calendar date for the end of the insurance period for all insurable types of dry peas in the county is September 30 of the crop year in which the crop normally is harvested unless otherwise specified in the Special Provisions.

10. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during 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 due to a cause of loss contained in section 10(a) through (g) that occurs during the insurance period.

11. Duties in the Event of Damage or Loss

In accordance with the requirements of section 14 of the Basic Provisions, 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. If you intend to destroy the crop prior to harvest, the samples must not be destroyed until after our inspection.

12. 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 to your pea crop covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage of each dry pea type, if applicable, excluding contract seed peas, by its respective production guarantee;

(2) Multiplying each result of section 12(b)(1) by the respective price election;

(3) Totaling the results of section 12(b)(2);

(4) Multiplying the insured acreage of each contract seed pea variety by its respective production guarantee;

(5) Multiplying each result of section 12(b)(4) by the applicable base price;

(6) Multiplying each result of section 12(b)(5) by your selected price election percentage;

(7) Totaling the results of section 12(b)(6);

(8) Totaling the results of section 12(b)(3) and section 12(b)(7);

(9) Multiplying the total production to be counted of each dry pea type, excluding contract seed peas, if applicable (see section 12(d)), by the respective price elections;

(10) Totaling the value of all contract seed pea production (see section 12(c));

(11) Totaling the results of section 12(b)(9) and section 12(b)(10);

(12) Subtracting the result of section 12(b)(11) from the result in section 12(b)(8); and

(13) Multiplying the result of section 12(b)12 by your share.

For example:

You have a 100 percent share in 100 acres of spring-planted smooth green dry edible peas in the unit, with a guarantee of 4,000 pounds per acre and a price election of $0.09 per pound. You are only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000 pounds guarantee;

(2) 400,000 pounds × $0.09 price election = $36,000.00 value of guarantee;

(9) 200,000 pounds × $0.09 price election = $18,000.00 value of production to count; $36,000.00 value of guarantee − $18,000.00 value of production to count = $18,000.00 loss; and

(13) $18,000.00 × 100 percent = $18,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of contract seed peas in the same unit, with a guarantee of 5,000 pounds per acre and a base price of $0.40 per pound. Your selected price election percentage is 75 percent. You are only able to harvest 450,000 pounds. Your total indemnity for both spring-planted smooth green dry edible peas and contract seed peas would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000 pounds guarantee for the spring-planted smooth green dry edible pea type, and

(4) 100 acres × 5,000 pounds = 500,000 pounds guarantee for the contract seed pea type;

(2) 400,000 pounds guarantee × $0.09 price election = $36,000.00 value of guarantee for the spring-planted smooth green dry edible pea type, and

(5) 500,000 pounds guarantee × $0.40 base price = $200,000.00 gross value of guarantee for the contract seed pea type;

(6) $200,000 × .75 price election percentage = $150,000 net value of guarantee for the contract seed pea type;

(8) $36,000.00 + $150,000.00 = $186,000.00 total value of guarantee;

(9) 200,000 pounds × $0.09 price election = $18,000.00 value of production to count for the spring-planted smooth green dry edible pea type, and

(10) 450,000 pounds × $0.30 = $135,000.00 value of production to count for the contract seed pea type;

(11) $18,000.00 + $135,000.00 = $153,000.00 total value of production to count;

(12) $186,000.00 − $153,000.00 = $33,000.00 loss; and

(13) $33,000.00 loss × 100 percent = $33,000.00 indemnity payment.

(c) The value of contract seed pea production to count for each variety in the unit will be determined as follows:

(1) For production meeting the minimum quality requirements contained in the seed company contract, and for production that does not meet such requirements due to uninsured causes:

(i) Multiplying the local market price or base price per pound, whichever is greater, by the price election percentage you selected; and

(ii) Multiplying the result by the number of pounds of such production.

(2) For mature production not meeting the minimum quality requirements contained in the seed pea processor contract due to insurable causes, and immature production that is appraised:

(i) Multiplying the highest local market price available for such dry peas by the price election percentage you selected; and

(ii) Multiplying the result by the number of pounds of such production.

(d) The total pea production to count (in pounds) 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 put to another use without our consent;

(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 (mature unharvested production of dry peas, excluding Austrian Winter Peas, may be adjusted for quality deficiencies in accordance with section 12 (c) or (e), if applicable); and

(iv) 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 when 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 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 the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(e) Mature production of smooth green and yellow peas, lentils, and seed peas that do not qualify as contract seed peas under the policy terms, and that are not deliverable under the contract or are sold under the contract for less than the contract price, may be adjusted for quality deficiencies. No adjustment for quality deficiencies will be allowed for Austrian Winter Peas.

(1) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the United States Standards for Whole Dry Peas, Split Peas, and Lentils, result in production grading U.S. No. 2 or worse because of defects, color, skinned production (lentils only), odor, material weathering, or distinctly low quality; 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.

(2) 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 which occurs within the insurance period;

(ii) The deficiencies, substances, or conditions result in a net price for the damaged production that is less than the local market price;

(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;

(iv) With regard to deficiencies in quality (except test weight, which may be determined by our loss adjuster), the samples are analyzed by:

(A) A grader licensed under the United States Agricultural Marketing Act or the United States Warehouse Act;

(B) A grader licensed under State law and employed by a warehouse operator who has a storage agreement with the Commodity Credit Corporation; or

(C) A grader not licensed under State law, but who is employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation and is in compliance with State law regarding warehouses; and

(v) With regard to substances or conditions injurious to human or animal health, the samples are analyzed by a laboratory approved by us.

(3) Dry Pea production that is eligible for quality adjustment, as specified in sections 12(e) (1) and (2), will be reduced as follows:

(i) The highest local market price for the qualifying damaged production will be determined on the earlier of the date such damaged production is sold or the date of final inspection for the unit. The highest local market price for the qualifying damaged production will be determined in the local area to the extent feasible. 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 dry peas to those buyers. Discounts used to establish the net value of the damaged production will be limited to those that are usual, customary, and reasonable.

The value will not be reduced for:

(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 dry peas; except, if the value of the damaged production can be increased by conditioning, we may reduce the value of the production after it has been conditioned by the cost of conditioning but not lower than the value of the production before conditioning;

(ii) The value per pound of the damaged or conditioned production will be divided by the local market price to determine the quality adjustment factor;

(iii) The number of pounds of the damaged or conditioned production will then be multiplied by the quality adjustment factor to determine the production count to be included in section 12(d); and

(iv) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

13. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[62 FR 65744, Dec. 16, 1997, as amended at 63 FR 36157, July 2, 1998; 67 FR 55691, Aug. 30, 2002]

§457.141 Rice crop insurance provisions.

The rice crop insurance provisions for the 2003 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

Rice Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Flood irrigation. An irrigated practice commonly used for rice production whereby the planted acreage is intentionally covered with water that is maintained at a uniform and shallow depth throughout the growing season.

Harvest. Combining or threshing the rice for grain. A crop that is swathed prior to combining is not considered harvested.

Local market price. The cash price per pound for the U.S. No. 3 grade of rough rice offered by buyers in the area in which you normally market the rice. Factors not associated with grading under the United States Standards for Rice including, but not limited to, protein and oil content or milling quality will not be considered.

Planted. The uniform placement of an adequate amount of rice seed into a prepared seedbed by one of the following methods:

(a) Drill seeding—Using a grain drill to incorporate the seed to a proper soil depth;

(b) Broadcast seeding—Distributing seed evenly onto the surface of an un-flooded seedbed followed by either timely mechanical incorporation of the seed to a proper soil depth in the seedbed or flushing the seedbed with water; or

(c) Broadcast seeding into a controlled flood—Distributing the rice seed onto a prepared seedbed that has been intentionally covered to a proper depth by water. The water must be free of movement and be completely contained on the acreage by properly constructed levees and gates.

Acreage seeded in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Saline water. Water that contains a concentration of salt sufficient to cause damage to the insured crop.

Second crop rice. The regrowth of a stand of rice following harvest of the initially insured rice crop that can be harvested in the same crop year.

Swathed. Severance of the stem and grain head from the ground without removal of the rice kernels from the plant and placing in a windrow.

Total milling yield. Rice production consisting of heads, second heads, screenings, and brewer's rice as defined by the official United States Standards for Rice.

2. Unit Division

Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

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 rice in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each rice type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§457.8), the contract change date is November 30 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:

State and county	Cancellation and termination date
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas; and all Texas counties south thereof.	January 15.
Florida	February 15.
All other Texas counties and all other states.	February 28.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the rice in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That is planted for harvest as grain;

(c) That is flood irrigated; and

(d) That is not wild rice.

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 planted to rice:

(1) The preceding crop year unless allowed by the Special Provisions; or

(2) That 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 producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant.

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 October 31 immediately following planting.

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 (except drought);

(2) Fire;

(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; or

(8) Failure of the irrigation water supply if caused by an insured cause of loss specified in sections 9(a)(1) through (7), drought, or the intrusion of saline water.

(b) In addition to the causes of loss not insured against in section 12 of the Basic Provisions, we will not insure against any loss of production due to the application of saline water, except as specified in section 9(a)(8) of these crop provisions.

10. Replanting Payment

(a) A replanting payment for rice is allowed as follows:

(1) You must comply with all requirements regarding replanting payments contained under section 13 (Replanting Payment) of the Basic Provisions (§ 457.8);

(2) The rice 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; and

(3) The replanted rice must be seeded at a rate that is normal for initially planted rice (if new seed is planted at a reduced seeding rate into a partially damaged stand of rice, the acreage will not be eligible for a replanting payment).

(b) In accordance with the provisions of section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), the maximum amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 400 pounds, multiplied by your price election, multiplied by your insured share.

(c) When rice 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.

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 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 on any unit by:

(1) Multiplying the insured acreage by its respective production guarantee by type, if applicable;

(2) Multiplying each result in section 12(b)(1) by the respective price election by type, if applicable;

(3) Totaling the results of section 12(b)(2);

(4) Multiplying the total production to be counted by type, if applicable, (see section

12(c) through (e)) by the respective price election;

(5) Totaling the results of section 12(b)(4);

(6) Subtracting the 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 pounds) 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;

(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 section 12(d));

(iv) 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 when 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, including any production from a second rice crop harvested in the same crop year.

(d) Mature rough rice 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 12 percent. 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 Rice, result in rice not meeting the grade requirements for U.S. No. 3 (grades U.S. No. 4 or worse) because of red rice, chalky kernels or damaged kernels;

(ii) The rice has a total milling yield of less than 68 pounds per hundredweight;

(iii) The whole kernel weight is less than 55 pounds per hundredweight of milled rice for medium and short grain varieties;

(iv) The whole kernel weight is less than 48 pounds per hundredweight of milled rice for long grain varieties; or

(v) 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 specified in section 12(d)(2) resulted from a cause of loss against which insurance is provided under these crop provisions and which occurs within the insurance period;

(ii) The deficiencies, substances, or conditions specified in section 12(d)(2) result in a net price for the damaged production that is less than the local market price;

(iii) All determinations of these deficiencies, substances, or conditions specified in section 12(d)(2) are made using samples of the production obtained by us or by a disinterested third party approved by us;

(iv) With regard to deficiencies in quality (except test weight, which may be determined by our loss adjuster), the samples are analyzed by:

(A) A grader licensed under the United States Agricultural Marketing Act or the United States Warehouse Act;

(B) A grader licensed under State law and employed by a warehouse operator who has a storage agreement with the Commodity Credit Corporation; or

(C) A grader not licensed under State law, but who is employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation and is in compliance with State law regarding warehouses; and

(v) With regard to substances or conditions injurious to human or animal health, the samples are analyzed by a laboratory approved by us.

(4) Rice production that is eligible for quality adjustment, as specified in sections 12(d) (2) and (3), will be reduced as follows:

(i) In accordance with quality adjustment factors contained in the Special Provisions; or

(ii) If quality adjustment factors are not contained in the Special Provisions, as follows:

(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 that 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 rice; 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 rice 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. Prevented Planting

Your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[62 FR 28310, May 23, 1997, as amended at 62 FR 65174, Dec. 10, 1997; 65 FR 56774, Sept. 20, 2000; 67 FR 55691, Aug. 30, 2002]

§ 457.142 Northern potato crop insurance provisions.

The Northern Potato Crop Insurance Provisions for the 1998 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:

Northern Potato Crop Provisions

These provisions will be applicable in: Alaska; Humboldt, Modoc, and Siskiyou Counties, California; Colorado; Connecticut; Idaho; Indiana; Iowa; Maine; Massachusetts; Michigan; Minnesota; Montana; Nebraska; Nevada; New York; North Dakota; Ohio; Oregon; Pennsylvania; Rhode Island; South Dakota; Utah; Washington; Wisconsin; and Wyoming.

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

1. Definitions

Buyer. A business entity in the business of buying or processing potatoes, that possesses all the licenses and permits required by the state in which it operates, and has the facilities to accept the potatoes purchased.

Certified seed. Potatoes for planting a potato crop in a subsequent crop year that have been found to meet the standards of the public agency that is responsible for the seed certification process within the state in which they were grown.

Discard. Disposal of production by you, or a person acting for you, without receiving any value for it.

Disposed. Any disposition of the crop including but not limited to sale or discard.

Grade inspection. An inspection in which samples of production are obtained by us, or a party approved by us, prior to the sale, storage, or disposal of any lot of potatoes, or any portion of a lot and the potatoes are evaluated and quality (grade) determinations are made by us, a laboratory approved by us, or a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, in accordance with the United States Standards for Grades of Potatoes.

Harvest. Lifting potatoes from within the soil to the soil surface.

Hundredweight. One hundred (100) pounds avoirdupois.

Local market. The area in which the insured potatoes are normally sold.

Lot. A quantity of production that can be separated from other quantities of production by grade characteristics, load, location or other distinctive features.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow potatoes, and to deliver the potato production to the processor;

(b) The processor's commitment to purchase the production stated in the contract; and

(c) A price that will be paid to the producer for the production stated in the contract.

Reduction percentage. A factor determined based on the weight of only freeze damaged production in a sample of potatoes in relationship to the total weight of the sample, and the provisions in section 11(g)(1) of these crop provisions; and that is used to determine a quantity of potatoes that will not be included as production to count.

Tuber rot. Any soft, mushy, or leaky condition of potato tissue (soft rot or wet breakdown as defined in the United States Standards for Grades of Potatoes), including, but not limited to, breakdown caused by Southern Bacterial Wilt, Ring Rot, or Late Blight.

2. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the potatoes in the county insured under this policy unless the Special Provisions provide different price elections by type. If the Special Provisions provide for different price elections by type, you may select one price election for each potato type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price election offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) If the production from any acreage of the insured crop is not harvested, the price used to determine your indemnity will be 80 percent of your price election.

(c) Any acreage of potatoes damaged to the extent that similarly situated producers in the area would not normally further care for the potatoes will be deemed to have been destroyed even though you may continue to care for the potatoes. The price election for unharvested acreage will apply to such acreage.

3. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

4. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

5. Annual Premium

In lieu of the premium computation method contained in section 7 of the Basic Provisions, the annual premium amount (y) is computed by multiplying (a) the production guarantee by (b) the price election for harvested acreage, by (c) the premium rate, by (d) the insured acreage, by (e) your share at the time of planting, and by (f) any applicable premium adjustment factors contained in the actuarial documents ($a \times b \times c \times d \times e \times f = y$).

6. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all the potatoes in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) Planted with certified seed (unless otherwise permitted by the Special Provisions);

(c) Planted for harvest as certified seed stock, or for human consumption, (unless specified otherwise in the Special Provisions);

(d) That are not (unless allowed by the Special Provision or by written agreement):

(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 of the Basic Provisions, we will not insure any acreage that:

(a) Does not meet the rotation requirements contained in the Special Provisions for the crop; or

(b) Is damaged before the final planting date to the extent that similarly situated producers in the area would normally not further care for the crop, unless it is replanted or we agree that it is not practical to replant.

8. Insurance Period

In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows (exceptions, if any, for specific counties, varieties or types are contained in the Special Provisions):

(a) October 1, in Alaska;

(b) October 10 in Nebraska and Wyoming;

(c) October 15 in Colorado; Indiana; Iowa; Michigan; Minnesota; Montana; Nevada; North Dakota; South Dakota; Utah; and Wisconsin;

(d) October 20 in Maine; and

(e) October 31 in Humboldt, Modoc, and Siskiyou Counties, California; Connecticut; Idaho; Massachusetts; New York; Ohio; Oregon; Pennsylvania; Rhode Island; and Washington.

9. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects, but only if sufficient and proper pest control measures are used;

(4) Plant disease, but only if sufficient and proper disease control measures are used;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period (see section 9(a)(1) through (7)).

(b) In addition to the causes of loss not insured against as contained in section 12 of the Basic Provisions, we will not insure against any loss of production due to:

(1) Damage that occurs or becomes evident after the end of the insurance period, including, but not limited to, damage that occurs or becomes evident in storage; or

(2) Causes, such as freeze after certain dates, as limited by the Special Provisions.

10. Duties in the Event of Damage or Loss

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples at least 10 feet wide and extending the entire length of each field in the unit if you are going to destroy any acreage of the insured crop that will not be harvested.

(b) We must be given the opportunity to perform a grade inspection on the production from any unit for which you have given notice of damage.

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 units, we will combine all optional units for which acceptable production records were not provided; and

(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) Multiplying the insured acreage by its respective production guarantee (If there is unharvested acreage in the unit, the harvested and unharvested acreage will be determined separately);

(2) Multiplying each result in section 11(b)(1) by the respective price election (The price election may be limited as specified in section 3.);

(3) Totaling the results of section 11(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable (see section 11(d)), by the respective price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting the results of section 11(b)(5) from the result in section 11(b)(3); and

(7) Multiplying the result of section 11(b)(6) by your share.

For example:

You have a 100 percent share in 100 harvested acres of potatoes in the unit, with a guarantee of 150 hundredweight per acre and a price election of $4.00 per hundredweight. You are only able to harvest 10,000 hundredweight. Your indemnity would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee;

(2) 15,000 hundredweight × $4.00 price election = $60,000.00 value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count;

(6) $60,000.00 − $40,000.00 = $20,000.00 loss; and

(7) $20,000.00 × 100 percent = $20,000.00 indemnity payment.

You also have a 100 percent share in 100 unharvested acres of potatoes in the same unit, with a guarantee of 150 hundredweight per acre and a price election of $3.20 per hundredweight. The price election for unharvested acreage is 80.0 percent of your elected price election ($4.00 × 0.80 = $3.20.) This unharvested acreage was appraised at 35 hundredweight per acre for a total of 3500 hundredweight as production to count. Your total indemnity for the harvested and unharvested acreage would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the harvested acreage, and 100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the unharvested acreage;

(2) 15,000 hundredweight guarantee × $4.00 price election = $60,000.00 value of guarantee for the unharvested acreage, and 15,000 hundredweight guarantee × $3.20 price election = $48,000.00 value of guarantee for the unharvested acreage;

(3) $60,000.00 + $48,000.00 = $108,000.00 total value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count

for the harvested acreage, and 3500 hundredweight × $3.20 = $11,200.00 value of production to count for the unharvested acreage;

(5) $40,000.00 + $11,200.00 = $51,200.00 total value of production to count;

(6) $108,000.00 − $51,200.00 = $56,800.00 loss; and

(7) $56,800.00 loss × 100 percent = $56,800.00 indemnity payment.

(c) The extent of any quality loss must be determined based on samples obtained no later than the time the potatoes are placed in storage, if the production is stored prior to sale, or the date they are delivered to a buyer, wholesaler, packer, broker, or other handler if production is not stored.

(d) The total production to count (in hundredweight) 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 put to another use without our consent;

(C) That is damaged solely by uninsured causes;

(D) From which any production is disposed of without a grade inspection; or

(E) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Production lost due to harvest prior to full maturity. Production to count from such acreage will be determined by increasing the amount of harvested production by 2 percent per day for each day the potatoes were harvested prior to the date the potatoes would have reached full maturity. The date the potatoes would have reached full maturity will be considered to be 45 days prior to the calendar date for the end of the insurance period, unless otherwise specified in the Special Provisions. This adjustment will not be made if the potatoes are damaged by an insurable cause of loss, and leaving the crop in the field would either reduce production or decrease quality;

(iv) Unharvested production (the value of unharvested production will be calculated using the reduced price election determined in section 2(b) and unharvested production may be adjusted in accordance with sections 11(e), (f), (g), and (h)); 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 when 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 price used to determine the amount of any indemnity will be limited as specified in section 2 even if the representative samples are harvested. 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 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 (the amount of production prior to the sorting or discarding of any production).

(e) Potato production is eligible for quality adjustment if:

(1) The potatoes have freeze damage or tuber rot that is evident at, or prior to, the end of the insurance period; and

(2) A grade inspection is performed.

(f) Potato production that is eligible for quality adjustment, as specified in section 11(e), with 5 percent damage or less (by weight) will be adjusted 0.1 percent for each 0.1 percent of damage through 5.0 percent.

(g) Potato production that is eligible for quality adjustment, as specified in section 11(e), with 5.1 percent damage or more (by weight) will be adjusted as follows:

(1) For potatoes damaged by freeze, production will be reduced 0.1 percent for each 0.1 percent of damage through 5.0 percent, 0.5 percent for each 0.1 percent of damage from 5.1 through 15.0 percent, and by 1.0 percent for each 0.1 percent of damage from 15.1 through 19.5 percent. However, if you do not discard any harvested production within 21 days of the end of the insurance period that has freeze damage in excess of 17.9 percent, we will include 15 percent of such production when determining the amount of production to count.

(2) For potatoes that have tuber rot due to an insurable cause other than freeze, production to count will be determined as follows:

(i) For potatoes for which a price is agreed upon between you and a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) if the end of the insurance period, or that are delivered to a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period, by dividing the price received or that will be received per hundredweight by the highest

price election designated in the Special Provisions for the insured potato type, and multiplying the result (not to exceed 1.0) by the number of hundredweight of sold production. If production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market;

(ii) For harvested potatoes discarded within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period and appraised unharvested production that could:

(A) Not have been sold, the production to count will be zero; or

(B) Have been sold, the production will be reduced as follows (all percentage points of damage will be rounded to the nearest 0.1 percent):

(*1*) 0.1 percent for each 0.1 percent of damage through 5.0 percent;

(*2*) 05. percent for each 0.1 percent of damage from 5.1 percent through 6.0 percent;

(*3*) 1.0 percent for each 0.1 percent of damage from 6.1 through 8.0 percent;

(*4*) 2.0 percent for each 0.1 percent of damage from 8.1 through 9.0 percent; and

(*5*) 2.5 percent for each 0.1 percent of damage from 9.1 through 10.4 percent.

(iii) For potatoes for which a price is not agreed upon between you and a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period and that remain in storage 22 or more days (61 or more days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) after the end of the insurance period, adjustment will be made in accordance with section 11(g)(2)(ii)(B).

(h) When a combination of freeze damage or a tuber rot condition is 5.1 percent (by weight) or greater, the amount of production to count for production affected by tuber rot will first be determined in accordance with section 11(g)(2). If production is not sold within the time frame specified in section 11(g)(2), this amount will be further adjusted as follows:

(1) The percentage of potatoes with freeze damage will be determined by dividing the weight of potatoes with only freeze damage in representatives samples of the production by the total weight of the samples;

(2) The reduction percentage will be determined based on the result of section 11(h)(1) and section 11(g)(1); and

(3) The reduction percentage determined in section 11(h)(2) will be multiplied by the amount of production determined in accordance with section 11(g)(2).

12. Prevented Planting

Your prevented planting coverage will be 25 percent of your production guarantee for timely planted acreage. If you have limited or additional coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[62 FR 65331, Dec. 12, 1997]

§ 457.143 Northern potato crop insurance—quality endorsement.

The Northern Potato Crop Insurance Quality Endorsement provisions for the 1998 and succeeding 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:

Northern Potato Crop Insurance Quality Endorsement

1. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of your Northern Potato Crop Provisions subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Crop Provisions and this endorsement, this endorsement will control.

2. You must elect this endorsement on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this endorsement. This endorsement will continue in effect until canceled. It may be canceled by either you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date.

3. All acreage of potatoes insured under the Northern Potato Crop Provisions will be insured under this endorsement except:

(a) Any acreage specifically excluded by the actuarial documents; and

(b) Any acreage grown for seed.

4. We will adjust production to count (determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions) from (1) unharvested acreage; (2) harvested acreage that is stored after a grade inspection; or (3) that is marketed after a grade inspection; and that contains potatoes that grade less than U.S. No. 2 due to:

(a) Internal defects (the number of potatoes with such defects must be in excess of the tolerance allowed for U.S. No. 2 grade potatoes on a lot basis and must not be separable from undamaged production using

methods used by the potato packers or processors to whom you normally deliver your potato production), will be adjusted as follows:

(1) For potatoes for which a price is agreed upon in writing between you and a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period, or that are delivered to a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period, by multiplying the production to count by the factor (not to exceed 1.0) that results from dividing the price received or that will be received per hundredweight of the damaged production by the highest available price election. This method of adjustment will not be performed if it has already been performed under the terms of section 11(g)(2)(i) of the Northern Potato Crop Insurance Provisions. If production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market.

(2) For harvested potatoes discarded within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period and appraised unharvested production that could:

(i) Not have been sold, the production to count will be zero; or

(ii) Have been sold, the production to count will be determined in accordance with section 4(a)(1). The price used for the damaged production will be the price you could have received in the local market.

(3) For potatoes for which a price is not agreed upon between you and a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period and that remain in storage 22 or more days (61 or more days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) after the end of the insurance period, production to count will be determined in accordance with section 4(b).

(b) Factors other than those specified in section 4(a), by multiplying by a factor (not to exceed 1.0) that is determined as follows:

(1) The combined weight of sampled potatoes that grade U.S. No. 2 or better and that are damaged by freeze or tuber rot will be divided by the total sample weight; and

(2) The percentage determined in section 4(b)(1) above will be divided by the applicable percentage factor determined in accordance with section 9.

5. Potatoes harvested or appraised prior to full maturity that do not grade U.S. No. 2 due solely to size will be considered to have met U.S. No. 2 standards unless the potatoes are damaged by an insurable cause of loss and leaving the crop in the field would either reduce production or decrease quality.

6. Production to count for potatoes destroyed, stored or marketed without a grade inspection will be 100 percent of the gross weight of such potatoes.

7. All determinations must be based upon a grade inspection.

8. The actuarial documents may provide ''U.S. No. 1'' in place of ''U.S. No. 2'' as used in this endorsement. If both U.S. No. 1 and 2 are available in the actuarial documents, you may elect U.S. No. 1 or 2 by potato type or group, if separate types or groups are specified in the Special Provisions.

9. *Percentage factor* means the historical average percentage of potatoes grading U.S. No. 2 or better, by type, determined from your records. If at least 4 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 determined based on a combination of your records and the percentage factor contained in the Special Provisions.

[62 FR 65335, Dec. 12, 1997]

§457.144 Northern potato crop insurance—processing quality endorsement

The Northern Potato Crop Insurance Processing Quality Endorsement provisions for the 1998 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:

Northern Potato Crop Insurance Processing Quality Endorsement

1. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of your Northern Potato Crop Provisions and Quality Endorsement subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Crop Provisions or Quality Endorsement and this endorsement, this endorsement will control.

2. You must have a Northern Potato Quality Endorsement in place and elect this endorsement on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this endorsement. This endorsement may be canceled by

either you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date.

3. All terms of the Northern Potato Quality Endorsement not modified by this endorsement will be applicable to acreage covered under this endorsement.

4. A processor contract must be executed with a potato processor for the potato types insured under this endorsement and a copy submitted to us on or before the acreage reporting date for potatoes. If you elect this endorsement, all insurable acreage of production under contract with the processor must be insured under this endorsement.

5. When the processor contract requires the processor to purchase a stated amount of production, rather than all of the production from a stated number of acres, the insurable acreage will be determined by dividing the stated amount of production by the approved yield for the acreage. The number of acres insured under this endorsement will not exceed the actual number of acres planted to the potato types and which are needed to fulfill the contract.

6. In lieu of the provisions contained in section 4 of the Northern Potato Quality Endorsement, production that is rejected by the processor will be adjusted as follows: Production to count (determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions) from (1) unharvested acreage; (2) harvested acreage that is stored after a grade inspection; or (3) that is marketed after a grade inspection; and that contains potatoes that:

(a) Grade less than U.S. No. 2 due to internal defects, a specific gravity lower than the lesser of 1.074 or the minimum acceptable amount specified in the processor contract, or a fry color of No. 3 or darker due to either sugar exceeding 10 percent or sugar ends exceeding 19 percent (the number of potatoes with such defects must be in excess of the tolerance allowed for U.S. No. 2 grade potatoes on a lot basis and must not be separable from undamaged production using methods used by the processors to which you normally deliver your potato production), will be adjusted as follows:

(1) For potatoes for which a price is agreed upon in writing between you and a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period, or that are delivered to a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period, by multiplying the production to count by the factor (not to exceed 1.0) that results from dividing the price received or that will be received per hundredweight of the damaged production by the highest available price election. This method of adjustment will not be performed if it has already been performed under the terms of section 11(g)(2)(i) of the Northern Potato Crop Insurance Provisions. If production is sold for a price lower than the value appropriate and representative of the local market, we will determine the value of the production based on the price you could have received in the local market.

(2) For harvested potatoes discarded within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period and appraised unharvested production that could:

(i) Not have been sold, the production to count will be zero; or

(ii) Have been sold, the production to count will be determined in accordance with section 6(a)(1). The price used for the damaged production will be the price you could have received in the local market.

(3) For potatoes for which a price is not agreed upon in writing between you and a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period and that remain in storage 22 or more days (61 or more days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) after the end of the insurance period, production to count will be determined in accordance with section 6(b).

(b) Grade less than U.S. No. 2 due to factors other than those specified in section 6(a) will be multiplied by a factor (not to exceed 1.0) that is determined as follows:

(1) The combined weight of sampled potatoes that grade U.S. No. 2 or better and that are damaged by freeze or tuber rot will be divided by the total sample weight; and

(2) The percentage determined in section 6(b)(1) above will be divided by the applicable percentage factor determined in accordance with section 10.

7. All grade determinations for the purposes of this endorsement will be made using the United States Standards for Grades of Potatoes for Processing or Chipping.

8. All determinations must be based upon a grade inspection.

9. The actuarial documents may provide ''U.S. No. 1'' in place of ''U.S. No. 2'' as used in this endorsement. If both U.S. No. 1 and 2 are available in the actuarial documents, you may elect U.S. No. 1 or 2 by potato type or group, if separate types or groups are specified in the Special Provisions.

10. *Percentage factor* means the historical average percentage of potatoes grading U.S. No. 2 or better, by type, determined from your records. If at least 4 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 determined based on a combination of your records and the percentage factor contained in the Special Provisions.

[62 FR 65336, Dec. 12, 1997]

§457.145 Potato crop insurance—certified seed endorsement.

The potato Certified Seed Endorsement provisions for the 2001 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:

Potato Crop Insurance Certified Seed Endorsement

1. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of your Northern Potato Crop Provisions subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Provisions and this endorsement, this endorsement will control.

2. For the purpose of this endorsement, the term ''potato certified seed program'' means the state program administered by the public agency responsible for the seed certification process within the state in which the seed is produced.

3. You must elect this endorsement on or before the sales closing date for the initial crop year you wish to insure your potatoes under this endorsement. This endorsement will continue in effect until canceled. It may be canceled by either you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date.

4. All potatoes grown on insurable acreage and that are entered into the potato seed certification program administered by the state in which the seed is grown must be insured unless limited by section 5 below.

5. Your certified seed production guarantee per-acre will be the per-acre production guarantee used to cover the same acreage under the terms of the Northern Potato Crop Provisions. However, unless a written agreement provides otherwise, if the total amount of insurable certified seed acreage you have for the current crop year is greater than 125 percent of your average number of acres entered into and passing certification in the potato certified seed program in the three previous calendar years, your certified seed production guarantee for each unit will be reduced as follows:

6. You must provide acceptable records of your certified seed potato acreage and production for the previous three years. These records must clearly indicate the number of your acres entered into the potato seed certification program administered by the state in which the seed is grown.

7. All potatoes insured for certified seed production must be produced and managed in accordance with standards, practices, and procedures required for certification by the state's certifying agency and applicable regulations.

8. If, due to insurable causes occurring within the insurance period, the amount of certified seed you produce is less than your certified seed production guarantee, we will settle your claim by:

(a) Multiplying the insured acreage by its respective certified seed production guarantee;

(b) Multiplying each result in section 8(a) by the dollar amount per hundredweight contained in the Special Provisions for production covered under this endorsement;

(c) Totaling the results of section 8(b);

(d) Multiplying the number of hundredweight of production that qualify as certified seed and any amount of production lost due to uninsured causes, or that does not qualify as certified seed due to uninsured causes, by the dollar amount per hundredweight contained in the Special Provisions for production covered under this endorsement;

(e) Subtracting the result of section 8(d) from the result of section 8(c); and

(f) Multiplying the result of section 8(e) by your share.

9. You must notify us of any loss under this endorsement not later than 14 days after you receive notice from the state certification agency that any acreage or production has failed certification. Nothing herein extends the insurance period beyond the time period specified in section 8 of the Northern Potato Crop Provisions and section 11 of the Basic Provisions.

10. Acreage covered under the terms of this endorsement will have the same unit structure as provided under the Basic Provisions and the Northern Potato Crop Provisions. For example, if you have two optional units (00101 and 00102) under your Northern Potato Crop Insurance Policy and you elect this endorsement, you will also have two optional units (00201 and 00202) for certified seed coverage, provided that certified seed is grown in both units 00101 and 00102. Or, if you have two basic units (00100 and 00200) under your Northern Potato Crop Insurance Policy and you elect this endorsement, you will also have two basic units (00300 and 00400) for certified seed coverage, provided that certified seed is grown in both units 00100 and 00200. In the event certified seed acreage is not grown

in the same optional or basic units as acreage covered under the Basic Provisions and the Northern Potato Crop Provisions, certified seed units will be established in accordance with the unit division provisions contained in the Basic Provisions and the Northern Potato Crop Provisions. For example, if a basic unit is divided into two optional units for potato acreage covered under the Basic Provisions and the Northern Potato Crop Provisions, but certified seed is grown in only one of those optional units, the certified seed acreage will be insured as one basic unit.

11. Any production that does not qualify as certified seed because of varietal mixing or your failure to follow the standard practices and procedures required for certification will be considered as lost due to uninsured causes.

[62 FR 65337, Dec. 12, 1997, as amended at 64 FR 71271, Dec. 21, 1999]

§ 457.146 Northern potato crop insurance—storage coverage endorsement.

The Northern Potato Crop Insurance Storage Coverage Endorsement provisions for the 1998 and succeeding 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:

Northern Potato Crop Insurance Storage Coverage Endorsement

1. In return for payment of the required additional premium as contained in the actuarial documents, this endorsement is attached to and made part of your Northern Potato Crop Provisions subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Crop Provisions and this endorsement, this endorsement will control.

2. You must elect this endorsement on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this endorsement. This endorsement will continue in effect until canceled. It may be canceled by either you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date.

3. Potato production grown under a contract that requires the production to be delivered to a buyer within three days of harvest will not be insured under this endorsement. When such contract requires delivery of a stated amount of production, rather than all of the production from a stated amount of acres, the number of acres not insured under this endorsement will be determined by dividing the stated amount of production by the approved yield for the acreage. All other potato production insured under the Northern Potato Crop Provisions must be insured under this endorsement unless the Special Provisions allow you to exclude certain potato varieties, types, or groups from this endorsement, and you elect to exercise this option. If you elect this endorsement, such exclusions must be shown annually on your acreage report and will be applicable to all acreage of the excluded varieties, types, or groups for the crop year.

4. When production from separate insurance units, basic or optional, is commingled in storage, the production to count for each unit will be allocated pro rata based on the production placed in storage from each unit. Such allocation will be allowed only if verifiable records of production placed in storage are available by unit. If you do not have verifiable records, all units without verifiable records will be combined in accordance with section 11 of the Northern Potato Crop Provisions. For example, if 500 hundredweight from one unit are commingled with 1,500 hundredweight from another unit and the production to count from the stored production is 1,000 hundredweight, 250 hundredweight of production to count will be allocated to the unit contributing 500 hundredweight and 750 hundredweight to the unit contributing 1500 hundredweight to the stored production. This provision does not eliminate or change any other requirement contained in this policy to provide or maintain separate records of acreage or production by unit.

5. The extended coverage provided by this endorsement will be applicable only if:

(a) Insured potatoes are damaged within the insurance period by an insured cause other than freeze that later results in:

(1) Tuber rot as defined in the Northern Potato Crop Provisions, to the extent that 5.1 percent (by weight) or more of the insured production is affected;

(2) Internal defects to the extent that such defects are in excess of the amount allowed for the U.S. grade standard you elected for purposes of coverage under the Northern Potato Crop Insurance Quality Endorsement. Such defects must not be separable from undamaged production using methods used by the packers or processors to which you normally deliver your potato production. This coverage is applicable only to production covered under the Northern Potato Crop Insurance Quality Endorsement; or

(3) A specific gravity lower than the lesser of 1.074 or the minimum acceptable amount specified in the processor contract, or a fry color of No. 3 or darker due to either sugar

exceeding 10 percent or sugar ends exceeding 19 percent. This coverage is applicable only to production covered under the Northern Potato Crop Insurance Processing Quality Endorsement.

(b) You notify us within 72 hours of your initial discovery of any damage that has or that may later result in the quality deficiencies specified in section 5(a);

(c) The percentage of production that has any of the quality deficiencies specified in section 5(a) is determined no later than 60 days after the end of the insurance period; and

(d) The potatoes are evaluated and quality (grade) determinations are made by us, a laboratory approved by us, or a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, in accordance with the United States Standards for Grades of Potatoes. Samples of damaged production must be obtained by us or party approved by us prior to the sale or disposal of any lot of potatoes. Or, if production is not sold or disposed of within 60 days of the end of the insurance period, samples must be obtained within 60 days of the end of the insurance period.

[62 FR 65337, Dec. 12, 1997]

§457.147 Central and Southern potato crop insurance provisions.

The Central and Southern Potato Crop Insurance Provisions for the 1999 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:

Central and Southern Potato Crop Provisions

These provisions will be applicable in: Alabama; Arizona; all California counties except Humboldt, Modoc and Siskiyou; Delaware; Florida; Georgia; Maryland; Missouri; New Jersey; New Mexico; North Carolina; Oklahoma; Texas; and Virginia.

If a conflict exists among the policy provisions, the order of priority is as follows:

(1) The Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

1. Definitions

Certified seed. Potatoes for planting a potato crop in a subsequent crop year that have been found to meet the standards of the public agency that is responsible for the seed certification process within the state in which they were grown.

Discard. Disposal of production by you, or a person acting for you, without receiving any value for it.

Disposed. Any disposition of the crop including but not limited to sale or discard.

Grade inspection. An inspection in which samples of production are obtained by us, or a party approved by us, prior to the sale, storage or disposal of any lot of potatoes, or any portion of a lot and the potatoes are evaluated and quality (grade) determinations are made by us, a laboratory approved by us, or a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, in accordance with the United States Standards for Grades of Potatoes.

Harvest. Lifting potatoes from within the soil to the soil surface.

Hundredweight. One hundred (100) pounds avoirdupois.

Lot. A quantity of production that can be separated from other quantities of production by grade characteristics, load, location or other distinctive features.

Planting period. The period of time between the calendar dates designated in the Special Provisions for the planting of spring-planted, summer-planted, fall-planted, or winter-planted potatoes.

Practical to replant. In lieu of the definition of ''Practical to replant'' contained in section one of the Basic Provisions, 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, marketing windows, 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, or the end of the planting period in which initial planting took place in counties for which the Special Provisions designates separate planting periods, unless replanting is generally occurring in the area.

2. Unit Division

A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by planting period.

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

(a) In addition to the requirements of section 2 of the Basic Provisions, you may select only one price election for all the potatoes in the county insured under this policy unless the Special Provisions provide different price elections by type. If the Special

Provisions provide for different price elections by type, you may select one price election for each potato type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price election offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) If the production from any acreage of the insured crop is not harvested, the price used to determine your indemnity will be 80 percent of your price election.

(c) Any acreage of potatoes damaged to the extent that similarly situated producers in the area would not normally further care for the potatoes will be deemed to have been destroyed even though you may continue to care for the potatoes. The price election for unharvested acreage will apply to such acreage.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is:

(a) June 30 preceding 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; and

(c) November 30 preceding the cancellation date for counties with a February 28 or March 15 cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Dates
Pinellas, Hillsborough, Polk, Oseola, and Brevard Counties, Florida, and all Florida counties lying south thereof	Sep. 30.
Arizona; all California counties; and all Texas counties except Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Haskell, Knox, Lamb, Parmer, Swisher, and Yoakum.	Nov. 30.
Alabama; Delaware; Georgia; Maryland; Missouri; New Jersey; North Carolina; Virginia; and all Florida counties except Pinellas, Hillsborough, Polk, Oseola, and Brevard Counties, Florida, and all Florida counties to the south thereof.	Dec. 31.
Oklahoma; and Haskell and Knox Counties, Texas	Feb. 28.
Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Lamb, Parmer, Swisher, and Yoakum Counties, Texas; and New Mexico.	Mar. 15.

6. Annual Premium

In lieu of the premium computation method contained in section 7 of the Basic Provisions, the annual premium amount (y) is computed by multiplying (a) the production guarantee by (b) the price election for harvested acreage, by (c) the premium rate, by (d) the insured acreage, by (e) your share at the time of planting, and by (f) any applicable premium adjustment factors contained in the actuarial documents ($a \times b \times c \times d \times e \times f = y$).

7. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all the potatoes in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) Planted with certified seed (unless otherwise permitted by the Special Provisions);

(c) Planted for harvest as certified seed stock, or for human consumption, (unless specified otherwise in the Special Provisions);

(d) That are not (unless allowed by the Special Provisions or by written agreement):

(1) Interplanted with another crop; or

(2) Planted into an established grass or legume.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage that:

(a) Does not meet the rotation requirements contained in the Special Provisions for the crop; or

(b) Is damaged before the final planting date or before the end of the applicable planting period in counties for which the Special Provisions designate separate planting periods, to the extent that similarly situated producers in the area would normally not further care for the crop, unless it is replanted or we agree that it is not practical to replant.

9. Insurance Period

In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows (exceptions, if any, for specific counties, varieties or types are contained in the Special Provisions):

(a) July 15 in Missouri; North Carolina; and all Texas counties except Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Haskell, Hartley, Knox, Lamb, Parmer, Swisher, and Yoakum.

(b) July 25 in Arizona; and Virginia.

(c) August 15 in Oklahoma; and Haskell and Knox Counties, Texas.

(d) In Alabama; California; Florida; and Georgia; the dates established by the Special Provisions for each planting period; and

(e) October 15 in Bailey, Castro, Dallam, Deaf Smith, Floyd, Gains, Hale, Hartley, Lamb, Parmer, Swisher, and Yoakum Counties, Texas; Delaware; Maryland; New Jersey; and New Mexico.

10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss which occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects, but only if sufficient and proper pest control measures are used;

(4) Plant disease, but only if sufficient and proper disease control measures are used;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period (see section 10(a) (1) through (7)).

(b) In addition to the causes of loss not insured against as contained in section 12 of the Basic Provisions, we will not insure against any loss of production due to:

(1) Damage that occurs or becomes evident after the end of the insurance period, including, but not limited to, damage that occurs after potatoes have been placed in storage; or

(2) Causes, such as freeze after certain dates, as limited by the Special Provisions.

11. Duties in the Event of Damage or Loss

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples at least 10 feet wide and extending the entire length of each field in the unit if you are going to destroy any acreage of the insured crop that will not be harvested.

(b) We must be given the opportunity to perform a grade inspection on the production from any unit for which you have given notice of damage.

12. 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 acceptable production records were not provided; and

(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) Multiplying the insured acreage by its respective production guarantee (if there is unharvested acreage in the unit, the harvested and unharvested acreage will be determined separately);

(2) Multiplying each result in section 12(b)(1) by the respective price election (the price election may be limited as specified in section 3.);

(3) Totaling the results of section 12(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 12(d)) by the respective price election;

(5) Totaling the results of section 12(b)(4);

(6) Subtracting the results of section 12(b)(5) from the result in section 12(b)(3); and

(7) Multiplying the result of section 12(b)(6) by your share.

For example:

You have a 100 percent share in 100 harvested acres of potatoes in the unit, with a guarantee of 150 hundredweight per acre and a price election of $4.00 per hundredweight. You are only able to harvest 10,000 hundredweight. Your indemnity would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee;

(2) 15,000 hundredweight × $4.00 price election = $60,000.00 value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count;

(6) $60,000.00 − $40,000.00 = $20,000.00 loss; and

(7) $20,000.00×100 percent = $20,000.00 indemnity payment.

You also have a 100 percent share in 100 unharvested acres of potatoes in the same unit, with a guarantee of 150 hundredweight per acre and a price election of $3.20 per hundredweight. (The price election for unharvested acreage is 80.0 percent of your elected price election ($4.00 × 0.80 = $3.20.) This unharvested acreage was appraised at 35 hundredweight per acre for a total of 3,500 hundredweight as production to count. Your total indemnity for the harvested and unharvested acreage would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the harvested acreage, and

100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the unharvested acreage;

(2) 15,000 hundredweight guarantee × $4.00 price election = $60,000.00 value of guarantee for the harvested acreage, and

15,000 hundredweight guarantee × $3.20 price election = $48,000.00 value of guarantee for the unharvested acreage;

(3) $60,000.00 + $48,000.00 = $108,000.00 total value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count for the harvested acreage, and

3500 hundredweight × $3.20 = $11,200.00 value of production to count for the unharvested acreage;

(5) $40,000.00 + $11,200.00 = $51,200.00 total value of production to count;

(6) $108,000.00 − $51,200 = $56,800.00 loss; and

(7) $56,800.00 loss × 100 percent = $56,800.00 indemnity payment.

(c) The extent of any quality loss must be determined based on samples obtained no later than the time potatoes are placed in storage, if the production is stored prior to sale, or the date they are delivered to a buyer, wholesaler, packer, broker, or other handler if production is not stored.

(d) The total production to count (in hundredweight) 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 put to another use without our consent;

(C) That is damaged solely by uninsured causes;

(D) From which any production is disposed of without a grade inspection; or

(E) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Production lost due to harvest prior to full maturity. Production to count from such acreage will be determined by increasing the amount of harvested production by 2 percent per day for each day the potatoes were harvested prior to the date the potatoes would have reached full maturity. The date the potatoes would have reached full maturity will be considered to be 45 days prior to the calendar date for the end of the insurance period, unless otherwise specified in the Special Provisions. This adjustment will not be made if the potatoes are damaged by an insurable cause of loss, and leaving the crop in the field would either reduce production or decrease quality.

(iv) Unharvested production (the value of unharvested production will be calculated using the reduced price election determined in section 3(b) and unharvested production may be adjusted in accordance with section 12(e)); 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 when 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 price used to determine the amount of any indemnity will be limited as specified in section 3 even if the representative samples are harvested. 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 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 determined in accordance with section 12(e).

(e) With the exception of production with external defects, only marketable lots of mature potatoes will be production to count for loss adjustment purposes. Production not meeting the standards for grading U.S. No. 2 due to external defects will be determined on an individual potato basis for all unharvested potatoes and for any harvested potatoes if we determine it is practical to separate the damaged production. All determinations must be based upon a grade inspection.

(1) Marketable lots of potatoes will include any lot of potatoes that is:

(i) Stored;

(ii) Sold as seed;

(iii) Sold for human consumption; or

(iv) Harvested and not sold or that is appraised if such lot meets the standards for grading U.S. No. 2 or better on a sample basis.

(2) Marketable lots will also include any potatoes that we determine:

(i) Could have been sold for seed or human consumption in the general marketing area;

(ii) Were not sold as a result of uninsured causes including, but not limited to, failure to meet chipper or processor standards for fry color or specific gravity; or

(iii) Were disposed of without our prior written consent and such disposition prevented our determination of marketability.

(3) Unless included in section 12(e) (1) or (2), a potato lot will not be considered marketable if, due to insurable causes of damage, it:

(i) Is partially damaged, and is salvageable only for starch, alcohol, or livestock feed;

(ii) Is left unharvested and does not meet the standards for grading U.S. No. 2 or better due to internal defects; or

(iii) does not meet the standards for grading U.S. No. 2 or better due to external defects, is harvested, and it is not practical to separate the damaged production.

13. Prevented Planting

Your prevented planting coverage will be 25 percent of your production guarantee for timely planted acreage. If you have limited or additional coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[62 FR 65333, Dec. 12, 1997]

§457.148 Fresh market pepper crop insurance provisions.

The fresh market pepper crop insurance provisions for the 1999 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

Fresh Market Pepper Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Acre—43,560 square feet of land when row widths do not exceed six feet, or if row widths exceed six feet, the land area on which at least 7,260 linear feet of rows are planted.

Bell pepper—An annual pepper (of the capsicum annum species, grossum group), widely cultivated for its large, crisp, edible fruit.

Box—One and one-ninth (1⅑) bushels of the insured crop.

Crop year—In lieu of the definition of ''crop year'' contained in section 1 (Definitions) of the Basic Provisions (§457.8), crop year is a period of time that begins on the first day of the earliest planting period for fall planted peppers and continues through the last day of the insurance period for spring planted peppers. The crop year is designated by the calendar year in which spring planted peppers are harvested.

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 sufficient to directly damage the crop.

Freeze—The formation of ice in the cells of the plant or its fruit, caused by low air temperatures.

Harvest—The picking of peppers on the unit.

Mature bell pepper—A pepper that has reached the stage of development that will withstand normal handling and shipping.

Plant stand—The number of live plants per acre prior to the occurrence of an insurable cause of loss.

Planted acreage—In addition to the definition contained in the Basic Provisions, for each planting period, pepper seed or transplants must initially be planted in rows, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Planting period—The period of time designated in the actuarial documents in which the peppers must be planted to be considered fall, winter or spring-planted peppers.

Potential production—The number of boxes of mature bell peppers that the pepper plants will or would have produced per acre by the end of the insurance period, assuming normal growing conditions and practices.

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, marketing windows, 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 (inability to obtain plants or seed will not be considered when determining if it is practical to replant).

Row width—The widest distance from the center of one row of plants to the center of an adjacent row of plants.

Tropical depression—A system identified by the U.S. Weather Service as a tropical depression, and for the period of time so designated, including tropical storms, gales, and hurricanes.

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by planting period.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

3. Amounts of Insurance and Production Stages

(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 coverage level (and the corresponding amount of insurance designated in the actuarial documents for the applicable planting period and practice) for all the peppers in the county insured under this policy.

(b) The amount of insurance you choose for each planting period and practice must have the same percentage relationship to the maximum price offered by us for each planting period and practice. For example, if you choose 100 percent of the maximum amount of insurance for a specific planting period and practice, you must also choose 100 percent of the maximum amount of insurance for all other planting periods and practices.

(c) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8) do not apply to fresh market peppers.

(d) The amounts of insurance per acre are progressive by stages as follows:

Stage	Percent of the amount of insurance per acre that you selected	Length of time if direct-seeded	Length of time if transplanted
1	65	From planting through the 74th day after planting.	From planting through the 44th day after planting.
2	85	From the 75th day after planting until the beginning of stage 3.	From the 45th day after planting until the beginning of stage 3.
3	100	Begins the earlier of 110 days after planting, or the beginning of harvest.	Begins the earlier of 80 days after planting, or the beginning of harvest.

(e) Any acreage of peppers damaged in the first or second stage to the extent that the majority of producers in the area would not normally further care for it, will be deemed to have been destroyed. The indemnity payable for such acreage will be based on the stage the plants had achieved when the damage occurred.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is April 30 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 July 31.

6. Report of Acreage

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report on or before the acreage reporting date contained in the Special Provisions for each planting period:

(a) All the acreage of peppers in the county insured under this policy in which you have a share;

(b) The dates the acreage was planted within each planting period; and

(c) The row width.

7. Annual Premium

In lieu of the premium amount determinations contained in section 7 (Annual Premium) of the Basic Provisions (§ 457.8), the annual premium amount for each cultural practice (*e.g.*, fall direct-seeded irrigated) is determined by multiplying the third stage amount of insurance per acre by the premium rate for the cultural practice as established in the Actuarial Table, by the insured acreage, by your share at the time coverage begins, and by any applicable premium adjustment factors contained in the actuarial documents.

8. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the bell peppers in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are:

(1) Planted to be harvested and sold as mature fresh market bell peppers;

(2) Planted within the planting periods designated in the actuarial documents;

(3) Grown under an irrigated practice;

(4) Grown on acreage covered by plastic mulch except where the Special Provisions allow otherwise;

(5) Grown by a person who in at least one of the three previous crop years:

(i) Grew bell peppers for commercial sale; or

(ii) Participated in managing a bell pepper farming operation;

(c) That are not:

(1) Interplanted with another crop;

(2) Planted into an established grass or legume;

(3) Pimento peppers; or

(4) Grown for direct marketing.

9. Insurable Acreage

(a) In lieu of the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§457.8), that prohibit insurance attaching if a crop has not been planted in at least one of the three previous crop years, we will insure newly cleared land or former pasture land planted to fresh market peppers.

(b) In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§457.8):

(1) You must replant any acreage of peppers damaged during the planting period in which initial planting took place whenever less than 50 percent of the plant stand remains: and

(i) It is practical to replant;

(ii) If, at the time the crop was damaged, the final day of the planting period has not passed; and

(iii) The damage occurs within 30 days of transplanting or 60 days of direct-seeding.

(2) Whenever peppers initially are planted during the fall or winter planting periods and the conditions specified in sections 9(b)(1) (ii) and (iii) are not satisfied, you may elect:

(i) To replant such acreage and collect any replant payment due as specified in section 12. The initial planting period coverage will continue for such replanted acreage.

(ii) Not to replant such acreage and receive an indemnity based on the stage of growth the plants had attained at the time of damage. However, such an election will result in the acreage being uninsurable in the subsequent planting period.

(3) We will not insure any acreage on which peppers (except for replanted peppers in accordance with sections 9(b)(1) and (2)), tomatoes, eggplants, or tobacco have been grown and the soil was not fumigated or otherwise properly treated before planting peppers.

10. 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 the date we accept your application, or when the peppers are planted in each planting period. Coverage ends at the earliest of:

(a) Total destruction of the peppers on the unit;

(b) Abandonment of the peppers on the unit;

(c) The date harvest should have started on the unit on any acreage which will not be harvested;

(d) Final adjustment of a loss on the unit;

(e) Final harvest; or

(f) The calendar date for the end of the insurance period as follows:

(1) 165 days after the date of direct-seeding or replanting with seed; and

(2) 150 days after the date of transplanting or replanting with transplants.

11. 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) Excess rain;

(2) Fire;

(3) Freeze;

(4) Hail;

(5) Tornado;

(6) Tropical depression; or

(7) Failure of the irrigation water supply, if caused by an insured cause of loss 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 any loss of production due to:

(1) Disease or insect infestation, unless no effective control measure exists for such disease or insect infestation; or

(2) Failure to market the peppers, unless such failure is due to actual physical damage caused by an insured cause of loss that occurs during the insurance period.

12. Replanting Payments

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§457.8), a replanting payment is allowed if, due to an insured cause of loss, more than 50 percent of the plant stand will not produce peppers and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of your actual cost of replanting or the result obtained by multiplying the per acre replanting payment amount contained in the Special Provisions by your insured share.

(c) In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§457.8), that limit a replanting payment to one each crop year, only one replanting payment will be made for acreage planted during each planting period within the crop year.

13. Duties in the Event of Damage or Loss

In addition to the requirements contained in section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§457.8), if

you intend to claim an indemnity on any unit you also must give us notice not later than 72 hours after the earliest of:

(a) The time you discontinue harvest of any acreage on the unit;

(b) The date harvest normally would start if any acreage on the unit will not be harvested; or

(c) The calendar date for the end of the insurance period.

14. 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 in each stage by the amount of insurance per acre for the final stage;

(2) Multiplying each result in section 14(b)(1) by the percentage for the applicable stage (see section 3(d));

(3) Total the results of section 14(b)(2);

(4) Subtracting either of the following values from the result of section 14(b)(3):

(i) For other than catastrophic risk protection coverage, the total value of production to be counted (see section 14(c)); or

(ii) For catastrophic risk protection coverage, the result of multiplying the total value of production to be counted (see section 14(c)) by:

(A) Sixty percent for the 1998 crop year; or

(B) Fifty-five percent for 1999 and subsequent crop years; and

(5) Multiplying the result of section 14(b)(4) by your share.

(c) The total value of production to count from all insurable acreage on the unit will include:

(1) Not less than the amount of insurance per acre for the stage for any acreage:

(i) That is abandoned;

(ii) Put to another use without our consent;

(iii) That is damaged solely by uninsured causes; or

(iv) For which you fail to provide acceptable production records;

(2) The value of the following appraised production will not be less than the dollar amount obtained by multiplying the number of boxes of appraised peppers by the minimum value per box shown in the Special Provisions for the planting period:

(i) Potential production on any acreage that has not been harvested the third time;

(ii) Unharvested mature bell peppers (unharvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count);

(iii) Production lost due to uninsured causes; and

(iv) 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 when you put the acreage to another use or 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 (If we require you to continue to care for the crop and you do not do so, the original appraisal will be used); or

(B) You may elect to continue to care for the crop, in which case the amount of production to count for the acreage will be the harvested production, or our reappraisal if the crop is not harvested.

(3) The total value of all harvested production from the insurable acreage will be the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each box of peppers (this result may not be less than the minimum value shown in the Special Provisions for any box of peppers), and multiplying this result by the number of boxes of peppers harvested. Harvested production that is damaged or defective due to insurable causes and is not marketable, will not be counted as production to count.

15. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

16. Minimum Value Option

(a) The provisions of this option are continuous and will be attached to and made a part of your insurance policy, if:

(1) You elect *either* Option I *or* Option II of the Minimum Value Option on your application, or on a form approved by us, on or before the sales closing date for the initial crop year in which you wish to insure fresh market peppers under this option, and pay the additional premium indicated in the actuarial documents for this optional coverage; and

(2) You have not elected coverage under the Catastrophic Risk Protection Endorsement.

(b) In lieu of the provisions contained in section 14(c)(3), the total value of harvested production will be determined as follows:

(1) If you selected Option I of the Minimum Value Option, the total value of harvested production will be as follows:

(i) For sold production, the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each box of peppers (this result may not be less than the minimum value option price contained in the Special Provisions for any box of peppers), and multiplying this result by the number of boxes of peppers sold; and

(ii) For marketable production that is not sold, the dollar amount obtained by multiplying the number of boxes of such peppers on the unit by the minimum value shown in the Special Provisions for the planting period (harvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production).

(2) If you selected Option II of the Minimum Value Option, the total value of harvested production will be as provided in section 16(b)(1), except that the dollar amount specified in section 16(b)(1)(i) may not be less than zero.

(c) 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 preceding the crop year for which the cancellation of this option is to be effective.

[62 FR 14789, Mar. 28, 1997, as amended at 62 FR 65174, Dec. 10, 1997]

§457.149 Table grape crop insurance provisions.

The Table Grape Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

For FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

For Reinsured Policies

(Insurance provider's name or other appropriate heading)

For both FCIC and reinsured policies:

Table Grape Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Adapted. Varieties that are recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Cluster thinning and removal. Removing parts of an immature cluster or the entire cluster of grapes.

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.

Graft. To unite a shoot or bud (scion) with a rootstock or an existing vine in accordance with recommended practices to form a living union.

Harvest. Severing the clusters of mature grapes from the vine.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Lug. Twenty pounds of table grapes in the Coachella Valley, California district; 21 pounds in all other California districts; and 20 pounds in Arizona.

Set out. Physically planting the grape plant in the vineyard.

Table grapes. Grapes that are grown for commercial sale for human consumption as fresh fruit on acreage where the cultural practices to produce fresh marketable grapes are carried out.

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each table grape variety designated in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

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 table grape variety in the county insured under this policy.

(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 variety if applicable:

(1) Any damage, removal of bearing vines, 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 vines on insurable and uninsurable acreage;

(3) The age of the vines 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: Interplanting perennial crop, removal of vines, damage, change in practices and any other circumstance that may affect 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.

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

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.

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 January 31.

6. Report of Acreage

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report the acreage of table grapes in the county by variety.

7. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be any insurable variety of grapes in the county that you elect and for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are grown for harvest as table grapes;

(3) That are adapted to the area; and

(4) That are grown in a vineyard that, if inspected, is considered acceptable by us.

(b) In addition to table grapes not insurable under section 8 (Insured Crop) of the Basic Provisions (§ 457.8), we do not insure any table grapes grown on vines:

(1) That, after being set out or grafted, have not reached the number of growing seasons designated by the Special Provisions; or

(2) That have not produced an average of at least 150 lugs of table grapes per acre in at least one of the most recent three crop years in your actual production history base period. However, we may inspect and agree in writing to insure acreage that has not produced this amount.

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, table grapes 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.

9. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins 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 vineyard.

(2) The calendar date for the end of the insurance period for each crop year is the date during the calendar year in which the grapes are normally harvested or contained in the Special Provisions as provided to you on or before the contract change date.

(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 table grapes 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 or 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.

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your table grape policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such 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 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 vineyard;

(3) Wildlife;

(4) Earthquake;

(5) Volanic eruption; or

(6) Failure of irrigation water supply, if caused by an insured cause of loss ((a)(1) through (5) of this section) 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) Phylloxera, regardless of cause; or

(3) Inability to market the table grapes 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) You must notify us within 3 days after 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 the crop has been damaged during the growing season, you must provide notice at least 15 days prior to the beginning of harvest if you intend to claim an indemnity as a result of the damage previously reported. You must not destroy the damaged crop until the earlier of 15 days from the date you gave notice of loss, or our 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 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 by its respective production guarantee;

(2) Multiplying the result in section 12(b)(1) by the respective price election for the variety;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production to be counted of the variety (see section 12(c)) by the respective price election;

(5) Totaling the results in section 12(b)(4);

(6) Subtracting the result of section 12(b)(5) from the result in section 12(b)(3); and

(7) Multiplying the result of section 12(b)(6) by your share.

(c) The total production to count (in lugs) 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 in section 11(b);

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production that meets, or would meet if properly handled, the California Department of Food and Agriculture minimum standards for table grapes; 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) All harvested production from insurable acreage regardless of condition or disposition. The quantity of production to count for table grape production damaged by insurable causes within the insurance period that is marketed for any use other than table grapes will be determined by multiplying the greater of (1) the value of the table grapes per ton or (2) $50, by 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.

13. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 47747, Sept. 11, 1997, as amended at 62 FR 65175, Dec. 10, 1997; 65 FR 47839, Aug. 4, 2000]

§ 457.150 Dry bean crop insurance provisions.

The dry bean crop insurance provisions for the 2003 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

Dry Bean Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Actual value—The dollar value received, or that could be received, for contract seed beans under a seed bean processor contract if the contract seed bean production is properly handled in accordance with the requirements of such contract.

Base price—The price per pound (excluding any discounts or incentives that may apply) that is stated in the seed bean processor contract and that will be paid to the producer for at least 50 percent of the total production under contract with the seed company.

Beans—Dry beans and contract seed beans.

Combining—A harvesting process that uses a machine to separate the beans from the pods and other vegetative matter and place the beans into a temporary storage receptacle.

Contract seed beans—Dry beans grown under the terms of a seed bean processor contract for the purpose of producing seed to be used for producing dry beans or vegetable beans in a future crop year.

Dry beans—The crop defined by The United States Standards for Beans excluding contract seed beans.

Harvest—Combining the beans. Beans which are swathed or knifed prior to combining are not considered harvested.

Local market price—The cash price per hundredweight for the U.S. No. 2 grade of dry beans of the insured type offered by buyers in the area in which you normally market the dry beans. Moisture content and factors not associated with grading under the United States Standards for Beans will not be considered in establishing this price.

Net price—The dollar value of dry bean production received, or that could have been received, after reductions in value due to insurable causes of loss.

Pick—The percentage, on a weight basis, of defects including splits, damaged (including discolored) beans, contrasting types, and foreign material that remains in the dry beans after dockage has been removed by the proper use of screens or sieves.

Planted acreage—In addition to the definition contained in the Basic Provisions, beans

must initially be planted in rows far enough apart to permit mechanical cultivation, unless otherwise provided by the Special Provisions, actuarial documents, 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 after the end of the late planting period unless replanting is generally occurring in the area. For contract seed beans, it will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the seed bean processor contract or the seed company agrees to accept such production.

Seed bean processor contract—A written agreement between the contract seed bean producer and the seed company, containing at a minimum:

(a) The contract seed bean producer's promise to plant and grow one or more specific varieties of contract seed beans, and deliver the production from those varieties to the seed company;

(b) The seed company's promise to purchase all the production stated in the contract; and

(c) A base price, or a method to determine such price based on published independent information, that will be paid to the contract seed bean producer for the production stated in the contract.

Seed company—Any business enterprise regularly engaged in the processing of seed beans, that possesses all licenses and permits for marketing seed beans required by the State in which it operates, and that possesses or has contracted for facilities, with enough drying, screening and bagging or packaging equipment to accept and process the seed beans within a reasonable amount of time after harvest.

Swathing or knifing—Severance of the bean plant from the ground, including the pods and beans, and placing them into windrows.

Type—A category of beans identified as a type in the Special Provisions.

2. Unit Division

(a) In addition to the definition of basic unit in section 1 of the Basic Provisions, all acreage of contract seed beans qualifies as a separate basic unit. For production based seed bean processor contracts, the basic unit will consist of all the acreage needed to produce the amount of production under contract, based on the actual production history of the acreage. For acreage based seed bean processor contracts, the basic unit will consist of all acreage specified in the contract.

(b) In addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions, a separate optional unit may be established for each bean type shown in the Special Provisions.

(c) Contract seed beans may qualify for optional units only if the seed bean processor contract specifies the number of acres under contract. Contract seed beans produced under a seed bean processor contract that specifies only an amount of production or a combination of acreage and production, are not eligible for optional units.

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

(a) In addition to the requirements of section 3(b) (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 dry beans in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each dry bean type designated in the Special Provisions. The price elections you choose for each type are not required to have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you may also choose 75 percent of the maximum price election for another type.

(b) For contract seed beans only, the dollar amount of insurance is obtained by multiplying the production guarantee per acre for each variety in the unit by the insured acreage of that variety, times the applicable base price, and times the price election percentage you selected. The total of these results will be the amount of insurance for contract seed beans in the unit.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions, the contract change date is November 30 (December 17 for the 1998 crop year only) 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:

State and county	Cancellation and termination dates
California	February 28.
All other States	March 15.

6. Report of Acreage

For contract seed beans only, in addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must submit a copy of the seed bean processor contract on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions(§ 457.8), the crop insured will be all the beans in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are planted for harvest as:

(i) Dry beans; or

(ii) If applicable, contract seed beans, if the seed bean processor contract is executed on or before the acreage reporting date; and

(3) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume.

(b) For contract seed beans only:

(1) An instrument in the form of a ''lease'' under which you retain control of the acreage on which the insured crop is grown and that provides for delivery of the crop under substantially the same terms as a seed bean processor contract may be treated as a contract under which you have an insurable interest in the crop; and

(2) We will not insure any acreage of contract seed beans produced by a seed company.

(c) In addition to the types of dry beans designated in the Special Provisions, we will insure other types if:

(1) The type you intend to plant has been demonstrated to be adapted to the area. Evidence of adaptability must include:

(i) Results of test plots for 2 years and recommendations by a university or seed company; or

(ii) Two years of production reports that indicate your experience producing the type in your production area;

(2) You submit on or before the sales closing date your production reports and prices received, or the test plot results, and evidence of market potential, including the price buyers are willing to pay for the type; and

(3) Both parties (you and us) enter into a written agreement allowing insurance on the type in accordance with section 18 of the Basic Provisions.

(d) Any acreage of beans that is destroyed and replanted to a different insurable type of beans will be considered insured acreage in accordance with section 11.

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 that does not meet the rotation requirements contained in the Special Provisions; or

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that the majority of growers in the area would normally not further care for the crop, must be replanted unless we agree that replanting is not practical. We will not require you to replant if it is not practical to replant to the same type of beans as originally planted.

9. 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 the date immediately following planting as follows:

(a) October 15 in Oklahoma, New Mexico, and Texas;

(b) November 15 in California; and

(c) October 31 in all other States.

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 during 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 bean crop is 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 and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 10 percent of the production guarantee for the type to be replanted or 120 pounds multiplied by your price election for the type to be replanted and by your insured share.

(c) When beans are 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. The premium amount will not be reduced.

(d) The guarantee and premium for acreage replanted to a different insurable type will be based on the replanted type and will be calculated in accordance with sections 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) and 7 (Annual Premium) of the Basic Provisions (§457.8) and section 3 of these Crop Provisions.

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), 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.

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 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 unit.

(b) In the event of loss or damage to your bean crop covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage of each dry bean type by its respective production guarantee;

(2) Multiplying each result in section 13(b)(1) by the respective price election for each insured type;

(3) Totaling the results in section 13(b)(2);

(4) Multiplying the insured acreage of each contract seed bean type by its respective production guarantee;

(5) Multiplying each result in section 13(b)(4) by the applicable base price;

(6) Multiplying each result in section 13(b)(5) by your selected price election percentage;

(7) Totaling the results in section 13(b)(6);

(8) Totaling the results in section 13(b)(3) and section 13(b)(6);

(9) Multiplying the total production to be counted of each dry bean type if applicable, (see section 13(d)) by the respective price election;

(10) Totaling the value of all contract seed bean production (see section 13(c));

(11) Totaling the results in section 13(b)(9) and section 13(b)(10);

(12) Subtracting the total in section 13(b)(11) from the total in section 13(b)(8); and

(13) Multiplying the result by your share.

(c) The value of contract seed bean production to count for each type in the unit will be determined as follows:

(1) For production meeting the minimum quality requirements contained in the seed bean processor contract and for production that does not meet such requirements due to uninsured causes:

(i) Multiplying the actual value or base price per pound, whichever is greater, by the price election percentage you selected; and

(ii) Multiplying the result by the number of pounds of such production.

(2) For production not meeting the minimum quality requirements contained in the seed bean processor contract due to insurable causes:

(i) Multiplying the actual value by the price election percentage you selected; and

(ii) Multiplying the result by the number of pounds of such production.

(d) The total bean production to count (in pounds) 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 put to another use without our consent;

(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 (mature unharvested production of dry beans may be adjusted for quality deficiencies and excess moisture in accordance with section 13(e)); and

(iv) 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 when 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 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.

(e) Mature dry bean production to count may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality. Adjustment for excess moisture and quality deficiencies will not be applicable to contract seed beans.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 18 percent. We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) A pick is designated in the Special Provisions and the pick of the damaged production exceeds this designation; or

(ii) A pick is not designated in the Special Provisions and deficiencies in quality, in accordance with the United States Standards for Beans, result in dry beans not meeting the grade requirements for U.S. No. 2 (grades U.S. No. 3 or worse) because the beans are damaged or badly damaged; or

(iii) 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 which occurs within the insurance period;

(ii) The deficiencies, substances, or conditions result in a net price for the damaged production that is less than the local market price;

(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;

(iv) With regard to deficiencies in quality (except test weight, which may be determined by our loss adjuster), the samples are analyzed by:

(A) A grader licensed under the United States Agricultural Marketing Act or the United States Warehouse Act;

(B) A grader licensed under State law and employed by a warehouse operator who has a storage agreement with the Commodity Credit Corporation; or

(C) A grader not licensed under State law, but who is employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation and is in compliance with State law regarding warehouses; and

(v) With regard to substances or conditions injurious to human or animal health, the samples are analyzed by a laboratory approved by us.

(4) Dry bean production that is eligible for quality adjustment, as specified in sections 13(e) (2) and (3), will be reduced:

(i) If a conversion factor is designated by the Special Provisions, by multiplying the number of pounds of eligible production by the conversion factor designated in the Special Provisions for the applicable grade or pick; or

(ii) If a conversion factor is not designated by the Special Provisions as follows:

(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. If a local market price is not available for the insured crop year, the current years' maximum price election available for the applicable type will be used. The price for the qualifying damaged production will be the market price for the local area to the extent feasible. 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 dry beans to those buyers. Discounts used to establish the net price of the damaged production will be limited to those that are usual, customary, and reasonable. The price of the damaged production will not be reduced for:

(*1*) Moisture content;

(*2*) Damage due to uninsured causes; or

(*3*) Drying, handling, processing, including trading tare for grade to obtain a higher grade and price, or any other costs associated with normal harvesting, handling, and marketing of the dry beans; 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;

(B) The value per pound 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.

(f) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

14. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[62 FR 6105, Feb. 11, 1997, as amended at 62 FR 63633, Dec. 2, 1997; 62 FR 65175, Dec. 10, 1997; 67 FR 55690, Aug. 30, 2002]

§457.151 Forage seeding crop insurance provisions.

The Forage Seeding Crop Insurance Provisions for 2003 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:

Forage Seeding Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Crop year—The period within which the planting is or normally would become established and shall be designated by the calendar year in which the planting is made for spring planted acreage and the next succeeding calendar year for fall planted acreage.

Fall planted—A forage crop seeded after June 30.

Forage—Planted perennial alfalfa, perennial red clover, perennial grasses, or a mixture thereof, or other species, as shown in the actuarial documents.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce a normal stand, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. Severance of the forage plant from its roots. Acreage that is only grazed will not be considered harvested.

Normal stand—A population of live plants per square foot that meets the minimum required number of plants as shown in the Special Provisions.

Nurse Crop (companion crop)—A crop seeded into the same acreage as another crop, that is intended to be harvested separately, and that is planted to improve growing conditions for the crop with which it is grown.

Planted acreage—In addition to the provisions in section 1 of the Basic Provisions, 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, unless otherwise provided by the Special Provisions, actuarial documents, or written agreement.

Replanting—Performing the cultural practices necessary to prepare the land for replacing of the forage seed and then replacing the forage seed in the insured acreage with the expectation of producing a normal stand. Replacing new seed into an existing damaged stand, which results in a reduced seeding rate from the original seeding rate, will not be considered replanting.

Sales closing date—In lieu of the definition contained in the Basic Provisions, a date contained in the Special Provisions by which an application must be filed and by which you may change your crop insurance coverage for a crop year. If the Special Provisions provide a sales closing date for both fall seeded and spring seeded practices for the insured crop and you plant any insurable fall seeded acreage, you may not change your crop insurance coverage after the fall sales closing date for the fall seeded practice.

Spring planted—A forage crop seeded before July 1.

2. Unit Division

A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by spring planted and fall planted acreage.

3. Amounts of Insurance

(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 only select one coverage level and the corresponding amount of insurance designated in the actuarial documents for the applicable type and practice for all the forage seeding in the county that is insured under this policy. The amount of insurance you choose for each type and practice must have the same percentage relationship to the maximum amount of insurance offered by us for each type and practice. For example, if you choose 100 percent of the maximum amount of insurance for a specific type and practice, you must also choose 100 percent of the maximum amount of insurance for all other types and practices.

(b) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), do not apply to forage seeding.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date for counties with a March 15 cancellation date and April 30 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation and termination dates
California, Nevada, New Hampshire, New York, Pennsylvania, South Dakota counties for which the Special Provisions designate both fall and spring final planting dates, and Vermont.	July 31.
South Dakota counties for which the Special Provisions designate only a spring final planting date, and all other states.	March 15.

6. Report of Acreage.

In lieu of the provisions of section 6(a) of the Basic Provisions, a report of all insured acreage of forage seeding must be submitted on or before each forage seeding acreage report date specified 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 forage in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That is planted during the current crop year, or replanted during the calendar year following planting, to establish a normal stand of forage;

(c) That is not grown with the intent to be grazed, or not grazed at any time during the insurance period; and

(d) That is not interplanted with another crop, except nurse crops, unless allowed by the Special Provisions or by written agreement.

8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions:

(a) In California counties Lassen, Modoc, Mono, Shasta, Siskiyou and all other states, any acreage of the insured crop damaged before the final planting date, to the extent that such acreage has less than 75 percent of a normal stand, must be replanted unless we agree that it is not practical to replant; and

(b) In California, unless otherwise specified in the Special Provisions, any acreage of the insured crop damaged anytime during the crop year to the extent that such acreage has less than 75 percent of a normal stand must be replanted unless it cannot be replanted and reach a normal stand within the insurance period.

9. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8) regarding when insurance ends, forage seeding insurance will end at the earliest of:

(a) Total destruction of the insured crop on the unit;

(b) The initial harvest of the unit, if a late harvest date is not listed in the Special Provisions;

(c) The first harvest after the late harvest date, if a late harvest date is specified in the Special Provisions. You may harvest the crop as often as practical in accordance with good farming practices on or before the late harvest date.

(d) Final adjustment of a loss on a unit;

(e) Abandonment of the insured crop;

(f) The date grazing commences on the insured crop; or

(g) The following calendar dates:

(1) During the calendar year following the year of seeding for:

(i) Fall planted acreage in all California counties except

Lassen, Modoc, Mono, Shasta and Siskiyou—November 30;

(ii) Spring planted acreage in Lassen, Modoc, Mono, Shasta and Siskiyou Counties California, Colorado, Idaho, Nebraska, Nevada, Oregon, Utah and Washington—April 14;

(iii) Spring planted acreage in all other states—May 21;

(iv) Fall planted acreage in Lassen, Modoc, Mono, Shasta and Siskiyou Counties California and all other states—October 15;

(2) During the calendar year of seeding for spring planted acreage in all California counties except Lassen, Modoc, Mono, Shasta and Siskiyou—November 30.

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 that result in loss of, or failure to establish, a stand of forage that occur during 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 Payment

In lieu of the provisions contained in section 13 of the Basic Provisions:

(a) A replanting payment is allowed if:

(1) In California, unless specified otherwise in the Special Provisions, acreage planted to the insured crop is damaged by an insurable cause of loss occurring within the insurance period to the extent that less than 75 percent of a normal stand remains and the crop can reach maturity before the end of the insurance period;

(2) In Lassen, Modoc, Mono, Shasta, Siskiyou Counties, California, and all other states:

(i) A replanting payment is allowed only whenever the Special Provisions designate both fall and spring final planting dates;

(ii) The insured fall planted acreage is damaged by an insurable cause of loss to the extent that less than 75 percent of a normal stand remains;

(iii) It is practical to replant;

(iv) We give written consent to replant; and

(v) Such acreage is replanted the following spring by the spring planting date.

(b) The amount of the replanting payment will be equal to 50 percent of the amount of indemnity determined in accordance with section 13 unless otherwise specified in the Special Provisions.

(c) No replanting payment will be made on acreage for which one replanting payment has been allowed.

(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.

12. 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 Basic Provisions (§457.8), the representative samples of the 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 tilling of the balance of the unit is completed.

(b) In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§457.8), you must give us written notice if, during the period before destroying the crop on any fall planted acreage that is damaged, you decide to replant the acreage by the spring final planting date.

13. Settlement of Claim.

(a) 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 and practice by the amount of insurance for the applicable type and practice;

(2) Totaling the results in section 13(a)(1);

(3) Multiplying the total acres with an established stand for the insured acreage of each type and practice in the unit by the amount of insurance for the applicable type and practice;

(4) Totaling the results in section 13(a)(3);

(5) Subtracting the result in section 13(a)(4) from the result in section 13(a)(2); and

(6) Multiplying the result in section 13(a)(5) by your share.

Example: Assume you have 100 percent share in 30 acres of type A forage in the unit, with an amount of insurance of $100.00 per acre. At the time of loss, the following findings are established: 10 acres had a remaining stand of 75 percent or greater. You also have 20 acres of type B forage in the unit, with an amount of insurance of $90.00 per acre. 10 acres had a remaining stand of 75 percent or greater. Your indemnity would be calculated as follows:

1. 30 acres × $100.00 = $3,000 amount of insurance for type A; 20 acres × $90.00 = $1,800 amount of insurance for type B;

2. $3,000 + $1,800 = $4,800 total amount of insurance;

3. 10 acres with 75% stand or greater × $100.00 = $1,000 production to count for type A: 10 acres with 75% stand or greater × $90.00 = $900 production to count for type B;

4. $1,000 + $900 = $1,900 total production to count;

5. $4,800 − $1,900 = $2,900 loss;

6. $2,900 × 100 percent share = $2,900 indemnity payment.

(b) The acres with an established stand will include:

(1) Acreage that 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 that is harvested and not reseeded.

(c) The amount of indemnity on any spring planted acreage determined in accordance with section 13(a) will be reduced 50 percent if the stand is less than 75 percent but more than 55 percent of a normal stand.

14. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 13291, Mar. 20, 1997, as amended at 62 FR 65175, Dec. 10, 1997; 65 FR 3784, Jan. 25, 2000; 65 FR 11457, Mar. 3, 2000; 66 FR 42730, Aug. 15, 2001; 66 FR 53076, Oct. 19, 2001; 67 FR 65030, Oct. 23, 2002]

EDITORIAL NOTE: At 62 FR 65175, Dec. 10, 1997, § 457.151 was amended in section 1 by revising the definition ''Sales closing date'', however, this definition was not included when this section was added at 62 FR 13291, Mar. 20, 1997.

§ 457.152 Hybrid seed corn crop insurance provisions.

The Hybrid Seed Corn Crop Insurance Provisions for the 1998 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

Hybrid Seed Corn Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, (§ 457.8) with (1) controlling (2), etc.

1. Definitions

Adjusted yield. An amount determined by multiplying the county yield by the coverage level factor.

Amount of insurance per acre. A dollar amount determined by multiplying the adjusted yield by the price election you select and subtracting any minimum guaranteed payment, not to exceed the total compensation specified in the hybrid seed corn processor contract. If your hybrid seed corn processor contract contains a minimum guaranteed payment that is stated in bushels, we will convert that value to dollars by multiplying it by the price election you selected.

Approved yield. In lieu of the definition contained in the Basic Provisions, an amount FCIC determines to be representative of the yield that the female parent plants are expected to produce when grown under a specific production practice. FCIC will establish the approved yield based upon records provided by the seed company and other information it deems appropriate.

Bushel. Fifty-six pounds avoirdupois of shelled corn, 70 pound avoirdupois of ear corn, or the number of pounds determined under the seed company's normal conversion chart when that chart is used to determine the approved yield and the claim for indemnity.

Certified seed test. A warm germination test performed on clean seed according to specifications of the ''Rules for Testing Seeds'' of the Association of Official Seed Analysts.

Commercial hybrid seed corn. The offspring produced by crossing a male and female parent plant, each having a different genetic character. This offspring is the product intended for use by an agricultural producer to produce a commercial field corn crop for grain.

County yield. An amount contained in the actuarial documents that is established by FCIC to represent the yield that a producer of hybrid seed corn would be expected to produce if the acreage had been planted to commercial field corn.

Coverage level factor. A factor contained in the Special Provisions to adjust the county yield for commercial field corn to reflect the higher value of hybrid seed corn.

Dollar value per bushel. An amount that determines the value of any seed production to count. It is determined by dividing the amount of insurance per acre by the result of multiplying the approved yield by the coverage level percentage, expressed as a decimal.

Female parent plants. Corn plants that are grown for the purpose of producing commercial hybrid seed corn and have had the stamens removed or are otherwise male sterile.

Field run. Commercial hybrid seed corn production before it has been dried, screened, or processed.

Good farming practices. In addition to the definition contained in the Basic Provisions, good farming practices include those practices required by the hybrid seed corn processor contract.

Harvest. Combining, threshing or picking ears from the female parent plants to obtain commercial hybrid seed corn.

Hybrid seed corn processor contract. An agreement executed between the hybrid seed corn crop producer and a seed company containing, at a minimum:

(a) The producer's promise to plant and grow male and female parent plants, and to deliver all commercial hybrid seed corn produced from such plants to the seed company;

(b) The seed company's promise to purchase the commercial hybrid seed corn produced by the producer; and

(c) Either a fixed price per unit of measure (bushels, hundredweight, etc.) of the commercial hybrid seed corn or a formula to determine the value of such seed. Any formula for establishing the value must be based on data provided by a public third party that establishes or provides pricing information to the general public, based on prices paid in the open market (*e.g.*, commodity futures exchanges), to be acceptable for the purpose of this policy.

Inadequate germination. Germination of less than 80 percent of the commercial hybrid seed corn as determined by using a certified seed test.

Insurable interest. Your share of the financial loss that occurs in the event seed production is damaged by a cause of loss specified in section 10.

Local market price. The cash price offered by buyers for any production from the female parent plants that is not considered commercial hybrid seed corn under the terms of this policy.

Male parent plants. Corn plants grown for the purpose of pollinating female parent plants.

Minimum guaranteed payment. A minimum amount (usually stated in dollars or bushels) specified in your hybrid seed corn processor contract that will be paid or credited to you by the seed company regardless of the quantity of seed produced.

Non-seed production. Production that does not qualify as seed production because of inadequate germination.

Planted acreage. In addition to the definition contained in the Basic Provisions, the insured crop must be planted in rows wide enough to permit mechanical cultivation, unless otherwise provided by the Special Provisions or by written agreement.

Planting pattern. The arrangement of the rows of the male and female parent plants in a field. An example of a planting pattern is four consecutive rows of female parent plants followed by two consecutive rows of male parent plants.

Practical to replant. In addition to the definition contained in the Basic Provisions, practical to replant applies to either the female or male parent plant. It will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the hybrid seed corn processor contract, or the seed company agrees that it will accept the production from the replanted acreage.

Prevented planting. In addition to the definition contained in the Basic Provisions, prevented planting applies to the female and male parent plants. The male parent plants must be planted in accordance with the requirements of the hybrid seed corn processor contract to be considered planted.

Sample. For the purpose of the certified seed test, at least 3 pounds of randomly selected field run shelled corn for each variety of commercial hybrid seed corn grown on the unit.

Seed company. A business enterprise that possesses all licenses for marketing commercial hybrid seed corn required by the state in which it is domiciled or operates, and which possesses facilities with enough storage and drying capacity to accept and process the insured crop within a reasonable amount of time after harvest. If the seed company is the insured, it must also be a corporation.

Seed production. All seed produced by female parent plants with a germination rate of at least 80 percent as determined by a certified seed test.

Shelled corn. Kernels that have been removed from the cob.

Variety. The name, number or code assigned to a specific genetic cross by the seed company or the Special Provisions for the insured crop in the county.

2. Unit Division

For any processor contract that stipulates the amount of production to be delivered:

(a) In lieu of the definition of ''basic unit'' contained in the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill a hybrid seed corn processor contract;

(b) There will be no more than one basic unit for all production contracted with each processor contract;

(c) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(d) Optional units will not be established.

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

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the hybrid seed corn in the county insured under this policy unless the Special Provisions provide different price elections by variety, in which case you may select one price election for each hybrid seed corn variety designated in the Special Provisions. The price election you choose for each variety must have the same percentage relationship to the maximum price offered by us for each variety. For example, if you choose 100 percent of the maximum price election for one specific variety, you must also choose 100 percent of the maximum price election for all other varieties.

(b) The production reporting requirements contained in section 3 of the Basic Provisions are not applicable to this contract.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage

In addition to the requirements of section 6 of the Basic Provisions, you must:

(a) Report by type and variety, the location and insurable acreage of the insured crop;

(b) Report any acreage that is uninsured, including that portion of the total acreage occupied by male parent plants; and

(c) Certify that you have a hybrid seed corn processor contract and report the amount, if any, of any minimum guaranteed payment.

7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the female parent plants in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are grown under a hybrid seed corn processor contract executed before the acreage reporting date;

(3) That are planted for harvest as commercial hybrid seed corn in accordance with the requirements of the hybrid seed corn processor contract and the production management practices of the seed company; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Planted with a mixture of female and male parent seed in the same row;

(ii) Planted for any purpose other than for commercial hybrid seed corn;

(iii) Interplanted with another crop; or

(iv) Planted into an established grass or legume.

(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 that provides for delivery of the crop under substantially the same terms as a hybrid seed corn processor contract will be treated as a contract under which you have an insurable interest in the crop.

(c) A commercial hybrid seed corn producer who is also a seed company may be able to insure the hybrid seed corn crop if the following requirements are met:

(1) The seed company has an insurable interest in the hybrid seed corn crop;

(2) Prior to the sales closing date, the Board of Directors of the seed company has executed and adopted a corporate resolution that contains the same terms as a hybrid seed corn processor contract. This corporate resolution will be considered a contract under this policy;

(3) Sales records for at least the previous years' seed production must be provided to confirm that the seed company has produced and sold seed. If such records are not available, the crop may be insured under the Coarse Grains Crop Provisions with a written agreement; and

(4) Our inspection reveals that the storage and drying facilities satisfy the definition of a seed company.

(d) Any of the insured crop that is under contract with different seed companies may be insured under separate policies with different insurance providers provided all acreage of the insured crop in the county is insured. If you elect to insure the insured crop with different insurance providers, you agree to pay separate administrative fees for each insurance policy.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage of the insured crop:

(a) Planted and occupied exclusively by male parent plants;

(b) Not in compliance with the rotation requirements contained in the Special Provisions or, if applicable, required by the hybrid seed corn processor contract; or

(c) If either the female or male parent plants are damaged before the final planting date and we determine that the insured crop is practical to replant but it is not replanted.

9. Insurance Period

(a) In addition to the provisions of section 11 of the Basic Provisions, insurance attaches upon completion of planting of:

(1) The female parent plant seed on or before the final planting date designated in the Special Provisions, except as allowed in section 16 of the Basic Provisions; and

(2) The male parent plant seed.

(b) In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the October 31 immediately following planting.

10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(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; or

(8) Failure of the irrigation water supply, if due to a cause of loss contained in section 10(a) (1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we will not insure against any loss of production due to:

(1) The use of unadapted, incompatible, or genetically deficient male or female parent plant seed;

(2) Frost or freeze after the date established by the Special Provisions;

(3) Failure to follow the requirements stated in the hybrid seed corn processor contract and production management practices of the seed company;

(4) Inadequate germination, even if resulting from an insured cause of loss, unless you have provided adequate notice as required by section 11(b)(1); or

(5) Failure to plant the male parent plant seed at a time or in a manner sufficient to assure adequate pollination of the female parent plants, unless you are prevented from planting the male parent plant seed by an insured cause of loss.

11. Duties in the Event of Damage or Loss

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples of at least one complete planting pattern of the female and male parent plant rows that extend the entire length of each field in the unit. If you are going to destroy any acreage of the insured crop that will not be harvested, the samples must not be destroyed until after our inspection.

(b) In addition to the requirements of section 14 of the Basic Provisions:

(1) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate inadequate germination on any unit; and

(2) You must provide a completed copy of your hybrid seed corn processor contract unless we have determined it has already been provided by the seed company, and the seed company certifies that such contract is used for all its growers without any waivers or amendments.

12. 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) You will not receive an indemnity payment on a unit if the seed company refuses to provide us with records we require to determine the dollar value per bushel of production for each variety.

(c) 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 amount of insurance per acre, by type and variety if applicable;

(2) Totaling the results of section 12(c)(1) if there are more than one type or variety;

(3) Multiplying the total seed production to count (see section 12(d)) for each type and variety of commercial hybrid seed corn by the applicable dollar value per bushel for that type or variety;

(4) Multiplying the total non-seed production to count (see section 12(e)) for each type and variety by the applicable local market price determined on the earlier of the date the non-seed production is sold or the date of final inspection;

(5) Totaling the results of sections 12(c)(3) and 12(c)(4) by type and variety;

(6) Subtracting the result of section 12(c)(5) from the result of section 12(c)(1) if there is only one type or variety, or subtracting the result of 12(c)(5) from the result of section 12(c)(2) if there are more than one type or variety; and

(7) Multiplying the result of section 12(c)(6) by your share. For example:

You have a 100 percent share in 50 acres insured for the development of variety ''A'' hybrid seed corn in the unit, with an amount of

insurance per acre guarantee of $340 (county yield of 160 bushels times a coverage level factor of .867 for the 65 percent coverage level, times a price election of $2.45 per bushel, minus the minimum guaranteed payment of zero). Your seed production was 1,400 bushels and the dollar value per bushel was $9.80. Your non-seed production was 100 bushels with a local market value of $2.00 per bushel. Your indemnity would be calculated as follows:

(1) 50 acres × $340 = $17,000 amount of insurance guarantee;

(3) 1,400 bushels × $9.80 = $13,720 value of seed production;

(4) 100 bushel of non-seed × $2.00 = $200 of non-seed production;

(5) $13,720 + $200 = $13,920;

(6) $17,000 − $13,920 = $3,080; and

(7) $3,080 × 100 percent share = $3,080 indemnity payment.

You also have a 100 percent share in 50 acres insured for the development of variety ''B'' hybrid seed corn in the unit, with an amount of insurance per acre guarantee of $297 (county yield of 140 bushels times a coverage level factor of .867 for the 65 percent coverage level, times a price election of $2.45 per bushel, minus the minimum guaranteed payment of zero). You harvested 1,200 bushels and the dollar value per bushel for the harvested amount was $8.56. You also harvested 200 bushels of non-seed with a market value of $2.00 per bushel. Your indemnity would be calculated as follows:

(1) 50 acres × $340 = $17,000 amount of insurance guarantee for type ''A'' and 50 acres × $297 = $14,850 amount of insurance guarantee for type ''B'';

(2) $17,000 + $14,850 = $31,850 amount of insurance guarantee;

(3) 1,400 bushels × $9.80 = $13,720 value of seed production for type ''A'' and 1,200 bushels × $8.56 = $10,272 value of seed production for type ''B'';

(4) 100 bushels of non-seed × $2.00 = $200 of non-seed production for type ''A'' and 200 bushels of non-seed × $2.00 = $400 of non-seed production for type ''B'';

(5) $13,720 + $200 + $10,272 + $400 = $24,592 value of production to count;

(6) $31,850 − $24,592 = $7,258; and

(7) $7,258 × 100 percent share = $7,258 indemnity payment.

(d) Production to be counted as seed production will include:

(1) All appraised production as follows:

(i) Not less than the amount of insurance per acre 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;

(ii) Production lost due to uninsured causes;

(iii) Mature unharvested production with a germination rate of at least 80 percent of the commercial hybrid seed corn as determined by a certified seed test. Any such production may be adjusted in accordance with section 12(f);

(iv) Immature appraised production;

(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 when 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 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) Harvested production that you deliver as commercial hybrid seed corn to the seed company stated in your hybrid seed corn processor contract, regardless of quality, unless the production has inadequate germination.

(e) Production to be counted as non-seed production will include all harvested or mature appraised production that does not qualify as seed production to count as specified in section 12(d). Any such production may be adjusted in accordance with section 12(f).

(f) For the purpose of determining the quantity of mature production:

(1) Shelled commercial hybrid seed corn will be:

(i) Increased 0.12 percent for each 0.1 percentage point of moisture below 15 percent; or

(ii) Decreased 0.12 percent for each 0.1 percentage point of moisture in excess of 15 percent.

(2) The weight of ear corn required to equal one bushel of shelled seed corn will be increased 1.5 pounds for each full percentage point of moisture in excess of 14 percent, and

any portion of a percentage point will be disregarded. The moisture content of ear corn will be determined from a shelled sample of the ear corn.

(3) When records of commercial hybrid seed corn production provided by the seed company have been adjusted to a shelled corn basis of 15.0 percent moisture and 56 pound avoirdupois bushels, sections 12(f)(1) and (2) above will not apply to harvested production. In such cases, records of the seed company will be used to determine the amount of production to count, provided that the moisture and weight of such production are calculated on the same basis as that used to determine the approved yield.

13. Prevented Planting

Your prevented planting coverage will be 50 percent of your amount of insurance for timely planted acreage. If you have limited or additional levels of coverage as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[62 FR 65350, Dec. 12, 1997; 62 FR 67117, Dec. 23, 1997]

§457.153 Peach crop insurance provisions.

The Peach Crop Insurance Provisions for the 2001 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:

Peach Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Actual price per bushel for:

(a) Fresh peaches means the average price per bushel of U.S. Extra No. 1 ''2-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 seven consecutive marketing days, commencing with the day harvest of the variety begins. In the absence of FOB shipping point price from the Market News Service, the price per bushel of U.S. Extra No. 1 ''2-inch'' peaches will be the total of the price election and allowable costs for the undamaged peaches; and

(b) Processing peaches means the average price per bushel received from the processor for that applicable variety determined for seven consecutive marketing days, commencing with the day harvest of the variety begins.

Bearing tree. A tree in at least the 4th growing season after set out.

Bushel. Fifty pounds of ungraded peaches.

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, or permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

Harvest. The picking or removal of mature peaches from the trees either by hand or machine.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Loss in quality. When the crop is damaged to the extent that the producer does not receive the average price for U.S. Extra No. 1 peach.

Marketable. Peach production acceptable for processing or other human consumption even if failing to meet any U.S. or applicable state grading standard.

Packing shed. A facility at which peaches are graded, packed and cooled in preparation for shipment to a wholesale market.

Set out. Transplanting the tree into the orchard.

2. 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 peaches in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each peach type (fresh or processing) designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must choose 100 percent of the maximum price election for all other types.

(b) You must report, not later than 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) Any damage, removal of or addition of trees, or 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 and non-bearing trees on insurable and uninsurable acreage;

(3) The age of the trees, variety, type, and the planting pattern; and

(4) For the first year of insurance, acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the crop that is interplanted with the peaches;

(ii) The variety, and type if applicable;

(iii) The planting pattern; and

(iv) Any other reasonable and pertinent information that we request in order to establish your approved yield.

We will adjust the yield used to establish your production guarantee as necessary, based on our estimate of the effect of interplanting a perennial crop; removal or addition of trees or varieties of trees; physical or structural tree damage; a change in practices or changes in tree population and density, and any other circumstance affecting the yield potential of the insured crop. If you fail to notify us of any circumstance that may affect your yields from previous levels, we will adjust your production guarantee as necessary at any time we become aware of the circumstance.

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

3. 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.

4. 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.

5. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the peaches in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are grown on tree varieties that:

(1) Were commercially available when the trees were set out;

(2) Are a variety having a chilling hour requirement that is appropriate for the area;

(3) Are grown on a root stock that is adapted to the area.

(c) That the crop insured will be any of the types or varieties of peaches that are grown for the production of Fresh or Processing Peaches (except Processing Peaches excluded in California) on insured acreage and for which a guarantee and premium rate are provided by the Actuarial Table.

(d) That are grown in an orchard that, if inspected, is considered acceptable by us; and

(e) That has reached at least the fourth growing season after set out. However, we may agree in writing to insure acreage that has not reached this age if it has produced at least 100 bushels of peaches per acre.

6. 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, peaches 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.

7. 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 to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is September 30.

(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 acreage of peaches on or before the acreage reporting date for the crop year and

if the acreage was insured by you the previous crop year, insurance will not be considered to have attached, and no premium or indemnity will be due 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.

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your peach policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

8. 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) Insects, but not damage due to insufficient or improper application of pest control measures;

(5) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(6) Volcanic eruption;

(7) Wildlife, unless control measures have not been taken;

(8) An insufficient number of chilling hours to effectively break dormancy; or

(9) 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) Split pits, regardless of cause; or

(2) Inability to market the peaches 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.

9. 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), and unless the insurance period has ended prior to each of the following events, the following will apply:

(a) You must notify us within three days of the date that harvest of the damaged variety 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 unless you have records verifying that the direct market peaches were ''weighed and graded'' through a packing shed. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) If you previously gave notice in accordance with section 14 of the Basic Provisions (§457.8), and if you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest of the damaged variety, 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.

(d) 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.

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) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee;

(2) Multiplying each result in section 10(b)(1) by the respective price election;

(3) Totaling the results in section 10(b)(2);

(4) Multiplying the total production to be counted by type, if applicable, (see subsection 10(c)) by the respective price election;

(5) Totaling the results in section 10(b)(4);

(6) Subtracting the total in section 10(b)(5) from the total in section 10(b)(3); and

(7) Multiplying the result in section 10(b)(6) by your share.

(c) The total production to count (in bushels) from all insurable acreage on the unit will include:

(1) All appraised production will be determined as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) From which production is sold by direct marketing if you fail to meet the requirements contained in section 9;

(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;

(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 adequately care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(v) Any appraised production on insured acreage will be considered production to count unless such production is exceeded by the actual harvested production.

(2) All harvested production from the insurable acreage.

(3) Mature marketable peach production may be reduced as a result of a loss in quality due to an insured cause of loss. The amount of production to count for such peaches will be determined as follows:

(i) Peaches grown for fresh use by:

(A) Dividing the value of the damaged peaches by the actual price for undamaged peaches; and

(B) Multiplying the result of section 10(c)(3)(i)(A) by the number of bushels of the eligible damaged peaches.

(ii) Peaches grown for processing by:

(A) Dividing the value of the damaged peaches by the actual price of undamaged peaches for processing; and

(B) Multiplying the result of section 10(c)(3)(ii)(A) by the number of bushels of the eligible damaged peaches.

(4) Peaches that cannot be marketed due to insurable causes will not be considered production to count.

11. Late and Prevented Planting

the late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 39923, July 25, 1997, as amended at 62 FR 65176, Dec. 10, 1997; 65 FR 47839, Aug. 4, 2000]

§ 457.154 Processing sweet corn crop insurance provisions.

The Processing Sweet Corn 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:

Processing Sweet Corn Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Base contract price. The price stipulated on the processor contract without regard to discounts or incentives that may apply.

Bypassed acreage. Land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

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 required by the sweet corn processor contract with the processing company, and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. The removal of the ears from the stalks for the purpose of delivery to the processor.

Planted acreage. In addition to the definition contained in the Basic Provisions, sweet corn must initially be placed in rows far enough apart to permit mechanical cultivation. 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, 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 unless the replanted acreage can produce at least 75 percent of the approved yield, and the processor agrees in writing that it will accept the production from the replanted acreage.

Processor. Any business enterprise regularly engaged in canning or freezing processing sweet corn for human consumption, that possesses all licenses and permits for processing sweet corn 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 contracted processing sweet corn within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow sweet corn, and to deliver the sweet corn production to the processor;

(b) The processor's commitment to purchase all the production stated in the processor contract; and

(c) A base contract price.

Multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract.

Ton. Two thousand (2,000) pounds avoirdupois.

Unhusked ear weight. Weight of the seed-bearing spike of sweet corn including the membranous or green outer envelope.

Usable tons. The quantity of sweet corn for which the producer is compensated or should have been compensated by the processor.

2. Unit Division

(a) For processor contracts that stipulate the amount of production to be delivered:

(1) In lieu of the definition contained in the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor;

(i) There will be no more than one basic unit for all production contracted with each processor contract;

(ii) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(2) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable.

(b) For any processor contract that stipulates the number of acres to be planted, the provisions contained in section 34 of the Basic Provisions will apply.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for all the processing sweet corn in the county insured under this policy unless the Special Provisions provide different price elections by type. The percentage of the maximum price elections you choose for one type will be applicable to all other types insured under this policy.

(b) The insurance guarantee per acre is expressed as tons of unhusked ear weight. Any other measured production will be converted to an unhusked ear weight equivalent.

(c) The appraised production from bypassed acreage that could have been accepted by the processor will be included when determining your approved yield.

(d) Acreage that is bypassed because it was damaged by an insurable cause of loss will be considered to have a zero yield when determining your approved yield.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the processing sweet corn in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That is grown under, and in accordance with, the requirements of a processor contract executed on or before the acreage reporting date and not excluded from the processor contract at any time during the crop year; and

(3) That is not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the sweet corn is grown, you are at risk of loss, and the processor contract provides for delivery of sweet corn under specified conditions and at a stipulated base contract price.

(c) A commercial sweet corn producer who is also a processor may establish an insurable interest if the following requirements are met:

(1) The producer must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the processor must execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a processor contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure any acreage that does not meet the rotation requirements, if applicable, contained in the Special Provisions.

9. Insurance Period

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases at the earlier of:

(a) The date the sweet corn:

(1) Was destroyed;

(2) Should have been harvested but was not harvested;

(3) Was abandoned; or

(4) Was harvested;

(b) The date you harvest sufficient production to fulfill your processor contract if the processor contract stipulates a specific amount of production to be delivered;

(c) Final adjustment of a loss; or

(d) Unless otherwise agreed to in writing, the calendar date for the end of the insurance period in which the sweet corn would normally be harvested as follows:

(1) September 30 in Malheur County, Oregon, all Idaho counties, and all Iowa counties;

(2) October 20 in all other Oregon counties, and in all Washington counties; or

(3) September 20 in all other states.

10. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions:

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions, including:

(i) Excessive moisture that prevents harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures that cause an unexpected number of acres over a large producing area to be ready for harvest at the same time, affecting the timely harvest of a large number of such acres or the processing of such production is beyond the capacity of the processor, either of which causes the acreage to be bypassed.

(2) Fire;

(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 or as otherwise limited by the Special Provisions;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss listed in section 10(a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure any loss of production due to:

(1) Bypassed acreage because of:

(i) The breakdown or non-operation of equipment or facilities; or

(ii) The availability of a crop insurance payment. We may deny any indemnity immediately in such circumstance or, if an indemnity has been paid, require you to repay it to us with interest at any time acreage was bypassed due to the availability of a crop insurance payment; or

(2) Your failure to follow the requirements contained in the processor contract.

11. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 of the Basic Provisions, you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the sweet corn on the unit; or

(2) Discontinuance of harvest on a unit on which unharvested production remains.

(b) Within 3 days after the date harvest should have started on any acreage that will not be harvested unless we have previously released the acreage. You must also provide acceptable documentation of the reason the acreage was bypassed. Failure to provide such documentation will result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested and you wish to destroy the crop, 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 each unit. The samples must not be destroyed until the earlier of our inspection or 15 days after notice is given to us; and

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during the 15 day period or during harvest, so that we may inspect any damaged production. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You are not required to delay harvest.

12. 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) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result of section 12(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results of section 12(b)(2) if there are more than one type;

(4) Multiplying the total production to count (see section 12(c)), for each type if applicable, by its respective price election;

(5) Totaling the results of section 12(b)(4) if there are more than one type;

(6) Subtracting the results of section 12(b)(4) from the results of section 12(b)(2) if there is only one type or subtracting the results of section 12(b)(5) from the result of section 12(b)(3) if there are more than one type; and

(7) Multiplying the result of section 12(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of type A processing sweet corn in the unit, with a guarantee of 3.0 tons per acre and a price election of $50.00 per ton. You are only able to harvest 200 tons. Your indemnity would be calculated as follows:

(1) 100 acres × 3.0 tons = 300 tons guarantee;

(2) 300 tons × $50.00 price election = $15,000.00 value of guarantee;

(4) 200 tons × $50.00 price election = $10,000.00 value of production to count;

(6) $15,000.00 − $10,000.00 = $5,000.00 loss;

(7) $5,000.00 × 100 percent = $5,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of type B processing sweet corn in the same unit, with a guarantee of 4.0 tons per acre and a price election of $45.00 per ton. You are only able to harvest 350 tons. Your total indemnity for both types A and B would be calculated as follows:

(1) 100 acres × 3.0 tons = 300 tons guarantee for type A, and

100 acres × 4.0 tons = 400 tons guarantee for type B;

(2) 300 tons × $50.00 price election = $15,000.00 value of guarantee for type A, and

400 tons × $45.00 price election = $18,000.00 value of guarantee for type B;

(3) $15,000.00 + $18,000.00 = $33,000.00 total value of guarantee;

(4) 200 tons × $50.00 price election = $10,000.00 value of production to count for type A, and

350 tons × $45.00 price election = $15,750.00 value of production to count for type B;

(5) $10,000.00 + $15,750.00 = $25,750.00 total value of production to count;

(6) $33,000.00 − $25,750.00 = $7,250.00 loss;

(7) $7,250.00 loss × 100 percent = $7,250.00 indemnity payment.

(c) The total production to count, specified in tons of unhusked ear weight, 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) That is put to another use without our consent;

(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) Production on acreage that is bypassed unless the acreage was bypassed due to an insured cause of loss which resulted in

production which would not be acceptable under the terms of the processor contract.

(iv) 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 when 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 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.

(2) All harvested processing sweet corn production from the insurable acreage. The amount of such production will be:

(i) The usable tons of processing sweet corn shown on the processor settlement sheet, if available; or

(ii) Determined by dividing the dollar amount paid, payable, or which should have been paid under the terms of the processor contract for the quantity of the sweet corn delivered to the processor by the base contract price per ton; and

(3) All harvested processing sweet corn production from any other insurable units that have been used to fulfill your processor contract for this unit.

The total production to count will be expressed as an unhusked ear weight. Any other measure of production will be converted to an unhusked ear weight equivalent.

13. Late Planting

A late planting period is not applicable to processing sweet corn unless allowed by the Special Provisions and you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest.

14. Prevented Planting.

Your prevented planting coverage will be 40 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to the levels specified in the actuarial documents.

[62 FR 65342, Dec. 12, 1997]

§ 457.155 Processing bean crop insurance provisions.

The Processing Bean Crop Insurance Provisions for the 1998 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:

Processing Bean Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Base contract price. The price stipulated in the processor contract for the grade factor or sieve size that is designated in the Special Provisions, if applicable, without regard to discounts or incentives that may apply.

Broker. A business enterprise that has all the licenses and permits required by the state in which it operates, and has a long term agreement in writing with a processor to purchase and deliver processing beans.

Bypassed acreage. Land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

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 required by the bean processor contract with the processing company, and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. The mechanical picking of bean pods from the vines.

Planted acreage—In addition to the definition contained in the Basic Provisions, beans must initially be placed in rows far enough apart to permit mechanical 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.

Practical to replant. In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions, 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 unless the replanted acreage can produce at least 75 percent of the approved yield, and the processor agrees in writing that it will accept the production from the replanted acreage.

Processing beans. Lima, snap, or other bean types identified in the Special Provisions that are grown under a processor contract to be canned or frozen and sold for human consumption.

Processor. Any business enterprise regularly engaged in canning or freezing processing beans for human consumption, that possesses all licenses and permits for processing beans 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 beans within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, or between the producer and a broker, containing at a minimum:

(a) The producer's commitment to plant and grow processing beans, and to deliver the bean production to the processor or broker;

(b) The processor's, or broker's, commitment to purchase all the production stated in the processor contract; and

(c) A base contract price.

Multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract unless the contracts are for different types of processing beans.

Ton. Two thousand (2,000) pounds avoirdupois.

Type. A category of processing beans identified as a type in the Special Provisions.

2. Unit Division

(a) For any processor contract that stipulates the amount of production to be delivered:

(1) In lieu of the definition contained in the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor;

(i) There will be no more than one basic unit for all production contracted with each processor contract;

(ii) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(2) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units will not be established.

(b) For any processor contract that stipulates the number of acres to be planted, in addition to or instead of, establishing optional units by section, section equivalent or FSA farm serial number, or irrigated and non-irrigated acreage, optional units may be established by type if acreage of one type does not continue into acreage of another type in the same rows or planting pattern.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for all the processing beans in the county insured under this policy unless the Special Provisions provide different price elections by type. The percentage of the maximum price elections you choose for one type will be applicable to all other types insured under this policy.

(b) The appraised production from bypassed acreage that could have been accepted by the processor will be included when determining your approved yield.

(c) Acreage that is bypassed because it was damaged by an insurable cause of loss will be considered to have a zero yield when determining your approved yield.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the processing beans in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are grown under, and in accordance with, the requirements of a processor contract executed on or before the acreage reporting date and are not excluded from the processor contract at any time during the crop year; and

(3) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the processing beans are grown, you are at risk of loss, and the processor contract provides for delivery of the processing beans under specified conditions and at a stipulated base contract price.

(c) A commercial processing bean producer who is also a processor or broker may establish an insurable interest if the following requirements are met:

(1) The producer must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the processor or the broker must execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a processor contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure acreage that does not meet any rotation requirements, if applicable, contained in the Special Provisions.

9. Insurance Period

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases at the earlier of:

(a) The date the processing beans:

(1) Were destroyed;

(2) Should have been harvested but were not harvested;

(3) Were abandoned; or

(4) Were harvested;

(b) The date you harvest sufficient production to fulfill your processor contract if the processor contract stipulates a specific amount of production to be delivered;

(c) Final adjustment of a loss; or

(d) The date shown below for the end of the insurance period in the calendar year in which the processing beans would normally be harvested, unless otherwise agreed to in writing, as follows:

(1) October 30 for all processing beans in the state of Arkansas;

(2) October 15 for all processing beans in the states of Delaware, Maryland, and New Jersey;

(3) October 5 for all processing beans in the states of Idaho, Oregon, and Washington;

(4) September 30 for snap beans in the state of New York;

(5) September 20 for snap beans in all other states; or

(6) October 5 for lima beans in all other states.

10. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions:

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions, including:

(i) Excessive moisture that prevents the harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures that cause an unexpected number of acres over a large producing area to be ready for harvest at the same time, affecting the timely harvest of a large number of such acres or the processing of such production is beyond the capacity of the processor, either of which causes the acreage to be bypassed.

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease on acreage not planted to processing beans the previous crop year. (In certain instances, contained in the Special Provisions or in a written agreement, acreage planted to processing beans the previous year may be covered. Damage due to insufficient or improper application of disease control measures is not covered);

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss contained in section 10 (a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure any loss of production due to:

(1) Bypassed acreage because of:

(i) The breakdown or non-operation of equipment or facilities; or

(ii) The availability of a crop insurance payment. We may deny any indemnity immediately in such circumstance or, if an indemnity has been paid, require you to repay it to us with interest at any time acreage was bypassed due to the availability of a crop insurance payment; or

(2) Your failure to follow the requirements contained in the processor contract.

11. Duties in the Event of Damage or Loss

In addition to the notice required by section 14 of the Basic Provisions, you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the processing beans on the unit; or

(2) Discontinuance of harvest on a unit on which unharvested production remains.

(b) Within 3 days after the date harvest should have started on any acreage that will not be harvested unless we have previously released the acreage. You must also provide acceptable documentation of the reason the acreage was bypassed. Failure to provide such documentation will result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested and you wish to destroy the crop, 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 each unit. The samples must not be destroyed until the earlier of our inspection or 15 days after notice is given to us; and

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during the 15 day period or during harvest. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You are not required to delay harvest.

12. 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) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result of section 12(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results of section 12(b)(2) if there are more than one type;

(4) Multiplying the total production to count (see section 12(c)), for each type if applicable, by its respective price election;

(5) Totaling the results of section 12(b)(4) if there are more than one type;

(6) Subtracting the results of section 12(b)(4) from the results of section 12(b)(2) if there is only one type or subtracting the results of section 12(b)(5) from the result of section 12(b)(3) if there are more than one type; and

(7) Multiplying the result of section 12(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of snap type processing beans in the unit, with a guarantee of 3.0 tons per acre and a price election of $110.00 per ton. You are only able to harvest 200 tons. Your indemnity would be calculated as follows:

(1) 100 acres × 3.0 tons = 300 tons guarantee;

(2) 300 tons × $110.00 price election = $33,000.00 value of guarantee;

(3) 200 tons × $110.00 price election = $22,000.00 value of production to count;

(4) $33,000.00 − $22,000.00 = $11,000.00 loss; and

(5) $11,000.00 × 100 percent = $11,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of lima type processing beans in the same unit, with a guarantee of 1.0 ton per acre and a price election of $225.00 per ton. You are only able to harvest 75 tons. Your total indemnity for both snap and lima types processing beans would be calculated as follows:

(1) 100 acres × 3.0 tons = 300 tons guarantee for the snap type, and 100 acres × 1.0 ton = 100 tons guarantee for the lima type;

(2) 300 tons × $110.00 price election = $33,000.00 value of guarantee for the snap type, and 100 tons × $225.00 price election = $22,500.00 value of guarantee for the lima type;

(3) $33,000.00 + $22,500.00 = $55,500.00 total value of guarantee;

(4) 200 tons × $110.00 price election = $22,000.00 value of production to count for the snap type, and 75 tons × $225.00 price election = $16,875.00 value of production to count for the lima type;

(5) $22,000.00 + $16,875.00 = $38,875.00 total value of production to count;

(6) $55,500.00 − $38,875.00 = $16,625.00 loss; and

(7) $16,625.00 loss × 100 percent = $16,625.00 indemnity payment.

(c) The total production to count, specified in 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) That is put to another use without our consent;

(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) Production on acreage that is bypassed unless the acreage was bypassed due to an insured cause of loss which resulted in production which would not be acceptable under the terms of the processor contract.

(iv) 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 when 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 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.

(2) All harvested processing bean production from the insurable acreage. The amount of such production will be:

(i) The usable tons of processing beans shown on the processor settlement sheet, if available; or

(ii) Determined by dividing the dollar amount paid, payable, or which should have been paid under the terms of the processor contract for the quality and quantity of beans to be delivered to the processor by the base contract price per ton; and

(3) All harvested processing bean production from any other insurable units that have been used to fulfill your processor contract for this unit.

13. Late Planting

A late planting period is not applicable to processing beans unless allowed by the Special Provisions and you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest.

14. Prevented Planting

Your prevented planting coverage will be 40 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[62 FR 58625, Oct. 30, 1997, as amended at 62 FR 65176, Dec. 10, 1997]

§ 457.156 Quota tobacco crop insurance provisions.

The Quota Tobacco Crop Insurance Provisions for the 1999 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:

Quota Tobacco Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Amount of insurance. The dollar amount determined by multiplying the insured poundage quota by the current year's support price or the percentage of the current year's support price you select less any adjustments for late planting as specified in section 14.

Approved yield. The yield calculated in accordance with 7 CFR part 400, subpart G, if required by the Special Provisions.

Basic unit. In lieu of the definition in the Basic Provisions, a basic unit is all insurable acreage of an insurable type of tobacco in the county in which you have a share on the date of planting for the crop year and that is identified by a single FSA farm serial number at the time insurance first attaches under these provisions for the crop year.

Carryover tobacco. Any tobacco produced on the land identified by a FSA farm serial number in previous years that remained unsold at the end of the most recent marketing year.

County. In lieu of the definition in the Basic Provisions, county is defined as the county or other political subdivision of a

state shown on your accepted application including any land identified by a FSA farm serial number for such county but physically located in another county.

Discount variety. Tobacco defined as such under the provisions of the United States Department of Agriculture tobacco price support program.

Effective poundage marketing quota. The farm marketing quota as established and recorded by the local FSA office for the land identified by the FSA farm serial number plus any additional poundage, as allowed by the USDA Tobacco Marketing Quota Regulations, that you intend to produce for each unit in that crop year minus the amount of any carryover tobacco. The term may not include any tobacco that would be subject to a marketing quota penalty under USDA Tobacco Marketing Quota Regulations. For any crop year in which there are no effective USDA Tobacco Marketing Quota Regulations, the effective poundage marketing quota will be the pounds obtained by multiplying the applicable approved yield per acre by the lower of the reported or insured acreage on the basic unit, unless otherwise provided by the actuarial documents.

Fair market value. The current year's tobacco season average price for the applicable type of tobacco obtained from the sale of the tobacco through a market other than an auction warehouse.

Farm yield. The yield per acre used by FSA to establish the effective poundage marketing quota for land identified by a FSA farm serial number, unless we have estab lished a yield for that land in the actuarial documents.

Harvest. Cutting and removing all insured tobacco from the field in which it was grown.

Hydroponic plants. Seedlings grown in liquid nutrient solutions.

Insured poundage quota. The lesser of:

(1) The product (in pounds) obtained by multiplying the effective poundage marketing quota for the land identified by a FSA farm serial number by your selected coverage level; or

(2) The farm yield or approved yield, as applicable, adjusted for late planting in accordance with section 14, if applicable, multiplied by the appropriate number of insured acres and by your selected coverage level.

Late planting period. In lieu of the definition in section 1 of the Basic Provisions, the period that begins the day after the final planting date for the insured crop and ends 15 days after the final planting date, unless otherwise specified in the Special Provisions.

Market price. The previous years' season average price published by National Agricultural Statistics Service for the applicable type of tobacco in the area.

Marketing year. The marketing year published by National Agricultural Statistics Service for the applicable type of tobacco in the area.

Planted acreage. Land in which tobacco seedlings, including hydroponic plants, have been transplanted by hand or machine from the tobacco bed to the field.

Pound. Sixteen ounces avoirdupois.

Replanting. In lieu of the definition in section 1 of the Basic Provisions, performing the cultural practices necessary to replace the tobacco plant, and then replacing the tobacco plant in the insured acreage with the expectation of producing at least the quota.

Support price. The average price per pound for the type of tobacco as announced by the USDA under its tobacco price support program, or, if there is no such program, as announced by FCIC.

Tobacco bed. An area protected from adverse weather, in which tobacco seeds are sown and seedlings are grown until transplanted into the tobacco field by hand or machine.

2. Unit Division

A unit will be determined in accordance with the definition of basic unit contained in section 1 of these Crop Provisions. The provision in the Basic Provisions regarding optional units are not applicable, unless specified by the Special Provisions.

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

In addition to section 3 of the Basic Provisions, a production report, if required by the Special Provisions, must be filed in accordance with section 3(c) of the Basic Provisions.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage

In addition to the requirements of section 6 of the Basic Provisions:

(a) You must report the effective poundage marketing quota and specify any amount of carryover tobacco, if applicable.

(b) You must provide a copy of any written lease agreement between you and any landlord or tenant showing the amount of the effective poundage marketing quota allocated to you. The written lease agreement must:

(1) Identify all other persons sharing in the effective poundage marketing quota; and

(2) Be submitted to your local insurance provider's office on or before the acreage reporting date.

(c) In the event of a loss, if the written lease agreement has been submitted timely, we will distribute the effective poundage marketing quota in accordance with the terms of the written lease agreement. If the written lease agreement is not submitted timely, we will prorate the effective poundage marketing quota across the FSA farm serial number to all insured and uninsured persons based on planted acres within land identified by the FSA farm serial number.

7. Annual Premium

In lieu of paragraph (c) of section 7 of the Basic Provisions, your annual premium amount is determined by either:

(a) Multiplying the amount of insurance by the rate, your share, and any premium adjustment percentages that may apply; or

(b) If no support price program exists, multiplying the approved yield by the coverage level, the support price, the acres, your share, and any premium adjustment percentages that may apply.

8. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be any of the tobacco types designated in the Special Provisions for the county, in which you have a share, that you elect to insure, and for which a premium rate is provided by the actuarial documents.

(b) In addition to section 8 of the Basic Provisions, the crop insured will not include any poundage above the effective poundage marketing quota or the insured poundage quota.

9. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage under these crop provisions that is:

(a) Planted to a discount variety;

(b) Planted to a tobacco type for which no premium rate is provided by the actuarial documents;

(c) Planted in any manner other than as provided in the definition of ''planted acreage'' in section 1 of these Crop Provisions, unless otherwise provided by the Special Provisions or by written agreement; or

(d) Damaged before the final planting date to the extent that most of the producers of tobacco acreage with similar characteristics in the area would normally not further care for the crop, unless such crop is replanted or we agree that replanting is not practical.

10. Insurance Period

In accordance with the provisions of section 11(b) of the Basic Provisions, insurance ceases at the earliest of:

(a) Total destruction of the tobacco on the unit;

(b) Weighing-in at the tobacco warehouse;

(c) Removal of the tobacco from the field where grown except for curing, grading, packing, or immediate delivery to the tobacco warehouse; or

(d) The February 28 immediately following the normal harvest period.

11. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during 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 a peril specified in section 11 (a) through (g) that occurs during the insurance period.

12. Duties in the Event of Damage or Loss

In accordance with the requirements of section 14 of the Basic Provisions, any representative samples we may require of each unharvested tobacco type must be at least 5 feet wide (at least two rows) and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until after our inspection.

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, 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 poundage quota by your elected percentage of the current year's support price.

(2) Subtracting the total value of the production to be counted (see section 13(c)) from the amount of insurance; and

(3) Multiplying the result in section 13(b)(1) by your share. For example:

You have 100 percent share of type 31 quota tobacco in the unit, with an insurable poundage quota of 1,000 pounds and a support price of $1.73 per pound. The amount of insurance equals $1730.00 (1,000 insurable poundage quota × $1.73 support price). You are only able to harvest 600 pounds. The value of the total production to count equals $1038.00 (600 harvested pounds × $1.73 support price). Your indemnity would be calculated as follows:

(1) $1730.00 (amount of insurance) − $1038.00 (value of the total production to count) = $692.00 loss

(2) $692.00 loss × 100 percent = $692.00 indemnity payment

(c) The value of the total production to count (pounds of appraised or harvested production) for all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the amount of insurance per insured acre for the unit for any 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, if required by the Special Provisions;

(ii) The value of production lost due to uninsured causes which is the number of pounds of such production multiplied by the support price;

(iii) The value of potential production on unharvested insured acreage that you intend to put to another use with our consent, if you and we agree on the number of pounds of such production to count which will be multiplied by the support price. Upon such agreement, the insurance period for that acreage will end when 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 allow you 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 value of production to count for such acreage will be the number of pounds of harvested or appraised production taken from samples at the time harvest should have occurred multiplied by the support price. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, the value of production to count will be our appraisal made prior to giving you consent to put the acreage to another use multiplied by the support price); or

(B) If you elect to continue to care for the crop, the value of production to count for the acreage will be the harvested production, or our reappraisal multiplied by the support price if additional damage occurs and the crop is not harvested;

(2) All harvested production from insurable acreage multiplied by:

(i) The average price for any tobacco sold on a warehouse floor; and

(ii) Fair market value for all other tobacco sold or not sold.

(d) Mature tobacco production that is damaged by insurable causes will be adjusted for quality based on the USDA Official Standard Grades for the insured type of tobacco.

(e) To enable us to determine the fair market value of tobacco not sold through auction warehouses, you must give us the opportunity to inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed. Failure to provide us the opportunity to inspect such tobacco may result in rejection of any claim for indemnity.

(f) If we consider the best offer you receive for such tobacco to be inadequate, we may obtain additional offers on your behalf.

(g) Once we agree that any carryover or current year's tobacco has no market value due to insured causes, you must destroy it. If you disagree and refuse to destroy the tobacco with no value, we will determine the value and count it as production to count.

14. Late Planting

(a) In lieu of late planting provisions in the Basic Provisions regarding acreage initially planted after the final planting date, insurance will be provided for acreage planted to the insured crop after the final planting date as follows:

(1) For each acre or portion thereof planted during the first 10 days after the final planting date, the farm yield will be reduced by 1 percent per day; and

(2) For each acre or portion thereof planted during the 11th through the 15th day after the final planting date, the farm yield will be reduced by 2 percent per day.

(b) If you plant enough acreage to fulfill the effective poundage marketing quota, there will be no reduction in the insured poundage quota as a result of any late planted acreage.

15. Prevented Planting

The prevented planting provisions in the Basic Provisions are not applicable to quota tobacco.

[63 FR 34782, June 26, 1998]

§457.157 Plum crop insurance provisions.

The Plum Crop Insurance Provisions for the 2001 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:

Plum Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic isions with (1) controlling (2), etc.

1. Definitions

Adapted. Varieties of the insured crop that are recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

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.

Harvest. The picking of mature plums from the trees by hand.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Lug. Twenty-eight (28) pounds of the insured crop.

Scion. Twig or portion of a twig of one plant that is grafted onto a stock of another.

Varietal group. Different varieties of plums that are grouped according to the normal maturity dates as specified in the Special Provisions.

2. Unit Division

Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units must meet one or more of the following, as applicable, unless otherwise provided by the Special Provisions, actuarial documents, or written agreement:

(a) Optional units may be established if each optional unit is located on non-contiguous land.

(b) In addition to, or instead of, establishing optional units for non-contiguous land, optional units may be established by varietal group when provided for in the Special Provisions. The requirements of section 34(a)(1) of the Basic Provisions are not applicable for this method of unit division.

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 plums 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 plum 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 100 percent of the maximum price election for one varietal group, you must also choose 100 percent 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 if applicable:

(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 varietal group 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 interplanting a perennial crop, removal of trees, damage, change in practice, and any other circumstance that may effect 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.

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

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.

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 January 31.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§457.8), the crop insured will be all the plums in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are grown on tree varieties that:

(1) Were commercially available when the trees were set out;

(2) Are adapted to the area;

(3) Are grown on rootstock that is adapted to the area; and

(4) Are regulated by the California Tree Fruit Agreement, California Advisory Board Standards, a related crop advisory board, or the State;

(c) That are irrigated;

(d) That have produced an average of at least 200 lugs per acre in at least one of the three most recent actual production history crop years, unless we inspect the acreage and give our approval to insure such acreage in writing;

(e) That are grown in an orchard that, if inspected, is considered acceptable by us; and

(f) That have reached at least the fifth (5th) growing season after set out. Plums produced on scions that have not reached the fifth growing season may be insured if the provisions in section 6(a), (b), (c), and (e) are met. Such trees must have produced at least 200 lugs per acre in at least one year after being grafted.

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, plums 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 on February 1 of each crop year. Notwithstanding the previous sentence, 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.

(2) The calendar date for the end of the insurance period for each crop year is September 30.

(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 plums on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due 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.

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your plum policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

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 orchard;

(3) Wildlife, unless control measures have not been taken;

(4) Earthquake;

(5) Volcanic eruption;

(6) An insufficient number of chilling hours to effectively break dormancy; or

(7) 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) Rejection of the crop by the packing house due to being undersized, immature, overripe, or mechanically damaged; or

(3) Inability to market the plums 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 or immediately if damage is discovered during harvest, so that we may inspect the damaged production.

(d) You must not destroy the damaged crop until after we have given you written consent to do so.

(e) If you fail to notify us in accordance with this section, we may consider all such production to be undamaged and include it 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 from 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) Multiplying the insured acreage for each varietal group, if applicable, by its respective production guarantee;

(2) Multiplying the results in section 11(b)(1) by the respective price election for each varietal group, if applicable;

(3) Totaling the results in section 11(b)(2);

(4) Multiplying the total production to be counted of each varietal group, if applicable, (see section 11(c)) by the respective price election;

(5) Totaling the results in section 11(b)(4);

(6) Subtracting the results in section 11(b)(5) from the results in section 11 (b)(3); and

(7) Multiplying the result in section 11(b)(6) by your share.

(c) The total production to count (in lugs) 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 directly if you fail to meet the requirement 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) All harvested production from the insurable acreage:

(i) That is packed and sold as fresh fruit and meets the U.S. No. 1 standards as modified by the California Tree Fruit Agreement publication for plums for the applicable crop year;

(ii) That is packed and sold as fresh fruit but does not meet the grade requirements specified in section 11(c)(2)(i) due to insurable causes. Such production will be adjusted by:

(A) Dividing the value per lug of this production by the highest price election available for the applicable varietal group; and

(B) Multiplying the resulting factor, if less than 1.0, by the number of lugs of such plums.

(iii) That is damaged and is, or could be, marketed for any use other than fresh packed plums. Such production will be adjusted by:

(A) Multiplying the number of tons of such production by the value per ton of the damaged plums or $50.00, whichever is greater; and

(B) Dividing that result by the highest price election available for the applicable varietal group.

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 33735, June 23, 1997, as amended at 62 FR 65177, Dec. 10, 1997; 65 FR 47839, Aug. 4, 2000]

§457.158 Apple crop insurance provisions.

The Apple Crop Insurance Provisions for the 2005 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:

Apple Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

1. Definitions

Apple production. All production of fresh apples and processing apples from the insurable acreage.

Area A. A geographic area that includes Montana, Wyoming, Utah, New Mexico and all states west thereof.

Area B. A geographic area that includes all states not included in Area A, except Colorado.

Area C. Colorado.

Bin. A container that contains a minimum of 875 pounds of apples or another quantity as designated in the Special Provisions.

Box. A container that contains 35 pounds of apples or another quantity as designated in the Special Provisions.

Bushel. In all states except Colorado, 42 pounds of apples. In Colorado, 40 pounds of apples.

Damaged apple production.

(1) With respect to losses calculated under section 12 only, the percentage of fresh or processing apple production that fails to grade U.S. No. 1 Processing or better in accordance with the grade standards, within each lot, bin, bushel or box, as applicable, due to an insurable cause of loss; or

(2) With respect to losses calculated under section 14, the percentage of fresh apple production that fails to grade U.S. Fancy or better in accordance with the grade standards, within each lot, bin, bushel, or box, as applicable, due to an insurable cause of loss.

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper, buyer, or broker. Examples of direct marketing include selling through an on-farm or roadside stand, or a farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

Fresh apples. Apple production:

(1) That is sold, or could be sold, for consumption without undergoing any change in its basic form, such as peeling, juicing, crushing, etc.; and

(2) From acreage that is reported as fresh apples on the acreage report.

Grade standards. The United States Standards for Grades of Apples, the United States Standards for Grades of Apples for Processing, or such other standards contained in the Special Provisions.

Harvest. The picking of mature apples from the trees or collecting of mature apples from the ground. Apples collected from the ground that cannot be sold for human consumption will not be considered harvested.

Lot. A quantity of production that can be separated from other quantities of production by grade characteristics, load, location or other distinctive features.

Marketable. Apple production that is not damaged apple production.

Mature. Apples defined as ''mature'' under the applicable grade standards.

Pounds. Sixteen (16) ounces avoirdupois.

Processing apples. Apple production:

(1) That is sold after it had undergone a change to its basic structure such as peeling, juicing, crushing, etc.; and

(2) From acreage designated as processing apples on the acreage report.

Production guarantee (per acre). The quantity of apples in boxes or bushels determined by multiplying the approved APH yield per acre by the coverage level percentage you elect. If the production of apples has been measured in bins, the amount must be converted to boxes or bushels.

Russeting. A defect on the surface of the apple as described in the grade standards.

Sunburn. A defect as described in the grade standards.

Type. Fresh, processing, or varietal group apples as specified in the Special Provisions.

Varietal group. Apple varieties with similar characteristics that are grouped for insurance purposes as specified in the Special Provisions.

2. Unit Division

In addition to the requirements of section 34(b) of the Basic Provisions, optional units may be established if each optional unit is:

(a) Located on non-contiguous land; or

(b) By varietal group.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for all the apples in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each apple type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type, if applicable:

(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 has changed:

(i) The age and type of the interplanted crop, if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

(c) 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; 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 of the Basic Provisions, the contract change date is October 31 preceding the cancellation date for California and August 31 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates

(a) In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31 in California and November 20 in all other states.

(b) If your apple policy is canceled or terminated by us for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, but on or before the cancellation and termination dates whichever is later, insurance will be considered to have not attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

(c) We may not cancel your policy when an insured cause of loss has occurred after insurance attached, but prior to the cancellation date. However, your policy can be terminated if a cause for termination contained in sections 2 or 27 of the Basic Provisions exists.

6. Report of Acreage

In addition to the requirements contained in section 6 of the Basic Provisions, you must report and designate all acreage by type by the acreage reporting date. Blocks of apple acreage grown for processing are not eligible for the Optional Coverage for Fresh Quality Adjustment option contained in section 14 of these Crop Provisions.

7. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all apples in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown on tree varieties that are adapted to the area and have, in at least one of the previous four years, produced:

(1) 10 bins of apples per acre in Area A; or

(2) 150 bushels of apples per acre in Area B; or

(3) 200 bushels of apples per acre in Area C; and

(c) That are grown in an orchard that, if inspected, is considered acceptable by us.

8. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance from attaching to a crop planted with another crop, apples 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.

9. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) For the year of application in California, coverage begins on February 1 of the calendar year the insured crop normally blooms. In all other states, coverage begins November 21 of the calendar year prior to the calendar year the insured crop normally blooms, except that, if your application is received by us after January 12 but prior to February 1 in California, or after November 1 but prior to November 21 in all other states, insurance will attach on the 20th day after your properly completed application is received in our local office, unless we inspect the acreage during the 20-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 apple acreage.

(2) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring an existing policy to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) The calendar date for the end of the insurance period for each crop year is November 5, or such other date as specified in the Special Provisions.

(4) Notwithstanding the provisions in this section, coverage will not be considered to have begun for a crop year if the policy is canceled or terminated in accordance with section 5(b).

(b) In addition to the provisions of section 11 of the Basic Provisions:

(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. There will be no coverage of any insurable interest acquired after the acreage reporting date.

(2) If you relinquish your insurable share on any insurable acreage of apples on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due 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.

(3) If you relinquish your insurable share on any insurable acreage of apples after the acreage reporting date for the crop year, insurance coverage will be provided for any loss due to an insurable cause of loss that occurred prior to the date that you relinquished your insurable share and the whole premium will be due for such acreage for that crop year.

10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period and result in damaged apple production:

(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) 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) Earthquake;

(6) Volcanic eruption;

(7) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period;

(8) Wildlife; and

(9) All other natural causes of loss that cannot be prevented, including, but not limited to, hail, wind, excess sun causing sunburn and frost and freeze causing russeting.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to your inability to market the apples 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 of the Basic Provisions, the following will apply:

(a) You must notify us at least 3 days prior to 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, or immediately if damage is discovered during harvest. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

12. 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 the units.

(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, by type as applicable;

(2) Multiplying each result in section 12(b)(1) by the respective price election;

(3) Totaling the results in section 12(b)(2) if there are more than one type;

(4) Multiplying the total production to count (see section 12(c)), for each type as applicable, by the respective price election;

(5) Totaling the results in section 12(b)(4), if there are more than one type;

(6) Subtracting the total in section 12(b)(5) from the total in section 12(b)(3); and

(7) Multiplying the result in section 12(b)(6) by your share.

(c) The total production to count (in boxes or bushels) 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 11;

(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 apple production that would be marketable if harvested; and

(iv) Potential marketable apple 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) All harvested marketable production from the insurable acreage.

Basic Coverage example:

You have 100 percent share and designated 10 acres of fresh apples and 5 acres of processing apples in the unit on the acreage report, with a 600 bushels per acre guarantee for both fresh and processing apples and a price election of $9.10 per bushel for fresh apples and $4.76 per bushel for processing apples. You are only able to harvest 5,000 bushels of fresh apples and 1,000 bushels of processing apples that grade at least U.S. No. 1 Processing. Your indemnity would be calculated as follows:

A. 10 acres × 600 bushels = 6,000 bushels guarantee of fresh apples; 5 acres × 600 bushels = 3,000 bushels guarantee of processing apples;

B. 6,000 bushels × $9.10 price election = $54,600.00 value of guarantee for fresh apples; 3,000 bushels × $4.76 price election = $14,280.00 value of guarantee for processing apples;

C. $54,600.00 value of guarantee for fresh apples + $14,280.00 value of guarantee for processing apples = $68,880.00 total value guarantee;

D. 5,000 bushels of harvested marketable fresh apple production to count × $9.10 price election = $45,500.00 value of production to count for fresh apples; 1,000 bushels of harvested marketable processing apple production to count × $4.76 price election = $4,760.00

value of production to count for processing apples;

E. $45,500.00 value of production to count for fresh apples + $4,760.00 value of production to count for processing apples = $50,260.00 total value of production to count;

F. $68,880.00 total value guarantee − $50,260.00 total value of production to count = $18,620.00 value of loss; and

G. $18,620.00 value of loss × 100 percent share = $18,620.00 indemnity payment.

[End of Example]

(d) The production to count determined in accordance with section 12(c) will be used for APH purposes, regardless of whether there are any adjustments under section 14.

13. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

14. Optional Coverage for Fresh Fruit Quality Adjustment.

(a) In the event of a conflict between the Apple Crop Insurance Provisions and this option, this option will control.

(b) In return for payment of the additional premium designated in the actuarial documents, this option provides for quality adjustment of fresh apple production as follows:

(1) To be eligible for this option, you must have elected to insure your apples at the additional coverage level. If you elect Catastrophic Risk Protection (CAT) after this option is effective, it will be considered as notice of cancellation of this option by you.

(2) You must elect this option on or before the sales closing date for the initial crop year for which you wish to insure your apples under this option. This option will continue in effect until canceled by either you or us for any succeeding crop year by written notice to the other party on or before the cancellation date.

(3) This option will apply to all your apple acreage designated in your acreage report as grown for fresh apples and that meets the insurability requirements specified in the Apple Crop Insurance Provisions, except any acreage specifically excluded by the actuarial documents. Any acreage designated in your acreage report as grown for processing apples is not eligible for coverage under this option.

(4) In lieu of sections 12(c)(1)(iii) and (iv) and (2), the production to count will include all appraised and harvested production for a unit's fresh apple acreage that grades at least U.S. No. 1 Processing, adjusted in accordance with this option.

(5) If appraised or harvested fresh apple production is damaged to the extent that 20 percent or more of the apples do not grade U.S. Fancy or better the following adjustments will apply:

(i) Fresh apple production to count with 21 percent through 40 percent damaged apple production will be reduced 2 percent for each full percent in excess of 20 percent.

(ii) Fresh apple production to count with 41 percent through 50 percent damaged apple production will be reduced 40 percent plus an additional 3 percent for each full percent in excess of 40 percent.

(iii) Fresh apple production to count with 51 percent through 64 percent damaged apple production will be reduced 70 percent plus an additional 2 percent for each full percent in excess of 50 percent.

(iv) Fresh apple production to count with 65 percent or more damaged apple production will not be considered production to count.

(v) Notwithstanding sections 14(b)(5)(i) through (iv), if you sell any of your fresh apple production as U.S. Fancy, all such sold production will be included as production to count under this option.

The following is an example of loss under the Optional Coverage for Fresh Fruit Quality Adjustment:

You have 100 percent share and designated 10 acres of fresh apples and 5 acres of processing apples in the unit on the acreage report, with a 600 bushel per acre guarantee for both fresh and processing apples and a price election of $9.10 per bushel for fresh apples and $4.76 per bushel for processing apples. You harvest 5,000 bushels of apples from your designated fresh acreage that grade U.S. No. 1 Processing or better, but only 2,650 of those bushels grade U.S. Fancy or better. You also harvest from your designated processing acreage 1,000 bushels apples that grade U.S. No. 1 Processing or better. Your indemnity would be calculated as follows:

A. 10 acres × 600 bushels per acre = 6,000 bushels guarantee of fresh apples; 5 acres × 600 bushels per acre = 3,000 bushels guarantee of processing apples;

B. 6,000 bushels guarantee of fresh apples × $9.10 price election = $54,600.00 value of guarantee for fresh apples acreage; 3,000 bushels guarantee of processing apples × $4.76 price election = $14,280.00 value of guarantee for processing apple acreage;

C. $54,600.00 value of guarantee for fresh apple acreage + $14,280.00 value of guarantee for processing apple acreage = $68,880.00 total value of guarantee for all apple acreage;

D. The value of the fresh apple and processing apple production to count is determined as follows:

i. 5,000 bushels of apples that graded U.S. No. 1 or better − 2,650 bushels that graded U.S. Fancy = 2,350 bushels not grading U.S. Fancy;

ii. 2,350 / 5,000 = 47 percent of fresh apples that did not make U.S. Fancy grade;

iii. In accordance with section 14(b)(5)(ii): 47 percent − 40 percent = 7 percent in excess of 40 percent;

iv. 7 percent × 3 percent = 21 percent;

v. 40 percent + 21 percent = 61 percent;

vi. 5,000 bushels of apples that graded U.S. No. 1 or better × .61 (61 percent) = 3,050 bushels of fresh apple production to count;

vii. 5,000 bushels of apples that graded U.S. No. 1 or better minus 3,050 bushels of fresh apple production not grading U.S. Fancy or better = 1,950 bushels of fresh apple production to count.

viii. 1,950 bushels of fresh apples production to count × $9.10 = $17,745.00 value of the fresh apple production to count; 1,000 bushels of harvested marketable processing apple production to count × $4.76 price election = $4,760.00 value of the processing apple production to count;

E. $17,745.00 value of the fresh apple production to count + $4,760.00 value of the processing apple production to count = $22,505.00 total value of production to count;

F. $68,880.00 total value of guarantee for all apple acreage − $22,505.00 total value of production to count = $46,375.00 value of loss; and

G. $46,375.00 value of loss × 100 percent share = $46,375.00 indemnity payment.

[End of Example]

[63 FR 17054, Apr. 8, 1998, as amended at 65 FR 47839, Aug. 4, 2000; 69 FR 52591, Aug. 27, 2004; 69 FR 53500, Sept. 1, 2004; 69 FR 62803, Oct. 28, 2004]

§ 457.159 Stonefruit crop insurance provisions.

The Stonefruit Crop Insurance Provisions for the 2001 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:

Stonefruit Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as 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.

Grading standards. As specified in the Special Provisions.

Harvest. The picking of mature stonefruit either by hand or machine.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Lug. A container of fresh stonefruit of specified weight. Lugs of varying sizes will be converted to standard lug equivalents on the basis of the following average net pounds of packed fruit:

Crop	Pounds per lug
Fresh Apricots	24
Fresh Nectarines	25
Fresh Freestone Peaches	22

Weight for Processing Apricots, Processing Cling Peaches, and Processing Freestone Peaches are specified in tons.

Marketable. Stonefruit production acceptable for processing or other human consumption, even if it fails to meet the State Department of Food and Agriculture minimum grading standard.

Processor. A business enterprise regularly engaged in processing fruit for human consumption that possesses all licenses and permits for processing fruit 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 contracted fruit within a reasonable amount of time after harvest.

Stonefruit. Any of the following crops grown for fresh market or processing:

(a) Fresh Apricots,

(b) Fresh Freestone Peaches,

(c) Fresh Nectarines,

(d) Processing Apricots,

(e) Processing Cling Peaches, and

(f) Processing Freestone Peaches.

Ton. Two thousand (2,000) pounds avoirdupois.

Type. Class of a stonefruit crop with similar characteristics that are grouped for insurance purposes.

Varietal group. A subclass of type.

2. Unit Division

Notwithstanding the provisions of section 34 of the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices, optional units will only be allowed as stated herein or by written agreement.

(a) *Optional Units on Acreage Located on Non-contiguous Land:* Optional units may be established if each optional unit is located on non-contiguous land.

(b) *Optional Units by Type or Varietal Group:* Optional units may be established by type or

varietal group if allowed by the Special Provisions.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election and coverage level for each crop grown in the county and listed in the Special Provisions that is insured under this policy. If separate price elections are available by type or varietal group of a crop, the price elections you choose for each type or varietal group must have the same percentage relationship to the maximum price offered by us for each type or varietal group. For example, if you choose 100 percent of the maximum price election for one type of cling peaches, you must choose 100 percent of the maximum price election for all other types of cling peaches.

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type or varietal group, if applicable, for each stonefruit crop:

(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 or varietal group 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 interplanting a perennial crop, removal of trees, damage, change in practice, and any other circumstance that could affect 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.

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 for California and August 31 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31 for California and November 20 for all other states.

6. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all of each stonefruit crop you elect to insure, that is grown in the county, and for which premium rates are provided in the actuarial documents:

(a) In which you have a share;

(b) That is grown on trees that:

(1) Were commercially available when the trees were set out;

(2) Is adapted to the area; and

(3) Is grown on a root stock that is adapted to the area;

(c) That is irrigated;

(d) That have produced at least 200 lugs of fresh market production per acre, or at least 2.2 tons per acre for processing crops, in at least 1 of the 3 most recent actual production history crop years, unless we inspect such acreage and give our approval in writing;

(e) That are regulated by the applicable state's Tree Fruit Agreement or related crop advisory board for the state (for applicable crop or type);

(f) That are grown in an orchard that, if inspected, is considered acceptable by us; and

(g) That have reached at least the fifth growing season after set out. However, we may agree in writing to insure acreage that has not reached this age if it meets the requirements of subsection (d) of this section.

7. Insurable Acreage

In lieu of the provisions of section 9 of the Basic Provisions that prohibit insurance attaching to a crop planted with another crop, stonefruit interplanted with another perennial crop is insurable unless we inspect the acreage and determine that it does not meet the requirements for insurability contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) Coverage begins on February 1 in California and November 21 for all other states of each crop year, except that for the year of application, if your application is received after January 22 but prior to February 1 in California or after November 11 but prior to November 21 in all other states, 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) July 31 for all apricots; and

(ii) September 30 for all nectarines and peaches; and

(iii) As otherwise provided for specific counties or types in the Special Provisions.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(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 of acquisition.

(2) If you lose or relinquish your insurable share on any insurable acreage of stonefruit on or before the acreage reporting date for the crop year and if the acreage was insured by you the previous crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due 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.

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your stonefruit policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is the later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

9. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, 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 orchard;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption; or

(6) Failure of the irrigation water supply, if due to a cause of loss contained in sections 9(a)(1) through (5) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, 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) Split pits regardless of cause; or

(3) Inability to market the insured crop for any reason other than actual physical damage from an insurable cause of loss 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 of the Basic Provisions, the following will apply:

(a) You must notify us within 3 days after the date harvest should have started if the insured 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) In addition to section 14 of the Basic Provisions, if you intend to claim an indemnity on any unit, you must give us notice at least 15 days prior to the beginning of harvest. You must not destroy the damaged crop until after we have given you written consent to do so. If you fail to notify us and such failure results in our inability to inspect the damaged production, we may consider all such production to be undamaged and include it 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 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) Multiplying the insured acreage for each type or varietal group by its respective production guarantee;

(2) Multiplying each result of section 11(b)(1) by the respective price election for the type or varietal group;

(3) Totaling the results of section 11(b)(2). (If there is only one type or varietal group, the result of (3) will be the same as the result of (2));

(4) Multiplying the total production to count (see section 11(c)), for each type or varietal group, by the respective price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting the result of section 11(b)(5) from the result of section 11(b)(2). (If there is only one type or varietal group, the result of (6) will be the same as the result of (5)); and

(7) Multiplying the result of section 11(b)(6) by your share.

For example:

You have a 100 percent share in 50 acres of varietal group A stonefruit in the unit, with a guarantee of 500 lugs per acre and a price election of $6.00 per lug. You are only able to harvest 5,000 lugs. Your indemnity would be calculated as follows:

(1) 50.0 acres × 500 lugs = 25,000 lugs guarantee;

(2) and (3) 25,000 lugs × $6.00 price election = $150,000.00 value of guarantee;

(4) 5,000 lugs × $6.00 price election = $30,000.00 value of production to count;

(5) and (6) $150,000.00—$30,000.00 = $120,000.00 loss; and

(7) $120,000.00 × 100 percent = $120,000 indemnity payment.

You also have a 100 percent share in 50 acres of varietal group B stonefruit in the unit, with a guarantee of 300 lugs per acre and a price election of $3.00 per lug. You are only able to harvest 3,000 lugs. Your indemnity would be calculated as follows:

(1) 50.0 acres × 500 lugs varietal group A = 25,000 lugs guarantee; and 50.0 acres × 300 lugs varietal group B = 15,000 lugs guarantee;

(2) 25,000 lugs × $ 6.00 price election = $150,000.00 value of guarantee for varietal group A; and 15,000 lugs × $3.00 price election = $45,000.00 value of guarantee for varietal group B;

(3) $150,00.00 + $45,000.00 = $195,000.00 total value of guarantee;

(4) 5,000 lugs varietal group A × $6.00 price election = $30,000.00 value of production to count; and 3,000 lugs varietal group B × $3.00 price election = $9,000.00 value of production to count; and

(5) $30,000.00 + $9,000.00 = $39,000.00 total value of production to count;

(6) $195,000.00—$39,000.00 = $156,000.00 loss

(7) $156,000.00 loss × 1.000 = $156,000 indemnity payment.

(c) The total production to count (in lugs or tons) from all insurable acres on a 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 that would be marketable if harvested; 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 insured crop. We will then make another appraisal when you notify us if any further damage or that harvest is general in the area unless you harvested the crop. If you harvest the crop 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.

(3) The quantity of harvested production will be reduced if the following conditions apply:

(i) The value of the damaged production is less than 75 percent of the marketable value of undamaged production due to an insured cause of loss; and

(ii) For stonefruit insured as fresh fruit only, the stonefruit either is packed and sold as fresh fruit and meets only the utility grade requirements of the applicable grading standards, or fails to meet the applicable grading standards but is or could be sold for any use other than fresh packed stonefruit.

(4) Harvested production of stonefruit that is eligible for quality adjustment as specified in section 11(c)(3) will be reduced as follows:

(i) When packed and sold as fresh fruit or when insured as a processing crop, by dividing the marketable value per lug or ton by

the highest price election (for the applicable coverage level) and multiplying the result (not to exceed 1.00) by the quantity of such production; or

(ii) For all other fresh stonefruit, multiplying the number of tons that could be marketed by the value per ton (for the applicable coverage level) and dividing that result by the highest price election available for that type.

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions (§ 457.8) are not applicable.

[63 FR 29935, June 2, 1998, as amended at 65 FR 47840, Aug. 4, 2000]

§ 457.160 Processing tomato crop insurance provisions.

The Processing Tomato Crop Insurance Provisions for the 2005 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 polices:

Processing Tomato Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Acre. 43,560 square feet of land on which row widths do not exceed 6 feet, or the land on which at least 7,260 linear feet rows are planted if row widths exceed 6 feet.

Broker. An enterprise in the business of buying and selling tomatoes possessing all the licenses and permits required by the state in which it operates, and that has a written contract with a processor to purchase processing tomatoes on behalf of the processor and to deliver such tomatoes to the processor.

Bypassed acreage. Land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

First fruit set. The reproductive stage of the plant at which 30 percent of the plants have produced a fruit that has reached a minimum of one inch in diameter.

Good Farming Practices. In addition to the definition of ''good farming practices'' contained in section 1 of the Basic Provisions, good farming practices include the cultural practices required under the processor contract.

Harvest. The severance of tomatoes from the vines.

Plant stand. The number of plants per acre considered to be normal for the applicable tomato variety and growing area.

Planted acreage—In addition to the definition contained in the Basic Provisions, tomatoes must initially be placed 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, 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, marketing window, 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 unless the replanted acreage can produce at least 75% of the approved yield, and the processor agrees in writing that it will accept the production from the replanted acreage.

Processor. Any business enterprise regularly engaged in processing tomatoes for human consumption, that possesses all licenses and permits for processing tomatoes 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 contracted processing tomatoes within a reasonable amount of time after harvest.

Processor Contract. A written agreement between the producer and a processor, or between the producer and a broker, containing at a minimum:

(a) The producer's commitment to plant and grow processing tomatoes, and to deliver the tomato production to the processor or broker;

(b) The processor's, or broker's, commitment to purchase all the production stated in the processor contract; and

(c) A price per ton that will be paid for the production.

Ton. Two thousand (2,000) pounds avoirdupois.

2. Unit Division

(a) Notwithstanding the provisions of this section or any unit division provisions contained in the Basic Provisions, no indemnity will be paid for any loss of production on any unit if the insured produced a crop sufficient to fulfill the processor contracts forming the basis for the guarantee, and any indemnity

will be limited to the amount necessary to compensate for loss in yield at the price elected between production to count and the contract requirements.

(b) In California only, in addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions, optional units may be established if acreage planted to tomatoes is separated by a field that is not planted to tomatoes, or by a permanent boundary such as a permanent waterway, fence, public road or woodland. Such optional unit must consist of the minimum number of acres stated in the Special Provisions. Acreage planted to tomatoes that is less than the minimum number of acres required will attach to the closest unit within the section, section equivalent, or FSA farm serial number.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for all the processing tomatoes in the county insured under this policy unless the Special Provisions provide different price elections by type. The percentage of the maximum price election you choose for one type will be applicable to all other types insured under this policy. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) Liability under this policy will not exceed the number of tons required to be accepted by the processor under a processor contract in effect on or before:

(1) The earlier of August 20 or the date of damage to the insured crop in all counties with an acreage reporting date of July 15; or

(2) The earlier of the acreage reporting date or the date of damage in all other counties. (Exclude indemnities that occur in stage one and replant payments.)

(c) The price election used to determine the amount of an indemnity is progressive by stage and increases, at specified intervals, to the price used for final stage losses. Stages will be determined on an acre basis. The stages and applicable price elections are:

(1) First stage is from planting until first fruit set. If any acreage of the insured crop is destroyed in this stage, the price used to establish the amount of any indemnity owed for such acreage will be 50 percent of your price election;

(2) Second stage is from the first fruit set until harvest. If any acreage of the insured crop is destroyed in this stage, the price used to establish the amount of any indemnity owed for such acreage will be 80 percent of your price election; and

(3) Third stage (final stage) is harvested acreage. The price election used in this stage to establish the amount of any indemnity owed will be 100 percent of your price election.

(d) Any acreage of tomatoes damaged to the extent, that the majority of producers in the area would not normally further care for the tomatoes, will be deemed to have been destroyed even though you may continue to care for it. The price election used to determine the amount of an indemnity will be that applicable to the stage in which the tomatoes were destroyed.

(e) The appraised production from bypassed acreage that could have been accepted by the processor will be included when determining your approved yield.

(f) Acreage that is bypassed because it was damaged by an insurable cause of loss to the extent that the processor cannot use the product will be considered to have a zero yield when determining your approved yield.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is August 31 preceding the cancellation date for California and November 30 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 15 in California and March 15 in all other states.

6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date in all counties, unless otherwise specified in the Special Provisions.

7. Annual Premium

In lieu of the premium amount determinations contained in section 7 of the Basic Provisions, the annual premium amount per acre is determined by multiplying the production guarantee per acre by the price election for the third (final) stage; by the premium rate; by the insured acreage; by the applicable share at the time of planting; and ultimately by any applicable premium adjustment factors contained in the actuarial documents.

8. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the tomatoes in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are planted for harvest as processing tomatoes;

(3) That are grown under, and in accordance with, the requirements of a processor contract executed on or before August 20 in all counties with an acreage reporting date of July 15, or on or before the acreage reporting date in all other counties, and are not excluded from the processor contract for or during the crop year; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Grown on acreage on which tomatoes were grown in either of the two previous years, except in California;

(ii) Interplanted with another crop; or

(iii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the tomatoes are grown, you are at risk of loss, and the processor contract provides for delivery of processing tomatoes under specified conditions and at a stipulated price.

(c) A tomato producer who is also a processor or broker may establish an insurable interest if the following requirements are met:

(1) The processor or broker, as applicable, must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the processor or the broker must execute and adopt a resolution that contains the same terms as an acceptable processor contract. (Such resolution will be considered a processor contract under this policy); and

(3) As applicable, our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

9. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure any acreage that does not meet the rotation requirements, if applicable, contained in the Special Provisions.

10. Insurance Period

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases at the earlier of the date:

(a) You harvest sufficient production to fulfill your processor contract if the processor contract stipulates a specific amount of production to be delivered;

(b) The tomatoes should have been harvested but was not harvested;

(c) The tomatoes were abandoned;

(d) Harvest was completed;

(e) Final adjustment of a loss was completed; or

(f) The following calendar date for the end of the insurance period

(1) October 20 in California; and

(2) October 10 in all other states.

11. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions:

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions, including:

(i) Excessive moisture that prevents the harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures that cause an unexpected number of acres over a large producing area to be ready for harvest at the same time, affecting the timely harvest of a large number of such acres or the processing of such production being beyond the capacity of the processor, either of which causes the acreage to be bypassed;

(2) Fire;

(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; or

(8) Failure of the irrigation water supply, if due to a cause of loss contained in sections 11(a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we will not insure against any loss of production due to:

(1) Acreage being bypassed, if the acreage is bypassed because:

(i) The breakdown or non-operation of equipment or facilities; or

(ii) The availability of a crop insurance payment. We may deny any indemnity immediately in such circumstance or, if an indemnity has been paid, require you to repay it to us with interest at any time acreage was bypassed due to the availability of a crop insurance payment;

(2) The processing tomatoes not being timely harvested, unless such delay in harvesting is solely and directly due to an insured cause of loss; or

(3) Your failure to follow the requirements contained in the processor contract.

12. Replanting Payment

(a) In accordance with section 13 of the Basic Provisions, a replanting payment is allowed if the crop sustained a loss exceeding 50 percent of the plant stand and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be determined as follows:

(1) The amount shown on the Special Provisions multiplied by your share; or

(2) If an amount is not contained in the Special Provisions, the lesser of 20 percent of the production guarantee or three tons, multiplied by your third stage (final) price election, multiplied by your share; and

(3) In no event will the replanting payment per acre exceed your actual cost of replanting.

13. Duties in the Event of Damage or Loss

In addition to the notice required by section 14 of the Basic Provisions, you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the tomatoes in the unit; or

(2) Discontinuance of harvest on a unit on which unharvested production remains;

(b) Within 3 days after the date harvest should have started on any acreage that will not be harvested. You must also provide acceptable documentation of the reason the acreage was bypassed. Failure to provide such documentation will result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested and you wish to destroy the crop, 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. The samples must not be destroyed until the earlier of our inspection or 15 days after notice is given to us; and

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during the 15 day period or during harvest, so that we may inspect the damaged production. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You are not required to delay harvest.

14. 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) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result of section 14(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results of section 14(b)(2) if there are more than one type;

(4) Multiplying the total production to counted (see section 14(c)), for each type if applicable, by its respective price election;

(5) Totaling the results of section 14(b)(4) if there are more than one type;

(6) Subtracting the result of section 14(b)(4) from the result of section 14(b)(2) if there is only one type or subtracting the result of section 14(b)(5) from the result of section 14(b)(3) if there are more than one type; and

(7) Multiplying the result of section 14(b)(6) by your share.

For example:

You have a 100 percent share in 50 acres of type A processing tomatoes in the unit, with a guarantee of 18.8 tons per acre and a price election of $50.00 per ton. You are only able to harvest 10.0 tons. Your indemnity would be calculated as follows:

(1) 50.0 acres × 18.8 tons = 940.0 tons guarantee;

(2) 940.0 tons × $50.00 price election = $47,000.00 value guarantee;

(4) 10.0 tons × $50.00 price election = $500.00 value of production to count;

(6) $47,000.00 − $500.00 = $46,500.00 loss; and

(7) $46,500 × 100 percent = $46,500.00 indemnity payment.

You also have a 100 percent share in 50 acres of type B processing tomatoes in the same unit, with a guarantee of 15.0 tons per acre and a price election of $35.00 per ton. You are only able to harvest 5.0 tons. Your total indemnity for both types A and B would be calculated as follows:

(1) 50.0 acres × 18.8 tons = 940.0 ton guarantee for type A and 50.0 acres × 15.0 tons = 750.0 ton guarantee for type B;

(2) 940.0 ton guarantee × $50.00 price election = $47,000.00 value of guarantee for type A and 750.0 ton guarantee × $35.00 = $26,500.00 value of guarantee for type B;

(3) $47,000.00 + $26,500.00 = $72,500.00 total value of guarantee;

(4) 10.0 tons × $50.00 price election = $500.00 value of production to count for type A and 5.0 tons × $35.00 price election = $175.00 value of production to count for type B;

(5) $500.00 + $175.00 = $675.00 total value of production to count;

(6) $72,500.00 − $675.00 = $71,575.00 loss; and

(7) $71,575 loss × 100 percent = $71,575.00 indemnity payment.

(c) The total production to count, specified in 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 production records that are acceptable to us.

(ii) Production lost due to uninsured causes;

(iii) Production on acreage that is bypassed unless the acreage was bypassed due to an insured cause of loss which resulted in production which would not be acceptable under the terms of the processor contract;

(iv) Potential production on insured acreage that you intend to put to another use or abandoned, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when 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;

(2) All harvested production (in tons) delivered to the processor which meets the quality requirements of the processor contract (expressed as usable or payable weight).

(3) All harvested tomato production delivered to processor which does not meet the quality requirements of the processor contract due to not being timely delivered.

(d) Once harvest has begun on any acreage covered by a processor contract that specifies the number of tons to be delivered, the total indemnity payable will be limited to an amount based on the lesser of the guaranteed tons, or the tons remaining unfulfilled under the processor contract.

15. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 54342, Oct. 20, 1997, as amended at 62 FR 65177, Dec. 10, 1997; 69 FR 44576, July 27, 2004]

§ 457.161 Canola and rapeseed crop insurance provisions.

The canola and rapeseed crop insurance provisions for the 2003 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:

Canola and Rapeseed Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

1. Definitions

Canola. A crop of the genus *Brassica* as defined in accordance with the Official United States Standards for Grain—Subpart C—U.S. Standards for Canola.

Harvest. Combining or threshing for seed. A crop that is swathed prior to combining is not considered harvested.

Local market price (Canola). The cash price per pound for U.S. No. 2 grade canola that reflects the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade canola.

Planted acreage. In addition to the definition contained in the Basic Provisions, 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. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Price of damaged production. The cash price per pound available if the production were sold for canola that qualifies for quality adjustment in accordance with section 12 of these crop provisions.

Rapeseed. A crop of the genus *Brassica* that contains at least 30 percent of an industrial type of oil as shown on the Special Provisions and that is measured on a basis free from foreign material.

Swathed. Severance of the stem and seed pods from the ground and placing into windrows without removal of the seed from the pod.

2. Unit Division

In addition to optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated practices, optional units may be by type if the type is designated on the Special Provisions.

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

In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the canola and rapeseed in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each canola and rapeseed type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for a specific type, you must also choose 100 percent of the maximum price election for all other types.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date for counties with a March 15 cancellation date, and June 30 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation and Termination dates
All counties in Georgia	Sept. 30.
All other counties without fall planted types specified on the actuarial table.	Mar. 15.
All other counties with fall planted types specified on the actuarial table.	Aug. 31.

6. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all canola and rapeseed 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 seed; and

(c) That is not, unless allowed by Special Provisions or by written agreement:

(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 of the Basic Provisions,

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that most producers producing crops on similarly situated acreage in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure any acreage that does not meet the rotation requirements contained in the Special Provisions.

8. Insurance Period

In accordance with the provisions of section 11 of the Basic Provisions, the end of the insurance period is October 31 of the calendar year in which the crop is normally harvested.

9. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss which occur during 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, caused by an insured cause of loss that occurs during the insurance period.

10. Replanting Payment

(a) In accordance with section 13 of the Basic Provisions, a replanting payment is allowed if the insured crop is damaged by an insurable cause of loss to the extent that most producers producing the crop on similarly situated acreage in the area, would not continue to care for the crop and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 175 pounds, multiplied by your price election, multiplied by your insured share.

(c) When the canola or rapeseed is replanted using a practice or type that is uninsurable as an original planting, the liability for the unit will be reduced by the amount of the replanting payment that 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 of the Basic Provisions, the representative samples of the unharvested crop that we may require must be at least 10 feet wide and extend the entire length of each field in the unit. If you intend to put the acreage to another use or not harvest the acreage, the samples must not be harvested or destroyed until our inspection.

12. 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 acceptable 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) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result in section 12(b)(1) by the respective price election for each type, if applicable;

(3) If there are more than one type, totaling the results in section 12(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 12(c)) by the respective price election;

(5) If there are more than one type, totaling the results in section 12(b)(4);

(6) If there are more than one type, subtracting the total in section 12(b)(5) from the total in section 12(b)(3);

(7) If there is only one type, subtracting the total in section 12(b)(4) from the total in section 12(b)(2); and

(8) Multiplying the result in section 12(b)(6) and 12(b)(7), as applicable, by your share.

(c) The total production to count (pounds) 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) That is 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;

(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 section 12(d)); and

(iv) 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 when 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 canola may be adjusted for excess moisture and quality deficiencies. Mature rapeseed may be adjusted for excess moisture only. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Canola and rapeseed production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 8.5 percent. We must be permitted to obtain samples of the production to determine the moisture content.

(2) Canola production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in the canola not meeting the grade requirements for U.S. No. 3 or better (U.S. Sample grade) because of kernel damage (excluding heat damage), 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 in canola production only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these Crop Provisions and which occurs within the insurance period;

(ii) The deficiencies, substances, or conditions result in a net price for the damaged production that is less than the local market price;

(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;

(iv) With regard to deficiencies in quality, the samples are analyzed by:

(A) A grain grader licensed under the United States Grain Standards Act or the United States Warehouse Act;

(B) A grain grader licensed under State law and employed by a warehouse operator who has a storage agreement with the Commodity Credit Corporation; or

(C) A grain grader not licensed under State law, but who is employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation and is in compliance with State law regarding warehouses; and

(v) With regard to substances or conditions injurious to human or animal health, the samples analyzed by a laboratory approved by us.

(4) Canola production that is eligible for quality adjustment, as specified in sections 12(d)(2) and (3), will be reduced:

(i) In accordance with the quality adjustment factors contained in the Special Provisions; or

(ii) As follows if quality adjustment factors are not contained in the Special Provisions:

(A) Divide the price of damaged production by the local market price to determine the quality adjustment factor.

(B) The number of pounds remaining after any reduction due to excessive moisture (the moisture-adjusted gross pounds) of the damaged or conditioned production will then be multiplied by the quality adjustment factor to determine the net production to count.

(5) For canola, the price of damaged production and the local market price will be determined at the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit subject to the following conditions:

(i) Discounts used to establish the price of damaged production will be limited to those that are usual, customary, and reasonable.

(ii) The price of damaged production will not be reduced for:

(A) Moisture content;

(B) Damage due to uninsured causes;

(C) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the canola; except, if the price of damaged production can be increased by conditioning, we may reduce the price of damaged production after the production has been conditioned by the cost of conditioning but not lower than the price of damaged production before conditioning. We may obtain prices of damaged production from any buyer of our choice. If we obtain prices of damaged production from one or more buyers located outside your local market area, we will reduce such price of damaged production by the additional costs required to deliver the canola to those buyers; or

(D) Erucic acid or glucosinolates in excess of the amount allowed under the definition of canola contained in the Official United States Standards for Grain; and

(iii) 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.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on an unadjusted weight basis.

For example:

You have 100 percent share in 25 acres of Fall Oleic Canola in a unit with a 650 pound production guarantee and a price election of $0.11 per pound. You are only able to harvest 14,700 pounds and there is no appraised production. Your indemnity would be calculated as follows:

(1) 25 acres × 650 pounds = 16,250 pounds of Fall Oleic Canola;

(2) 16,250 pounds × $0.11 price election = $1,788 value of guarantee for Fall Oleic Canola;

(3) 14,700 pounds × $0.11 price election = $1,617 total value of production to count for Fall Oleic Canola;

(4) $1,788 value of guarantee − $1,617 value of production to count = $171 value of loss; and

(5) $171 value of loss × 100 percent = $171 indemnity payment.

You also have a 100 percent share in 50 acres of Fall High Erucic Rapeseed in the same unit with a production guarantee of 750 pounds per acre and a price election of $0.15 per pound. You are only able to harvest 14,000 pounds and there is no appraised production. Your total indemnity for both Fall Oleic Canola and Fall High Erucic Rapeseed would be calculated as follows:

(1) 25 acres × 650 pounds = 16,250 pounds guarantee for the Fall Oleic Canola, and 50 acres × 750 pounds = 37,500 pounds guarantee for the Fall High Erucic Rapeseed;

(2) 16,250 pounds guarantee × $0.11 price election = $1,788 value of the guarantee for the Fall Oleic Canola, and 37,500 pounds guarantee × $0.15 price election = $5,625 value of the guarantee for the Fall High Erucic Rapeseed;

(3) $1,788 + $5,625 = $7,413 total value of the guarantees;

(4) 14,700 pound × $0.11 price election = $1,617 value of production to count for the Fall Oleic Canola, and 14,000 pounds × $0.15 price election = $2,100 value of production to count for the Fall High Erucic Rapeseed;

(5) $1,617 + $2,100 = $3,717 total value of production to count;

(6) $7,413 value of guarantee − $3,717 value of production = $3,696 loss; and

(7) $3,696 value of loss × 100 percent = $3,696 indemnity payment.

13. Late Planting

In lieu of section 16(a) of the Basic Provisions, the production guarantee for each acre planted to the insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date unless otherwise specified in the Special Provisions.

14. Prevented Planting

In addition to the provisions contained in section 17 of the Basic Provisions, your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to the levels specified in the actuarial documents.

[62 FR 65997, Dec. 17, 1997, as amended at 67 FR 43526, June 28, 2002]

§ 457.162 Nursery crop insurance provisions.

The Nursery Crop Insurance Provisions for the 2006 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

Nursery Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Act. The Federal Crop Insurance Act, 7 U.S.C. 1501 *et seq*.

American Standard for Nursery Stock. A publication of the American Nursery and Landscape Association, or a subsequent successor organization, issued in accordance with the rules of the American National Standards Institute, Inc. that provides common terminology and standards for nurseries.

Amount of insurance. For each basic unit, your basic unit value multiplied by the coverage level percentage you elect and multiplied by your share.

Basic unit value. The full value of all insurable plants in each basic unit as shown on your PIVR, including any revision that increases the value of your insurable plant inventory.

Container grown. Nursery plants planted and grown in standard nursery containers either above ground or that are placed in the ground, either directly or when placed in another pot in the ground (i.e., pot-in-pot).

Crop year. The period beginning the day insurance attaches and extending until the following May 31. Crop year is designated by the year in which the insurance period ends.

Crop year deductible. The deductible percentage multiplied by the sum of all plant inventory values for each basic unit. The crop year deductible will be increased for any increases in the inventory value on the PIVR or through the purchase of a Peak Inventory Endorsement, if in effect at the time of loss. The crop year deductible will be reduced by any previously incurred deductible, except any incurred under the Rehabilitation Endorsement, if you timely report each loss to us.

Deductible percentage. An amount equal to 100 percent minus the percent of coverage you select.

Eligible Plant List. A list that includes the botanical and common names of insurable plants, the winter protection requirements for container grown material and the areas in which they apply, the hardiness zone to which field grown material is insurable, the designated hardiness zone for each county, and the unit classification for each plant on the list, published by FCIC on RMA's Web site at *http://www.rma.usda.gov*. It is also available on compact disk from your crop insurance agent.

Fabric grow bag. A fabric bag (including a woven or matted bag with a plastic or fabric bottom) used for growing woody plants in-ground or as an above-ground nursery plant container that provides adequate drainage and is appropriate in size for the plant.

FCIC. The Federal Crop Insurance Corporation, a wholly owned corporation within the USDA, or a successor agency.

Field grown. Nursery plants planted and grown in the ground without the use of an artificial root containment device. Plants grown in in-ground fabric grow bags, plants that are balled and burlapped or plants grown in containers that allow the plants to root (excluding fibrous roots) into the ground (for example, a container without a bottom) are also considered field grown.

Field market value A. The value of undamaged insurable plants, based on the lesser of: (1) The prices contained in the Plant Price Schedule; or (2) the prices contained in your catalog or price list in the basic unit immediately prior to the occurrence of any loss, as determined by our appraisal. This allows the amount of insurance

under the policy to be divided among the individual units in accordance with the actual value of the plants in the unit at the time of loss to determine whether you are entitled to an indemnity for insured losses in the basic unit. This value is also used to calculate the actual value of the plants in the basic unit at the time of loss to ensure that you have not under-reported your plant values. For liners, the total value of undamaged liners is multiplied by the survival factor to determine the value of undamaged insurable plants.

Field market value B. The value of insurable plants, based on the lesser of: (1) The prices contained in the Plant Price Schedule; or (2) the prices contained in your catalog or price list in the basic unit following the occurrence of a loss, as determined by our appraisal, plus any reduction in value due to uninsured causes. This is used to determine the loss of value for each individual unit so that losses can be paid on an individual unit basis.

Good nursery practices. In lieu of the definition of ''good farming practices'' contained in section 1 of the Basic Provisions, the horticultural practices generally in use in the area for nursery plants to make normal progress toward the stage of growth at which marketing can occur and: (1) For conventional practices, generally recognized by agricultural experts for the area as compatible with the nursery plant production practices and weather conditions in the county; or (2) for organic practices, generally recognized by the organic agricultural industry for the area as compatible with the nursery plant production practices and weather conditions in the county or contained in the organic plan. We may, or you may request us to, contact FCIC to determine whether or not production methods will be considered to be ''good nursery practices.''

Irrigated practice. In lieu of the definition in the Basic Provisions, the application of water, using appropriate systems and at the proper times, to provide the quantity of water needed to sustain normal growth of your insured plant inventory and provide cold protection for applicable plants as specified in the Eligible Plant List.

Liners. Plants produced in standard nursery containers that are equal to or greater than 1 inch in diameter (including trays containing 200 or fewer individual cells, unless specifically provided by the Special Provisions) but less than 3 inches in diameter at the widest point of the container or cell interior, have an established root system reaching the sides of the containers, are able to maintain a firm root ball when lifted from the containers, and meet all other conditions specified in the Special Provisions.

Loss. Field market value A minus field market value B.

Marketable. Of a condition that it may be offered for sale in the market.

Monthly proration factors. Factors contained in the actuarial documents that are used to calculate premium when you do not insure the nursery plants for an entire crop year.

Nursery. A business enterprise that grows the nursery plants and derives at least 50 percent of its gross income from the wholesale marketing of such plants.

Occurrence deductible. This deductible allows a smaller deductible than the crop year deductible to be used when the inventory value is less than the reported basic unit value. The occurrence deductible is the lesser of: (1) The deductible percentage multiplied by field market value A multiplied by the under-report factor; or (2) the crop year deductible.

PIVR. The plant inventory value report, your report that declares the value of insurable plants in accordance with section 6.

Plant Price Schedule. A schedule of insurable plant prices that establishes the maximum insurable value of undamaged insurable plants, published by FCIC as an actuarial document available on RMA's Web site at *http://www.rma.usda.gov*. It is also available on compact disk from your crop insurance agent.

Practice. A cultural method of producing plants. Container grown and field grown are considered separate insurable practices.

Sales closing date. In lieu of the definition in section 1 of the Basic Provisions, the date shown in the Special Provisions. New-policy applications may be filed at any time. However, all applications, including those for new or amended coverage, are subject to a 30-day waiting period before commencement of coverage as specified in sections 3(d) and 9(a).

Standard nursery containers. Rigid containers not less than 1 inch in diameter at the widest point of the container interior (including trays that contain 200 or fewer individual cells, unless specifically provided by the Special Provisions), above-ground fabric grow bags, and other types of containers specified in the Special Provisions that are appropriate in size and provide adequate drainage for the plant. In-ground fabric grow bags, balled and burlapped, and trays (flats) without individual cells are not considered standard nursery containers.

Stock plants. Plants used solely for propagation during the insurance period.

Survival factor. A factor shown on the Special Provisions that specifies the expected percentage of liners that normally survive the period from insurance attachment to market.

Under-report factor. The factor that adjusts your indemnity for under-reporting of inventory values. The factor is always used in determining indemnities. For each basic unit,

the under-report factor is the lesser of: (1) 1.000; or (2) the basic unit value, including a Peak Inventory Value Report during the coverage term of a Peak Inventory Endorsement, minus the total of all previous losses, as adjusted by any previous under-report factor, divided by field market value A. Payments made under the Rehabilitation Endorsement will not be considered a previous loss when calculating the under-report factor.

Wholesale. To sell nursery plants in large quantities at a price below that offered on low-quantity sales to retailers, commercial users, governmental end-users, or other end-users for business purposes (*e.g.* sales to landscape contractors and commercial fruit producers). This determination will be based on a county-by-county basis.

2. Unit Division

(a) If you elect additional coverage for a practice, a basic unit, as defined in section 1 of the Basic Provisions, may be divided into additional basic units by each insurable plant type designated in section 2(b) for which a premium rate is provided by the actuarial documents.

(b) Only the following plant types contained on the Eligible Plant List are insurable:

(1) Deciduous Trees (Shade and Flower);

(2) Broad-leaf Evergreen Trees;

(3) Coniferous Evergreen Trees;

(4) Fruit and Nut Trees;

(5) Deciduous Shrubs;

(6) Broad-leaf Evergreen Shrubs;

(7) Coniferous Evergreen Shrubs;

(8) Small Fruits;

(9) Herbaceous Perennials;

(10) Roses;

(11) Ground Cover and Vines;

(12) Annuals;

(13) Foliage;

(14) Palms and Cycads;

(15) Liners (container grown only and inclusive of all insurable plant types); and

(16) Other plant types listed in the Special Provisions.

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

(a) The production reporting requirements, including the misreporting provisions, contained in section 3 of the Basic Provisions are not applicable.

(b) In addition to the requirements of section 3 of the Basic Provisions, you may select either catastrophic risk protection or additional coverage for each insured practice. An administrative fee established in accordance with section 7(e) of the Basic Provisions will be owed for each practice insured.

(c) In lieu of section 3(b) of the Basic Provisions:

(1) If you select additional coverage for a practice:

(i) You may select one coverage level for each plant type insured in that practice if you elect basic units by plant type;

(ii) You will receive 100 percent of the price election for all plant types in that practice;

(iii) You must provide on the application a coverage level percentage for each plant type that will be insured; and

(iv) You must select a coverage level if:

(A) A new plant is added under a revised PIVR or Peak Inventory Endorsement; and

(B) The plant is not categorized under a plant type reported on the initial PIVR.

(2) If you select catastrophic risk protection for a practice, all plant types under the practice must be insured at the catastrophic risk protection level.

(d) In lieu of section 3(d) of the Basic Provisions, you may request changes to the coverage level for a plant type by submitting them in writing to us as follows:

(1) For new policies, changes cannot be made for the crop year after the date of the application; and

(2) For carryover policies:

(i) For the 2006 crop year only, changes must be requested on or before September 30th prior to the start of the crop year;

(ii) For all subsequent crop years, changes must be requested on or before the sales closing date; and

(iii) Unless we reject the proposed increase because a loss occurs within 30 days of the date the request is made (Rejection can occur at any time we discover such loss has occurred), requested changes will take effect:

(A) For the 2006 crop year, 30 days after the date you submitted your request; and

(B) For all subsequent crop years, on the date of the start of the crop year.

(e) Your amount of insurance will be reduced by the amount of any indemnity paid under this policy. For losses occurring when a Peak Inventory Endorsement is in effect, to determine the amount of insurance remaining after the loss you must subtract the amount of the indemnity from the peak amount of insurance, then subtract any remaining amount of indemnity from the amount of insurance.

(f) If you restock your nursery plant inventory, you may increase your amount of insurance in accordance with section 6(g).

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is January 31 of each crop year.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are May 31 preceding the crop year.

6. PIVR

(a) Section 6 of the Basic Provisions is not applicable.

(b) You must submit a PIVR for each insured practice, as applicable, and two copies of your most recent wholesale catalogs or price lists in accordance with subsection (k) to us with your application on or before the sales closing date for each crop year following the year of application.

(1) You will be notified in writing if an application for insurance is refused because the inventory or wholesale catalog or price list is not acceptable.

(2) If you fail to provide a PIVR or applicable catalog or price list on or before the sales closing date for any crop year, insurance will not attach until 30 days after all such documents have been received by your crop insurance agent and we will not be liable for any losses that occur before insurance has attached.

(c) The PIVR must include, by basic unit, all growing locations, basic unit value, coverage level selected, as applicable, and your share.

(1) If you do not elect additional basic units by plant type or you elect CAT coverage, the plant inventory values for each plant type in the basic unit must be separately reported on the PIVR and totaled to determine the basic unit value.

(2) At our option, you will be required to provide documentation in support of your PIVR, including, but not limited to, a detailed plant inventory listing that includes the name, the number, and the size of each plant; acceptable records of sales and purchases of plants for the three previous crop years in the amount of detail we require; and your ability to properly obtain and maintain nursery stock. Acceptable records must contain the name and telephone number of the purchaser or seller, as applicable, names of the plants, the number of each plant sold or purchased, and the sales price for each plant.

(3) Failure to provide documentation when requested or providing inadequate documentation will result in denial of insurance for the crop year for any basic units for which such documentation was not provided. This provision does not apply to:

(i) Plant varieties you have not previously grown; or

(ii) New nurseries where an inspection has determined you have the ability to properly obtain and maintain the nursery stock.

(d) Your PIVR, including any revised report, and your Peak Inventory Value Report will be used to determine your premium and amount of insurance.

(e) Your PIVR must reflect your insurable nursery plant inventory value by basic unit.

(1) The price for each plant and size listed on your PIVR will be the lower of the Plant Price Schedule price or the lowest wholesale price in your nursery catalog or price list submitted in accordance with section 6(k).

(2) In no instance will we be liable for plant values greater than those contained in the Plant Price Schedule.

(3) If you have previously made a claim and the loss adjuster is unable to determine whether a plant was damaged prior to submission of your PIVR for the current crop year, the plant will be insurable at full value based on the lesser of the Eligible Plant List price or the catalog or price list price. The value of the plant may be reduced at any time during the crop year if the extent of damage is discovered.

(f) For catastrophic level policies only, you must report, on the PIVR for each practice insured, your greatest plant sales in any of the previous 3 years and the actual inventory value on the date insurance attaches.

(1) You may be required to provide documentation to support the above reporting requirements. To be considered adequate, sales documents must contain the name and telephone number of the purchaser, names of the plants, the number of each plant sold, and the sales price for each plant.

(2) For each applicable practice, the total of your basic unit values cannot exceed 110 percent of the higher of your:

(i) Greatest amount of plant sales in any of the previous 3 years; or

(ii) Actual inventory value on the date insurance attaches.

(3) Failure to provide documentation when requested or providing inadequate documentation will result in denial of insurance for the crop year for any basic unit for which such documentation was not provided. This provision does not apply to:

(i) Plant varieties you have not previously grown; or

(ii) New nurseries where an inspection has determined you have the ability to properly obtain and maintain the nursery stock.

(g) You may increase your reported inventory value for each basic unit no more than twice during the crop year by submitting a revised PIVR prior to 30 days before the end of such crop year.

(1) Any requested increase must be made in writing and contain the same information as required in section 6(c). The limitations in section 3(d) regarding making changes to the coverage level after a specified date are not applicable to a revised PIVR that adds new plant types. The limitations continue to apply if plants are added for a specific plant type.

(2) An inspection will be performed when the total of all the basic unit values contained on the revised PIVRs is increased 50 percent or more from the previous total of all the basic unit values on the PIVR, and the increase is not due to restocking subsequent to an insured loss.

(3) At our discretion, we may inspect the inventory if an increase of less than 50 percent is reported on the revised PIVR.

(4) Your revised PIVR will be considered accepted by us and insurance will attach on any proposed increase in inventory value 30 days after your written request is received unless we reject the proposed increase in your plant inventory value in writing.

(5) We will reject any requested increase if a loss occurs within 30 days of the date the request is made.

(6) You cannot revise your PIVR to decrease the plant inventory value after the start of the insurance period specified in section 9.

(h) For insurable plants that were damaged prior to the attachment of insurance coverage:

(1) The applicable price, as determined in accordance with section 6(e), will be reduced for inventory reporting purposes if we accept such plants for insurance coverage;

(2) The plants will be removed from the PIVR if they are not accepted;

(3) The procedure for calculating the insurable value of damaged plants that are accepted for coverage is contained in the Special Provisions.

(i) You must report the full value of each basic unit value in accordance with section 6(e). Failure to report the full value of each basic unit value will result in the reduction of any claim in accordance with section 12(d).

(j) Insurable plants in over-sized containers will be valued for purposes of reporting inventory and loss adjustment as if the plants were in appropriate-sized containers in accordance with the standards contained in the current American Standard for Nursery Stock. Each cell in a multiple-cell container is considered a separate container. (See the Eligible Plant List at *http://www.rma.usda.gov/* for additional information and requirements on container specifications and volume calculation.)

(k) At a minimum, your wholesale catalog or price list must:

(1) Be type-written and legible;

(2) Show an issue date on the cover page (may be handwritten);

(3) Contain the name, address, and phone number of your nursery;

(4) Be provided to customers and used in the sale of your plants; and

(5) List each plant's name (scientific or common), plant or container size, and wholesale price.

7. Premium

(a) In lieu of section 7(c) of the Basic Provisions, we will determine your premium by multiplying the amount of insurance by the appropriate premium rate, any premium adjustment factor, and the monthly proration factor contained in the actuarial documents, if applicable.

(b) In addition to the provisions in section 7 of the Basic Provisions, we will prorate your premium based on:

(1) The time remaining in the crop year after insurance attaches:

(i) If you have made application after the start of the insurance period specified in section 9; or

(ii) If you submit a PIVR or wholesale catalog or price list after the sales closing date;

(2) The time remaining in the crop year after insurance attaches and the additional amount of inventory reported, if you submit a revised PIVR to report an increase in inventory value for a basic unit; and

(3) The time period for which insurance is provided under the Peak Inventory Endorsement.

(c) If your premium is prorated, premium will be charged for the entire month for any calendar month during which any amount of coverage is provided under these provisions or the Peak Inventory Endorsement.

(d) In lieu of section 7(a) of the Basic Provisions:

(1) If you apply for insurance before April 1st, the annual premium is earned and payable at the time coverage begins. You will be billed for the premium and administrative fee not earlier than the premium billing date specified in the Special Provisions.

(2) If you apply for insurance, or submit your PIVR or wholesale catalog or price list, on or after April 1st, the premium for the partial crop year will be due and must be paid at the time of application.

(3) Failure to pay the premium at the time of application, or when you submit your PIVR or wholesale catalog or price list, will result in no insurance and no indemnity being owed for the crop year.

8. Insured Crop and Plants

In lieu of the provisions of sections 8 and 9 of the Basic Provisions, the crop insured will be all nursery plants and plant types in each practice, contained on the Eligible Price List, in which you have a share, that you elect to insure, and that:

(a) Are shown on the Eligible Plant List and meet all the requirements for insurability (plant types, species and cultivars not insurable under the eligible plant list may be insured by written agreement, subject to FCIC's determination that the proper storage requirements and an accurate insurable price for the plant can be determined, and provided all other requirements, such as plant and container size, are met);

(b) Are determined by us to be acceptable;

(c) Are grown in a county for which a premium rate is provided in the actuarial documents;

(d) Are grown in a nursery inspected by us and determined to be acceptable;

(e) Are irrigated unless otherwise provided by the Special Provisions (You must have adequate irrigation equipment and water to irrigate all insurable nursery plants at the time coverage begins and throughout the insurance period);

(f) Are grown in accordance with the production practices for which premium rates have been established;

(g) Are grown in an appropriate medium;

(h) Are not grown for sale as Christmas trees;

(i) Are not stock plants or plants being grown solely for harvest of buds, flowers, or greenery;

(j) May produce edible fruits or nuts provided the plants are made available for sale (Harvest of the edible fruit or nuts does not affect insurability); and

(k) Are not produced in nursery containers that contain two or more different genera, species, subspecies, varieties or cultivars.

9. Insurance Period

(a) In lieu of section 11 of the Basic Provisions:

(1) For the year of application, if you apply for coverage:

(i) On or before August 31, 2005, for the 2006 crop year, coverage begins on October 1, 2005, unless we notify you in writing that your inventory is not acceptable;

(ii) After August 31, 2005, and on or before May 1, 2006, for the 2006 crop year, or on or before May 1st of the crop year for any subsequent crop year, coverage begins 30 days after your crop insurance agent receives an application signed by you, unless we notify you in writing that your inventory is not acceptable;

(iii) After May 1, 2006, or after May 1st for any subsequent crop year, coverage will not begin until the next crop year, subject to the 30-day delay specified in subparagraph (ii); and

(2) For continuous policies:

(i) For the 2006 crop year, the insurance period begins on October 1, 2005.

(ii) For the 2007 crop year, the insurance period begins on June 1, 2006, and for each subsequent crop year, the insurance period begins on each June 1st.

(b) Insurance ends at the earliest of:

(1) The date of final adjustment of a loss when the total indemnities due equal the amount of insurance;

(2) Removal of bare root nursery plant material from the field;

(3) Removal of all other insured plant material from the nursery; or

(4) 11:59 p.m. on May 31, 2006, for the 2006 crop year, and on May 31st for each subsequent crop year.

10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided for unavoidable damage caused only by the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions, except as specified in section 10(c) or the Special Provisions;

(2) Fire, provided weeds and undergrowth in the vicinity of the plants or buildings on your insured site are controlled by chemical or mechanical means;

(3) Wildlife;

(4) Earthquake; or

(5) Volcanic eruption.

(b) Insurance is also provided against the following if due to a cause of loss specified in section 10(a) that occurs within the insurance period:

(1) A loss in plant values because of an inability to market such plants, provided such plants would have been marketed during the crop year (e.g. poinsettias that are not marketable during their usual and recognized marketing period of November 1st through December 25th);

(2) Failure of the irrigation water supply; or

(3) Failure of, or reduction in, the power supply.

(c) In addition to the causes of loss excluded in sections 12(a) and (c) through (f) of the Basic Provisions, we do not insure against any loss caused by:

(1) Disease or insect infestation, unless:

(i) A disease or insect infestation occurs for which no effective control measure exists; or

(ii) Coverage is specifically provided by the Special Provisions.

(2) The inability to market the nursery plants as a result of:

(i) The refusal of a buyer to accept production;

(ii) Boycott; or

(iii) An order from a public official prohibiting sales including, but not limited to, a stop sales order, quarantine, or phytosanitary restriction on sales;

(3) Cold temperatures, if cold protection is required in the eligible plant list, unless:

(i) You have installed adequate cold protection equipment or facilities and there is a failure or breakdown of the cold protection equipment or facilities resulting from an insurable cause of loss specified in section 10(a) (the insured plants must be damaged by cold temperatures and the damage must occur within 72 hours of the failure of such equipment or facilities unless we establish that repair or replacement was not possible between the time of failure or breakdown and the time the damaging temperatures occurred); or

(ii) The lowest temperature or its duration exceeded the ability of the required cold protection equipment to keep the insured plants from sustaining cold damage;

(4) Collapse or failure of buildings or structures, unless the damage to the building or structures results from a cause of loss specified in section 10(a);

(5) Any cause of loss, including those specified in section 10(a), if the only damage suffered is a failure of plants to grow to an expected size; or

(6) In lieu of section 12(b) of the Basic Provisions, failure to follow recognized good nursery practices.

11. Duties in the Event of Damage or Loss

(a) In addition to your duties contained in section 14 of the Basic Provisions,

(1) You must obtain our written consent prior to:

(i) Destroying, selling or otherwise disposing of any plant inventory that is damaged; or

(ii) Changing or discontinuing your normal growing practices with respect to care and maintenance of the insured plants.

(2) You must submit a claim for indemnity to us on our form, not later than 60 days after the date of your loss, but in no event later than 60 days after the end of the insurance period. This requirement will be waived by us if the final adjustment of your claim is totally or partially deferred because we are unable to make an accurate determination of the amount of damage to the insured plants. If within the time frame specified we notify you that we are unable to make an accurate determination of damage on all or some of your damaged plants:

(i) For those damaged plants on which the loss adjustment and claim have not been deferred, you must submit a partial claim within the time frame specified in section 11(a)(2) and we will settle your claim on such plants;

(ii) For those damaged plants on which the loss adjustment and claim have been deferred, we will determine the amount of damage at the earliest possible date but no later than one year after the end of the insurance period for the crop year in which the damage occurred; and

(iii) You must maintain the identity of the plants on which loss adjustment is deferred throughout the deferral period.

(b) Failure to obtain our written consent as required by section 11(a)(1) will result in the denial of your claim.

12. Settlement of Claim

We will determine indemnities for any unit as follows:

(a) Determine the under-report factor for the basic unit;

(b) Determine the occurrence deductible;

(c) Subtract field market value B from field market value A;

(d) Multiply the result of 12(c) by the under-report factor;

(e) Subtract the occurrence deductible from the result in section 12(d); and

(f) If the result of section 12(e) is greater than zero, and subject to the limit of section 12(g);

(1) For other than catastrophic risk protection coverage, your indemnity equals the result of section 12(e), multiplied by your share.

(2) For catastrophic risk protection coverage, your indemnity equals the result of section 12(e) multiplied by fifty-five percent, multiplied by your share.

(g) The total of all indemnities for the crop year will not exceed the amount of insurance, including any peak amount of insurance during the coverage term of the Peak Inventory Endorsement, if this endorsement is elected.

13. Late and Prevented Planting

The late and prevented planting provisions in the Basic Provisions are not applicable.

14. Written Agreements

(a) In lieu of section 18(a) of the Basic Provisions, you must request in writing a written agreement with the application for the initial crop year, and not later than the cancellation date for each subsequent crop year, except as provided in section 14(c).

(b) In lieu of the requirements of section 18(d) of the Basic Provisions, any written agreement is valid only until the end of the insurance period for the crop year such written agreement applies; and

(c) In lieu of section 18(e) of the Basic Provisions, an application for a written agreement submitted after the date of application for the initial crop year and the cancellation date for all subsequent crop years may be approved if:

(1) You demonstrate your physical inability to have applied timely; and

(2) After physical examination of the nursery plant inventory, we determine the inventory will be marketable at the value shown on the PIVR.

15. Examples

Single Unit Example

Assume you have a 100 percent share and the plant inventory value reported by you is $100,000, and your coverage level is 75 percent. Your amount of insurance is $75,000 ($100,000 × .75). At the time of loss, field market value A is $125,000, and field market value B is $80,000. The under-report factor is .80 ($100,000 divided by $125,000). The deductible percentage is 25 percent (100 − 75), the crop year deductible is $25,000 (.25 × $100,000)

and the occurrence deductible is $25,000 (.25 × $125,000 × .80). Your indemnity would be calculated as follows:

Step (1) Determine the under-report factor $100,000 ÷ $125,000 = .80;

Step (2) Field market value A minus field market value B $125,000 − $80,000 = $45,000;

Step (3) The result of step (2) multiplied by the result of step (1) $45,000 × .80 = $36,000;

Step (4) The result of step (3) minus the occurrence deductible $36,000 − $25,000 = $11,000; and

Step (5) Result of step (4) multiplied by your share $11,000 × 1.000 = $11,000 indemnity payment.

Peak Inventory Value Report Example

Assume you have a second loss on the same basic unit. Your amount of insurance has been reduced by subtracting your previous indemnity payment of $11,000 from your amount of insurance ($75,000 − $11,000 = $64,000). Your crop year deductible has been reduced to zero by the previous loss ($25,000 − $36,000, but not less than zero). You purchase a Peak Inventory Endorsement and report $60,000 in inventory. Your peak amount of insurance is your reported inventory times your coverage level ($60,000 × .75 = $45,000). The combined amount of insurance for the coverage term of the peak endorsement is $64,000 + $45,000 = $109,000. Your crop year deductible is increased by $15,000 ($60,000 × .25). At the time of loss, field market value A is $124,000, and field market value B is $58,000. The under-report factor is 1.00 [($160,000 − $36,000)/$124,000]. The crop year deductible is $15,000 (.25 × $60,000) and the occurrence deductible is $15,000 (the lesser of field market value A × .25 or the crop year deductible). Your indemnity would be calculated as follows:

Step (1) Determine the under-report factor $160,000 − $36,000) ÷ $124,000 = 1.00;

Step (2) Field market value A minus field market value B $124,000 − $58,000 = $66,000;

Step (3) The result of step (2) multiplied by the result of step (1) $66,000 × 1.0 = $66,000;

Step (4) The result of step (3) minus the occurrence deductible $66,000 − $15,000 = $51,000; and

Step (5) Result of step (4) multiplied by your share $51,000 × 1.000 = $51,000 indemnity payment.

Your peak amount of insurance is reduced to zero. Your amount of insurance is reduced by the amount the indemnity exceeds the peak amount of insurance. $64,000 − ($51,000 − 45,000) = $64,000 − $6,000 = $58,000.

[63 FR 50975, Sept. 24, 1998; 63 FR 57046, Oct. 26, 1998, as amended at 70 37241, June 28, 2005]

§457.163 Nursery peak inventory endorsement.

Nursery Crop Insurance

Peak Inventory Endorsement

This endorsement is not continuous and must be purchased for each crop year to be effective for that crop year.

In return for payment of premium for the coverage contained herein, this endorsement will be attached to and made part of the Nursery Crop Insurance Provisions, subject to the terms and conditions described herein.

1. Definitions

Coverage commencement date. The later of the date you declare as the beginning of the coverage or 30 days after a properly completed Peak Inventory Value Report is received by us.

Coverage term. A period of time that begins on the coverage commencement date and ends on the coverage termination date.

Coverage termination date. The date you declare that the peak amount of insurance will cease. This date cannot be after the end of the crop year.

Peak amount of insurance. The additional inventory value reported on the Peak Inventory Value Report for each basic unit multiplied by your coverage level and by your share.

Peak Inventory Value Report. A report that increases the value of insurable plants over the value reported on the PIVR, declares the coverage commencement and coverage termination dates, and the other requirements of section 6 of the Nursery Crop Insurance Provisions.

Peak inventory premium adjustment factor. A factor calculated by subtracting the monthly proration factor for the month following the month containing the coverage termination date from the proration factor for the month in which coverage commenced. Peak Inventory Endorsements with a coverage termination date during the month of May will have a premium adjustment factor equal to the proration factor for the month containing the coverage commencement date.

Restock. Replacement of lost or damaged plants that increase the value of your insurable inventory to an amount greater than your remaining amount of insurance.

2. Eligibility

(a) You must have insurance under the Nursery Crop Insurance Provision in effect for the crop year that this endorsement applies;

(b) You must have elected an additional level of coverage.

(c) You must submit a Peak Inventory Value Report, which will serve as the application for coverage under this endorsement.

(1) The Peak Inventory Value Report may contain one or more plant type basic units and each plant type basic unit will be considered a separate Peak Inventory Endorsement.

(2) We may reject the Peak Inventory Value Report if all requirements in this endorsement and the Nursery Crop Insurance Provisions are not met.

(d) You may purchase no more than one Peak Inventory Endorsement for each basic unit during the crop year unless you have suffered insured losses and have restocked your nursery, in which case an additional Peak Inventory Endorsement may be purchased after each insured loss.

3. Coverage

(a) The amount of insurance provided under the Nursery Crop Provisions for each basic unit is increased by the peak amount of insurance for such unit for the coverage term.

(b) Except as provided herein, this endorsement does not change, amend or otherwise modify any other provision of your Nursery Crop Insurance Policy.

4. PEAK INSURANCE PERIOD

Coverage begins on the coverage commencement date and ends at 11:59 p.m. on the coverage termination date.

5. Premium

(a) The premium for this endorsement is determined by multiplying the peak amount of insurance by the appropriate premium rate and by the peak inventory premium adjustment factor.

Example of Peak Inventory Endorsement Total Premium Calculation

Assume a grower reports a peak amount of insurance on a basic unit of $100,000 with a 65 percent coverage level and a share of 1.000. The base premium rate is $0.051. The proration factors for the Peak Inventory Endorsement are 0.68 for the month that coverage commenced and 0.52 for the month following the month containing the coverage termination date, as stated in the actuarial documents. The peak premium adjustment factor is 0.16 (0.68—0.52). The total premium amount for the Peak Inventory Endorsement is $530.40 ($100,000 × 0.65 × 1.000 × $0.051 × 0.16).

(b) The premium for this endorsement is due and payable in accordance with section 7 of the Nursery Crop Insurance Provisions.

6. Reporting Requirements

In addition to the reporting requirements of section 6 of the Nursery Crop Insurance Provisions, you must submit a Peak Inventory Value Report on our form.

7. Liability Limit

The peak amount of insurance is limited to 200 percent of the basic unit value you declare under the Nursery Crop Insurance Provisions.

[63 FR 50979, Sept. 24, 1998; 63 FR 57047, Oct. 26, 1998, as amended at 70 FR 36246, June 28, 2005]

§ 457.164 Nursery rehabilitation endorsement.

NURSERY CROP INSURANCE REHABILITATION ENDORSEMENT

If you elect this endorsement and pay the additional premium designated in the actuarial documents, this endorsement is attached to and made a part of your Nursery Crop Insurance Provisions subject to the terms and conditions herein. In the event of a conflict between the Nursery Crop Insurance Provisions and this endorsement, this endorsement will control.

1. Eligibility

(a) You must have purchased additional coverage under the Nursery Crop Insurance Provisions, and you must comply with all terms and conditions contained in the applicable Nursery Crop Insurance Provisions and endorsements.

(b) All field grown nursery plants insured under the Nursery Crop Insurance Provisions must be insured under this endorsement. Nursery plants produced in standard nursery containers are not covered under this endorsement.

(c) You must elect this endorsement:

(1) At the time of application for the initial crop year your field grown nursery plants will be insured under the Nursery Crop Insurance Provisions; or

(2) By October 1, 2005, for the 2006 crop year and by the sales closing date for each subsequent crop year if your field grown plants are already insured under the Nursery Crop Insurance Provisions.

2. Coverage

(a) This endorsement is only applicable to field grown plants damaged by an insured cause of loss specified in

section 10 of the Nursery Crop Insurance Provisions.

(b) Rehabilitation costs covered by this endorsement are limited to expenditures for labor and materials for pruning and setup (righting, propping, and staking).

(c) To be eligible for a rehabilitation payment:

(1) The damaged plants must have a reasonable expectation of recovery based on:

(i) The type of damage (e.g., broken limbs from high winds, trees uprooted by hurricane, etc.);

(ii) The extent of damage (e.g., twenty percent of the limbs broken, half the canopy removed, etc.); and

(iii) Whether the plant can recover to the point it is marketable;

(2) Verifiable records must be provided showing actual expenditures for rehabilitation and such expenditures must be reasonable and customary for the type and extent of damage sustained by the plants;

(3) Rehabilitation procedures must be performed directly following the occurrence of damage and before additional deterioration of the damaged plants occurs;

(4) We must determine it is practical to rehabilitate the damaged plants (It is not practical if the costs of rehabilitation are greater than the value of the plant); and

(5) The total actual rehabilitation costs for each loss occurrence on the basic unit must be at least the lesser of 2.0 percent of field market value A or $5,000.

(d) The maximum amount of each rehabilitation payment for each basic unit will be the lesser of:

(1) Your total actual rehabilitation costs multiplied by the under-report factor contained in the Nursery Crop Insurance Provisions; or

(2) An amount equal to 7.5 percent of the value (based on insurable plant prices determined in accordance with section 6 of the Nursery Crop Insurance Provisions) of all your insurable field grown plants that were rehabilitated subsequent to an insured cause of loss, multiplied by the under-report factor described in the Nursery Crop Insurance Provisions, multiplied by the coverage level percentage you elect, and multiplied by your share. Insurable, rehabilitated plants that have not recovered from damage that occurred prior to attachment of this endorsement will have a reduced value in accordance with section 6(h) of the Nursery Crop Insurance Provisions.

(e) The total of all rehabilitation payments for the crop year for the basic unit will not exceed 7.5 percent of the value (based on insurable plant prices determined in accordance with section 6 of the Nursery Crop Insurance Provisions) of all your insurable field grown plants in such basic unit, multiplied by the under-report factor described in the Nursery Crop Insurance Provisions, multiplied by the coverage level percentage you elect, and multiplied by your share.

3. Cancellation

This endorsement will continue in effect until canceled or coverage under the Nursery Crop Insurance Provisions is cancelled or terminated. This endorsement may be canceled by you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date, contained in the Nursery Crop Insurance Provisions, preceding the crop year for which the cancellation of this endorsement is to be effective.

[70 FR 37247, June 28, 2005]

§457.165 Millet crop insurance provisions.

The Millet Crop Insurance Provisions for the 2003 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:

Millet Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Bushel. Fifty pounds of millet, or any other quantity which is designated in the Special Provisions for that purpose.

Harvest. Combining or threshing the millet for grain. A crop that is swathed prior to combining is not considered harvested.

Late planting period. In lieu of the definition of ''Late planting period'' contained in section 1 of the Basic Provisions, late planting period is defined as the period that begins the day after the final planting date for the insured crop and ends 20 days after the final planting date.

Local market price. The cash price for millet with a 50-pound test weight adjusted to zero percent foreign material content basis offered by buyers in the area in which you normally market the millet. Factors not associated with grading, including, but not limited to moisture content, will not be considered.

Millet. Proso millet produced for grain to be used primarily as bird and livestock feed.

Nurse crop (companion crop). A crop planted into the same acreage as another crop, that is intended to be harvested separately, and that is planted to improve growing conditions for the crop with which it is grown.

Planted acreage. In addition to the definition of ''Planted acreage'' contained in section 1 of the Basic Provisions, planted acreage is also defined as land on which seed is initially spread onto the soil surface by any method and is subsequently mechanically incorporated into the soil in a timely manner and at the proper depth. Acreage planted in any manner not contained in the definition of ''planted acreage'' will not be insurable unless otherwise provided by the Special Provisions.

Swathed. Severance of the stem and grain head from the ground without removal of the seed from the head and placing into a windrow.

Windrow. Millet that is cut and placed in a row.

2. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the millet in the county insured under this policy.

3. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

4. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

5. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all the millet in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That is planted for harvest as grain;

(c) That is not planted as a nurse crop; and

(d) That is not (unless allowed by Special Provisions or written agreement):

(1) Interplanted with another crop; or

(2) Planted into an established grass or legume.

6. Insurable Acreage

In addition to section 9 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

7. Insurance Period

In accordance with section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows:

(a) North Dakota and South Dakota:

(1) September 15 for acreage not swathed and windrowed; or

(2) October 10 for acreage swathed and windrowed by September 15;

(b) All other states, unless otherwise specified in the Special Provisions:

(1) September 30 for acreage not swathed and windrowed by September 30; or

(2) October 15 for acreage swathed and windrowed by September 30.

8. Causes of Loss

In accordance with section 12 of the Basic Provisions, 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 a cause of loss that occurs during the insurance period.

9. Duties In the Event of Damage or Loss

In accordance with section 14 of the Basic Provisions, 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.

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:

(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 the total production to count (See section 10(c)) from the result of section 10(b)(1);

(3) Multiplying the result of section 10(b)(2) by your price election; and

(4) Multiplying the result of section 10(b)(3) by your share and any adjustment from section 10(f).

For example:

You have a 100 percent share in 100 acres of millet in the unit, with a guarantee of 15 bushels per acre and a price election of $4.00 per bushel. You are only able to harvest 800 bushels. Your indemnity would be calculated as follows:

(1) 100 acres × 15 bushel = 1,500 bushel guarantee;

(2)1,500 bushels guarantee − 800 bushel production to count = 700 bushel loss;

(3) 700 bushel × $4.00 price election = $2,800 loss; and

(4) $2,800 × 100 percent share = $2,800 indemnity payment.

(c) The total production (bushels) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Your appraised production will not be 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 10(d));

(iv) Potential production on insured acreage you want to put to another use or you wish to 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) Mature millet 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 .12 percent for each 0.1 percent point of moisture in excess of 12 percent. 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 the millet weighing less than 50 pounds per bushel; 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) The deficiencies, substances, or conditions result in a net price for the damaged production that is less than the local market price;

(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 grader 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) Millet production that is eligible for quality adjustment, as specified in sections 10(d)(2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions if quality adjustment factors are not available in the county, the eligible millet production will be reduced as follows:

(i) 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.

(ii) 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 that are usual, customary, and reasonable. The price will not be reduced for:

(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 millet; except, if the value of the damaged production can be increased by conditioning, we may reduce the value 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 millet to those buyers.

(iii) The value of the damaged or conditioned production determined in section 10(d)(4)(ii) will be divided by the local market price to determine the quality adjustment factor;

(iv) The number of bushels remaining after any reduction due to excessive moisture (the moisture-adjusted gross bushel, if appropriate) of the damaged or conditioned production under section 10(d)(1) will then be multiplied by the quality adjustment factor from section 10(d)(4)(iii) to determine the 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.

(f) If the insured crop is not swathed and not harvested, the amount of indemnity payable under section 10(b)(4) will be reduced by 30 percent to reflect those costs not incurred by you. If the insured crop is swathed but not harvested, the amount of indemnity payable under section 10(b)(4) will be reduced by 15 percent to reflect those costs not incurred by you.

11. Late Planting

In lieu of the provisions contained in section 16(a) of the Basic Provisions, the production guarantee for each acre planted to the insured crop during the late planting period, unless otherwise specified in the Special Provisions, will be reduced by:

(a) One percent for the first through the tenth day; and

(b) Three percent for the eleventh through the twentieth day.

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have an additional coverage level, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[67 FR 3037, Jan. 23, 2002, as amended at 67 FR 5925, Feb. 8, 2002]

§ 457.166 Blueberry crop insurance provisions.

The Blueberry Crop Insurance Provisions for the 2005 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:

Blueberry Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Damaged blueberries. Blueberries ready to harvest that due to an insurable cause of loss as shown in section 8 of these Crop Provisions do not meet the United States Standards for Grades of Blueberries, U.S. No. 1, or such other applicable grading standards specified in the Special Provisions.

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, or permitting the general public to enter the field for the purpose of picking the crop.

Harvest. Picking mature blueberries from the bushes either by hand or machine.

Mature blueberry production. Blueberries ready to harvest that meet or exceed the United States Standards for Grades of Blueberries, U.S. No. 1, or such other applicable grading standards contained in the Special Provisions.

Pound. Sixteen ounces avoirdupois.

Production guarantee (per acre). The number of pounds determined by multiplying the approved yield per acre by the coverage level percentage you elect.

Prune. A cultural practice performed to increase blueberry production as follows:

(a) For lowbush blueberries, a process by which the acreage is either burned or mowed; and

(b) For all other blueberries, a process by which parts of the bush are cut off or the bush is cut back.

2. Unit Division

The enterprise, whole-farm, and optional unit provisions in the Basic Provisions are not applicable, and blueberry acreage is limited to basic units as defined in section 1 of the Basic Provisions, unless otherwise specified in the Special Provisions.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election percentage for each blueberry type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) You must report (by type, if applicable) by the production reporting date designated in section 3 of the Basic Provisions:

(1) For all types of blueberries: any damage; removal of bushes; 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; and

(2) For highbush and rabbiteye blueberry types:

(i) The number of bearing bushes on insurable and uninsurable acreage; and

(ii) The age of the bushes and the planting pattern.

(c) We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: Removal of bushes; damage to bushes; changes in practices; and any other circumstance that may affect 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.

(d) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer for the next year if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time you request the increase.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

(a) In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are November 20.

(b) If your blueberry policy is canceled or terminated by us for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will be considered to have not attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

(c) We may not cancel your policy when an insured cause of loss has occurred after insurance attached, but prior to the cancellation date. However, your policy can be terminated if a cause for termination contained in sections 2 or 27 of the Basic Provisions exists.

6. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the blueberries in the county for which a premium rate is provided in the actuarial documents:

(1) In which you have a share;

(2) That are grown on bush varieties that:

(i) Were commercially available when the bushes were set out or have subsequently became commercially available; and

(ii) Are varieties adapted to the area of the following types:

(A) Highbush blueberries;

(B) Lowbush blueberries;

(C) Rabbiteye blueberries; or

(D) Other blueberry types listed on the Special Provisions.

(3) That are produced on bushes that have reached the minimum insurable age or have produced the minimum yield per acre designated in the Special Provisions; and

(4) That, if inspected, are considered acceptable by us.

(b) Lowbush blueberry plants (or other types as specified in the Special Provisions) must be pruned every other year to be eligible for insurance.

7. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) For the year of application, coverage begins on November 21 of the calendar year prior to the year the insured crop normally blooms, except that, if your application is received by us after November 1, insurance will attach on the twentieth day after your properly completed application is received in our local office unless we inspect the acreage during the 20-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 blueberry acreage.

(2) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring an existing policy to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) The calendar date for the end of insurance period for each crop year is September 30 for Michigan and September 15 for all other states, unless specified otherwise in the Special Provisions.

(4) Notwithstanding the provisions in this section, coverage may not begin for a crop year if the policy is cancelled or terminated in accordance with section 5(b).

(b) In addition to the provisions of section 11 of the Basic Provisions:

(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. There will be no coverage of any insurable interest acquired after the acreage reporting date.

(2) If you relinquish your insurable share on any insurable acreage of blueberries on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due 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.

(3) If you relinquish your insurable share on any insurable acreage of blueberries after the acreage reporting date for the crop year, insurance coverage will be provided for any loss due to an insurable cause of loss that occurred prior to the date that you relinquished your insurable share and the whole premium will be due for such acreage for that crop.

8. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, 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 unit;

(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) Earthquake;

(6) Volcanic eruption;

(7) An insufficient number of chilling hours to effectively break dormancy;

(8) Wildlife, unless appropriate control measures have not been taken; and

(9) Failure of the irrigation water supply, if caused by a cause of loss specified in this section that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) Failure to install and maintain a proper drainage system;

(2) Failure to harvest in a timely manner;

(3) Inability to market the blueberries for any reason other than actual physical damage to the blueberries 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); or

(4) Mechanical damage.

9. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(a) You must notify us:

(1) Within 3 days of the date harvest should have started if the crop will not be harvested.

(2) Within 24 hours if any cause of loss occurs:

(i) Within 15 days of harvest;

(ii) When the blueberries are mature and ready for harvest; or

(iii) During harvest.

(3) 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 sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals and 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 that is not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(4) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit as a result of previously reported damage, so that we may inspect the damaged production.

(b) 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.

(c) You may be required to harvest a sample, selected by us, to be used for appraisal purposes.

10. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide acceptable production records 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 type, if applicable, by its respective production guarantee;

(2) Multiplying each result in section 10(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results in section 10(b)(2) if there is more than one type;

(4) Multiplying the total production to count for each blueberry type, if applicable, by the respective price election;

(5) Totaling the results in section 10(b)(4), if there is more than one type;

(6) Subtracting the result in section 10(b)(5) from the result in section 10(b)(3); and

(7) Multiplying the result in section 10(b)(6) by your share.

Example For Section 10(b)

You have 100 percent share in 25 acres of highbush blueberries with a production guarantee of 4,000 pounds per acre and a price election of $.45 per pound. You are only able to harvest 62,500 total pounds because adverse weather reduced the yield. Your indemnity would be calculated as follows:

A. 25 acres × 4,000 pound production guarantee/acre = 100,000 pound total production guarantee;

B. 100,000 pounds × $.45 price election = $45,000 guarantee;

C. One type only, so same as (2) above, $45,000;

D. 62,500 pounds production to count × $.45 price election = $28,125 value of production to count;

E. One type only, so same as (4) above, $28,125;

F. $45,000 − $28,125 = $16,875 loss; and

G. $16,875 × 100 percent share = $16,875 indemnity payment.

End of Example

(c) The total production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised blueberry 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 9;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records;

(ii) Production lost due to uninsured causes; and

(iii) 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 harvest 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 mature blueberry production from the insurable acreage.

(d) If you have harvested or unharvested damaged blueberries and the percent of damaged blueberries exceeds that shown in the Special Provisions for that type, production to count for the damaged unit or portion of a unit will be determined as follows:

(1) The blueberries from the specific acreage will not be considered production to count if no blueberries are harvested and sold from such acreage;

(2) For damaged blueberries that are harvested and sold, the production to count for such damaged blueberries will be determined by:

(i) Subtracting the harvest costs contained in the Special Provisions from the price received for the damaged blueberries;

(ii) Dividing the result in section 10(d)(2)(i) by the price election; and

(iii) Multiplying the resulting factor from section 10(d)(2)(ii), not less than zero, by the pounds of damaged blueberries;

(e) If you have harvested or unharvested damaged blueberries and the percent of damaged blueberries does not exceed that shown in the Special Provisions for that type, the production to count for the damaged unit or portion of a unit will be the appraised or harvested production of blueberries.

(f) If we determine that frost protection equipment, as shown on your accepted application, was not properly utilized, the indemnity for the affected acreage in the unit will be reduced by the percentage reduction allowed for frost protection equipment as specified in the Special Provisions. You must, at our request, provide us records by date for each period the frost protection equipment was used.

11. Late and Prevented Planting

The late and prevented planting provisions in the Basic Provisions are not applicable.

[69 FR 52155, Aug. 25, 2004]

§ 457.167 Pecan revenue crop insurance provisions.

The Pecan Revenue Crop Insurance Provisions for the 2005 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: Pecan Revenue Crop Insurance Provisions

1. Definitions

AMS. The Agricultural Marketing Service of the United States Department of Agriculture.

Amount of insurance per acre—The amount determined by multiplying your approved average revenue per acre by the coverage level percentage you elect.

Average gross sales per acre—Your gross sales of pecans for a crop year divided by your net acres of pecans grown during that crop year. For example, if for the 2004 crop year, your gross sales were $100,000 and your net acres of pecans was 100, then your average gross sales per acre for the 2004 crop year would be $1,000.

Approved average revenue per acre—The total of your average gross sales per acre based on at least the most recent consecutive four years of sales records building to ten years and dividing that result by the number of years of average gross sales per acre. If you provide more than four years of sales records, they must be the most recent consecutive 6, 8 or 10 years of sales records. If you do not provide at least four years of gross sales records, your approved average revenue will be:

(1) The average of two years of your gross sales per acre and two years of the lowest available dollar span amount provided in the actuarial documents; or

(2) If you do not provide any gross sales records, the lowest available dollar span amount provided in the actuarial documents.

Crop year—The period beginning February 1 of the calendar year in which the pecan trees bloom and extending through January 31 of the year following such bloom, and will be designated by the calendar year in which the pecan trees bloom.

Direct marketing—Sale of the insured crop directly to consumers without the intervention of an intermediary such as wholesaler, retailer, packer, processor, sheller, shipper, buyer or broker. Examples of direct marketing include selling through an on-farm or roadside stand, or a farmer's market, or permitting the general public to enter the field for the purpose of harvesting all or a portion of the crop, or shelling and packing your own pecans.

Enterprise unit—In lieu of the definition of ''enterprise unit'' contained in the Basic Provisions, for pecan revenue, an enterprise unit will be all your insurable pecan acreage in the county in which you have any share on the date coverage begins for the crop year.

Gross sales—Total value of in-shell pecans grown during a crop year.

Harvest—Collecting mature pecans from the orchard.

Hedge—The removal of vegetative growth from the tree to prevent overcrowding of pecan trees.

In-shell pecans—Pecans as they are removed from the orchard with the nut-meats in the shell.

Interplanted—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Market price—The market price that is the greater of:

(1) The average price per pound for in-shell pecans of the same variety or varieties insured offered by buyers on the day you sell any of your pecans, you harvest any of your pecans if they are not sold, or your pecans are appraised if you are not harvesting them, in the area in which you normally market the pecans (If buyers are not available in your immediate area, we will use the average in-shell price per pound offered by buyers nearest to your area.);

(2) The actual price received for any sold pecan production;

(3) The average of the AMS prices for similar quality pecans published during the week you sell any of your pecans, you harvest your pecans if they are not sold, or your pecans are appraised if you are not harvesting them (For example, if you sell production on November 5 and harvest production on November 14 but do not sell the production, the average of the AMS prices for the week containing November 5 will be used to determine the market price for the production sold on November 5 and the average of the AMS prices for the week containing November 14 will be used to determine the market price for the production harvested on November 14).

Net acres—The insured acreage of pecans multiplied by your share.

Pound—A unit of weight equal to sixteen ounces avoirdupois of in-shell pecans.

Scion—Twig or portion of a pecan variety used in top work.

Sequentially thinned—A method of systematically removing pecan trees for the purpose of improving sunlight penetration and maintaining the proper spacing necessary for continuous production.

Set Out—The transplanting of pecan trees into the orchard.

Top work—To graft scions of one pecan variety onto the tree or branch of another pecan variety.

Two-year coverage module—A two-crop-year subset of a continuous policy in which you agree to insure the crop for both years of the module, and we agree to offer the same premium rate, amount of insurance per acre, coverage level, terms and conditions of insurance for each year of coverage except for legislatively mandated changes, as long as all policy terms and conditions are met for each year of the coverage module, including the timely payment of premium, and you have not done anything that would result in a revision to these terms, as specified in this policy.

2. Unit Division

(a) For both years of the two-year coverage module a unit will be:

(1) A enterprise unit as defined in section 1; or

(2) A basic unit as defined in section 1 of the Basic Provisions.

(b) Provisions in section 34 of the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number, by irrigated and non-irrigated practices, or grown under an organic farming practice are not applicable.

3. Insurance Guarantees and Coverage Levels for Determining Indemnities

In lieu of section 3 of the Basic Provisions the following applies:

(a) You may select only one coverage level for both years of the two-year coverage module for all pecans in the county. By giving us written notice, you may change the coverage level for the succeeding two-year coverage module not later than the sales closing date of the next two-year coverage module.

(b) For coverage in excess of catastrophic risk protection, your insurance guarantee for the unit will be determined by multiplying your amount of insurance per acre by the net acres.

(c) For coverage under the Catastrophic Risk Protection Endorsement, your insurance guarantee for each unit equals your approved average revenue per acre multiplied by the percentage listed in the Special Provisions and multiplied by the net acres.

(d) Your amount of insurance per acre will remain the same as stated in the Summary of Coverage on each unit for each year of the two-year coverage module unless:

(1) Otherwise provided in the Special Provisions, you sequentially thin more than 12.5 percent of your insured acres, your average gross sales for those acres thinned will be multiplied by a factor of .80 for the first year after thinning or a factor contained in the Special Provisions.

(2) You increase the previous year's insured acreage by more than 12.5 percent, which will result in the recalculation of your approved average revenue using the sales records for the added acreage. If such sales records are not available for the added acreage, the lowest available dollar span amount provided in the actuarial documents will apply to the added acreage.

(3) You take any other action that may reduce your gross sales below your approved average revenue, which will result in an adjustment to your approved average revenue to conform to the amount of the reduction in gross sales expected from the action.

(e) If you remove a contiguous block of trees from the unit, you must report such removal on your acreage report in accordance with section 6, or within 3 days if removal has occurred after the acreage reporting date, and your insurable acreage will be reduced by the number of acres of trees that have been removed.

(f) You must report for each unit your gross sales including the amount of harvested and appraised potential production to us for each year of the two-year coverage module on or before the acreage reporting date for the first year of the next two-year coverage module.

(1) If you do not report your gross sales in accordance with this paragraph, we will assign a gross sales amount for any year you

fail to report. The gross sales amount assigned by us will be not greater than the lowest available dollar span provided by the actuarial table for the current coverage module.

(2) If your gross sales are reported after the acreage reporting date for the two-year coverage module, we will readjust your average gross sales per acre for the next crop year.

(3) The gross sales or your assigned gross sales amount will be used to compute your sales history for the next two-year coverage module.

(4) If you filed a claim for any year, the value of harvested production and appraised potential production used to determine your indemnity payment will be the gross sales for that year.

(g) Hail and fire coverage may be excluded from the covered causes of loss for your insured crop only if you selected additional coverage of not less than 65 percent of your approved average revenue per acre, and you have purchased the same or a higher dollar amount of coverage for hail and fire from us or any other source.

(h) If you have additional coverage for pecans in the county and the acreage has been designated as ''high risk'' by FCIC, you will be able to obtain a High Risk Land Exclusion Option for the high risk land under the additional coverage policy and insure the high risk acreage under a separate Catastrophic Risk Protection Endorsement, provided that the Catastrophic Risk Protection Endorsement is obtained from the same insurance provider from which the additional coverage was obtained.

(i) Any person may sign any document related to pecan crop insurance coverage on behalf of any other person covered by this policy provided that person has a properly executed power of attorney or such other legally sufficient document authorizing such person to sign.

4. Contract Changes

In lieu of the provisions contained in section 4 of the Basic Provisions:

(a) We may change the terms of your coverage under this policy for any two-year coverage module. Any change to your policy within a two-year coverage module may only be done in accordance with this policy.

(b) Any changes in policy provisions, amounts of insurance, premium rates, and program dates (except as allowed herein or as specified in section 3) can be viewed on the RMA Web site at *http://www.rma.usda.gov/* or a successor website not later than the contract change date contained in these Crop Provisions. We may revise this information after the contract change date to correct clerical errors.

(c) The contract change date is October 31 preceding the next two-year coverage module.

(d) After the contract change date, all changes specified in section 4(b) will also be available upon request from your crop insurance agent. You will be provided, in writing, a copy of the changes to the Basic Provisions, Crop Provisions, and a copy of the Special Provisions. If changes are made that will be effective for the second year of the two-year coverage module, such copies will be provided not later than 30 days prior to the termination date. If changes are made that will be effective for a subsequent two-year coverage module, such copies will be provided not later than 30 days prior to the cancellation date. For changes effective for subsequent two-year coverage modules, acceptance of the changes will be conclusively presumed in the absence of written notice from you to change or cancel your insurance coverage in accordance with the terms of this policy.

5. Life of Policy, Cancellation and Termination Dates

(a) In lieu of section 2(a) of the Basic Provisions, this is a continuous policy with a two-year coverage module and will remain in effect for each subsequent two-year coverage module until canceled by you in accordance with the terms of this policy or terminated by us or by the operation of the terms of this policy.

(b) In lieu of section 2(c) of the Basic Provisions, after acceptance of your application, you may not cancel or transfer your policy to a different insurance provider during the initial two-year coverage module. Thereafter, the policy will continue in force for each succeeding two-year coverage module unless canceled, terminated, or transferred to a different insurance provider in accordance with the terms of this policy.

(c) In lieu of section 2(d) of the Basic Provisions, this contract may be canceled by either you or us for the next two-year coverage module by giving written notice on or before the cancellation date.

(d) Your policy may be terminated before the end of the two-year coverage module if you are determined to be ineligible to participate in any crop insurance program authorized under the Act in accordance with section 2(e) of the Basic Provisions or 7 CFR part 400, subpart U.

(e) The cancellation date is January 31 of the second crop year of each two-year coverage module.

(f) The termination date is January 31 of each crop year.

6. Report of Acreage

(a) In addition to the requirements of section 6 of the Basic Provisions you must report, by the acreage reporting date designated in the Special Provisions:

(1) Any damage to trees, removal of trees, change in practices, sequential thinning in excess of 12.5 percent of your insured acreage or any other action that may reduce the gross sales below the approved average revenue upon which the amount of insurance per acre 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;

(4) Any acreage that is excluded under sections 8 or 9; and

(5) Your gross sales receipts as required under section 3(f);

(b) We will reduce the amount of your insurable acreage based on our estimate of the removal of a contiguous block of trees or damage to trees of the insured crop. We will reduce your amount of insurance per acre based on our estimate of the expected reduction in gross sales from a change in practice or sequential thinning in excess of 12.5 percent of your insured acreage.

(c) If you fail to notify us of any circumstance stated in section 6(a)(1), we will reduce your insured acreage or your amount of insurance per acre to an amount to reflect the expected reduction of gross sales, as applicable, at any time we become aware of the circumstance.

7. Annual Premium and Administrative Fees

In addition to the requirements of section 7 of the Basic Provisions, the premium and administrative fees, as applicable, are due annually for each year of the two-year insurance period.

8. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all the pecans in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are grown for harvest as pecans;

(c) That are grown in an orchard that, if inspected, is considered acceptable by us;

(d) That are grown on trees that have reached at least the 12th growing season after either being set out or replaced by transplants, or that are in at least the 5th growing season after top work and have produced at least 600 pounds of pecans in-shell per acre in at least one year after having been grafted;

(e) That are in an orchard that consists of a minimum of one (1) contiguous acre, unless allowed by written agreement; and

(f) That are not (unless allowed by the Special Provisions or by written agreement):

(1) Grown on trees that are or have been hedged; or

(2) Direct marketed to consumers.

9. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance attaching to a crop planted with another crop, pecans interplanted with another perennial crop are insurable if allowed by the Special Provisions or by written agreement.

10. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) Coverage begins on February 1 of each crop year. However, for the year of application, we will inspect all pecan acreage and will notify you of the acceptance or rejection of your application not later than 30 days after the sales closing date. If we fail to notify you by that date, your application will be accepted unless other grounds exist to reject the application, as specified in section 2 of the Basic Provisions of the application. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) For each subsequent two-year coverage module that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior two-year coverage module. Policy cancellation that results solely from transferring an existing policy to a different insurance provider for a subsequent two-year coverage module will not be considered a break in continuous coverage.

(3) The calendar date for the end of the insurance period is January 31 of the crop year.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(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. Acreage acquired after the acreage reporting date will not be insured.

(2) If you relinquish your insurable share on any insurable acreage of pecans on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A request for a transfer of right to an indemnity is submitted by all affected parties and approved by us;

(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.

(3) If you relinquish your insurable share on any insurable acreage of pecans after the

acreage reporting date for the crop year, insurance coverage will be provided for any loss due to an insurable cause of loss that occurred prior to the date that you relinquished your insurable share and the whole premium will be due for such acreage for that crop year.

11. Causes of Loss

(a) In lieu of the first sentence of section 12 of the Basic Provisions, insurance is provided against an unavoidable decline in revenue due to 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 unmulched pruning debris has not been removed from the orchard;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption;

(8) Failure of the irrigation water supply, if caused by a cause of loss specified in sections 11(a)(1) through (7) that occurs during the insurance period; or

(9) Decline in market price;

(b) If damage occurs before the beginning of the crop year, coverage is only provided if and to the extent the crop was insured the previous crop year;

(c) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to the inability to market the pecans 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.

12. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 of the Basic Provisions, 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) If the Special Provisions permit or you have a written agreement authorizing direct marketing, you must notify us at least 15 days before harvest begins if 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 the dollar value of your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised dollar value of production to count that is not less than the amount of insurance per acre for the direct-marketed acreage if such failure results in our inability to make the required appraisal.

(c) If you intend to claim an indemnity, you must notify us at least 15 days prior to the beginning of harvest, or immediately if a loss occurs during harvest, so that we may inspect the damaged production.

(d) You must not sell, destroy or dispose of the damaged crop until after we have given you written consent to do so.

(e) 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.

(f) You may be required to harvest a sample, selected by us, to be used for appraisal purposes.

13. Settlement of Claim

(a) Indemnities will be calculated separately for each year in the two-year coverage module.

(b) We will determine your loss on a unit basis.

(c) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the amount of insurance per acre by the net acres of the insured pecans;

(2) Subtracting the dollar value of the total production to count as determined in section 13(d) from the result of section 13(c)(1):

(i) For additional coverage, the total dollar value of the total production to count determined in accordance with section 13(d); or

(ii) For catastrophic risk protection coverage, the result of multiplying the total dollar value of the total production to count determined in accordance with section 13(d) by the catastrophic risk protection factor contained in the Special Provisions; and

(d) The dollar value of the total production to count from all insurable acreage will include:

(1) The value of all appraised production as follows:

(i) Not less than your amount of insurance 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 12;

(C) That is damaged solely by uninsured causes;

(D) For which no sales records or unacceptable sales records are provided to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production;

(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 value of production to count; and

(v) The market price will be used to value all appraised production in section 13(d)(1); and

(2) The value of all harvested production from the insurable acreage determined as follows:

(i) The dollar amount obtained by multiplying the number of pounds of pecans sold by the market price for each day the pecans were sold;

(ii) Totaling the results of section 13(d)(2)(i), as applicable;

(iii) The dollar amount obtained by multiplying the number of pounds of pecans harvested, but not sold production, by the market price;

(iv) Totaling the result of section 13(d)(2)(iii), as applicable; and

(v) Totaling the results of section 13(d)(2)(ii) and (iv).

PECAN REVENUE EXAMPLE

Year	Acres	Average pounds per acre	Average gross sales per acre
2004	100	750	$1,050
2003	100	625	625
2002	100	200	250
2001	100	1250	750
Total Average Gross Sales Per Acre			2,675

The approved average revenue equals the total average gross sales per acre divided by the number of years ($2,675 ÷ 4 = $669).

The amount of insurance per acre equals the approved average revenue multiplied by the coverage level percent ($669 × .65 = $435).

Assume the insured produced, harvested and sold 70 acres of pecans with 300 pounds per acre of pecans on the 13th with an average price per pound of $0.75, an actual price received of $0.73, and an average AMS price of $0.74, and elected not to harvest the other 30 acres of pecans, which were appraised on the 30th at 100 pounds per acre, but because of the quality, the average price per pound was $0.65 and an average AMS price was $0.64. The total dollar value of production to count is (300 pounds × $0.75 × 70 net acres) + (100 pounds × $0.65 × 30 net acres) = $15,750 + $1,950 = $17,700.

The indemnity would be:

The amount of insurance per acre multiplied by the net acres minus the dollar value of the total production to count equals the dollar amount of indemnity ($435 × 100 = $43,500.00 − $17,700.00 = $25,800).

14. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

15. Substitution of Yields

The substitution of yield provisions of the Basic Provisions are not applicable.

16. Written Agreements

Not withstanding the provisions of section 18 of the Basic Provisions, for counties with actuarial documents for pecans, you must have at least two years of production and gross sales records and for counties without actuarial documents, you must have at least four years of production and gross sales records to qualify for a written agreement.

[69 FR 52163, Aug. 25, 2004; 69 FR 54179, Sept. 7, 2004, as amended at 69 FR 63041, Oct. 29, 2004]

PART 458 [RESERVED]

CHAPTER V—AGRICULTURAL RESEARCH SERVICE, DEPARTMENT OF AGRICULTURE

Part		*Page*
500	National Arboretum	365
501	Conduct on U.S. Meat Animal Research Center, Clay Center, Nebraska	370
502	Conduct on Beltsville Agriculture Research Center Property, Beltsville, Maryland	373
503	Conduct on Plum Island Animal Disease Center	375
504	User fees	377
505	National Agricultural Library fees for loans and copying	377
510	Public information	379
520	Procedures for implementing National Environmental Policy Act	380

PART 500—NATIONAL ARBORETUM

Subpart A—Conduct on U.S. National Arboretum Property

Sec.
500.1 General.
500.2 Recording presence.
500.3 Preservation of property.
500.4 Conformity with signs and emergency directions.
500.5 Nuisances.
500.6 Gambling.
500.7 Intoxicating beverages and narcotics.
500.8 Soliciting, vending, debt collection, and distribution of handbills.
500.9 Photographs for news or advertising.
500.10 Pets.
500.11 Vehicular and pedestrian traffic.
500.12 Weapons and explosives.
500.13 Nondiscrimination.
500.14 Exceptions.
500.15 Penalties and other law.

Subpart B—Fee Schedule for Certain Uses of National Arboretum Facilities and Grounds.

500.20 Scope.
500.21 Fee schedule for tram and tours.
500.22 Fees and conditions for use of facilities and grounds.
500.23 Fees for commercial photography and cinematography on grounds.
500.24 Fee schedule.
500.25 Payment of fees.

AUTHORITY: 20 U.S.C. 196(a); sub secs. 2, 4, 5; 40 U.S.C. 121(d); 40 U.S.C. 1315(c).

SOURCE: 70 FR 55708, Sept. 23, 2005, unless otherwise noted.

Subpart A—Conduct on U.S. National Arboreturm Property

§ 500.1 General.

The rules and regulations in this part apply to the buildings and grounds of the U.S. National Arboretum (USNA), Washington, DC, 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 further delegate, the authority to make all the needful rules and regulations for the protection of the buildings and grounds of the USNA (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.

§ 500.2 Recording presence.

Admission to the USNA during periods when it is closed to the public will be limited to authorized individuals who may be required to sign the register or display identification documents when requested by the Security Staff, or other authorized individuals.

§ 500.3 Preservation of property.

(a) While at the USNA, it is unlawful to:

(1) Willfully destroy, damage, or remove USNA property or any part thereof;

(2) Set or maintain any open fire on the property of the USNA; however, the use of small candles may be approved at the discretion of the Director, USNA; or

(3) Apply any type of insecticide or herbicide on the grounds of the USNA, except for USNA employees in the course of their official duties or other persons authorized by the Director, USNA.

(b) Persons not employed by USNA are not permitted to bring biological agents of any kind, including but not limited to disease and pest agents of plants, onto the property without written permission of the Director, USNA.

§ 500.4 Conformity with signs and emergency directions.

Persons in and on property of the USNA shall comply with official signs of prohibitory or directive nature and with the directions of authorized individuals.

§ 500.5 Nuisances.

(a) 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.

(b) Playing of music or creation of other noises of a decibel level high

enough to be heard outside of the USNA 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 USNA property, is prohibited.

§ 500.7 Intoxicating beverages and narcotics.

(a) Entering USNA property or the operation of a motor vehicle thereon, by a person under the influence of intoxicating beverages or a narcotic drug, is prohibited.

(b) Except as provided in subpart B of this part, possession of or consumption of intoxicating beverages on USNA property is prohibited.

(c) The sale of alcoholic beverages on the grounds of the USNA is prohibited.

(d) The possession of or use of narcotic drugs on the grounds of the USNA is prohibited.

§ 500.8 Soliciting, vending, debt collection, and distribution of handbills.

(a) The following activities are prohibited on USNA grounds:

(1) Soliciting of alms or contributions;

(2) Display or distribution of commercial advertising;

(3) Collecting private debts;

(4) Campaigning for election to any office;

(5) Soliciting and vending for commercial purposes (including, but not limited to, the vending of newspapers and other publications);

(6) Soliciting signatures on petitions, polls, or surveys (except as authorized by the USNA); and

(7) Impeding ingress to or egress from the USNA.

(b) Distribution to USNA general public visitors of material such as pamphlets, handbills, and flyers is prohibited without prior approval of the Director, USNA.

(c) The prohibitions in paragraphs (a) and (b) of this section do not apply to:

(1) Commercial or nonprofit activities performed under contract or concession with the USNA or pursuant to the provisions of the Randolph Sheppard Act;

(2) The solicitation of USNA personnel for contributions for the Combined Federal Campaign (CFC);

(3) National or local drives for funds for welfare, health, and other purposes sponsored or approved by the Agricultural Research Service; or

(4) Personal notices posted by employees on authorized bulletin boards.

§ 500.9 Photographs for news or advertising.

Photographs for news purposes may be taken at the USNA without prior permission. Photographs for advertising and other commercial purposes may be taken, but only with the prior approval of the Director, USNA and fees may be charged pursuant to § 500.23.

§ 500.10 Pets.

Pets brought upon USNA property must have proper vaccinations and, except assistance trained animals, must be kept on leash at all times. The release or abandonment of fish, plants, and animals of any kind on USNA grounds is prohibited.

§ 500.11 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles in or on USNA property shall drive only on established roads, 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, and parking in designated no parking areas in or on USNA property is prohibited.

(c) Except in emergencies, parking in or on USNA 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.

(d) USNA approval is required for all vehicles needed for access setup and

breakdown activities relating to special events, ceremonies, or related activities. Off-road routes will be determined by the USNA.

(e) In addition to the penalties provided in § 500.15, vehicles parked in violation of this section are subject to being towed and the cost of such towing being assessed to the owner of such vehicle.

(f) 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 subpart.

§ 500.12 Weapons and explosives.

(a) No person while in or on USNA property shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for authorized official purposes.

(b) No person while in or on the USNA shall ignite fireworks or other pyrotechnical devices.

§ 500.13 Nondiscrimination.

The USNA is subject to the policy of nondiscrimination in programs or activities conducted by the United States Department of Agriculture as set forth in 7 CFR part 15d.

§ 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 it is determined 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 subpart is subject to fine under title 18, United States Code, or imprisonment of not more than 30 days, or both (see 40 U.S.C. 1315(c)). 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 that may be applicable.

Subpart B—Fee Schedule for Certain Uses of National Arboretum Facilities and Grounds

§ 500.20 Scope.

This subpart sets forth schedules of fees for temporary use by individuals or groups of United States National Arboretum (USNA) facilities and grounds. This subpart also sets forth schedules of fees for the use of the USNA for commercial photography and cinematography. Fees generated will be used to offset costs of services or for the purposes of promoting the mission of the USNA. All rules and regulations noted in 7 CFR 500, subpart A—Conduct on the U.S. National Arboretum Property, will apply to individuals or groups granted approval to use the facilities and grounds for the purposes specified in this subpart.

§ 500.21 Fee schedule for tram and tours.

The USNA provides tours of the USNA grounds in a 48-passenger tram (accommodating 2 wheelchairs). The fee is as follows: $4.00 per adult, $3.00 per senior citizen or Friend of the National Arboretum, and $2.00 per child under the age 17. Children under 4 sharing a seat with an adult will not be charged. Pre-scheduled tram tours for groups may be arranged for a set fee of $125.00. Additionally, a tour guide may be pre-arranged to provide a non-tram tour for the fee of $50 per hour. Promotional programs offering discounted fees for these programs may be instituted at the discretion of the USNA. Payment for use of the tram is due at the time of ticket purchase. Payment for pre-scheduled tram tours must be made at least one week in advance. Payment for pre-scheduled, non-tram guided tours must be made at least one week in advance of the tour date.

§ 500.22 Fees and conditions for use of facilities and grounds.

(a) *Fee requirement.* (1) The USNA will charge a fee for temporary use by individuals or groups of USNA facilities and grounds. Fees for specific sites are listed in § 500.24.

(2) Non-profit scientific or educational organizations whose purposes and interests are complementary to

the mission of the USNA and which substantially support the mission and purpose of the USNA (*e.g.*, Friends of the National Arboretum, National Bonsai Foundation, National Capital Area Federation of Garden Clubs, Herb Society of America) may be exempted from the fee for use of USNA facility or grounds requirement of this subpart by the Director, but still must reimburse the USNA for its costs, including setup, clean-up, security, and other costs as applicable.

(3) A Half Day usage is defined as 4 hours or less; a Whole Day usage is defined as more than 4 hours in a day. In all cases, usage includes all time during which a venue is committed, including time used to set up before and clean up after an event. For after-hours usage of sites or facilities, an additional $40/hour will be added for supervision for each required staff member or security officer, with higher amounts required for sites or facilities that are more sensitive.

(b) *Reservations*. (1) Facilities and grounds are available by reservation at the discretion of the Director of the USNA and may be available to individuals or groups for uses that are consistent with the mission of the USNA. Agency initiatives may be granted first priority. Offices and hallways inside secured doors will not be available for use.

(2) Reservations to use USNA facilities and grounds may be made directly with the USNA. To ensure consideration, reservation requests should be made as far in advance as possible with a minimum of 15 calendar days prior to the date of use required for all reservations. This advanced notice will provide the USNA adequate time to prepare sites and assign staff and supervision as necessary.

(3) The USNA will make every effort to respond to requests in a quick and timely fashion. The USNA will respond to reservation requests within 5 working days with information as to whether the requested site is available for use. The USNA will also give notice to the prospective user of any planned activities (construction, maintenance, pesticide applications, and any similar activities) that might affect the planned use or event.

(4) A 50 percent non-refundable deposit will be due at the time of a booking in order to reserve a specific date and location. The remaining 50 percent is due five working days prior to the event.

(c) *Terms and conditions of use*. (1) The USNA provides space, water, and electrical hookup when available, and restrooms where available. Users must provide all tents, tables, chairs, trash receptacles, or other property required for the scheduled event. Users must remove all trash from the property at the conclusion of the event. Users must remove all tents, tables and chairs, and other property no later than 5:00 p.m. of the day following the event. The USNA will charge a facility use and break down fee of $500.00 per day for each day following the deadline to remove temporary facilities and equipment. The USNA will not store temporary facilities or equipment for users.

(2) Users must abide by USNA vehicle regulations in § 500.11 including the requirement to obtain USNA approval whenever off road access is required for setup.

(3) The USNA will not assume any responsibility for last minute changes due to failure of current mechanical systems, severe storms and other weather events, emergencies relating to security and safety.

(4) Some events that involve bringing animals and certain plants onto the USNA property may not be compatible with the plant research, display, and education mission of the USNA. Such events will be evaluated on a case-by-case basis and exceptions may be made by the Director of the USNA.

(5) Music and bands will be permitted but the decibel level of music should not be loud enough to be heard outside the boundaries of the USNA.

(6) (i) A refundable deposit as specified in paragraph (c)(6)(ii) of this section for use of the facility or grounds, excluding the classroom, will be collected in advance. In the event of building, property, or grounds damage or excessive cleaning requirements, the deposit will be used for repair and remediation and the balance will be refunded within 30 days of the event date.

In the event that cleaning requirements or damage to the building, property or grounds exceeds the amount of the refundable deposit, the deposit will be used in full, with additional charges billed and due within 30 days of billing. Damages to plants, grounds, facilities, or equipment will be assessed on a value based on replacement costs, including labor.

(ii) *Refundable Deposit Schedule.*

Event fee	Refundable deposit required
$15,000–10,000	$2,000
$9,999–5,000	1,000
$4,999 and less	500

(7) Upon prior request, the Director may approve the consumption of beer and wine during uses of USNA pursuant to this section. Such permission generally will not be granted during times when USNA is open to the public. Director approval shall be conditioned upon compliance by users and by any of their agents or contractors, with all applicable provisions of the District of Columbia Code governing sale and consumption of alcoholic beverages, including the rules of the District of Columbia Department of Consumer Affairs, Alcoholic Beverage Regulation Administration.

(8) All users of the USNA pursuant to this subpart, as well as all those contracting with such users of the USNA, shall comply with all Federal and local laws.

(9) The USNA is a Federal property under the jurisdiction of the United States Department of Agriculture.

All activities are subject to Federal rules and regulations governing the use of public buildings and grounds.

(10) The USNA will not be responsible for any damage or loss suffered by an individual, group, or their contractor during a permitted event at the USNA.

(11) The Director may impose additional incidental terms and conditions concerning the use of the USNA facilities consistent with this part.

(12) Marriage ceremonies and accompanying receptions may only be held in the Dogwood Collection.

§ 500.23 Fees for commercial photography and cinematography on grounds.

The USNA may charge a fee for the use of the facility or grounds for purposes of commercial photography or cinematography as specified in § 500.24. Facilities and grounds are available for use for commercial photography or cinematography at the discretion of the USNA Director. Requests for use should be made a minimum of two weeks in advance of the required date. The USNA will charge for supervision costs at the rate of $40.00 per hour per security officer, in addition to the fees listed below. The USNA Director may waive fees for photography or cinematography conducted for the purpose of disseminating information to the public regarding the USNA and its mission or for the purpose of First Amendment activity. The USNA will charge a non-refundable application fee of $30 for commercial photography or cinematography activities that use models, sets or props that are not part of the natural, cultural resources, or administrative facilities features of the site; take place where members of the public are generally not allowed; or take place at a location where additional administrative costs are likely. If the application is approved and fees will be incurred, the application fee will be applied to the total fee due. No other credits will be given for the application fee. Fee payments for use of facilities or grounds or for commercial photography and cinematography must be made in advance of services being rendered. These payments are to be made in the form of a check or money order.

§ 500.24 Fee Schedule.

Event by category	Fee*	Unit	Notes
USNA Terrace	$12,000	Per Day	Up to 240 seated or 300 standing.

Event by category	Fee*	Unit	Notes
USNA Herb Garden	10,000	Per Day	Entrance Circle, Rose and Knot Garden: Up to 48 seated or 100 standing; cannot be tented. Specialty Garden: Up to 200 standing; may not be tented.
USNA Meadow	15,000	Per Day	Up to 600 seated or 1000 standing.
USNA Administration Building Lobby	2,000	Per Day	Up to 150 standing.
USNA Auditorium	2,500	Per Day	Up to 120 seated or 200 standing.
Friendship Garden	1,500	Per Day	Up to 60 seated or 100 standing.
National Capitol Columns	10,000	Per Day	Up to 190 seated or 400 standing; cannot be tented; includes night lighting of columns.
Bonsai Museum International, Pavilion and Upper Courtyard.	10,000	Per Day	Up to 120 seated or 200 standing.
Bonsai Museum Chinese Pavilion	10,000	Per Day	Up to 50 seated or 100 standing.
Dogwood Collection Allee & Circle	3,000	Per Day	Up to maximum of 150 people at event; reserved for marriage ceremonies and accompanying receptions only.
M Street Picnic Area	5,000	Per Day	Up to 200 seated or standing; paved or grassy areas can be tented.
Classroom	125 50	Per Day Per Half Day	Standard set-up with 40 chairs; includes microphone/lectern, screen, projection stand, two flip charts (no paper), and trashcan.
Still Photography:			
Individual	No Charge		For personal use only; includes hand-held cameras, recorders and tripods.
Other	$30 $250 plus Supervision.	Application Fee Per Half Day	All photography that use models, sets or props that are not part of the site's natural or cultural resources or administrative facilities; or take place where members of the public are generally not allowed; or take place at a location where additional administrative costs are likely.
Cinematography:			
Set Preparation	$30 $250 plus Supervision.	Application Fee Per Whole Day.	Set up; no filming.
Filming	$1,500 to $3,900	Per Whole Day	Sliding scale based on number of people in cast and crew and number of pieces of equipment from 45 people and 6 pieces of equipment = $1,500 to 200 people = $3,900; 5 people with carry on equipment = same as still photography.

*Fees include only access to sites; additional security charges may be necessary depending upon the site and the number of people participating.

§ 500.25 Payment of fees.

(a) Unless provided otherwise, all payments due under this subpart must be made by cash, check, or money order (in U.S. funds). Checks and money orders for payment of any fees imposed under this part are to be made payable, in U.S. funds, to the ''U.S. National Arboretum.'' Upon request, the USNA shall provide receipts to requesters for their records or billing purposes. If the USNA enters into an agreement to allow USNA visitors and users to make payment in the form of a credit card, USNA visitors and users who are assessed user fees may pay those fees with a credit card subject to the terms and conditions of such agreement.

(b) Any fees that become past due shall be collected in accordance with 7 CFR part 3.

PART 501—CONDUCT ON U.S. MEAT ANIMAL RESEARCH CENTER, CLAY CENTER, NEBRASKA

Sec.
501.1 General.
501.2 Admission.
501.3 Preservation of property.
501.4 Conformity with signs and emergency directions.
501.5 Nuisances.
501.6 Gambling.
501.7 Intoxicating beverages and narcotics.

501.8 Soliciting, vending, debt collection, and distribution of handbills.
501.9 Photographs for news, advertising, or commercial purposes.
501.10 Pets.
501.11 Mobile equipment and pedestrian traffic.
501.12 Weapons and explosives.
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 505—NATIONAL AGRICULTURAL LIBRARY FEES FOR LOANS AND COPYING

Sec.

505.1 Scope and purpose.

505.2 Fees for loans of materials in library collections.
505.3 Fees for copying, duplicating, and reproduction of materials in library collections.
505.4–505.5 Reserved.
505.6 Payment of fees.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 3125a.

SOURCE: 65 FR 6528, Feb. 10, 2000, unless otherwise noted.

§ 505.1 Scope and purpose.

These regulations establish fees for loans, paper copying, duplication, or reproduction of materials in the collections of the National Agricultural Library (NAL) within the United States Department of Agriculture (USDA).

§ 505.2 Fees for loans of materials in library collections.

(a) NAL will make loans of original materials from its collections, and charge fees for such loans, to other non-Federal and non-USDA libraries and institutions in the United States and Canada only. Loans will not be made directly to individuals.

(b) Loans will be made at a flat fee of $15.00 per loaned item.

(c) Cost for replacement of lost or damaged items will be the actual cost to purchase a replacement plus a $50.00 processing fee; or if the cost cannot be determined, a flat rate of $75.00 for monographs or $150.00 for audiovisuals per item, plus a $50.00 processing fee.

(d) All services in this section will incur a billing surcharge per invoice generated in addition to the above fees which may change as vendor's charges change. This fee, currently $10.00, is billed as a direct cost recovery based on charges to the library by the billing vendor. Interlibrary loan requests submitted by participants in the ILL Fee Management (IFM) program under the Online Computer Library Center, Inc. (OCLC) will not incur the billing surcharge as their activities will not generate an invoice.

§ 505.3 Fees for paper copying, duplicating, and reproduction of materials in library collections.

(a) Photocopy reproduction of paper copy will be set as a flat fee of $13.00 for domestic requests and $16.00 for international requests for each document requested with a maximum of 50 pages per article for copyright compliance. Materials delivered to international addresses via the Internet will be charged at the domestic rate. Photocopy reproduction of paper copy that requires special handling due to size or condition will incur special handling fees to recover costs at $20.00 per half hour or fraction thereof.

(b) Paper copies of microfilm or microfiche will be produced at a flat fee of $13.00 for requests delivered domestically and $16.00 for requests requiring delivery to an international address. This charge is for each document requested with a maximum of 50 pages per article for copyright compliance.

(c) Duplication of NAL owned microfiche will be charged a flat fee of $13.00 per each 5 microfiche duplicated or fraction thereof. Duplication of NAL owned microfilm will be charged a flat fee of $20.00 for each reel produced.

(d) Photographic services from NAL Special Collections will be charged at cost for reproduction of the photo product (slides, transparencies, etc.) plus a preparation fee of $25.00 per half hour or fraction thereof.

(e) All services in this section will incur a billing surcharge, currently $10.00, per invoice generated in addition to the above fees. This fee is a direct cost recovery based on charges to the library by the billing vendor and is subject to change. Interlibrary loan requests submitted by participants in the IFM program on OCLC will not incur the billing surcharge as their activities will not generate an invoice.

§§ 505.4–505.5 [Reserved]

§ 505.6 Payment of fees.

Charges which include billing and handling will be invoiced quarterly by the National Technical Information Service (NTIS) of the United States Department of Commerce. The NAL encourages users to establish deposit accounts with NTIS. Payment for services will be made by check, money order or credit card in U.S. funds directly to the NTIS upon receipt of invoice from NTIS. Subject to a reduction for the actual costs of performing the invoicing service by NTIS, all funds received will be returned to NAL for credit to the appropriations account

charged with the cost of processing the loan or copying request.

PART 510—PUBLIC INFORMATION

Sec.
510.1 General statement.
510.2 Public inspection, copying, and indexing.
510.3 Requests for records.
510.4 Multitrack processing.
510.5 Denials.
510.6 Appeals.

AUTHORITY: 5 U.S.C. 301, 552; 7 CFR part 1, subpart A and appendix A thereto.

SOURCE: 66 FR 57841, Nov. 19, 2001, 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, REE, USDA, Room 1–2248, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY-VOICE (301) 504–1743. Office hours are 8 a.m. to 4:30 p.m. Information maintained in our electronic reading room can be accessed at *http://www.ars.usda.gov/is/foia/#Electronic*.

§510.3 Requests for records.

Requests for records of ARS under 5 U.S.C. 552(a)(3) shall be made in accordance with Subsection 1.5 of this title and submitted to the FOIA Coordinator, Information Staff, ARS, REE, USDA, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY-VOICE (301) 504–1743; Facsimile (301) 504–1648; e-mail *vherberger@ars.usda.gov* or *shutchison@ars.usda.gov*. The FOIA Coordinator is delegated authority to make determinations regarding such requests in accordance with Subsection 1.3(c) of this title.

§510.4 Multitrack processing.

(a) When ARS has a significant number of requests, the nature of which precludes a determination within 20 working days, the requests may be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing.

(b) ARS may establish as many processing tracks as appropriate; processing within each track shall be based on a first-in, first-out concept, and rank-ordered by the date of receipt of the request.

(c) A requester whose request does not qualify for the fastest track may be given an opportunity to limit the scope of the request in order to qualify for the fastest track. This multitrack processing system does not lessen agency responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(d) ARS shall process requests in each track on a ''first-in, first-out'' basis, unless there are unusual circumstances as set forth in §1.16 of this title, or the requester is entitled to expedited processing as set forth in §1.9 of this title.

§510.5 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 §1.7(a) of this title.

§510.6 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with §1.14 of this title and should be addressed as follows: Administrator,

ARS, 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.

SUBCHAPTER A—GENERAL

Part		*Page*
600	Organization	385
601	Functions	388

SUBCHAPTER B—CONSERVATION OPERATIONS

610	Technical assistance	392
611	Soil surveys	399
612	Snow surveys and water supply forecasts	400
613	Plant materials centers	402
614	Appeal procedures	404

SUBCHAPTER C—WATER RESOURCES

621	River basin investigations and surveys	409
622	Watershed projects	413
623	Emergency wetlands reserve program	416
624	Emergency watershed protection	424

SUBCHAPTER D—LONG TERM CONTRACTING

630	Long term contracting	431
631	Great Plains Conservation Program	431
632	Rural Abandoned Mine Program	435
633	Water Bank Program	447
634	Rural Clean Water Program	453
635	Equitable relief from ineligibility	473
636	Wildlife Habitat Incentives Program	476

SUBCHAPTER E [RESERVED]

SUBCHAPTER F—SUPPORT ACTIVITIES

650	Compliance with NEPA	482

Part		Page
651	[Reserved]	
652	Technical service provider assistance	504
653	Technical standards	514
654	Operation and maintenance	515
655	[Reserved]	
656	Procedures for the protection of archeological and historical properties encountered in NRCS-assisted programs	519
657	Prime and unique farmlands	520
658	Farmland Protection Policy Act	523

SUBCHAPTER G—MISCELLANEOUS

660	[Reserved]	
661	Public information and right to privacy	531
662–699	[Reserved]	

SUBCHAPTER A—GENERAL

PART 600—ORGANIZATION

Sec.
600.1 General.
600.2 National headquarters.
600.3 Regional offices.
600.4 State offices.
600.5 Area offices.
600.6 Field offices.
600.7 Specialized field offices.
600.8 Plant materials centers.
600.9 Major land resource area soil survey offices.

AUTHORITY: 7 U.S.C. 6962.

SOURCE: 65 FR 14781, Mar. 20, 2000, unless otherwise noted.

§ 600.1 General.

(a) The Natural Resources Conservation Service (NRCS) was authorized by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 7 U.S.C. 6901 note) and established by Secretary's Memorandum 1010–1 (2.b.6), *Reorganization of the Department of Agriculture*, to provide national leadership in the conservation, development, and productive use of the Nation's natural resources. Such leadership encompasses the conservation of soil, water, air, plant, and animal resources with consideration of the many human (economic and sociological) interactions. NRCS is the Federal agency that works with landowners on private lands to help them conserve their natural resources. NRCS employees are highly skilled in many scientific and technical specialties, including soil science, soil conservation, agronomy, biology, agroecology, range conservation, forestry, engineering, geology, hydrology, wetlands science, cultural resources, and economics. NRCS was formerly the Soil Conservation Service (SCS) which was established by the Soil Conservation Act of 1935 (Pub. L. 74–46, 49 Stat. 163 (16 U.S.C. 590 (a–f))). NRCS has responsibility for three major areas:

(1) Soil and water conservation;

(2) Natural resource surveys including soil surveys, resources inventory, snow surveys, and water supply forecasting; and

(3) Community resource protection and management including watershed projects, river basin studies and investigations, resource conservation and development areas, land evaluation and site assessment, and emergency watershed protection. In addition, NRCS has leadership for the Wetlands Reserve Program, Environmental Quality Incentives Program, Grazing Lands Conservation Initiative, Farmland Protection Program, Wildlife Habitat Incentives Program, Forestry Incentives Program, and Conservation Farm Option. NRCS provides technical support for the Conservation Reserve Program.

(b) The NRCS organization consists of a National Headquarters located in Washington, D.C.; six regional offices; 50 state offices and two equivalent offices in the Caribbean Area and the U.S. Trust Territories of the Pacific Basin Area; approximately 2,500 field offices and 300 specialized offices; 26 plant materials centers; 17 major land resource area soil survey offices; nine national centers; and seven national institutes. A Chief who reports to the USDA Under Secretary for Natural Resources and Environment heads NRCS.

§ 600.2 National headquarters.

(a) *Chief*. The Chief, with assistance of the Associate Chief, is responsible for administering a coordinated national program of natural resource conservation; planning, directing, and coordinating all program, technical, and administrative activities of NRCS; developing policies and procedures; correlating NRCS conservation programs with other agencies; accepting departmental leadership for programs for other activities assigned by the Secretary of Agriculture; and serving as Equal Employment Opportunity Officer for NRCS.

(b) *Deputy chiefs*. Five deputy chiefs assist the Chief as follows:

(1) *Deputy Chief for Management*. The Deputy Chief for Management is responsible for policies, guidelines, and standards for management services,

human resources management, financial management, information technology, administrative support (providing a coordinated administrative management program for National Headquarters activities), NRCS outreach, training, and correspondence management. This deputy chief also is responsible for the activities of three national centers: business management, information technology, and employee development.

(2) *Deputy Chief for Strategic Planning and Accountability*. The Deputy Chief for Strategic Planning and Accountability is responsible for policies, guidelines, and standards for strategic and performance planning, budget planning and analysis, and operations management and oversight.

(3) *Deputy Chief for Programs*. The Deputy Chief for Programs is responsible for policies, guidelines, and standards for conservation operations, resource conservation and community development, watersheds and wetlands, international programs, conservation compliance activities, conservation programs funded by the Commodity Credit Corporation, and animal husbandry and clean water programs.

(4) *Deputy Chief for Soil Survey and Resource Assessment*. The Deputy Chief for Soil Survey and Resource Assessment is responsible for policies, guidelines, and standards for NRCS technical activities, and provides leadership for soils, resource inventory, and resource assessment. This deputy chief also is responsible for the activities of two national centers (soil survey and cartography and geospatial) and two national institutes (soil quality and natural resources inventory and analysis).

(5) *Deputy Chief for Science and Technology*. The Deputy Chief for Science and Technology is responsible for policies, guidelines, and standards for the agency, and provides leadership for resource economics and social sciences, conservation engineering, and ecological sciences. This deputy chief also is responsible for the activities of four national centers (water and climate, water management, soil mechanics, and plant data) and five national institutes (grazing lands technology, social sciences, watershed science, wetlands science, and wildlife habitat management). This deputy chief, working closely with the deputy chiefs for Management and Soil Survey and Resource Assessment, provides overall direction for the National Science and Technology Consortium.

(c) *National Science and Technology Consortium*. The consortium consists of three divisions, four centers, five technical institutes, and several cooperating scientists under the Deputy Chief for Science and Technology; two divisions, two centers, and two technical institutes under the Deputy Chief for Soil Survey and Resource Assessment; and one division and three centers under the Deputy Chief for Management.

(1) *Centers*. The nine centers provide specific products and services that maintain and enhance the technical quality of the agency. The centers are: water and climate, water management, soil mechanics, plant data, soil survey, cartography and geospatial, information technology, business management, and employee development.

(2) *Institutes*. The seven institutes are: soil quality, natural resources inventory and analysis, grazing lands technology, social sciences, watershed science, wetlands science, and wildlife habitat management. The institutes provide training; develop technical materials; and acquire, develop, and transfer needed technology in special emphasis areas so field employees can better serve their customers. The institutes often establish partnerships with other Federal agencies, universities, and public and private organizations.

(3) *Cooperating Scientists*. Cooperating scientists work in the areas of soil erosion and sedimentation, air quality, and agroforestry. These scientists are located at various universities and research centers.

(d) *Civil Rights*. The Civil Rights staffs provide coordination, assistance, and recommendations to the Chief on civil rights employment and program compliance issues.

(e) *Legislative Affairs*. The Legislative Affairs Staff provides coordination and assistance to the Chief on legislative affairs issues and activities.

(f) *Conservation Communications*. The Conservation Communications Staff is

responsible for communications, volunteer programs, conservation education, and public affairs activities.

(g) *Strategic Natural Resource Issues.* The Strategic Natural Resource Issues Staff is responsible for coordinating priority strategic issues as determined by the Chief.

§ 600.3 Regional offices.

Each regional office is under the direction and supervision of a regional conservationist. Regional offices are responsible for

(1) Providing agency leadership, guidance, coordination, and partnering for solutions to regional resource issues;

(2) Program implementation, consistency, and accountability;

(3) Region-wide strategic planning, performance measurement, and operations management;

(4) Administrative operations and support;

(5) Fund integrity and accountability;

(6) Technical quality of work; and

(7) All NRCS activities in the region.

Regional offices are located in Beltsville, Maryland; Atlanta, Georgia; Fort Worth, Texas; Madison, Wisconsin; Lincoln, Nebraska; and Sacramento, California.

§ 600.4 State offices.

Each office is under the direction and supervision of a State conservationist. Each State conservationist is responsible for NRCS programs in a State. The Pacific Basin Area Office, under the direction and supervision of a director, serves the U.S. Trust Territories in that area. The Caribbean Area Office, under the direction and supervision of a director, serves the Commonwealth of Puerto Rico and the U.S. Virgin Islands. Directors of the Pacific Basin and Caribbean areas have the same responsibility and authority as a State conservationist. All references to State conservationists in this chapter include the directors of the Pacific Basin and Caribbean areas.

§ 600.5 Area offices.

Each area office is under the direction and supervision of an area conservationist or assistant State conservationist for field operations who is responsible for NRCS activities in the geographical area served by the area office. Usually the geographical area includes multiple field offices and counties. Many area offices now consist of teams working on a watershed or other geopolitical basis.

§ 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. Field offices are generally collocated with other USDA agencies in USDA Service Centers.

§ 600.7 Specialized field offices.

Other field offices serve specialized activities, such as watershed protection and flood reduction projects, construction projects, resource conservation and development areas, and soil survey activities. State conservationists designate direction and supervision of these offices.

§ 600.8 Plant materials centers.

Plant materials centers (PMC) assemble and test plant species for conservation uses. Usually a PMC serves two or more States, and is under the jurisdiction of the State conservationist where the center is located. Each PMC is directed and supervised by a manager who is responsible to a State office specialist/manager as designated by the State conservationist.

§ 600.9 Major land resource area soil survey offices.

The United States is divided into 17 major land resource areas (MLRA) for the purpose of soil survey production. Major land resource area soil survey offices (MO) provide the technical leadership, coordination, and quality assurance for all soil survey project activities within the respective MLRA. Each MO serves two or more States (except for the MO in Alaska), and is under the jurisdiction of the State conservationist where the office is located. Each MO is directed and supervised by

a leader who is designated by the State conservationist.

PART 601—FUNCTIONS

Sec.
601.1 Functions assigned.
601.2 Functions reserved to the Secretary of Agriculture.
601.3 Defense responsibilities.

AUTHORITY: 7 U.S.C. 1010–1011; 16 U.S.C. 590a–590f, 1001–1008, 2001–2009, 2203–2205, 3801 *et seq.*; 33 U.S.C. 701b–1.

SOURCE: 65 FR 14783, Mar. 20, 2000, unless otherwise noted.

§ 601.1 Functions assigned.

The Natural Resources Conservation Service (NRCS) is the Federal agency that works with private landowners to conserve their natural resources. NRCS employees help land users and communities approach conservation planning and implementation with an understanding of how natural resources relate to each other and to people—and how human activities affect those resources. The agency emphasizes voluntary, science-based assistance, partnerships, and cooperative problem solving at the community level. The mission of NRCS is to work on the Nation's non-Federal lands to conserve, improve, and sustain natural resources. The following functions support the mission.

(a) NRCS facilitates and provides conservation technical assistance at the local level that helps people assess their natural resource conditions and needs, set goals, identify programs and other resources to address those needs, develop proposals and recommendations, implement solutions, and measure their success. The agency's role is to assist with:

(1) Resource inventories,

(2) Resource assessments,

(3) Planning assistance, and/or

(4) Technical assistance.

(b) NRCS provides technical assistance through local conservation districts to land users, communities, watershed groups, Federal and State agencies, other partners, and customers.

(c) NRCS provides assistance on a voluntary basis.

(d) The agency's work focuses on soil, water, air, plant, and animal conservation including erosion reduction, water quality improvement, wetland restoration and protection, fish and wildlife habitat improvement, range management, stream restoration, water management, and other natural resource issues.

(e) Through the conservation operations program, NRCS maintains a cadre of conservationists and interdisciplinary technical experts who provide landowners with advice and recommendations. Science based procedures and techniques are based on new knowledge and research provided by the Agricultural Research Service and others. NRCS developed and maintains a system of directives—including manuals, handbooks, and technical references—to institutionalize new methods, procedures, and standards used to deliver technical assistance at the field level.

(f) NRCS has general responsibility for administration of the following programs:

(1) Conservation operations, authorized by the Soil Conservation Act of 1935 and the Soil and Water Resources Conservation Act of 1977. Activities include:

(i) Conservation technical assistance to land users, communities, units of State and local government, and other Federal agencies in planning and implementing natural resource solutions to reduce erosion, improve soil and water quantity and quality, improve and conserve wetlands, enhance fish and wildlife habitat, improve air quality, improve pasture and range conditions, reduce upstream flooding, and improve woodlands. Assistance is also provided to implement the highly erodible land (HEL) and wetland conservation (Swampbuster) provisions and—on a reimbursable basis—the Wetlands Reserve Program (WRP) and Conservation Reserve Program (CRP) in the 1985 Food Security Act, as amended by the Food, Agriculture, Conservation and Trade Act of 1990 and Federal Agriculture Improvement and Reform Act of 1996. NRCS technical field staff make HEL and wetland determinations and assist land users to develop and implement conservation plans needed

to ensure compliance with the law. NRCS is also the lead Federal agency for delineating wetlands on agricultural lands for purposes of implementing both the provisions of the Food Security Act and Section 404 of the Clean Water Act.

(ii) Soil surveys that provide the public with local information on the uses and capabilities of their soil resource. Soil surveys are based on scientific analysis and classification of the soils and are used to determine land capabilities and conservation treatment needs. Surveys are conducted cooperatively with other Federal agencies, land grant universities, State agencies, and local units of government. NRCS is the world leader in soil classification and soil mapping, and is expanding into soil quality.

(iii) Snow survey and water supply forecasts that provide western States and Alaska with vital information and forecasts of seasonable variable water supplies. NRCS field staff in cooperation with partnering organizations manually collect data from 850 remote high mountain sites. Data is electronically collected from an additional 600 SNOTEL (automated snowpack telemetry network) sites. In cooperation with the National Weather Service, the data is assembled and analyzed. Then, NRCS staff develop seasonal water supply forecasts.

(iv) Plant Material Centers that assemble, test, and encourage increased plant propagation and usefulness of plant species for biomass production, carbon sequestration, erosion reduction, wetland restoration, water quality improvement, streambank and riparian area protection, coastal dune stabilization, and to meet other special conservation treatment needs. The work is carried out cooperatively with State and Federal agencies, private organizations, commercial businesses, and seed and nursery associations. After species are proven, they are released to the private sector for commercial production.

(v) National Resources Inventory (NRI) that is a statistically-based survey designed and implemented using scientific principles to assess conditions and trends of soil, water, and related resources on nonfederal lands in the United States. The NRI captures data on land cover and use, soil erosion, prime farmland, wetlands, habitat diversity, selected conservation practices, and related attributes at thousands of scientifically selected sample sites in all 50 states, Puerto Rico, the U.S. Virgin Islands, and some Pacific Basin locations.

(2) Conservation programs in the Federal Agriculture Improvement and Reform Act of 1996, most of which are funded by the Commodity Credit Corporation (CCC). NRCS provides leadership and technical assistance for the following programs:

(i) *Environmental Quality Incentives Program (EQIP).* EQIP provides a single, voluntary conservation program for farmers and ranchers who face serious threats to soil, water, and related natural resources. Nationally, it provides technical, financial, and educational assistance, half of it targeted to livestock-related natural resource problems and half to more general conservation priorities.

(ii) *Wetlands Reserve Program (WRP).* WRP is a voluntary program to restore and protect wetlands on private property. It provides an opportunity for landowners to receive financial incentives to restore wetlands in exchange for retiring marginal agricultural land.

(iii) *Wildlife Habitat Incentives Program (WHIP).* WHIP is a voluntary program for people who want to develop and improve wildlife habitat on private lands. It provides both technical assistance and cost sharing to help establish and improve fish and wildlife habitat.

(iv) *Farmland Protection Program (FPP).* This program provides funds to help purchase development rights to keep productive farmland in agricultural use. Working through existing programs, USDA joins with State, tribal, or local governments to acquire voluntary conservation easements or other interests from landowners.

(v) *Forestry Incentives Program (FIP).* FIP supports good forest management practices on privately owned, non-industrial forest lands nationwide. FIP is designed to benefit the environment while meeting future demands for wood products. Although not funded by CCC, Section 373 of the Federal Agriculture Improvement and Reform Act of 1996

extended the program under discretionary appropriations.

(3) Resource Conservation and Development (RC&D) Program, authorized by Section 102 of the Flood and Agriculture Act of 1962 (Pub. L. 87–702) and Sections 1528–1538 of the Agriculture and Food Act of 1981 (Pub. L. 97–98). This program is initiated and directed at the local level by volunteers who involve multiple communities, various units of government, municipalities, and grassroots organizations. RC&D is a catalyst for civic-oriented groups to share knowledge and resources in a collective attempt to solve common problems. The program offers aid in balancing the environmental, economic, and social needs of an area.

(4) Rural Abandoned Mine Program (RAMP) and other responsibilities assigned under the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87). Under RAMP, NRCS provides technical and financial assistance to landowners to reclaim certain abandoned coal-mined lands. This assistance can be used to reclaim these lands for approved uses, which include pasture, range, woodland, cropland, noncommercial recreation, and wildlife habitat. The program's first priority is to protect public health, welfare, safety, and property from hazards caused by past surface coal mining or by surface effects of deep mining.

(5) Watershed surveys and planning, authorized by the Watershed Protection and Flood Prevention Act (Pub. L. 83–566, Section 6 (16 U.S.C. 1001–1008)). The 1996 appropriations act combined the Small Watershed Planning and the River Basin Surveys and Investigations programs into a new program called the Watershed Surveys and Planning Program. The program involves cooperation with other Federal, State, and local agencies to conduct watershed planning, river basin surveys and investigations, flood hazard analysis, and floodplain management assistance, which aid in the development of coordinated water resource programs, including the development of guiding principles and procedures.

(6) Watershed and flood prevention operations include several activities. Watershed operations are authorized by the Flood Control Act of 1944 (Public Law 78–534) and the Watershed Protection and Flood Prevention Act of 1954 (Public Law 87–566) and amendments; both of which are addressed by 7 CFR 622. Since 1998, the appropriations act for the Watershed Protection and Flood Prevention Act (Public Law 83–566) has included funds, not to exceed a specified amount, that may be used for Public Law 78–534 projects.

(i) Publc Law 83–566 and Public Law 78–534, jointly called the Small Watershed Program, authorize the Secretary of Agriculture to cooperate with State and local agencies to plan and carry out works of improvement for flood prevention; for the conservation, development, utilization, and disposal of water; and for the conservation and proper use of land in watershed or subwatershed areas. Under Public Law 83–566, these areas shall not exceed 250,000 acres. There is no acreage limitation under Public Law 78–534.

(ii) The Small Watershed Program provides for cooperation with State and other public agencies (called project sponsors) in the installation of planned works of improvement and land treatment measures in authorized watershed projects. Eligible measures include flood prevention, water conservation, recreation, agricultural water management, floodplain easements, municipal and industrial water, and rural water supply.

(7) Emergency Watershed Protection (EWP) Program, authorized by Section 216 of Public Law 81–516, 33 U.S.C. 701b–1, and Section 403 of the Agriculture Credit Act of 1978 (Public Law 95–334, 16 U.S.C. 2203), as amended by Section 382 of the Federal Agriculture Improvement and Reform Act of 1996 (Public Law 104–127, 110 Stat. 888, 1016). EWP provides assistance to reduce an imminent threat to life and property caused by a sudden impairment of a watershed from a natural disaster. Emergency work includes such measures as removing debris from streams, stabilizing streambanks, repairing levees, critical area stabilization, and purchasing floodplain easements. Technical and financial assistance is available to sponsoring local organizations (units of government, Indian tribes and tribal organizations, and organizations formed by State law) for this disaster

recovery work. Sponsors are required to provide the local share of the costs; obtain real property rights, water rights, and permits; and do any needed operation and maintenance.

§ 601.2 Functions reserved to the Secretary of Agriculture.

(a) Designation of new Resource Conservation and Development (RC&D) areas. Once designated, these areas may receive RC&D Program assistance from NRCS.

(b) Administration of the Soil and Water Resources Conservation Act of 1977 (Public Law 95–192) to conduct an appraisal and develop a national conservation program every five years.

§ 601.3 Defense responsibilities.

In the event of 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 onsite 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

Sec.
610.1 Purpose.
610.2 Scope.
610.3 Assistance through conservation districts.
610.4 Technical assistance furnished.
610.5 Interdisciplinary assistance.

Subpart B—Soil Erosion Prediction Equations

610.11 Purpose and scope.
610.12 Equations for predicting soil loss due to water erosion.
610.13 Equations for predicting soil loss due to wind erosion.
610.14 Use of USLE, RUSLE, and WEQ.

Subpart C—State Technical Committees

610.21 Purpose and scope.
610.22 State Technical Committee membership.
610.23 State Technical Committee meetings.
610.24 Responsibilities of State Technical Committees.
610.25 Specialized Subcommittees.

Subpart D—Conservation of Private Grazing Land

610.31 Purpose and scope.
610.32 Technical assistance furnished.

AUTHORITY: 16 U.S.C. 590a–f, 590q, 2005b, 3861, 3862.

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.

(a) Conservation operations, including technical assistance, is the basic soil and water conservation program of NRCS. This program is designed to:

(1) Reduce soil losses from erosion;

(2) Help solve soil, water, and agricultural waste management problems;

(3) Bring about adjustments in land use as needed;

(4) Reduce damage caused by excess water and sedimentation;

(5) Enhance the quality of fish and wildlife habitat; and

(6) Improve all agricultural lands, including cropland, forestland, and grazing lands that include pastureland, rangeland, and grazed forestland so that the long-term sustainability of the resource base is achieved.

(b) The Natural Resources Conservation Service is USDA's technical agency for providing assistance to private landowners, conservation districts, and other organizations in planning and carrying out their conservation activities and programs. NRCS works with individuals, groups, and units of government to help them plan and carry out conservation decisions to meet their objectives.

[64 FR 42003, Aug. 3, 1999]

§ 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.

Subpart C—State Technical Committees

SOURCE: 64 FR 42003, Aug. 3, 1999, unless otherwise noted.

§ 610.21 Purpose and scope.

This subpart sets forth the procedures for establishing and using the advice of State Technical Committees. NRCS shall establish in each State a technical committee to assist in making technical recommendations relating to the implementation of natural resource conservation activities and programs. USDA will use State Technical Committees in an advisory capacity in the administration of certain conservation programs and initiatives. These State Technical Committees are exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.2).

§ 610.22 State Technical Committee membership.

(a) State Technical Committees shall include members who represent a variety of natural resource sciences and occupations, including those related to soil, water, wetlands, plants, and wildlife. The State Conservationist in each State will serve as chairperson. In addition, committee membership will include one representative from each of the following agencies or groups, if willing to serve:

(1) NRCS, USDA;

(2) Farm Service Agency, USDA;

(3) State Farm Service Agency Committee, USDA;

(4) Forest Service, USDA;

(5) Cooperative State Research, Education, and Extension Service, USDA;

(6) Rural Development, USDA;

(7) Fish and Wildlife Service, United States Department of Interior;

(8) United States Environmental Protection Agency;

(9) Bureau of Land Management, United States Department of Interior;

(10) Bureau of Indian Affairs, United States Department of Interior;

(11) U.S. Geological Survey, United States Department of Interior;

(12) Bureau of Reclamation, United States Department of Interior;

(13) Corps of Engineers, United States Department of the Army;

(14) Each of the Federally recognized American Indian Tribal Governments and Alaskan Native Corporations encompassing 100,000 acres or more in the State;

(15) State departments and agencies that the NRCS State Conservationist deems appropriate, including a member from each of the following agencies or entities within the State:

(i) Fish and wildlife agency;

(ii) Forestry agency;

(iii) Water resources agency;

(iv) Department of agriculture;

(v) Association of soil and water conservation districts;

(vi) Soil and water conservation agency;

(vii) Coastal zone management agency; and

(16) Other Federal, State, tribal, and local agency personnel with expertise in soil, water, wetlands, plant, and wildlife management, as the NRCS State Conservationist considers appropriate.

(b) In addition to agency and Tribal membership, State Technical Committees shall include members from the following private interests, if willing to serve:

(1) Agricultural producers with demonstrable conservation expertise;

(2) Nonprofit organizations with demonstrable conservation expertise;

(3) Persons knowledgeable about economic and environmental impacts of conservation techniques and programs; and

(4) Representatives from agribusiness.

(c) To ensure that recommendations of the State Technical Committees take into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the conservation and related technical concerns of particular historically underserved groups and individuals; i.e., minorities, women, persons with disabilities and socially and economically disadvantaged groups.

(d) In accordance with the guidelines in paragraphs (a), (b), and (c) of this section, the State Conservationist establishes membership on the State Technical Committee. Individuals or

groups wanting to participate on a State Technical Committee within a specific State may submit to the State Conservationist of that particular State a request that explains their interest and outlines their credentials which they believe are relevant to becoming a member of the State Technical Committee. Decisions of the State Conservationist concerning membership on the committee are final and not appealable to any other individual or group within USDA.

§ 610.23 State Technical Committee meetings.

(a) The State Conservationist shall provide public notice of State Technical Committee meetings in which issues related to conservation programs will be considered.

(b) The State Conservationist shall publish a meeting notice no later than 14 calendar days prior to the meeting. Notification may exceed this 14-day minimum where State open meeting laws exist and provide for a longer notification period. This minimum 14-day notice requirement may be waived in the case of exceptional conditions. The State Conservationist shall publish this notice in at least one or more newspaper(s), including recommended Tribal publications, to attain statewide circulation. The State Conservationist, as Chairperson, schedules and conducts the meetings, although a meeting may be requested by any USDA agency as needed.

§ 610.24 Responsibilities of State Technical Committees.

(a) Each State Technical Committee established under this subpart shall meet on a regular basis, as determined by the State Conservationist, to provide information, analysis, and recommendations.

(b) The State Technical Committee shall provide, in writing to the implementing USDA program agency, recommendations, data, and technical analyses, which reflect the professional information and judgment of the State Technical Committee. Such information, analyses, and recommendations shall be provided in a manner that will assist in determining matters of fact, technical merit, or scientific question.

(c) The responsibilities of the State Technical Committee include making recommendations with respect to the technical matters such as:

(1) Guidelines for evaluating petitions by agricultural producers regarding new conservation practices and systems not already described in field office technical guides;

(2) Aspects of wetland protection, restoration, and mitigation requirements;

(3) Criteria to be used in evaluating bids for enrollment of environmentally-sensitive lands in the Conservation Reserve Program (16 U.S.C. 3831–3836);

(4) Guidelines for haying or grazing and the control of weeds to protect nesting wildlife on set-aside acreage;

(5) Highly erodible land exemptions and the appeals process as it pertains to technical issues and information;

(6) Wetland and highly erodible land conservation compliance exemptions and the appeals process;

(7) Methods to address common weed and pest problems, and programs to control weeds and pests found on acreage enrolled in the Conservation Reserve Program (16 U.S.C. 3831–3836);

(8) Guidelines for planting perennial cover for water quality and wildlife habitat improvement on set-aside lands;

(9) Criteria and priorities for state initiatives under the Environmental Quality Incentives Program (EQIP) (16 U.S.C. 3839aa), including:

(i) Criteria to prioritize applications from applicants with significant statewide resource concerns outside a priority area;

(ii) Eligible conservation practices for an EQIP priority area or for significant statewide resource concerns outside a priority area;

(iii) Criteria to be used in defining a large confined livestock operation under EQIP;

(iv) Suggestions on how often producers' EQIP applications are ranked and selected;

(v) Criteria to prioritize applications from applicants with significant statewide resource concerns outside a priority area; and

(vi) Determination of cost share and incentive payment limits for participants subject to environmental requirements or with significant statewide resource concerns outside a priority area.

(10) The implementation of the Wildlife Habitat Incentives Program (WHIP) (16 U.S.C 3836a);

(11) The technical merits of proposals submitted for the Farmland Protection Program (16 U.S.C. 3830);

(12) The development of a Wetland Reserve Program (WRP) (16 U.S.C. 3837) wetland restoration plan;

(13) Statewide program guidelines applicable to WRP easement compensation, restoration planning, priority ranking, and related policy matters, 7 CFR part 1467;

(14) Identification of any categories of wetland conversion activities and conditions which are routinely determined by NRCS to have minimal effect on wetland functions and values as described in 7 CFR part 12.

(15) Conservation techniques and measures related to achieving environmental justice needs; and

(16) Types or classes of wetland that are not eligible for mitigation exemption under the Wetland Conservation provisions of 7 CFR part 12.

(d) The implementing agency reserves the authority to accept or reject the Committee's recommendations; however, the implementing USDA agency shall give strong consideration to the Committee's suggestions.

§ 610.25 Specialized subcommittees.

In some situations, specialized subcommittees, made up of State Technical Committee members, may be needed to analyze and refine specific issues. The State Conservationist may assemble certain members to discuss, examine, and focus on a particular technical or programmatic topic. The subcommittee may seek public participation; however, it is not required to do so. Nevertheless, decisions resulting from these subcommittee sessions shall be made only in a general session of the State Technical Committee, where the public is notified and invited to attend.

Subpart D—Conservation of Private Grazing Land

SOURCE: 67 FR 68497, Nov. 12, 2002, unless otherwise noted.

§ 610.31 Purpose and scope.

(a) This subpart sets forth the policies for the Conservation of Private Grazing Land (CPGL) Program, as authorized by Section 386 of the Federal Agriculture Improvement and Reform Act of 1996, (Pub. L. 104–127, April 4, 1996) 16 U.S.C. 2005b. Under the CPGL Program, NRCS will provide technical assistance to landowners and managers who request assistance based on locally-established priorities and resource concerns. The purpose of the CPGL Program is to provide technical assistance to private grazing land owners and managers to voluntarily conserve or enhance grazing land resources to meet ecological, economic, and social demands.

(b) The term ''private grazing land'' means private, State-owned, tribally owned, and any other non-federally owned rangeland, pastureland, grazed forestland, hayland, and other lands used for grazing.

(c) The NRCS Chief may implement the CPGL Program in any of the 50 States, the District of Columbia, Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, and American Samoa. NRCS will provide assistance in cooperation with conservation districts, or directly to a landowner or operator.

§ 610.32 Technical assistance furnished.

(a) Provide technical assistance to grazing-land owners and managers to plan and implement resource conservation on grazing land. The objective of planning on grazing land is to assist landowners and managers in understanding the basic ecological principles associated with managing their land. This objective can be met by implementing a plan that meets the needs of the resources (soil, water, air, plants, and animals) and management objectives of the owner or manager. NRCS may provide assistance, at the request of the private grazing-land owner or manager to:

(1) Maintain and improve private grazing land resources that provide multiple benefits;

(2) Ensure the long-term sustainability of private grazing land resources;

(3) Implement new grazing land management technologies;

(4) Manage resources on private grazing land through conservation planning, including, but not limited to; grazing management, nutrient management, and weed and invasive species control;

(5) Maintain and improve water quality and quantity, aquatic and wildlife habitat, recreational opportunities, and aesthetics on private grazing land;

(6) Harvest, process, and market private grazing land resources; and

(7) Identify opportunities to diversify private grazing land enterprises.

(b) Refer to 7 CFR 610.4 on other items relating to technical assistance.

(c) To receive technical assistance, a landowner or manager may contact NRCS or the local conservation district to seek assistance to solve identified natural resource problems or opportunities. Participation in this program is voluntary.

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 Soil survey information.

Subpart C—Cartographic Operations

611.20 Function.
611.21 Availability of aerial photography.
611.22 Availability of satellite imagery.

AUTHORITY: 16 U.S.C. 590a–590f, 590q, 42 U.S.C. 3271–3274.

SOURCE: 69 FR 60283, Oct. 8, 2004, 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 disseminating soil survey information.

(b) A soil survey Memorandum of Understanding (MOU) is prepared prior to the start of each soil survey project, or a work plan is prepared for soil survey maintenance activities. These documents provide specific details and technical specifications to support the interpretive and data needs of the area to be surveyed. The MOU 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 MOU if federal lands are included in the survey.

§ 611.11 Soil survey information.

(a) *Availability*. NRCS disseminates soil survey information to the public by any of the means described in paragraph (d) of this section. NRCS makes soil survey information available as soon as is practicable following field work or other soil survey activity that provides new soil survey information.

(b) *Content*. Soil survey information conforms with standards and meets the needs identified in the soil survey MOU or work plan as described in § 611.10 of this part. Soil survey information includes:

(1) Soil maps that delineate the location and extent of various soil areas;

(2) Soil characteristics for each of the soil areas shown on soil maps;

(3) Interpretations of the soil characteristics; and

(4) Information about the source, version, and applicability or limitations associated with the soil survey information.

(c) *Maintenance*. Soil survey information is reviewed on a periodic basis to ensure that the information continues to meet evolving needs.

(d) *Distribution*. Soil survey information is disseminated to the public through electronically accessible maps and reports, electronic access to data files, or printed documents. To the extent practicable, as limited by commonly accepted technology, soil survey information is disseminated in electronic form.

(e) *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, soil survey information from which the conservation plan was developed may be disseminated as described in paragraph (a) of this section.

Subpart C—Cartographic Operations

§ 611.20 Function.

The NRCS National Cartography and Geospatial Center 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 National Cartography and Geospatial Center obtains necessary clearance 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 National Cartography and Geospatial center: USDA—National Resources Conservation Service; P.O. Box 6567, FWFC-Bldg. 23; 501 W. Felix Street; Forth Worth, Texas 76115.

§ 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 pubic 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 National Cartography and Geospatial Center, USDA—Natural Resources Conservation Service; P.O. Box 6567, FWFC-Bldg. 23; 501 W. Felix Street; Forth Worth, Texas 76115. 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

Sec.
614.1 Purpose and scope.
614.2 Definitions.
614.3 Applicability.
614.4 Reservation of authority.
614.5 Decisions not subject to appeal.

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.
614.102 Mediation of preliminary technical determinations.
614.103 Final determinations.
614.104 Appeals of technical determinations.

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

Subpart A—General

Sec.
621.1 Purpose.
621.2 Scope.

Subpart B—USDA Cooperative Studies

621.10 Description.
621.11 Who may obtain assistance.
621.12 How to request assistance.
621.13 Conditions for approval.
621.14 Recipient responsibility.

Subpart C—Floodplain Management Assistance

621.20 Description.
621.21 Who may obtain assistance.
621.22 How to request assistance.
621.23 Conditions for approval.
621.24 NRCS responsibility.
621.25 Recipient responsibility.

Subpart D—Joint Investigations and Reports With the Department of the Army

621.30 Description.
621.31 Who may request assistance.
621.32 How to request assistance.
621.33 Conditions for approval.
621.34 Recipient responsibility.

Subpart E—Interagency Coordination

621.40 Participation in Federal interagency policy activities at the national level.
621.41 Participation in Federal-State policy and planning activities at the regional level.
621.42 Federal-State compacts.
621.43 Interstate compacts and commissions.
621.44 Special studies.
621.45 Flood insurance studies.

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

Sec.
622.1 Purpose.
622.2 Scope.
622.3 Relationship to the Pub. L. 78–534 Program.
622.4 Relationship to other agencies.
622.5 Guidelines.
622.6 Equal opportunity.
622.7 Notification under Executive Order 12372.

Subpart B—Qualifications

622.10 Sponsors.
622.11 Eligible watershed projects.

Subpart C—Application Procedure

622.20 Application.
622.21 State agency approval.

Subpart D—Planning

622.30 General.
622.31 Basic planning efforts.
622.32 Reviews and approvals.

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.

623.1 Purpose and scope.
623.2 Definitions.
623.3 Eligible person.
623.4 Eligible land.
623.5 Ineligible land.
623.6 Transfer of lands from the CRP to the EWRP.
623.7 Terms of the easement.
623.8 Easement value.
623.9 Easement priority.
623.10 Application to participate.
623.11 Obligations of the landowner.
623.12 Payments to landowners by NRCS.
623.13 Wetland Reserve Plan of Operations.
623.14 Easement modifications.
623.15 Transfer of land.
623.16 Monitoring and enforcement of easement terms and conditions.
623.17 Violations and Remedies.
623.18 Access to land.
623.19 Assignments.
623.20 Appeals.
623.21 Scheme and device.
623.22 Filing of false claims.

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.
624.1 Purpose.
624.2 Objective.
624.3 Scope.
624.4 Definitions.
624.5 Coordination.
624.6 Program administration.
624.7 Cost-sharing.
624.8 Assistance.
624.9 Time limits.
624.10 Floodplain easements.
624.11 Waivers.

AUTHORITY: Sec. 216, P.L. 81–516, 33 U.S.C. 701b–1; Sec. 403, P.L. 95–334, as amended, 16 U.S.C. 2203; 5 U.S.C. 301.

SOURCE: 70 FR 16926, Apr. 4, 2005, unless otherwise noted.

§ 624.1 Purpose.

The Natural Resources Conservation Service (NRCS) and United States Forest Service (FS) are responsible for administering the Emergency Watershed Protection (EWP) Program. This part sets forth the requirements and procedures for Federal assistance, administered by NRCS, under Section 216, Public Law 81–516, 33 U.S.C. 701b–1; and Section 403 of the Agricultural Credit Act of 1978, Public Law 95–334, as amended by Section 382, of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127, 16 U.S.C. 2203. The Secretary of Agriculture has delegated the administration of the EWP Program to the Chief of NRCS on state, tribal, and private lands, and Chief of FS on National Forest Systems lands, including any other lands that are administered under a formal agreement with the FS. The FS administers the EWP Program in accordance with the Forest Service Manuals 1950 and 3540, and the Forest Service Handbook 1909.15

§ 624.2 Objective.

The objective of the EWP Program is to assist sponsors, landowners, and operators in implementing emergency recovery measures for runoff retardation and erosion prevention to relieve imminent hazards to life and property created by a natural disaster that causes a sudden impairment of a watershed.

§ 624.3 Scope.

EWP Program technical and financial assistance may be made available to a qualified sponsor, or landowners when a floodplain easement is the selected alternative by the Secretary of Agriculture, upon a qualified sponsor or landowner's request when a Federal emergency is declared by the President or when a local emergency is declared by the NRCS State Conservationist. The EWP Program is designed for emergency recovery work, including the purchase of floodplain easements. Emergency watershed protection is authorized in the 50 States, the District of Columbia, the Commonwealth of

Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

§ 624.4 Definitions.

(a) *Defensibility* means the extent to which an action is:

(1) More beneficial than adverse in the extent and intensity of its environmental and economic effects;

(2) In compliance with Federal, State, and local laws;

(3) Acceptable to affected individuals and communities;

(4) Effective in restoring or protecting the natural resources;

(5) Complete with all necessary components included; and

(6) Efficient in achieving the desired outcome.

(b) *Exigency* means those situations that demand immediate action to avoid potential loss of life or property, including situations where a second event may occur shortly thereafter that could compound the impairment, cause new damages or the potential loss of life if action to remedy the situation is not taken immediately.

(c) *Floodplain easement* means a reserved interest easement, which is an interest in land, defined and delineated in a deed whereby the landowner conveys all rights and interest in the property to the grantee, but the landowner retains those rights, title, and interest in the property which are specifically reserved to the landowner in the easement deed.

(d) *Imminent threat* means a substantial natural occurrence that could cause significant damage to property or threaten human life in the near future.

(e)(1) *Limited resource area* is defined as a county where:

(i) Housing values are less than 75 percent of the State housing value average; and

(ii) Per capita income is 75 percent or less than the National per capita income; and

(iii) Unemployment is at least twice the U.S. average over the past 3 years based upon the annual unemployment figures.

(2) NRCS will use the most recent National census information available when determining paragraphs (e)(1)(i) and (ii) of this section.

(f) *Natural occurrence* includes, but is not limited to, floods, fires, windstorms, ice storms, hurricanes, typhoons, tornadoes, earthquakes, volcanic actions, slides, and drought.

(g) *Project sponsor* means a State government or a State agency or a legal subdivision thereof, local unit of government, or any Native American tribe or tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), with a legal interest in or responsibility for the values threatened by a watershed emergency; is capable of obtaining necessary land rights; and is capable of carrying out any operation and maintenance responsibilities that may be required.

(h) *Watershed emergency* means adverse impacts to resources exist when a natural occurrence causes a sudden impairment of a watershed and creates an imminent threat to life or property.

(i) *Watershed impairment* means the situation that exists when the ability of a watershed to carry out its natural functions is reduced to the point where an imminent threat to health, life, or property is created. This impairment can also include sediment and debris deposition in floodplains and upland portions of the watershed.

§ 624.5 Coordination.

(a) If the President declares an area to be a major disaster area, NRCS will provide assistance which will be coordinated with the Federal Emergency Management Agency (FEMA) or its designee. FEMA is the lead federal agency for Presidentially-declared natural disasters.

(b) When an NRCS State Conservationist determines that a watershed impairment exists, but the President does not declare an area to be a major disaster area, FEMA does not coordinate assistance. In this situation, NRCS will assume the lead, provide assistance, and coordinate work with the appropriate State office of emergency preparedness and other Federal, tribal, or local agencies involved with emergency activities, as appropriate.

(c) In the case where the watershed impairment exists solely on FS System

lands, the FS will determine the existence of the impairment, assume the lead, provide assistance and coordinate work with the appropriate State office of emergency preparedness and other Federal, tribal, or local agencies involved with emergency activities, as appropriate.

§ 624.6 Program administration.

(a) *Sponsors*. (1) When the State Conservationist declares that a watershed impairment exists, NRCS may, upon request, make assistance available to a sponsor which must be a State or political subdivision thereof, qualified Indian tribe or tribal organization, or unit of local government. Private entities or individuals may receive assistance only through the sponsorship of a governmental entity.

(2) Sponsors must:

(i) Contribute their share of the project costs, as determined by NRCS, by providing funds or certain services necessary to undertake the activity. Contributions that may be applied towards the sponsor's applicable cost-share of construction costs include:

(A) Cash;

(B) In-kind services such as labor, equipment, design, surveys, contract administration and construction inspection, and other services as determined by the State Conservationist; or

(C) A combination of cash and in-kind services;

(ii) Obtain any necessary real property rights, water rights, and regulatory permits; and

(iii) Agree to provide for any required operation and maintenance of the completed emergency measures.

(b) *Eligibility*. NRCS will provide assistance based upon the NRCS State Conservationist's determination that the current condition of the land or watershed impairment poses a threat to health, life, or property. This assistance includes EWP practices associated with the removal of public health and safety threats, and restoration of the natural environment after disasters, including acquisition of floodplain easements.

(1) Priority EWP assistance is available to alleviate exigency situations. NRCS may approve assistance for temporary correction practices to relieve an exigency situation until a more acceptable solution can be designed and implemented.

(2) *Limitations*. (i) In cases where the same type of natural event occurs within a 10-year period and a structural measure has been installed or repaired twice within that period using EWP assistance, then EWP assistance is limited to those sites eligible for the purchase of a floodplain easement as described in § 624.10 of this part.

(ii) EWP assistance will not be used to perform operation or maintenance, such as the periodic work that is necessary to maintain the efficiency and effectiveness of a measure to perform as originally designed and installed.

(iii) EWP assistance will not be used to repair, rebuild, or maintain private or public transportation facilities, public utilities, or similar facilities.

(iv) EWP assistance, funded by NRCS, will not be provided on any Federal lands if such assistance is found to augment the appropriations of other Federal agencies.

(v) EWP assistance is not available for repair or rehabilitation of nonstructural management practices, such as conservation tillage and other similar practices.

(3) *Repair of structural, enduring, and long-life conservation practices*. (i) Sponsors may receive EWP assistance for structural, enduring, and long-life conservation practices including, but not limited to, grassed waterways, terraces, embankment ponds, diversions, and water conservation systems, except where the recovery measures are eligible for assistance under the Emergency Conservation Program administered by the Farm Service Agency.

(ii) EWP assistance may be available for the repair of certain structural practices (*i.e.*, dams and channels) originally constructed under Public Law 83–566; Public Law 78–534; Subtitle H of Title XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451 *et seq.*, commonly known as the Resource Conservation and Development Program); and the Pilot Watershed Program of the Department of Agriculture Appropriation Act of 1954 (Pub. L. 83–156; 67 Stat. 214). EWP assistance may not be

used to perform operation and maintenance activities specified in the agreement for the covered structure project entered into with the eligible local organization responsible for the works of improvement.

(iii) NRCS may authorize EWP assistance for modifying damaged practices when technology advances or construction techniques warrant modifications, including when modifications are the result of federal permitting or other requirements necessary to implement the recovery measure, and will be cost-shared as described in §624.7.

(iv) EWP assistance is only available when public or private landowners, land managers, land users, or others document they have exhausted or have insufficient funding or other resources available to provide adequate relief from applicable hazards.

(4) Increased level of protection. In cases other than those described in paragraph (b)(3)(iii) of this section, if the sponsor desires to increase the level of protection that would be provided by the EWP practice, the sponsor will be responsible for paying 100 percent of the costs of the upgrade or additional work.

(c) *Eligible practices*. NRCS will only provide assistance for measures that:

(1) Provide protection from additional flooding or soil erosion; and,

(2) Reduce threats to life or property from a watershed impairment, including sediment and debris removal in floodplains and uplands; and

(3) Restore the hydraulic capacity to the natural environment to the maximum extent practical; and

(4) Are economically and environmentally defensible and technically sound.

(d) *Documentation*. NRCS will document the economic rationale of proposed practices in appropriate detail before the allocation of emergency funding, including projects under consideration for floodplain easements in §624.10. Generally, the expected value of the property restored should exceed the cost of emergency measures, including taking into consideration environmental benefits. Documentation will include, but is not limited to:

(1) Number of locations and extent of damage, including environmental and cultural resources at risk, because of the watershed impairment;

(2) Estimated damages to the values at risk if the threat is imminent but not yet realized;

(3) Events that must occur for any imminent threat to be realized and the estimated probability of their occurrence both individually and collectively;

(4) Estimates of the nature, extent, and costs of the emergency practices to be constructed to recover from an actual threat or relieve an imminent threat;

(5) Thorough description of the beneficial and adverse effects on environmental resources, including fish and wildlife habitat;

(6) Description of water quality and water conservation impacts, as appropriate;

(7) Analysis of effects on downstream water rights; and

(8) Other information deemed appropriate by NRCS to describe adequately the environmental impacts to comply with the National Environmental Policy Act, Endangered Species Act, National Historic Preservation Act, and related requirements.

(e) *Implementation*. When planning emergency recovery practices, NRCS will emphasize measures that are the most economical and are to be accomplished by using the least damaging practical construction techniques and equipment that retain as much of the existing characteristics of the landscape and habitat as possible. Construction of emergency practices may include, but are not limited to, timing of the construction to avoid impacting fish spawning, clearing of right-of-ways, reshaping spoil, debris removal, use of bioengineering techniques, and revegetation of disturbed areas. Mitigation actions needed to offset potential adverse impacts of the EWP Program practices should be planned for installation before, or concurrent with, the installation of the EWP Program practices. In rare occurrences where mitigation cannot be installed concurrently, plans will require mitigation be accomplished as soon as practical.

(f) NRCS may determine that a measure is not eligible for assistance for

any reason, including economic and environmental factors or technical feasibility.

§ 624.7 Cost-sharing.

(a) Except as provided in paragraph (b) of this section, the Federal contribution toward the implementation of emergency measures may not exceed 75 percent of the construction cost of such emergency measures, including work done to offset or mitigate adverse impacts as a result of the emergency measures.

(b) If NRCS determines that an area qualifies as a limited resource area, the Federal contribution toward the implementation of emergency measures may not exceed 90 percent of the construction cost of such emergency measures.

§ 624.8 Assistance.

(a) Sponsors must submit a formal request to the State Conservationist for assistance within 60 days of the natural disaster occurrence, or 60 days from the date when access to the sites becomes available. Requests must include a statement that the sponsors understand their responsibilities and are willing to pay its cost-shared percentage as well as information pertaining to the natural disaster, including the nature, location, and scope of the problems and the assistance needed.

(b) On receipt of a formal request for EWP assistance, the State Conservationist or designee shall immediately investigate the emergency situation to determine whether EWP is applicable and to prepare an initial cost estimation for submission to the NRCS Chief or designee. The cost estimation will be submitted no later than 60 days from receipt of the formal request from the sponsor. The State Conservationist will take into account the funding priorities identified in paragraph (c) (3) of this section. The State Conservationist will forward the damage survey report, which provides the information pertaining to proposed EWP practice(s) and indicates the amount of funds necessary to undertake the Federal portion, to the NRCS Chief or designee. This information will be submitted no later that 60 days from receipt of the formal request from the sponsor, or no later than 60 days from the date funding is made available to the State Conservationist, whichever is later. NRCS may not commit funds until notified by the Chief, or designee, of the availability of funds.

(c) Before the release of financial assistance, NRCS will enter into a Cooperative Agreement with a sponsor that specifies the responsibilities of the sponsor under this part, including any required operation and maintenance responsibilities. NRCS will not provide funding for activities undertaken by a sponsor prior to the signing of the agreement between NRCS and the sponsor.

(1) NRCS will only provide funding for work that is necessary to reduce applicable threats.

(2) Efforts must be made to avoid or minimize adverse environmental impacts associated with the implementation of emergency measures, to the extent practicable, giving special attention to protecting cultural resources and fish and wildlife habitat.

(3) Funding priorities for recovery measures. NRCS will provide EWP assistance based on the following criteria, which are ranked in the order of importance:

(i) Exigency situations;

(ii) Sites where there is a serious, but not immediate threat to human life;

(iii) Sites where buildings, utilities, or other important infrastructure components are threatened;

(iv) When reviewing paragraphs (c)(3)(i) through (iii) of this section, NRCS will take into account the following resources as they may affect the priority, including, but not limited to:

(A) Sites inhabited by federally listed threatened and endangered species or containing federally designated critical habitat where the species or the critical habitat could be jeopardized, destroyed, or adversely modified without the EWP practice;

(B) Sites that contain or are in the proximity to cultural sites listed on the National Register of Historic Places where the listed resource would be jeopardized if the EWP practice were not installed;

(C) Sites where prime farmland supporting high value crops is threatened;

(D) Sites containing wetlands that would be damaged or destroyed without the EWP practice;

(E) Sites that have a major effect on water quality; and

(F) Sites containing unique habitat, including but not limited to, areas inhabited by State-listed threatened and endangered species, fish and wildlife management areas, or State-identified sensitive habitats; and

(v) Other funding priorities established by the Chief of NRCS.

§ 624.9 Time limits.

Funds must be obligated by the State Conservationist and construction completed within 220 calendar days after the date funds are committed to the State Conservationist, except for exigency situations in which case the construction must be completed within 10 days after the date the funds are committed.

§ 624.10 Floodplain easements.

(a) *General*. NRCS may purchase floodplain easements as an emergency measure. NRCS will only purchase easements from landowners on a voluntary basis.

(b) *Floodplain easements*. (1) Floodplain easements established under this part will be:

(i) Held by the United States, through the Secretary of Agriculture;

(ii) Administered by NRCS or its designee; and

(iii) Perpetual in duration;

(2) *Eligible land*. NRCS may determine land is eligible under this section if:

(i) The floodplain lands were damaged by flooding at least once within the previous calendar year or have been subject to flood damage at least twice within the previous 10 years; or

(ii) Other lands within the floodplain would contribute to the restoration of the flood storage and flow, erosion control, or that would improve the practical management of the easement; or

(iii) Lands would be inundated or adversely impacted as a result of a dam breach.

(3) *Ineligible land*. NRCS may determine that land is ineligible under this section if:

(i) Implementation of restoration practices would be futile due to ''on-site'' or ''off-site'' conditions;

(ii) The land is subject to an existing easement or deed restriction that provides sufficient protection or restoration, as determined by the Chief of NRCS, of the floodplain's functions and values; or

(iii) The purchase of an easement would not meet the purposes of this part.

(4) *Compensation for easements*. NRCS will determine easement compensation in accordance with applicable regulation and other law.

(5) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment that is offered by NRCS. NRCS reserves the right not to purchase an easement if the easement compensation for a particular easement would be too expensive, as determined by NRCS.

(6) NRCS may provide up to 100 percent of the restoration and enhancement costs of the easement. NRCS may enter into an agreement with the landowner or another third party to ensure that identified practices are implemented. NRCS, the landowner, or other designee may implement identified practices. Restoration and enhancement efforts may include both structural and non-structural practices. An easement acquired under this part shall provide NRCS with the full authority to restore, protect, manage, maintain, and enhance the functions and values of the floodplain.

(7) The landowner must:

(i) Comply with the terms of the easement;

(ii) Comply with all terms and conditions of any associated agreement; and

(iii) Convey title to the easement that is acceptable to NRCS and warrant that the easement is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS.

(8) Structures, including buildings, within the floodplain easement may be demolished and removed, or relocated outside the 100-year floodplain or dam breach inundation area.

(c) Easements acquired under this part may not be modified or terminated. However, in limited situations,

as determined by the Chief of NRCS and when in the best interest of the Government, land exchanges may be authorized pursuant to (7 U.S.C. 428a) and other applicable authorities.

(d) *Enforcement*. (1) In the event of a violation of an easement, the violator will be given reasonable notice and an opportunity to correct the violation within 30 days of the date of the notice, or such additional time as NRCS may allow.

(2) NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of NRCS when such actions are deemed necessary to protect important floodplain functions and values or other rights of the United States under the easement. The landowner will be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with easement or agreement obligations.

(3) In addition to any and all legal and equitable remedies as may be available to the United States under applicable law, NRCS may withhold any easement and cost-share payments owing to landowners at any time there is a material breach of the easement covenants or any associated agreements. Such withheld funds may be used to offset costs incurred by the United States, in any remedial actions, or retained as damages pursuant to court order or settlement agreement.

(4) NRCS will be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

(5) On the violation of the terms or conditions of the easement or related agreement, the easement shall remain in force, and NRCS may require the landowner to refund all or part of any payments received by the landowner under this Part, together with interest thereon as determined appropriate by NRCS.

(6) All the general penal statutes relating to crimes and offenses against the United States shall apply in the administration of floodplain easements acquired under this part.

§ 624.11 Waivers.

To the extent allowed by law, the NRCS Deputy Chief for Programs may waive any provision of these regulations when the agency makes a written determination that such waiver is in the best interest of the Federal government.

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

Sec.
631.1 Purpose.
631.2 Definitions.
631.3 Administration.
631.4 Program applicability.
631.5 Land user eligibility.
631.6 Land eligible for the program.
631.7 Conservation treatment eligible for cost sharing.
631.8 Cost-share rates.
631.9 Conservation plan.

Subpart B—Contracts

631.10 Contracts.
631.11 Conservation practice maintenance.
631.12 Cost-share payments.
631.13 Disputes and appeals for matters other than contract violations.
631.14 Contract violations.

Subpart C—Miscellaneous

631.20 Setoffs.
631.21 Compliance with regulatory measures.
631.22 Access to operating unit.
631.23 State conservationist's authority.

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

Subpart A—General

Sec.
632.1 Purpose and scope.
632.2 Objectives.
632.3 Responsibilities.
632.4 Definitions.

Subpart B—Qualifications

632.10 Applicability.
632.11 Availability of funds.
632.12 Funding priorities.
632.13 Eligible lands and water.
632.14 Eligible land users.
632.15 Eligible uses and treatment of reclaimed lands.
632.16 Methods of applying planned land use and treatment.
632.17 Cost-share rates.
632.18 Special projects.
632.19 Crop history and allotments.

Subpart C—Participation

632.20 Application for assistance.
632.21 Reclamation plan.
632.22 Contracts.
632.23 Access to land unit and records.

Subpart D—Cost-Share Procedures

632.30 Applicability.
632.31 Cost-share payment.

Subpart E—Appeals and Violations

632.40 Appeals.
632.41 Violations.
632.42 Violation procedures.

Subpart F—Environment

632.50 Environmental evaluation.
632.51 Accord with environmental laws and orders.
632.52 Identifying typical classes of action.

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—WATER BANK PROGRAM

Sec.

633.1 Purpose and scope.
633.2 Definitions.
633.3 Administration.
633.4 Program requirements.
633.5 Application procedures.
633.6 Program participation requirements.
633.7 Annual payments.
633.8 Cost-share payments.
633.9 Conservation plan.
633.10 Modifications.
633.11 Transfer of an interest in an agreement.
633.12 Termination of agreements.
633.13 Violations and remedies.
633.14 Debt collection.
633.15 Payments not subject to claims.
633.16 Assignments.
633.17 Appeals.
633.18 Scheme and device.

AUTHORITY: 16 U.S.C. 1301–1311.

SOURCE: 62 FR 48472, Sept. 16, 1997, unless otherwise noted.

§ 633.1 Purpose and scope.

The regulations in this part set forth the policies, procedures, and requirements for the Water Bank Program (WBP) as administered by the Natural Resources Conservation Service (NRCS) for program implementation.

§ 633.2 Definitions.

The following definitions shall be applicable to this part:

Adjacent land means land on a farm which adjoins designated types 1 through 7 wetlands and is considered essential for the protection of the wetland or for the nesting, breeding, or feeding of migratory waterfowl. Adjacent land need not be contiguous to the land designated as wetland, but cannot be located more than one quarter of a mile away.

Agreement means the document that specifies the obligations and rights of any person who has been accepted for participation in the WBP.

Annual payment means the consideration paid to a participant each year for entering an agreement with the NRCS under the WBP.

Chief means the Chief of the Natural Resources Conservation Service or the person delegated authority to act for the Chief.

Conservation District is a subdivision of a State government organized pursuant to applicable State law to promote and undertake actions for the conservation of soil, water, and other natural resources.

Conservation plan means a written record of the land user's decision on the use and management of the wetland and adjacent areas covered by the agreement.

Cost-share payment means the payment made by the NRCS to achieve the protection of the wetland functions and values of the agreement area in accordance with the conservation plan.

Landowner means a person or persons having legal ownership of farmland, including those who may be buying farmland under a purchase agreement. Landowner may include all forms of collective ownership including joint tenants, tenants in common, and life tenants and remaindermen in a farm property.

Natural Resources Conservation Service (NRCS) is an agency of the United States Department of Agriculture, formerly called the Soil Conservation Service.

Operator means the person who is in general control of the farming operations on the farm during the crop year.

Person means one or more individuals, partnerships, associations, corporations, estates or trusts, or other business enterprises or other legal entities and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

Practice means a measure necessary or desirable to accomplish the desired program objectives.

State Technical Committee means a committee established by the Secretary of the United States Department of Agriculture in a State pursuant to 16 U.S.C. 3861. The State Conservationist will be the chairperson of the State Technical Committee.

U.S. Fish and Wildlife Service is an agency of the United States Department of the Interior.

Wetlands mean the inland fresh areas defined under 16 U.S.C. 1302 and described as types 1 through 7 in Circular 39, Wetlands of the United States, as published by the United States Department of the Interior.

Wetlands functions and values mean the hydrological and biological characteristics of wetlands and the social worth placed upon these characteristics, including:

(1) Habitat for migratory birds and other wildlife, in particular at risk species;

(2) Protection and improvement of water quality;

(3) Attenuation of water flows due to flooding;

(4) The recharge of ground water;

(5) Protection and enhancement of open space and aesthetic quality;

(6) Protection of flora and fauna which contributes to the Nation's natural heritage; and

(7) Contribution to educational and scientific scholarship.

WBP means the Water Bank Program.

§ 633.3 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief.

(b) As determined by the Chief and the Administrator of the Farm Service Agency, the NRCS will seek the agreement of the Farm Service Agency in establishing policies, priorities, and guidelines related to the implementation of this part.

(c) The State Conservationist will consultation with the State Technical Committee, on program administration and related policy matters. No determination by the State Technical Committee shall compel the NRCS to take any action which the NRCS determines will not serve the purposes of the program established by this part.

(d) The NRCS may enter into cooperative agreements with Federal or State agencies and with private conservation organizations to assist the NRCS with educational efforts, agreement management and monitoring, program implementation assistance, and to assure a solid technical foundation for the program.

(e) The NRCS shall consult with the U.S. Fish and Wildlife Service in the implementation of the program and in establishing program policies.

(f) The Chief may allocate funds for such purposes related to special pilot programs for wetland management and monitoring, emergencies, cooperative agreements with other Federal or State agencies for program implementation, coordination of enrollment

across State boundaries, or for other goals of the WBP found in this part.

§ 633.4 Program requirements.

(a) *General*. Under the WBP, the NRCS will enter 10-year agreements with eligible persons who voluntarily cooperate in the protection of wetlands and associated lands. To participate in WBP, a person will agree to the implementation of a conservation plan, the effect of which is to protect, enhance, maintain, and manage the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands. The NRCS may provide cost-share assistance for the activities that promote the protection of wetland functions and values. Specific protection actions may be undertaken by the participant or other NRCS designee.

(b) *Participant eligibility*. To be eligible to participate in the WBP, a person must:

(1) Be the landowner of eligible land for which enrollment is sought; or

(2) Have possession of the land by written lease over all designated acreage in the agreement for at least two years preceding the date of the agreement and will have possession over the all designated acreage for the agreement period.

(c) *Eligible land*. (1) The NRCS shall determine whether land is eligible for enrollment and whether, once found eligible, the lands may be included in the program based on the likelihood of successful protection of wetland functions and values when considering the cost of entering the agreement and protection costs. Land placed under an agreement shall be specifically identified and designated for the period of the agreement.

(2) The following land is eligible for enrollment in the WBP:

(i) Privately owned inland fresh wetland areas of types 1 through 7.

(ii) Privately owned inland fresh wetland areas of types 1 through 7 which are under a drainage easement with the U.S. Department of the Interior or with a State government which permits agricultural use; or

(iii) Other privately owned land which is adjacent to or within one quarter mile of designated types 1 through 7 wetlands and which is determined by the State Conservationist to be essential for the nesting, breeding, or feeding of migratory waterfowl, or for the protection of wetland.

(d) *Ineligible land*. The following land is not eligible for enrollment in the WBP:

(1) Converted wetlands if the conversion was in violation of 16 U.S.C. 3821 et seq.;

(2) Lands owned by an agency of the United States;

(3) Land which is set aside or diverted under any other program administered by the Department of Agriculture;

(4) Land which is harvested in the first year of the agreement period prior to being designated, except for land on which timber is harvested in accordance with a Forest Management Plan which is included in the conservation plan and is approved by the State forester or equivalent State official;

(5) Lands where implementation of agreement practices would be futile due to on-site or off-site conditions; and

(6) Land on which the ownership has changed during the 2-year period preceding the first year of the agreement period unless:

(i) The new ownership was acquired by will or succession as a result of the death of the previous owner,

(ii) The land was acquired by the owner or operator to replace eligible land from which he was displaced because of its acquisition by any Federal, State, or other agency having the right of eminent domain, or

(iii) The new owner operated the land to be designated for as long as 2 years preceding the first year of the agreement and has control of such land for the agreement period.

§ 633.5 Application procedures.

(a) Application for participation. To apply for enrollment, a person must submit an application for participation in the WBP.

(b) Preliminary agency actions. The NRCS must certify that the designated acreage that would be placed under an agreement constitutes a viable wetland unit, contains sufficient adjacent land

to protect the wetland, and provides essential habitat for the nesting, breeding or feeding of migratory waterfowl.

(c) Where funds allocated to the State do not permit accepting all requests which are filed, the State Conservationist, in consultation with the State Technical Committee, may establish ranking criteria and limit the approval of requests for agreements in accordance with the ranking scheme. Any ranking scheme shall consider estimated costs of the agreement, costs of protection, availability of matching funds, significance of wetland functions and values, and estimated success of protection measures.

(d) The NRCS may place higher priority on certain geographic regions of the State where the protection of wetlands may better achieve NRCS State and regional goals and objectives.

(e) Notwithstanding any limitation of this part, the State Conservationist may enroll eligible lands at any time in order to encompass total wetland areas subject to multiple ownership or otherwise to achieve program objectives. Similarly, the State Conservationist may, at any time, exclude otherwise eligible lands if the participation of the adjacent landowners is essential to the successful protection of the wetlands and those adjacent landowners are unwilling to participate.

§ 633.6 Program participation requirements.

(a) *WBP Agreement*. An agreement shall be executed for each participating farm. The agreement shall be signed by the owner of the designated acreage and any other person who, as landlord, tenant, or share cropper, will share in the payment or has an interest in the designated acreage. There may be more than one agreement for a farm.

(b) *Agreement period*. The agreement period shall:

(1) Be for a term of 10 years;

(2) Become effective on January 1 of the year in which the agreement is approved except that the agreement shall become effective on January 1 of the next succeeding year in cases where, at the time the agreement is approved, the NRCS determines that the agreement signers will be unable to comply with the provisions of paragraph (c) of this section in the year in which such agreement is approved.

(c) *Agreement terms and conditions*. The acreage designated under an agreement shall:

(1) Be maintained for the agreement period in a manner which will preserve, restore, or improve the wetland character of the land;

(2) Not be drained, burned, filled, or otherwise used in a manner which would destroy the wetland character of the acreage, except that the provisions of this paragraph shall not prohibit the carrying out of management practices which are specified in a conservation plan for the farm;

(3) Not be used as a dumping area for draining other wetlands, except where the State Conservationist determines that such use is consistent with the sound management of wetlands and is specified in the conservation plan;

(4) Not be used as a source of irrigation water;

(5) Not be used for the harvesting of a crop;

(6) Not be hayed except for during periods of severe drought and only under conditions prescribed by the State Conservationist in consultation with the Secretary of the Interior or his designee; and

(7) Not be grazed, except as may be specified in the conservation plan.

§ 633.7 Annual payments.

(a) Person on the farm having an interest in the designated acreage, including tenants and sharecroppers, shall be eligible for an annual payment in the manner agreed upon by them as representing their respective contributions to compliance with the agreement. The State Conservationist shall not approve an agreement if it is determined that the proposed division of payment is not fair and equitable.

(b) The annual per acre payment rates for wetlands and for adjacent land shall be determined for each county by the State Conservationist, based on recommendations of the State Technical Committee.

(c) Maximum payments. In order to ensure that limited program funds are expended to maximize program benefits, the State Conservationist, in consultation with the State Technical

Committee, may establish uniform maximum annual payment limits for agreements within a State or for geographic areas within a State.

(d) Preliminary estimates of annual payments. Upon request prior to filing an application for enrollment, a person may be apprised of the maximum annual payment rates.

(e) Adjustment of annual rates.

(1) The State Conservationist, in consultation with the State Technical Committee, shall reexamine the payment rates with respect to each agreement at the beginning of the fifth year of any ten-year initial or renewal period and before the renewal expires.

(2) An adjustment in the payment rates shall be made for any initial or renewal period taking into consideration the current land rental rates and crop values in the area. No adjustment shall be made in a payment rate which will result in a reduction of an annual payment rate from the rate which is specified in the initial or renewal agreement.

(3) The rate or rates of annual payments may be increased if the program participant permits access by the general public to the designated acreage for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations.

§ 633.8 Cost-share payments.

(a) In addition to annual payments, the NRCS may share the cost with program participants of protecting the wetland functions and values of the enrolled land as provided in the conservation plan. The NRCS may pay up to 75 percent of such costs.

(b) Cost-share payments may be made only upon a determination by the NRCS that an eligible practice or an identifiable unit of the practice has been established in compliance with appropriate standards and specifications. Identified practices may be implemented by the program participant or other designee.

(c) A program participant may seek additional cost-share assistance from other public or private organizations as long as the activities funded are in compliance with this part. In no event shall the program participant receive an amount which exceeds 100 percent of the total actual cost of the practices.

§ 633.9 Conservation plan.

(a) The program participant, with assistance from NRCS and in consultation with the Conservation District, shall prepare a conservation plan for the acreage designated under an agreement.

(b) The conservation plan is the basis for the agreement and is incorporated therein. It includes a schedule of conservation treatment and management required to protect and to maintain the wetland and adjacent land as a functional wetland unit for the life of the agreement.

(c) Conservation treatment and management of the vegetation for wetland protection, wildlife habitat, or other authorized objectives are consistent with the program objectives and priorities.

§ 633.10 Modifications.

The NRCS may approve modifications to the agreement or associated conservation plan after consultation with the Conservation District. Any modification must meet WBP program objectives, and must be in compliance with this part.

§ 633.11 Transfer of interest in an agreement.

(a) If the ownership or operation of a farm changes in such a manner that the agreement no longer contains the signatures of the persons required by § 633.6(a) to sign the agreement, the agreement shall be modified to reflect the new interested persons and new divisions of payments.

(b) If such persons are not willing to become parties to the modified agreement or for any other reason a modified agreement is not executed, the agreement shall be terminated and all unearned payments shall be forfeited or refunded.

(c) The annual payment for the year in which the change of ownership or operation occurs shall not be considered to have been earned unless the designated acreage is continued in the program and there is compliance with the agreement for the full agreement year.

(d) The signatories to the agreement prior to the change of ownership or operation shall be jointly and severally responsible for refunding the unearned payments previously made.

§ 633.12 Termination of agreements.

(a) The State Conservationist may, by mutual agreement with the parties to the agreement, consent to the termination of the agreement where:

(1) The parties to the agreement are unable to comply with the terms of the agreement as the result of conditions beyond their control;

(2) Compliance with the terms of the agreement would work a severe hardship on the parties to the agreement; or

(3) Termination of the agreement would be in the public interest.

(b) If an agreement is terminated in accordance with the provisions of this section, the annual payment for the year in which the agreement is terminated shall not be considered to have been earned unless there is compliance with the terms and conditions of the agreement for the entire calendar year.

§ 633.13 Violations and remedies.

(a) In the event of a violation of an agreement or any associated conservation plan, the parties to the agreement shall be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist may allow.

(b) In addition to any and all legal and equitable remedies as may be available to the NRCS under applicable law, the NRCS may withhold any annual or cost-share payments owing to the parties of the agreement at any time there is a material breach of the agreement or any conservation plan. Such withheld funds may be used to offset costs incurred by the NRCS in any remedial actions or retained as damages pursuant to court order or settlement agreement.

(c) The NRCS shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

§ 633.14 Debt collection.

Any debts arising under this program are governed with respect to their collection by the Federal Claims Collection Act of 1966 (31 U.S.C. 3701) and the regulations found in 4 CFR chapter II.

§ 633.15 Payments not subject to claims.

(a) Any payments due any person shall be determined and allowed without regard to State land and without regard to any claim or lien against any crop, or proceeds thereof, which may be asserted by any creditor, except as provided in paragraph (b) of this section.

(b) The regulations governing setoffs and withholdings, in part 13 of this title, as amended, shall be applicable to this program.

§ 633.16 Assignments.

Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 633.17 Appeals.

(a) Any person may obtain reconsideration and review of determinations affecting participation in this program in accordance with part 614 of this chapter.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision shall be a final agency action except a decision of the Chief of NRCS under these procedures.

§ 633.18 Scheme and device.

(a) If it is determined by the NRCS that a person has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such person during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by the NRCS.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of an annual payment or payments for cost-share practices for the

purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A program participant who succeeds to the responsibilities under this part shall report in writing to the NRCS any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

PART 634—RURAL CLEAN WATER PROGRAM

Subpart A—General

Sec.
634.1 Purpose and scope.
634.2 Objective.
634.3 Administration.
634.4 Responsibilities.
634.5 Definitions.

Subpart B—Project Authorization and Funding

634.10 Applicability.
634.11 Availability of funds.
634.12 Eligible project areas.
634.13 Project applications.
634.14 Review and approval of project applications.
634.15 Agreements.
634.16 Suspension of grants.
634.17 Termination of grant agreement.
634.18 Termination of project.
634.19 Project completion and closeout.

Subpart C—Participant RCWP Contracts

634.20 Eligible land.
634.21 Eligible participants.
634.22 Application for assistance.
634.23 Water quality plan.
634.24 Cost sharing.
634.25 Contracting.
634.26 Contract modifications.
634.27 Cost-share payment.
634.28 Appeals not related to contract violations.
634.29 Violations.
634.30 Appeals in USDA administered projects.
634.31 Appeals of contract violations.

Subpart D—Financial Management

634.40 Financial management.

Subpart E—Monitoring and Evaluation

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 mutural 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 closeout.

(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 closeout 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.

PART 635—EQUITABLE RELIEF FROM INELIGIBILITY

Sec.

635.1 Definitions and abbreviations.
635.2 Applicability.
635.3 Reliance on incorrect actions or information.
635.4 Failure to fully comply.
635.5 Forms of relief.
635.6 Equitable relief by State Conservationists.
635.7 Procedures for granting equitable relief.

AUTHORITY: 7 U.S.C. 7996.

SOURCE: 69 FR 56347, Sept. 21, 2004, unless otherwise noted.

§635.1 Definitions and abbreviations.

The following terms apply to this part:

Covered program means a natural resource conservation program specified in §635.3.

Chief means the Chief of the Natural Resources Conservation Service or the person delegated authority to act for the Chief.

FSA means the Farm Service Agency of the United States Department of Agriculture.

NRCS means the Natural Resources Conservation Service of the United States Department of Agriculture.

OGC means the Office of the General Counsel of the United States Department of Agriculture.

Secretary means the Secretary of the U.S. Department of Agriculture.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin area, or the State Conservationist's designee.

§ 635.2 Applicability.

(a) This part is applicable to all covered conservation programs administered by the Natural Resources Conservation Service, except for the Highly Erodible Land and Wetland Conservation provisions of Title XII, subtitles B and C of the Food Security Act of 1985, as amended, (16 U.S.C. 3811 *et seq.*). Administration of this part shall be under the supervision of the Chief, except that such authority shall not limit the exercise of authority by State Conservationists of the Natural Resources Conservation Service provided in § 635.6.

(b) The equitable relief available under this part does not apply where the action for which relief is requested occurred before May 13, 2002. In such cases, authority that was effective prior to May 13, 2002, shall be applied.

(c) This part does not apply to a conservation program administered by the Farm Service Agency of the United States Department of Agriculture.

§ 635.3 Reliance on incorrect actions or information.

(a) The Chief, or designee, may grant relief by extending benefits or payments in accordance with § 635.5 when any participant that has been determined to be not in compliance with the requirements of a covered NRCS program, and therefore ineligible for a loan, payment, or other benefit under the covered program, if the participant, acting in good faith, relied upon the action or advice of an NRCS employee or representative of the United States Department of Agriculture, to the detriment of the participant.

(b) This section applies only to a participant who relied upon the action of, or information provided by, an NRCS employee, or representative of USDA, and the participant acted, or failed to act, as a result of that action or information. This part does not apply to cases where the participant had sufficient reason to know that the action or information upon which they relied was improper or erroneous or where the participant acted in reliance on their own misunderstanding or misinterpretation of program provisions, notices or information.

§ 635.4 Failure to fully comply.

(a) When a participant fails to fully comply with the terms and conditions of a covered program, the Chief, or designee, may grant relief in accordance with § 635.5 if the participant made a good faith effort to comply fully with the requirements of the covered program.

(b) This section only applies to participants who are determined by the Chief to have made a good faith effort to comply fully with the terms and conditions of the program and rendered substantial performance.

(c) In determining whether a participant acted in good faith and rendered substantial performance under paragraph (b) of this section, the Chief, or designee, shall consider such factors as whether—

(1) Performance of the primary conservation program requirements were completed; or

(2) The actions of the participant resulted in minimal damages or failure that were minor in nature.

§ 635.5 Forms of relief.

(a) The Chief, or designee, may authorize a participant in a covered program to:

(1) Retain loans, payments, or other benefits received under the covered program;

(2) Continue to receive loans, payments, and other benefits under the covered program;

(3) Continue to participate, in whole or in part, under any contract executed under the covered program;

(4) In the case of a conservation program, re-enroll all or part of the land covered by the program; and

(5) Receive such other equitable relief as determined to be appropriate.

(b) As a condition of receiving relief under this part, the participant may be required to remedy their failure to meet the program requirement or mitigate its affects.

§ 635.6 Equitable relief by State Conservationists.

(a) General nature of the authority. Notwithstanding provisions in this part providing supervision and relief authority to other officials, the State

Conservationist, without further review by other officials (other than the Secretary), may grant relief as set forth in §635.5 to a participant under the provisions of §635.3 and §635.4 so long as:

(1) The program matter with respect to which the relief is sought is a program matter in a covered program which is operated within the State under the control of the State Conservationist;

(2) The total amount of relief which will be provided to the participant (that is, to the individual or entity that applies for the relief) under this authority for errors during the fiscal year is less than $20,000 (included in that calculation, any loan amount or other benefit of any kind payable for the fiscal year);

(3) The total amount of such relief which has been previously provided to the participant using this authority for errors in a fiscal year, as calculated in paragraph (a)(2) of this section, is not more than $5,000;

(4) The total amount of loans, payments, and benefits of any kind for which relief is provided to similarly situated participants by a State Conservationist for errors for a fiscal year under the authority provided in this section, as calculated in paragraph (a)(2), is not more than $1,000,000.

(b) Additional limits on the authority. The authority provided under this section does not extend to the administration of:

(1) Payment limitations under 7 CFR part 1400;

(2) Payment limitations under a conservation program administered by the Secretary; or

(3) The highly erodible land and wetland conservation requirements under subtitles B or C of Title XII of the Food Security Act of 1985 (16 U.S.C. 3811 *et seq.*).

(c) Relief shall only be made under this part after consultation with, and the approval of, the Office of the General Counsel.

(d) Secretary's reversal authority. A decision made under this part by the State Conservationist may be reversed only by the Secretary, who may not delegate that authority.

(e) Relation to other authorities. The authority provided under this section is in addition to any other applicable authority that may allow relief.

§635.7 Procedures for granting equitable relief.

(a) Application for equitable relief by covered program participants. For the purposes of this part, the following conservation programs administered by NRCS are identified as ''covered programs'':

(1) Agricultural Management Assistance (AMA);
(2) Conservation Security Program (CSP);
(3) Emergency Watershed Protection, Floodplain Easement Component (EWP-FPE);
(4) Environmental Quality Incentives Program (EQIP);
(5) Farm and Ranch Lands Protection Program (FRPP);
(6) Grassland Reserve Program (GRP);
(7) Resource Conservation and Development Program (RC&D);
(8) Water Bank Program (WBP);
(9) Watershed Protection and Flood Prevention Program, (WPFPP) (long-term contracts only);
(10) Wetlands Reserve Program (WRP);
(11) Wildlife Habitat Incentives Program (WHIP);
(12) Any other conservation program administered by NRCS which subsequently incorporates these procedures within the program regulations or policies.

(b) Participants may request equitable relief from the Chief or the State Conservationist with respect to:

(1) Reliance on the actions or advice of an authorized NRCS representative; or

(2) Failure to fully comply with the program requirements but made a good faith effort to comply.

(c) Only a participant directly affected by the non-compliance with the covered program requirements may seek equitable relief under §635.6.

(d) Requests for equitable relief must be made in writing, no later than 30 calendar days from the date of receipt of the notification of non-compliance with the requirements of the covered conservation program.

(e) Requests for equitable relief shall include the following information:

(1) The reason why the participant was unable to comply with the requirements of the conservation program;

(2) Details regarding how much of the required action had been completed;

(3) Why the participant did not have sufficient reason to know that the action or information relied upon was improper or erroneous;

(4) Whether the participant did not act in reliance on their own misunderstanding or misinterpretation of the conservation program provisions, notices, or information; and

(5) Any other pertinent facts or supporting documentation.

PART 636—WILDLIFE HABITAT INCENTIVES PROGRAM

Sec.
636.1 Applicability.
636.2 Administration.
636.3 Definitions.
636.4 Program requirements.
636.5 Establishing priority for enrollment in WHIP.
636.6 Cost-share payments.
636.7 The Wildlife Habitat Development Plan (WHDP).
636.8 Cost-share agreements.
636.9 Modifications.
636.10 Transfer of interest in a cost-share agreement.
636.11 Termination of cost-share agreements.
636.12 Violations and remedies.
636.13 Misrepresentation and scheme or device.
636.14 Offsets and assignments.
636.15 Appeals.

AUTHORITY: 16 U.S.C. 3839bb–1.

SOURCE: 62 FR 49365, Sept. 19, 1997, unless otherwise noted.

§ 636.1 Applicability.

(a) The purpose of the WHIP is to help participants develop habitat for upland wildlife, wetland wildlife, threatened and endangered species, fish, and other types of wildlife.

(b) The regulations in this part set forth the requirements for the Wildlife Habitat Incentives Program (WHIP).

(c) The Chief, NRCS may implement WHIP in any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 636.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, NRCS.

(b) The State Conservationist will consult with the State Technical Committee in the implementation of the program and in establishing program direction for the NRCS in the applicable State. The State Conservationist has the authority to accept or reject the State Technical Committee recommendation; however, the State Conservationist will give strong consideration to the State Technical Committee's recommendation.

(c) NRCS may enter into cooperative agreements with Federal agencies, State and local agencies, conservation districts, local watershed groups, and private entities to assist with program implementation, including cost-share agreement execution, assistance, planning, and monitoring responsibilities.

(d) NRCS may make payments pursuant to agreements with other Federal, State, or local agencies, conservation districts, local watershed groups, or private entities for program implementation, coordination of enrollment of cost-share agreements, or for other goals consistent with the program provided for in this part.

(e) NRCS will provide the public with reasonable notice of opportunities to apply for participation in the program.

(f) Nothing in this part shall preclude the Chief of NRCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made under this part.

§ 636.3 Definitions.

Chief means the Chief of the Natural Resources Conservation Service or the person delegated authority to act for the Chief.

Conservation district means a political subdivision of a State, Native American Tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or Tribal law. The subdivision may be a conservation district, soil conservation

district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation plan means a record of a participant's decisions, and supporting information, for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems.

Cost-share agreement means the document that specifies the obligations and the rights of any person who has been accepted for participation in the program.

Cost-share payment means the payments under this part to develop wildlife habitat.

Habitat development means the physical actions or practices undertaken to establish, improve, protect, enhance, or restore the present conditions of the land for the specific purpose of improving conditions for wildlife.

Participant means an applicant who is a party to a WHIP cost-share agreement.

Person means an individual, partnership, association, corporation, cooperative, estate, trust, joint venture, joint operation, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

Practice means a specified treatment, such as a structural or land management measure, which is planned and applied according to NRCS standards and specifications.

Recurring practices means practices repeated on the same area over the life of a cost-share agreement to achieve specific habitat attributes.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

State Technical Committee means a committee established by the Secretary of the United States Department of Agriculture in a State pursuant to 16 U.S.C. 3861.

Wildlife means birds, fishes, reptiles, amphibians, invertebrates, and mammals, along with all other animals.

Wildlife habitat means the aquatic and terrestrial environments required for wildlife to complete their life cycles, including air, food, cover, water, and spatial requirements.

§ 636.4 Program requirements.

(a) To participate in WHIP, a person must:

(1) Develop and agree to comply with a WHDP, as described in § 636.7;

(2) Enter into a cost-share agreement for the development of wildlife as described in § 636.8;

(3) Provide NRCS with written evidence of ownership or legal control for the life of the proposed cost-share agreement period; however, an exception may be made by the Chief:

(i) In the case of land allotted by the Bureau of Indian Affairs, tribal land, or

(ii) Other instances in which NRCS determines there is sufficient assurance of control;

(4) Agree to provide all information to NRCS as determined to be necessary to assess the merits of a proposed project and to monitor the compliance of a participant with a cost-share agreement; and (5)Agree to grant to NRCS or its representatives access to the land for purposes related to application, assessment, monitoring, enforcement, or other actions required to implement this part.

(b) *Ineligible land*. NRCS shall not provide cost-share assistance with respect to practices on land:

(1) Enrolled in a program where wildlife habitat objectives have been sufficiently achieved through other forms of assistance or without assistance, as determined by NRCS.

(2) With on-site or off-site conditions which NRCS determines would undermine the benefits of the habitat development or otherwise reduce its value;

(3) Where NRCS determines that the wildlife habitat development benefits attainable are of lessor value than would occur on other lands; or

(4) Owned by the United States, except where there is a direct Tribal, State, or private benefit; or

(5) On which habitat for threatened or endangered species would be adversely affected.

(c) All other land except as provided in paragraph (b) of this section is eligible.

§ 636.5 Establishing priority for enrollment in WHIP.

(a) In response to national and regional needs, the Chief may limit program implementation in any given year to specific geographic areas or to address specific habitat development needs of targeted species of special concern.

(b) The State Conservationist, in consultation with the State Technical Committee, may limit implementation of WHIP to address unique species, habitats, or special geographic areas of the State. Subsequent cost-share agreement offers that would complement previous cost-share agreements due to geographic proximity of the lands involved or other relationships may receive priority consideration for participation.

(c) NRCS will evaluate the applications and make enrollment decisions based on the wildlife habitat need using some or all of the following criteria:

(1) Contribution to resolving an identified habitat problem of national, regional, or state importance;

(2) Relationship to any established wildlife or conservation priority areas;

(3) Duration of benefits to be obtained from the habitat development practices;

(4) Self-sustaining nature of the habitat development practices;

(5) Availability of other partnership matching funds or reduced funding request by the person applying for participation;

(6) Estimated costs of wildlife habitat development activities; and

(7) Other factors determined appropriate by NRCS to meet the objectives of the program.

(d) Notwithstanding the criteria set forth in paragraph (c) of this section, the State Conservationist, in consultation with the State Technical Committee, may deny an application if it is not cost effective or does not sufficiently meet program requirements:

§ 636.6 Cost-share payments.

(a) NRCS may share the cost with a participant for implementing the practices as provided in the WHDP; NRCS shall offer to pay no more than 75 percent of the cost of establishing such practices. The cost-share payment to a participant shall be reduced proportionately below 75 percent to the extent that direct Federal financial assistance is provided to the participant from sources other than NRCS, except for certain cases that merit additional cost-share assistance to achieve the intended goals of the program, as determined by the State Conservationist.

(b) Cost-share payments may be made only upon a determination by the NRCS that an eligible practice or an identifiable unit of the practice has been established in compliance with appropriate standards and specifications. Identified practices may be implemented by the participant or other designee.

(c) Cost-share payments may be made for the establishment and installation of additional eligible practices, or the maintenance or replacement of an eligible practice, but only if NRCS determines the practice is needed to meet the objectives of the program, or that the failure of the original practice was due to reasons beyond the control of the participant.

§ 636.7 The Wildlife Habitat Development Plan (WHDP).

(a) The participant develops a WHDP with the assistance of NRCS or other public or private natural resource professionals, and the WHDP is approved by the participant, NRCS, and the local conservation district. A WHDP encompasses the parcel of land that has the wildlife habitat conditions that are of concern to the participant.

(b) The WHDP forms the basis for the agreement and is incorporated therein. The WHDP includes a schedule for installation of the wildlife habitat development practices, maintenance, and related requirements to maintain the habitat for the life of the cost-share agreement.

(c) The WHDP may be modified in accordance with § 636.9.

§ 636.8 Cost-share agreements.

(a) To apply for WHIP cost-share assistance, a person must submit an application for participation in the WHIP at a USDA office or to an NRCS representative.

(b) A WHIP cost-share agreement shall:

(1) Incorporate all portions of a WHDP;

(2) Be for a period of 5 to 10 years, unless provisions of paragraph (c) of this section apply;

(3) Include all provisions as required by law or statute;

(4) Specify the requirements for operation and maintenance of applied wildlife habitat development practices;

(5) Include any participant reporting and recordkeeping requirements to determine compliance with the cost-share agreement and program;

(6) Be signed by the participant. When the participant is not the owner, concurrence from the owner is required; and,

(7) Include any other provision determined necessary or appropriate by the NRCS representative.

(c) The Chief may allow a cost-share agreement period for less than five years in situations where wildlife habitat is threatened as a result of a disaster and emergency measures are necessary to address the potential for dramatic declines in one or more wildlife populations.

(d) Notwithstanding any limitation of this part, NRCS may enter into a cost-share agreement or contract that:

(1) Is for a term of at least 15 years;

(2) Protects and restores plant and animal habitat; and

(3) Provides cost-share payments in addition to amounts provided under § 636.6 of this part.

[62 FR 49365, Sept. 19, 1997, as amended at 67 FR 48353, July 24, 2002]

§ 636.9 Modifications.

(a) NRCS, with the concurrence of the conservation district, may approve modifications to a WHDP where such modifications are acceptable to the parties.

(b) NRCS may approve modifications to the cost-share agreement where such modifications are acceptable to the parties.

(c) Any modifications made under this section must meet WHIP program objectives, and must be in compliance with this part.

§ 636.10 Transfer of interest in a cost-share agreement.

(a) (1) If the ownership or operation of the land changes during the term of the cost-share agreement, NRCS shall modify the cost-share agreement to reflect the new interested persons and new divisions of payments. NRCS shall make eligible cost-share payments upon presentation of an assignment of rights or other evidence that title had passed.

(2) With respect to any and all payments owed to participants who wish to transfer ownership or control of land subject to a cost-share agreement, the division of payment shall be determined by the original party and that party's successor. In the event of a dispute or claim on the distribution of cost-share payments, NRCS may withhold payments without the accrual of interest pending a settlement or adjudication on the rights to the funds.

(b) (1) If such new owners or operators are not willing to assume the responsibilities posed in an existing WHIP cost-share agreement, NRCS shall terminate the cost-share agreement and may require that all cost-share payments may be forfeited, refunded, or both.

(2) The signatories to the cost-share agreement shall be jointly and severally responsible for refunding the cost-share payments pursuant to paragraph (b)(1) of this section.

§ 636.11 Termination of cost-share agreements.

(a) The State Conservationist may, by mutual agreement with the parties to the cost-share agreement, consent to the termination of the contract where:

(1) The parties to the cost-share agreement are unable to comply with the terms of the cost-share agreement as the result of conditions beyond their control;

(2) Compliance with the terms of the cost-share agreement would work a severe hardship on the parties to the contract; or,

(3) Termination of the cost-share agreement would, as determined by the State Conservationist, be in the public interest.

(b) If a cost-share agreement is terminated in accordance with the provisions of this section, the State Conservationist may allow the participants to retain any cost-share payments received under the cost-share agreement in a porportion appropriate to the effort the participant has made to comply with the cost-share agreement, or, in cases of hardship, where forces beyond the participant's control prevented compliance with the cost-share agreement.

§ 636.12 Violations and remedies.

(a) (1) If NRCS determines that a participant is in violation of a cost-share agreement or documents incorporated by reference into the cost-share agreement, NRCS may give the parties to the cost-share agreement reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as NRCS may allow.

(2) If the participant fails to cure the violation of a cost-share agreement within the period provided under paragraph (a)(1) of this section, NRCS may terminate the agreement and require the participant to refund all or part of any assistance earned under that cost-share agreement, plus interest, as well as require the participant to forfeit all rights for future payment under the agreement.

(b) [Reserved]

§ 636.13 Misrepresentation and scheme or device.

(a) A person who is determined by NRCS to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to cost-share agreement payments and must refund all payments, plus interest as determined by NRCS.

(b) A person who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or,

(3) Misrepresented any fact affecting a program determination shall refund to NRCS all payments, plus interest as determined by NRCS, with respect to all NRCS cost-share agreements. The person's interest in all NRCS cost-share agreements may be terminated.

§ 636.14 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the land, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found in part 3 of this title shall be applicable to cost-share agreement payments.

(b) Any person entitled to any cash payment under this program, may assign the right to receive such payments in whole or in part.

§ 636.15 Appeals.

(a) Any person may obtain reconsideration and review of determinations affecting participation in this program in accordance with part 614 Part C of this title, except as provided in paragraph (b) of this section.

(b) In accordance with the provisions of the Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354 (7 U.S.C. 6901), the following decisions are not appealable:

(1) Payment rates, payment limits, and cost-share percentages;

(2) The designation of approved wildlife priority areas, habitats or practices;

(3) NRCS program funding decisions;

(4) Eligible conservation practices; and

(5) Other matters of general applicability.

(c) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section.

SUBCHAPTER E [RESERVED]

SUBCHAPTER F—SUPPORT ACTIVITIES

PART 650—COMPLIANCE WITH NEPA

Subpart A—Procedures for NRCS-Assisted Programs

Sec.
650.1 Purpose.
650.2 Applicability.
650.3 Policy.
650.4 Definition of terms.
650.5 Environmental evaluation in planning.
650.6 Categorical exclusions.
650.7 When to prepare an EIS.
650.8 When to prepare an environmental assessment (EA).
650.9 NEPA and interagency planning.
650.10 Adoption of an EIS prepared by a cooperating agency.
650.11 Environmental documents.
650.12 NRCS decisionmaking.
650.13 Review and comment.

Subpart B—Related Environmental Concerns

650.20 Reviewing and commenting on EIS's prepared by other agencies.
650.21 Working relations with the U.S. Environmental Protection Agency (EPA) and related State environmental agencies.
650.22 Rare, threatened, and endangered species of plants and animals.
650.23 Natural areas.
650.24 Scenic beauty (visual resource).
650.25 Flood-plain management.

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.

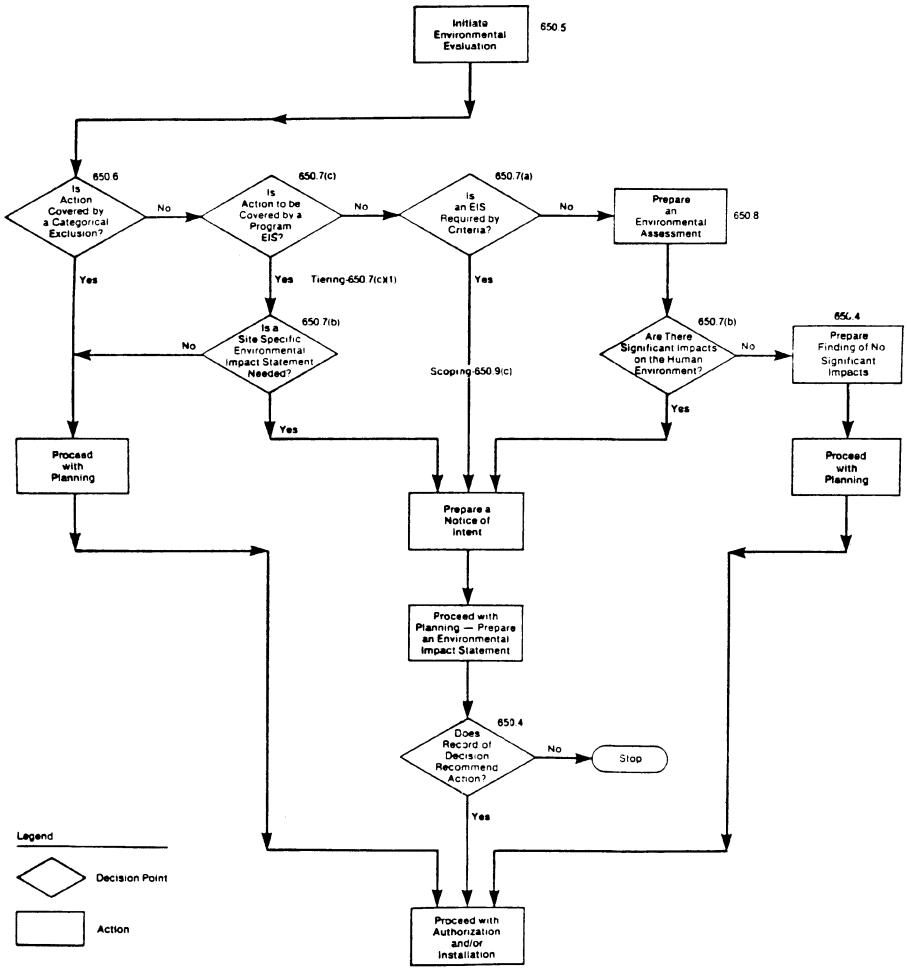
(4) To perform other related investigations and analyses as needed, including economic evaluation, engineering investigations, etc.

(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 decision-making.

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. Floodplain 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 flood-plain 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]

PART 651 [RESERVED]

PART 652—TECHNICAL SERVICE PROVIDER ASSISTANCE

Subpart A—General Provisions

Sec.
652.1 Applicability.
652.2 Definitions.
652.3 Administration.
652.4 Technical service standards.
652.5 Participant acquisition of technical services.
652.6 Department delivery of technical services.
652.7 Quality assurance.

Subpart B—Certification

652.21 Certification criteria and requirements.
652.22 Certification process for individuals.
652.23 Certification process for private-sector entities.
652.24 Certification process for public agencies.
652.25 Alternative application process for individual certification.
652.26 Certification renewal.

Subpart C—Decertification

652.31 Policy.
652.32 Causes for decertification.
652.33 Notice of proposed decertification.
652.34 Opportunity to contest decertification.
652.35 State Conservationist decision.
652.36 Appeal of decertification decision.
652.37 Period of decertification.
652.38 Scope of decertification.
652.39 Mitigating factors.
652.40 Effect of decertification.
652.41 Effect of filing deadlines.
652.42 Recertification.

AUTHORITY: 16 U.S.C. 3842.

SOURCE: 69 FR 69472, Nov. 29, 2004, unless otherwise noted.

Subpart A—General Provisions

§ 652.1 Applicability.

(a) The regulations in this part set forth the policies, procedures, and requirements related to delivery of technical assistance by individuals and entities other than the Department, hereinafter referred to as technical service providers. The Food Security Act of 1985, as amended, requires the Secretary to deliver technical assistance to eligible participants for implementation of its Title XII Programs either directly or, at the option of the producer, through payment to the producer for an approved third party provider. This regulation defines how a participant acquires technical service from a third party technical service provider, sets forth a certification and decertification process, and establishes a method to make payments for technical services.

(b) Technical service providers may provide technical assistance in the planning, design, installation, and check-out of conservation practices applied on private land or where allowed by conservation program rules on public land where there is a direct private land benefit.

(c) The Chief, NRCS, may implement this part in any of the fifty states, District of Columbia, the Commonwealth

of Puerto Rico, Guam, the Virgin Islands, American Samoa and the Commonwealth of the Northern Marianna Islands.

§ 652.2 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Approved list means the list of individuals, private sector entities, or public agencies certified by NRCS to provide technical services to a participant.

Certification means the action taken by NRCS to approve:

(1) An individual as meeting the minimum NRCS criteria for providing technical service for conservation planning or a specific conservation practice or system; or

(2) An entity or public agency as having an employee or employees that meet the minimum NRCS criteria for providing technical service for conservation planning or a specific conservation practice or system.

Chief means the Chief of NRCS or designee.

Conservation practice means a specified treatment, such as a structural or vegetative practice, or a land management practice, that is planned and applied according to NRCS standards and specifications.

Contribution agreement means the instrument used to acquire technical services under the authority of 7 U.S.C. 6962a.

Cooperative agreement means the same as that term is defined in the Federal Grants and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq*.

Department means the Natural Resources Conservation Service, the Farm Service Agency, or any other agency or instrumentality of the United States Department of Agriculture that is assigned responsibility for all or a part of a conservation program subject to this part.

Entity means a corporation, joint stock company, association, cooperative, limited partnership, limited liability partnership, limited liability company, nonprofit organization, a member of a joint venture, or a member of a similar organization.

Participant means a person who is eligible to receive technical or financial assistance under a conservation program covered by this rule.

Procurement contract means the same as the term ''contract'' means under the Federal Grants and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq*.

Program contract means the document that specifies the rights and obligations of any individual or entity that has been accepted for participation in a Title XII conservation program.

Public agency means a unit or subdivision of Federal, State, local, or Tribal government, other than the Department.

Recommending organization means a professional organization, association, licensing board or similar organization with which NRCS has entered into an agreement to recommend qualified individuals for NRCS certification as technical service providers for specific technical services.

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

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

Technical service means the technical assistance provided by technical service providers, including conservation planning, and/or the design, layout, installation, and check-out of approved conservation practices.

Technical service provider means an individual, entity, or public agency either:

(1) Certified by NRCS and placed on the approved list to provide technical services to participants; or,

(2) Selected by the Department to assist the Department in the implementation of conservation programs covered by this part through a procurement contract, contribution agreement, or cooperative agreement with the Department.

Written agreement means the document that specifies the rights and obligations of any individual or entity that has been authorized by NRCS to receive conservation planning assistance without having a program contract.

§ 652.3 Administration.

(a) As provided in this part, the Department will provide technical assistance to participants directly, or at the option of the participant, through a technical service provider in accordance with the requirements of this part.

(b) The Chief, NRCS, will direct and supervise the administration of the regulations in this part.

(c) NRCS will:

(1) Provide overall leadership and management for the development and administration of a technical service provider process;

(2) Consult with the Farm Service Agency and other appropriate agencies and entities concerning the availability and utilization of technical service providers and the implementation of technical service;

(3) Establish policies, procedures, guidance, and criteria for certification, recertification, decertification, certification renewal, and implementation of the use of technical service providers; and

(4) Establish a process for verifying information provided to NRCS under this part.

(d) The Department will not make payments under a program contract or written agreement with a participant for technical services provided by a technical service provider unless the technical service provider is certified by NRCS for the services provided and is identified on the approved list.

(e) The Department may enter into procurement contracts, contribution agreements, cooperative agreements, or other appropriate instruments to assist the Department in providing technical assistance when implementing conservation programs covered by this part. The Department will ensure that such instruments contain the qualification and performance criteria necessary to ensure quality implementation of the goals and objectives of these conservation programs; therefore, when the Department obtains assistance from a technical service provider in this manner, the technical service provider is authorized to provide technical services and receive payment even if such technical service provider is not certified in accordance with subpart B nor identified on the approved list.

(f) When a participant acquires technical services from a technical service provider, the Department is not a party to the agreement between the participant and the technical service provider. To ensure that quality implementation of the goals and objectives of the conservation programs are met, the technical service provider must be certified by NRCS in accordance with subpart B of this part and identified on the approved list. Upon request of NRCS, technical service providers are required to submit copies of all transcripts, licensing, and certification documentation.

§ 652.4 Technical service standards.

(a) All technical services provided by technical service providers must meet USDA standards and specifications as set forth in Departmental manuals, handbooks, guides, and other references for soils mapping and natural resources information, conservation planning, conservation practice application, and other areas of technical assistance.

(b) The Department will only pay a participant for technical services provided in accordance with established NRCS standards, specifications, and requirements. The Department must approve all new technologies and innovative practices, including interim standards and specifications, prior to a technical service provider initiating technical services for those technologies and practices.

(c) A technical service provider must assume responsibility in writing for the particular technical services provided. Technical services provided by the technical service provider must:

(1) Comply with all applicable Federal, State, Tribal, and local laws and requirements;

(2) Meet applicable Department standards, specifications, and program requirements;

(3) Be consistent with the particular conservation program goals and objectives for which the program contract was entered into by the Department and the participant; and

(4) Incorporate alternatives that are both cost effective and appropriate to

address the resource issues. Conservation alternatives will meet the objectives for the program and participant to whom assistance is provided.

(d) Technical service providers are responsible for the technical services provided, including any costs, damages, claims, liabilities, and judgments arising from past, present, and future negligent or wrongful acts or omissions of the technical service provider in connection with the technical service provided.

(e) The Department will not be in breach of any program contract or written agreement if it fails to implement conservation plans or practices or make payment for conservation plans or practices resulting from technical services that do not meet USDA standards and specifications or are not consistent with program requirements.

(f) The participant is responsible for complying with the terms and conditions of the program contract or written agreement, which includes meeting USDA technical standards and specifications for any technical services provided by a technical service provider.

(g) The technical service provider shall report in the NRCS conservation accomplishment tracking system the appropriate data elements associated with the technical services provided to the Department or participant.

(h) To the extent allowed under State or Tribal law, technical service providers may utilize the services of subcontractors to provide specific technical services or expertise needed by the technical service provider, provided that the subcontractors are certified by NRCS in accordance with this part for the particular technical services to be provided and the technical services are provided in terms of their Certification Agreement. Payments will not be made for any technical services provided by uncertified subcontractors, except when such technical services are provided under the provisions of a procurement contract, cooperative agreement, or contribution agreement with the NRCS.

§ 652.5 Participant acquisition of technical services.

(a) Participants may obtain technical assistance directly from the Department or, when available, from a technical service provider.

(b) To acquire technical assistance directly from the Department, participants should contact their local USDA Service Center.

(c) To acquire technical services from a technical service provider, participants must:

(1) Enter into and comply with a program contract or a written agreement prior to acquiring technical services; and

(2) Select a certified technical service provider from the approved list of technical service providers.

(d) The Department may approve written agreements for technical assistance prior to program participation based on available funding and natural resource priorities as identified by the State Conservationist.

(e) The technical assistance indicated in paragraph (d) may include the development of conservation plans suitable for subsequent incorporation into a program contract.

(f) The Department will identify in the particular program contract or written agreement the payment provisions for technical service providers hired directly by the participant.

(g) To obtain payment for technical services, participants must submit to the Department valid invoices, supporting documentation, and requests for payment. The Department will issue payment within 30 days of receiving these items. The Department may pay a participant for some or all of the costs associated with the technical services provided by a technical service provider hired by the participant or, upon receipt of an assignment of payment from the participant, make payment directly to the technical service provider.

(h) Participants must authorize in writing to the Department the disclosure of their records on file with the Department that they wish to make available to specific technical service providers.

(i) Payments for technical services will be made only one time for the

same technical service provided unless, as determined by the Department, the emergence of new technologies or major changes in the participant's farming or ranching operations necessitate the need for additional technical services.

(j) *Payment rates for technical services acquired by participants.* (1) NRCS will establish payment rates by calculating not-to-exceed rates for technical services. NRCS will calculate not-to-exceed rates using price data that it may acquire through various sources that it deems reliable.

(2) *Establishing not-to-exceed payment rates.* (i) NRCS will analyze the pricing information using a standardized methodology.

(ii) Not-to-exceed payment rates will be established nationally on a State by State basis for categories of technical services.

(iii) NRCS will coordinate payment rates between adjacent States to ensure consistency where similar resource conditions and agricultural operations exist. Payment rates may vary to some degree between States due to differences in State laws, the cost of doing business, competition, and other variables.

(iv) NRCS will review payment rates annually, or more frequently as needed, and adjust the rates based upon data from existing procurement contracts, Federal cost rates, and other appropriate sources.

(v) NRCS may adjust payment rates, as needed, on a case-by-case basis, in response to unusual conditions or unforeseen circumstances in delivering technical services such as highly complex technical situations, emergency conditions, serious threats to human health or the environment, or major resource limitations. In these cases, NRCS will set a case-specific not-to-exceed payment rate based on the Department's determination of the scope, magnitude, and timeliness of the technical services needed.

§ 652.6 Department delivery of technical services.

(a) The Department may enter into a procurement contract, contribution agreement, cooperative agreement, or other appropriate instrument to assist the Department in providing technical assistance when implementing the conservation programs covered by this part.

(b) The Department will ensure that such legal instruments contain qualification and performance criteria necessary to ensure quality implementation of these conservation programs. When the Department obtains assistance from a technical service provider through a procurement contract, contribution agreement, cooperative agreement, or other similar instrument, the technical service provider is authorized to provide technical services and receive payment even if such technical service provider is not certified in accordance with subpart B of this part nor identified on the approved list.

(c) The Department will implement procurement contracts, contribution agreements, cooperative agreements, and other appropriate instruments in accordance with applicable Federal acquisition or USDA Federal assistance rules and requirements for competency, quality, and selection, as appropriate.

(d) A technical service provider may not receive payment twice for the same technical service, such as once from a participant through a program contract or written agreement and then again through a separate contract or agreement made directly with the Department.

(e) The Department will, to the extent practicable, ensure that the amounts paid for technical service under this part are consistent across conservation program areas, unless specific conservation program requirements include additional tasks.

§ 652.7 Quality assurance.

(a) NRCS will review, in consultation with the Farm Service Agency, as appropriate, the quality of the technical services provided by technical service providers. As a requirement of certification, technical service providers must develop and maintain documentation in accordance with Departmental manuals, handbooks, and technical guidance for the technical services provided, and furnish this documentation to NRCS and the participant when the

particular technical service is completed. NRCS may utilize information obtained through its quality assurance process, documentation submitted by the technical service provider, and other relevant information in determining how to improve the quality of technical service, as well as determining whether to decertify a technical service provider under subpart C of this part.

(b) Upon discovery of a deficiency in the provision of technical service through its quality assurance process or other means, NRCS will, to the greatest extent practicable, send a notice to the technical service provider detailing the deficiency and requesting remedial action by the technical service provider. Failure by the technical service provider to promptly remedy the deficiency, or the occurrence of repeated deficiencies in providing technical services, may trigger the decertification process set forth in subpart C of this part. A failure by NRCS to identify a deficiency does not affect any action under the decertification process. Technical service providers are solely responsible for providing technical services that meet all NRCS standards and specifications.

Subpart B—Certification

§ 652.21 Certification criteria and requirements.

(a) To qualify for certification an individual must:

(1) Have the required technical training, education, and experience to perform the level of technical assistance for which certification is sought;

(2) Meet any applicable professional or business licensing or similar qualification standards established by State or Tribal law;

(3) Demonstrate, through documentation of training or experience, familiarity with NRCS guidelines, criteria, standards, and specifications as set forth in the applicable NRCS manuals, handbooks, field office technical guides, and supplements thereto for the planning and applying of specific conservation practices and management systems for which certification is sought; and

(4) Not be decertified in any State under subpart C of this part at the time of application for certification.

(b) To qualify for certification an entity or public agency must be authorized to provide such services in the jurisdiction and have a certified individual providing, in accordance with this part, technical services on its behalf.

(c) A technical service provider, as part of the certification by NRCS, must enter into a Certification Agreement with NRCS specifying the terms and conditions of the certification, including adherence to the requirements of this part, and acknowledging that failure to meet these requirements may result in ineligibility to receive payments from the Department, either directly or through the participant, for the technical services provided or may result in decertification.

(d) NRCS will certify Technical Service Providers for a time period specified by NRCS in the Certification Agreement, not to exceed 3 years. Decertification and Renewal of Certification is administered in accordance with § 652.26.

(e) NRCS may, pursuant to 31 U.S.C. 9701, establish and collect fees for the certification of technical service providers.

§ 652.22 Certification process for individuals.

(a) In order to be considered for certification as a technical service provider, an individual must:

(1) Submit an Application for Certification to NRCS in accordance with this section;

(2) Request certification through a recommending organization pursuant to § 652.25; or

(3) Request certification through an application submitted by a private-sector entity or public agency pursuant to § 652.23 or § 652.24, as appropriate.

(b) The application must contain the documentation demonstrating that the individual meets all requirements of paragraph (a) of § 652.21.

(c) NRCS will, within 60 days of receipt of an application, make a determination on the application submitted by an individual under paragraph (a)(1) of this section and in accordance with

paragraph (a) of § 652.21. If all requirements are met, NRCS will:

(1) Enter into a Certification Agreement and certify the applicant as qualified to provide technical services for a specific practice, category, or categories of technical service;

(2) Place the applicant on the list of approved technical service providers when certified; and

(3) Make available to the public the list of approved technical service providers by practice or category of technical services.

(d) NRCS may decertify an individual in accordance with the decertification process set forth in subpart C of this part.

§ 652.23 Certification process for private-sector entities.

(a) A private sector entity that applies for certification must identify, and provide supporting documentation, that it has the requisite professional and business licensure within the jurisdiction for which it seek certification, and that it employs at least one individual, authorized to act on its behalf that:

(1) Has received certification on an individual basis in accordance with § 652.22; or

(2) Seeks certification on an individual basis as part of the private-sector entity's certification and ensures that the requirements set forth in § 652.21(a) are contained within the private-sector entity's application to support such certification.

(b) NRCS will determine pursuant to § 652.22 whether the individual(s) identified in the private-sector entity's application meets the certification standards set forth in § 652.21 for the specific services the entity wishes to provide.

(c) NRCS will, within 60 days of receipt of an application, make a determination on the application submitted by an entity. If NRCS determines that all requirements for the private-sector entity and the identified individual(s) are met, NRCS will complete the actions described in paragraphs (c)(1) through (c)(3) of § 652.22.

(d) The Certification Agreement entered into with the private-sector entity shall:

(1) Identify the certified individuals who are authorized to perform technical services on behalf of and under the auspices of the entity's certification;

(2) Require that the entity has, at all times, an individual who is a certified technical service provider authorized to act on the entity's behalf;

(3) Require that the entity promptly provide an amended Certification Agreement to NRCS for approval when the list of certified individuals performing technical services under its auspices changes;

(4) Require that responsibility for any work performed by non-certified individuals be assumed by a certified individual who is authorized to act on the entity's behalf; and

(5) Require that the entity be legally responsible for the work performed by any individual working under the auspices of its certification.

(e) NRCS may, in accordance with the decertification process set forth in this part, decertify the private sector entity, the certified individual(s) acting under the auspices of its certification, or both the private sector entity and the certified individual(s) acting under the auspices of its certification.

§ 652.24 Certification process for public agencies.

(a) A public agency that applies for certification must identify, and provide supporting documentation, that it has the authority within the jurisdiction within which it seeks to provide technical services and an individual or individuals authorized to act on its behalf:

(1) Has been certified as an individual in accordance with § 652.22; or

(2) Seeks certification as an individual as part of the public agency's certification and sufficient information as set forth in § 652.21(a) is contained within the public agency's application to support such certification.

(b) NRCS shall determine whether the individual identified in the public agency's application meets the certification standards set forth in § 652.22.

(c) NRCS will, within 60 days of receipt of an application, make a determination on the application submitted by a public agency. If NRCS determines

that all requirements for the public agency and the identified individual(s) are met, NRCS will perform the actions described in paragraph (c)(1) through (c)(3) of § 652.22. The Certification Agreement entered into with the public agency shall:

(1) Identify the certified individuals that are authorized to perform technical services on behalf of and under the auspices of the public agency's certification;

(2) Require that the public agency have, at all times, an individual that is a certified technical service provider and is an authorized official of the public agency;

(3) Require that the public agency promptly provide to NRCS for NRCS approval an amended Certification Agreement when the list of certified individuals performing technical services under its auspices changes;

(4) Require that responsibility for any work performed by non-certified individuals be assumed by a certified individual that is authorized to act on the public agency's behalf; and

(5) Require that the public agency be legally responsible for the work performed by any individual working under the auspices of its certification.

(d) NRCS may, in accordance with the decertification process set forth in subpart C of this part, decertify the public agency, the certified individual(s) acting under its auspices, or both the public agency and the certified individual(s) acting under its auspices.

§ 652.25 Alternative application process for individual certification.

(a) NRCS may enter into an agreement, including a memorandum of understanding or other appropriate instrument, with a recommending organization that NRCS determines has an adequate accreditation program in place to train, test, and evaluate candidates for competency in a particular area or areas of technical service delivery and whose accreditation program NRCS determines meets the certification criteria as set forth for the technical services to be provided.

(b) Recommending organizations will, pursuant to an agreement entered into with NRCS:

(1) Train, test, and evaluate candidates for competency in the area of technical service delivery;

(2) Recommend to NRCS individuals who it determines meet the NRCS certification requirements of § 652.21(a) for providing specific practices or categories of technical services;

(3) Inform the recommended individuals that they must meet the requirements of this part, including entering into a Certification Agreement with NRCS, in order to provide technical services under this part;

(4) Reassess individuals that request renewal of their certification pursuant to § 652.26 through the recommendation of the organization; and

(5) Notify NRCS of any concerns or problems that may affect the organization's recommendation concerning the individual's certification, recertification, certification renewal, or technical service delivery.

(c) Pursuant to an agreement with NRCS, a recommending organization may provide to the appropriate NRCS official a current list of individuals identified by the recommending organization as meeting NRCS criteria as set forth in § 652.21(a) for specific practices or categories of technical service and recommend that the NRCS official certify these individuals as technical service providers in accordance with this part.

(d) NRCS will, within 60 days, make a determination on the recommendation for certification issued by the recommending organization. If NRCS determines that all requirements for certification are met by the recommended individual(s), NRCS will perform the actions described in paragraphs (c)(1) through (c)(3) of § 652.22.

(e) NRCS may terminate an agreement with a recommending organization if concerns or problems with its accreditation program, its recommendations for certification, or other requirements under the agreement arise.

§ 652.26 Certification renewal.

(a) NRCS certifications are in effect for a time period specified by NRCS in the Certification Agreement, not to exceed 3 years and automatically expire

unless they are renewed for an additional time period in accordance with this section.

(b) A technical service provider may request renewal of an NRCS certification by:

(1) Submitting a complete certification renewal application to NRCS or through a private sector entity, a public agency, or a recommending organization to NRCS at least 60 days prior to expiration of the current certification;

(2) Providing verification on the renewal form that the requirements of this part are met; and

(3) Agreeing to abide by the terms and conditions of a Certification Agreement.

(c) All certification renewals are in effect for a time period specified by NRCS in the Certification Agreement, not to exceed three years and before expiration, may be renewed for subsequent time period in accordance with this section.

Subpart C—Decertification

§ 652.31 Policy.

In order to protect the public interest, it is the policy of NRCS to maintain certification of those technical service providers who act responsibly in the provision of technical service, including meeting NRCS standards and specifications when providing technical service to participants. This section, which provides for the decertification of technical service providers, is an appropriate means to implement this policy.

§ 652.32 Causes for decertification.

A State Conservationist, in whose State a technical service provider is certified to provide technical service, may decertify the technical service provider, in accordance with these provisions, if the technical service provider, or someone acting on behalf of the technical service provider:

(a) Fails to meet NRCS standards and specifications in the provision of technical services;

(b) Violates the terms of the Certification Agreement, including but not limited to, a demonstrated lack of understanding of, or an unwillingness or inability to implement, NRCS standards and specifications for a particular practice for which the technical service provider is certified, or the provision of technical services for which the technical service provider is not certified;

(c) Engages in a scheme or device to defeat the purposes of this part, including, but not limited to, coercion, fraud, misrepresentation, or providing incorrect or misleading information; or

(d) Commits any other action of a serious or compelling nature as determined by NRCS that demonstrates the technical service provider's inability to fulfill the terms of the Certification Agreement or provide technical services under this part.

§ 652.33 Notice of proposed decertification.

The State Conservationist will send by certified mail, return receipt requested, to the technical service provider proposed for decertification a written Notice of Proposed Decertification, which will contain the cause(s) for decertification, as well as any documentation supporting decertification. In cases where a private sector entity or public agency is being notified of a proposed decertification, any certified individuals working under the auspices of such organization who are also being considered for decertification will receive a separate Notice of Decertification and will be afforded separate appeal rights following the process set forth below.

§ 652.34 Opportunity to contest decertification.

To contest decertification, the technical service provider must submit in writing to the State Conservationist, within 20 calendar days from the date of receipt of the Notice of Proposed Decertification, the reasons why the State Conservationist should not decertify, including any mitigating factors as well as any supporting documentation.

§ 652.35 State Conservationist decision.

Within 40 calendar days from the date of the notice of proposed decertification, the State Conservationist will issue a written determination. If the

State Conservationist decides to decertify, the decision will set forth the reasons for decertification, the period of decertification, and the scope of decertification. If the State Conservationist decides not to decertify the technical service provider, the technical service provider will be given written notice of that determination. The decertification determination will be based on an administrative record, which will be comprised of: the Notice of Proposed Decertification and supporting documents, and, if submitted, the technical service provider's written response and supporting documentation. Both a copy of the decision and administrative record will be sent promptly by certified mail, return receipt requested, to the technical service provider.

§ 652.36 Appeal of decertification decisions.

(a) Within 20 calendar days from the date of receipt of the State Conservationist's decertification determination, the technical service provider may appeal, in writing, to the Chief of NRCS. The written appeal must state the reasons for appeal and any arguments in support of those reasons. If the technical service provider fails to appeal, the decision of the State Conservationist is final.

(b) Final decision. Within 30 calendar days of receipt of the technical service provider's written appeal, the Chief or his designee, will make a final determination, in writing, based upon the administrative record and any additional information submitted to the Chief by the technical service provider. The decision of the Chief, or his designee, is final and not subject to further administrative review. The Chief's determination will include the reasons for decertification, the period of decertification, and the scope of decertification.

§ 652.37 Period of decertification.

The period of decertification will not exceed three years in duration and will be decided by the decertifying official, either the State Conservationist or Chief, as applicable, based upon their weighing of all relevant facts and the seriousness of the reasons for decertification, mitigating factors, if any, and the following general guidelines:

(a) For failures in the provision of technical service for which there are no mitigating factors, *e.g.*, no remedial action by the technical service provider, a maximum period of three years decertification;

(b) For repeated failures in the provision of technical assistance for which there are mitigating factors, *e.g.*, the technical service provider has taken remedial action to the satisfaction of NRCS, a maximum period of one to two years decertification; and

(c) For a violation of Certification Agreement terms, *e.g.*, failure to possess technical competency for a listed practice, a period of one year or less, if the technical service provider can master such competency within a year period.

§ 652.38 Scope of decertification.

(a) When the technical service provider is a private sector entity or public agency, the decertifying official may decertify the entire organization, including all the individuals identified as authorized to provide technical services under the auspices of such organization. The decertifying official may also limit the scope of decertification, for example, to one or more specifically named individuals identified as authorized to provide technical services under the organization's auspices or to an organizational element of such private sector entity or public agency. The scope of decertification will be set forth in the decertification determination and will be based upon the facts of each decertification action, including whether actions of particular individuals can be imputed to the larger organization.

(b) In cases where specific individuals are decertified only, an entity or public agency must file within 10 calendar days an amended Certification Agreement removing the decertified individual(s) from the Certification Agreement. In addition, the entity or public agency must demonstrate that, to the satisfaction of the State Conservationist, the entity or public agency has taken affirmative steps to ensure that the circumstances resulting in decertification have been addressed.

§ 652.39 Mitigating factors.

In considering whether to decertify, the period of decertification, and scope of decertification, the deciding official will take into consideration any mitigating factors. Examples of mitigating factors include, but are not limited to the following:

(a) The technical service provider worked, in a timely manner, to correct any deficiencies in the provision of technical service;

(b) The technical service provider took the initiative to bring any deficiency in the provision of their technical services to the attention of NRCS and sought NRCS advice to remediate the situation; and

(c) The technical service provider took affirmative steps to prevent any failures in the provision of technical services from occurring in the future.

§ 652.40 Effect of decertification.

(a) The Department will not make payment under a program contract for the technical services of a decertified technical service provider that were provided during the period of decertification. Likewise, NRCS will not procure, or otherwise enter into an agreement for, the services of a decertified technical service provider during the period of decertification.

(b) National decertification list. NRCS shall maintain a current list of decertified technical service providers. NRCS shall remove decertified providers from the list of certified providers. Participants may not hire a decertified technical service provider. It is the participant's responsibility to check the decertified list before hiring a technical service provider. Decertification of a technical service provider in one State decertifies the technical service provider from providing technical services under current programs in all States, the Caribbean Area, and the Pacific Basin Area.

§ 652.41 Effect of filing deadlines.

A technical service provider's failure to meet the filing deadlines under this subpart will result in the forfeiture of appeal rights. All filings must be received by NRCS no later than the close of business (5 p.m.) the last day of the filing period.

§ 652.42 Recertification.

A decertified technical service provider may apply to be re-certified under the certification provisions of this part after the period of decertification has expired. A technical service provider may not utilize the certification renewal process in an attempt to be recertified after being decertified.

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.
654.13 Designating responsibility for operation and maintenance.
654.14 Duration of sponsor(s)' responsibility.
654.15 Operation and maintenance.
654.16 Property management.
654.17 Inspection.
654.18 Natural Resources Conservation Service responsibility.
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: 7 U.S.C. 1010a; 16 U.S.C. 590a–590f; 42 U.S.C. 3271–3274.

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 National Soil Survey Center. (see 7 CFR 600.2(c), 600.6)

(4) Coordinate soil mapping units that qualify as prime farmlands with adjacent States, including Major Land Resource Area Offices (see 7 CFR 600.4, 600.7) 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 Chief for consideration.

(b) *National Soil Survey Center*. The National Soil Survey Center is to provide requested technical assistance to State Conservationists and Major Land Resource Area Offices in inventorying prime and unique farmlands (see 7 CFR 600.2(c)(1), 600.4, 600.7). 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 Deputy Chief for Soil Survey and Resource Assessment (see 7 CFR 600.2(b)(3)) is to provide national leadership in preparing guidelines for inventorying prime farmlands and for national statistics and reports of prime farmlands.

[43 FR 4031, Jan. 31, 1978, as amended at 65 FR 57538, Sept. 25, 2000]

§ 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 TO PART 661—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 TO PART 661—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.

PARTS 662–699 [RESERVED]