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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.

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

EFFECTIVE DATE NOTE: At 73 FR 76891, Dec. 18, 2008, the authority citation to part 457 was revised, effective January 20, 2009. For the convenience of the user, the revised text is set forth as follows:

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

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.

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).

Native sod. Acreage on which the plant cover is composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing, and that has no record of being tilled (determined in accordance with FSA records) for the production of an annual crop on or before May 22, 2008.

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

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

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

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

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.

Prairie Pothole National Priority Area. Consists of specific counties within the States of Iowa, Minnesota, Montana, North Dakota or South Dakota as specified on the RMA Web site at *http://www.rma.usda.gov/.*

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.

(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.

(e) Notwithstanding the provisions in section 9(a)(1), if the Governor of a State designated within the Prairie Pothole National Priority Area elects to make section 508(o) of the Act effective for the State, any native sod acreage greater than 5 acres located in a county contained within the Prairie Pothole National Priority Area that has been tilled for the production of an annual crop after May 22, 2008, is not insurable for the first 5 crop years of planting following the date the native sod acreage is tilled. If the Governor makes this election after you have received an indemnity or other payment for native sod acreage, you may be required to repay the amount received and any premium for such acreage may be refunded to you.

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:

(1) Not later than 60 days after the end of the insurance period unless, prior to the end of the 60 day period, you:

(i) Request an extension in writing and we agree to such request (Extensions will only be granted if the amount of loss cannot be determined within such time period because the information needed to determine the amount of the loss is not available.); or

(ii) Have farm-stored production and elect, in writing, to delay measurement of your farm-stored production and settlement of any potential associated claim for indemnity (Extensions will be granted for this purpose up to 180 days after the end of the insurance period.); and

(2) That includes 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) For a crop you have previously planted in the county or area for at least three years:

(A) A completed APH form (only for crops that require APH) based on verifiable production records for at least the three most recent crop years in which the crop was planted; and

(B) Verifiable production records for at least the three most recent crop years in which the crop was planted:

(*1*) The verifiable production records do not necessarily have to be from the same physical acreage for which you are requesting a written agreement; and

(*2*) Verifiable production records do not have to be submitted if you have insured the crop in the county or area for at least the previous three crop years and have certified the yields on the applicable production reports or the yields are based on your insurance claim (although you are not required to submit production records, you still must maintain production records in accordance with section 21);

(ii) For a crop you have not previously planted in the county or area for at least three years:

(A) A completed APH form (only for crops that require APH) based on verifiable production records for at least the three most recent crop years for a similar crop from acreage:

(*1*) In the county; or

(*2*) In the area if you have not produced the crop in the county; and

(B) Verifiable production records for at least the three most recent crop years in which the similar crop was planted:

(*1*) The verifiable production records for the similar crop do not necessarily have to be from the same physical acreage for which you are requesting a written agreement; and

(*2*) Verifiable production records do not have to be submitted if you have insured the similar crop for at least the three previous crop years and have certified the yields on the applicable production reports or the yields are based on your insurance claim (although you are not required to submit production records, you still must maintain production records in accordance with section 21);

(C) If you have at least one year of production records, but less than three years of production records, for the crop in the county or area but have production records for a similar crop in the county or area such that the combination of both sets of records results in at least three years of production records, you must provide the information required in sections 18(f)(2)(i)(A) & (B) for the years you grew the crop in the county or area and the information required in sections 18(f)(2)(ii)(A) & (B) regarding the similar crop for the remaining years; and

(D) A similar crop to the crop for which a written agreement is being requested must:

(*1*) 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;

(*2*) Have substantially the same growing season (i.e., normally planted around the same dates and harvested around the same dates);

(*3*) Require comparable agronomic conditions (e.g., comparable needs for water, soil, etc.); and

(*4*) Be subject to substantially the same risks (frequency and severity of loss would be expected to be comparable from the same cause of loss);

(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) or (e), 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) or (e), 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 or any claim where FCIC is directly involved in the claims process or directs us in the resolution of the claim, 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).

(1) 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.

(2) Such suit must be brought in the United States district court for the district in which the insured acreage is located.

(3) 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 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; 71 FR 36982, June 29, 2006; 73 FR 70865, Nov. 24, 2008]

EFFECTIVE DATE NOTE: At 73 FR 76891, Dec. 18, 2008, § 457.8 was amended by adding paragraph (e) to the end of section 27, effective January 20, 2009. For the convenience of the user, the added text is set forth as follows:

§ 457.8 The application and policy.

* * * * *

27. Concealment, Misrepresentation or Fraud.

* * * * *

(e) If you willfully and intentionally provide false or inaccurate information to us or

FCIC or you fail to comply with a requirement of FCIC, in accordance with 7 CFR part 400, subpart R, FCIC may impose on you:

(1) A civil fine for each violation in an amount not to exceed the greater of:

(i) The amount of the pecuniary gain obtained as a result of the false or inaccurate information provided or the noncompliance with a requirement of this title; or

(ii) $10,000; and

(2) A disqualification for a period of up to 5 years from receiving any monetary or nonmonetary benefit provided under each of the following:

(i) Any crop insurance policy offered under the Act;

(ii) The Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7333 *et seq.*);

(iii) The Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*);

(iv) The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*);

(v) The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*);

(vi) Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*);

(vii) The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*); and

(viii) Any federal law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in the prices of agricultural commodities.

* * * * *

§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:		
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.

Crop, state and county	Cancellation date	Termination date
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 2009 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: Florida Citrus Fruit Crop Insurance Provisions

1. Definitions

Amount of insurance (per acre). The dollar amount determined by multiplying the Reference Maximum Dollar Amount shown on the actuarial documents for each fruit type and age of trees, within a citrus fruit crop, times the coverage level percent that you elect, times your share.

Box. A standard field box as prescribed in the State of Florida Citrus Fruit Laws or contained in standards issued by FCIC.

Buckhorn. To prune any limb at a diameter of at least three inches for citrus.

Citrus fruit crop. Except as otherwise provided in section 6, any of the following:

(1) Citrus I—Early and mid-season oranges;

(2) Citrus II—Late oranges juice;

(3) Citrus III—Grapefruit for which freeze damage will be adjusted on a juice basis;

(4) Citrus IV—Tangelos and Tangerines;

(5) Citrus V—Murcott Honey Oranges (also known as Honey Tangerines) and Temple Oranges;

(6) Citrus VI—Lemons and Limes;

(7) Citrus VII—Grapefruit for which freeze damage will be adjusted on a fresh fruit basis, and late oranges fresh;

(8) Citrus VIII—Navel Oranges; and

(9) Citrus IX—Any other citrus fruit crop designated in the Special Provisions.

Citrus fruit type (fruit type). Any of the separate citrus fruit listed in the Special Provisions and contained within one of the citrus fruit crops designated as Citrus I through IX.

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 fruit caused by low air temperatures.

Harvest. The severance of mature citrus fruit from the tree by pulling, picking, shaking, or any other means, or collecting the marketable citrus fruit from the ground.

Hurricane. A windstorm classified by the U.S. Weather Service as a hurricane.

Interstock. The area of the tree that is grafted to a rootstock. For example, the rootstock may be Sour Orange, and the interstock grapefruit, and the grafted scion Valencia orange.

Potential production. The amount, converted to boxes, of citrus fruit that would have been produced had damage not occurred.

(a) Including citrus fruit that:

(1) Was harvested before damage occurred;

(2) Remained on the tree after damage occurred;

(3) Except as provided in (b), was missing, damaged, or destroyed from either an insured or uninsured cause;

(4) Was marketed or could be marketed as fresh citrus fruit;

(5) Was harvested prior to inspection by us; or

(6) Was harvested within 7 days after a freeze;

(b) Not including citrus fruit that:

(1) Was missing, damaged, or destroyed before insurance attached for any crop year;

(2) Was damaged or destroyed 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.

Scion. A detached living portion of a plant joined to a stock in grafting.

Top worked. A buckhorned citrus tree with a new scion grafted onto the interstock.

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 fruit 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) In addition to 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 coverage level for each citrus fruit crop 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 fruit types within a citrus fruit crop, you must select the same coverage level for each fruit type. For example, if you choose the 75 percent coverage level for one fruit type, you must also choose the 75 percent coverage level for all other fruit types within that citrus fruit crop.

(b) The production reporting requirements contained in section 3 of the Basic Provisions are not applicable.

(c) For the first year of insurance for acreage interplanted with another fruit type or another crop, and any time the planting pattern of such acreage is changed, you must report, by the sales closing date, the following:

(1) The age and fruit type of the interplanted citrus trees, as 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 fruit type or another crop on the insured fruit type. 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.

(e) For carryover policies:

(1) Any changes to your coverage must be requested on or before the sales closing date;

(2) Requested changes will take effect on May 1, the first day of the crop year, unless we reject the requested increase based on our inspection, or because a loss occurs on or before April 30 (Rejection can occur at any time we discover loss has occurred on or before April 30); and

(3) If the increase is rejected, coverage will remain at the same level as the previous crop year.

(f) If your citrus fruit was damaged prior to the beginning of the insurance period, your amount of insurance (per acre) will be reduced by the amount of damage that occurred.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is January 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 April 30.

6. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all acreage of each citrus fruit crop 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 of the Basic Provisions, we do not insure any citrus fruit:

(1) That cannot be expected to mature each crop year within the normal maturity period for the fruit type;

(2) Produced by citrus 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 (In order for the year of set out to be considered as a growing season, citrus trees must be set out on or before April 30 of the calendar year);

(3) Of ''Meyer Lemons'' and oranges commonly known as ''Sour Oranges'' or ''Clementines'';

(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 the sales closing date or the time you submit the application for insurance);

(5) That is produced on citrus trees that have been topworked until the third crop year after topworking. The Special Provisions will specify the appropriate rate class for trees insurable following topworking, but that have not reached full production; or

(6) Of any fruit type not specified as insurable in the Special Provisions or within the definition of ''citrus fruit crop.''

(c) Prior to the date insurance attaches, and upon our approval, you may elect to insure or exclude from insurance any insurable citrus acreage that has a potential production of less than 100 boxes per acre. If you elect to:

(1) Insure such acreage, we will consider the potential production to be 100 boxes per acre when determining the amount of loss; or

(2) Exclude such acreage, we will disregard the acreage for all purposes related to this policy.

(d) In addition to the provisions in section 6 of the Basic Provisions, if you fail to notify us of your election to insure or exclude citrus 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.

(e) Potential production will be determined during loss adjustment.

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:

(a) Citrus fruit from trees interplanted with another fruit type or another crop is insurable unless we inspect the acreage and determine it does not meet the requirements contained in your policy.

(b) If the citrus fruit is from trees interplanted with another fruit type or another crop, acreage will be prorated according to the percentage of the acres occupied by each of the interplanted fruit types or crops (For example, if grapefruit have been interplanted with oranges on 100 acres and the grapefruit trees are on 50 percent of the acreage, grapefruit will be considered planted on 50 acres and oranges will be considered planted on 50 acres).

(c) The combination of the citrus fruit acreage and the interplanted crop acreage cannot exceed the physical amount of acreage.

8. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) Coverage begins on May 1 of each crop year, unless:

(i) For new or carryover policies, as applicable, we inspect the acreage and determine it does not meet the requirements for insurability contained in your policy (You must provide any information we require for the fruit type, so we may determine the condition of the grove to be insured); or

(ii) For carryover policies, you report additional citrus acreage, or a greater share, such that the amount of insurance will increase by more than 10 percent and we notify you all or a part of your citrus acreage is not insurable.

(2) The calendar date for the end of the insurance period for each crop year, unless specified otherwise in the Special Provisions, is:

(i) February 7 for early and navel oranges, Orlando tangelos and tangerines;

(ii) February 28 for all other tangelos;

(iii) March 31 for mid-season and temple oranges;

(iv) April 30 for lemons, limes;

(v) May 15 for murcott honey oranges; and

(vi) June 30 for grapefruit and late season oranges.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(1) If you acquire an insurable share in any insurable acreage of citrus fruit 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, no premium will be due, and no indemnity payable, 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, insurance is provided only against the following causes of loss to citrus fruit 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;

(5) Tornado;

(6) Excess wind, but only if it causes the individual citrus fruit from Citrus IV, V, VII, and VIII to be unmarketable as fresh fruit; or

(7) Diseases, but only if specified in the Special Provisions.

(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) 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) If any citrus fruit within a unit is damaged by an insurable cause of loss, 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 each fruit type and multiplying that result by your share;

(2) Calculating the average percent of damage to the fruit within each respective fruit type, rounded to the nearest tenth of a percent (0.1%) (To determine the percent of damage, the amount of citrus fruit damaged from an insured cause must be converted to boxes and divided by the undamaged potential production);

(3) Subtracting the deductible from the result of section (10)(b)(2);

(4) If the result of section (10)(b)(3) is positive, dividing this result by the coverage level percentage (If the result of section 10(b)(3) is negative, no indemnity will be due);

(5) Multiplying the result of section (10)(b)(4) by the amount of insurance for the unit for the respective fruit type, to determine the value of all damage; and

(6) Totaling all such results of section (10)(b)(5) for all fruit types and subtracting any indemnities paid for the current crop year to determine the amount payable for the unit. (For example, assume a 55-acre unit sustains late season damage. No previous damage has occurred on the unit during the crop year and no fruit has been harvested. The producer elected the 75 percent coverage level and has a 100 percent share. The amount of insurance is $1,180 per acre, based on the 75 percent coverage level, for the citrus crop, fruit type, and age of trees. The amount of potential production is 24,530 boxes and the amount of damaged production is 17,171 boxes. The loss would be calculated as follows:

1. 55 acres × $1,180 = $64,900 amount of insurance for the unit;

2. 17,171 ÷ 24,530 = 70 percent average percent of damage;

3. 70 percent damage − 25 percent deductible (100 percent − 75 percent) = 45 percent;

4. 45 percent ÷ 75 percent = 60 percent adjusted damage; and

5. 60 percent × $64,900 = $38,940 indemnity.

(c) Citrus fruit crops IV, V, VII, and VIII 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, or contained in standards issued by FCIC, 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 Citrus IV, damage in excess of 50 percent will be the actual percent of damaged fruit; and

(ii) Citrus IV (except tangerines), V, VII, and VIII, 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 Citrus IV, V, VII, and VIII, 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 IV.

(e) Any citrus fruit of Citrus 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) Citrus I—52 pounds of juice per box;

(ii) Citrus II—54 pounds of juice per box;

(iii) Citrus III—45 pounds of juice per box; and

(iv) Citrus VI—43 pounds of juice per box.

(f) Any individual 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 individual 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) Individual citrus fruit of Citrus IV, V, VII, and VIII, 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, or wind damage from a hurricane, tornado or other excess wind storms that results in the fruit not meeting the standards for packing as fresh fruit, will be considered 100 percent damaged.

11. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[73 FR 7196, Feb. 7, 2008; 73 FR 10973, Feb. 29, 2008]

§ 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.
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 2008 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 seventh growing season after being set out, unless otherwise provided in the Special Provisions.

(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; 72 FR 10909, Mar. 12, 2007]

§457.123 Almond crop insurance provisions.

The Almond Crop Insurance Provisions for the 2008 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 sixth growing season after being set out, unless otherwise provided in the Special Provisions.

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; 72 FR 10909, Mar. 12, 2007]

§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 (2⁸⁄₃₂ 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 2008 and succeeding crop years for all counties with a contract change date on or after the effective date of this rule and for the 2009 and succeeding crop years for all counties with a contract change date prior to the effective date of this rule, 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

1. Definitions

Allowable cost.—The dollar amount per container for harvesting, packing, and handling as shown in the Special Provisions.

Amount of insurance (per acre).—The dollar amount of coverage per acre obtained by multiplying the reference maximum dollar amount shown on the actuarial documents by the coverage level percentage you elect.

Average net value per container.—The dollar amount obtained by totaling the net values

of all containers of sweet corn sold and dividing the result by the total number of containers of all sweet corn sold.

Container.—The unit of measurement for the insured crop as specified in the Special Provisions.

Crop year.—In lieu of the definition of ''crop year'' contained in section 1 of the Basic Provisions, for counties with fall, winter, and spring planting periods or counties with fall and spring planting periods, the 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. For counties with only spring planting periods, the period of time that begins on the earliest planting period for spring 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.

Harvest.—Separation of ears of sweet corn from the plant by hand or machine.

Marketable sweet corn.—Sweet corn that is sold for any purpose or grades U.S. No. 1 or better in accordance with the requirements of the United States Standards for Grades of Sweet Corn.

Minimum value.—The dollar amount per container shown in the Special Provisions we will use to value marketable production to count.

Net value.—The dollar value of packed and sold sweet corn obtained by subtracting the allowable cost and any additional charges specified in the Special Provisions from the gross value per container of sweet corn sold. This result may not be less than zero.

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 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 in section 1 of the Basic Provisions, 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 basic unit, as defined in section 1 of the Basic Provisions, will also be established for each planting period.

3. Amounts of Insurance and Production Stages

(a) In addition to the requirements of section 3 of the Basic Provisions, 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 of the Basic Provisions do not apply to sweet corn.

(d) If specified in the Special Provisions, we will limit your amount of insurance per acre if you have not produced the minimum amount of production of sweet corn contained in the Special Provisions in at least one of the three most recent crop years.

(e) 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.

(f) The indemnity payable for any acreage of sweet corn will be based on the stage the plants had achieved when damage occurred. 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 have an amount of insurance based on the first stage for the purposes of establishing an indemnity even if you continue to care for the damaged sweet corn.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, 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, 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 of the Basic Provisions, 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 of the Basic Provisions, 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 of the Basic Provisions, 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, unless otherwise provided in the Special Provisions or by written agreement.

9. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions any acreage of sweet corn damaged during the planting period in which initial planting took place:

(a) Must be replanted if:

(1) Less than 75 percent of the plant stand remains;

(2) It is practical to replant; and

(3) The final day of the planting period has not passed at the time the crop was damaged.

(b) Whenever sweet corn is initially planted during the fall or winter planting periods and the final planting date for the planting period has passed, but it is considered practical to replant, you may elect:

(1) 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; or

(2) 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 of the Basic Provisions, 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, unless otherwise provided in the Special Provisions.

11. 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) Wildlife;

(4) Volcanic eruption;

(5) Earthquake;

(6) Insects, but not damage due to insufficient or improper application of pest control measures;

(7) Plant disease, but not damage due to insufficient or improper application of disease control measures; or

(8) 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 of the Basic Provisions, we will not insure against damage or loss due to:

(1) Failure to harvest in a timely manner unless harvest is prevented by one of the insurable causes of loss specified in section 11(a); or

(2) Failure to market the sweet corn unless such failure is due to actual physical damage caused by an insured cause of loss as specified in section 11(a). 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. Replanting Payments

(a) In accordance with section 13 of the Basic Provisions, 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 of the Basic Provisions, 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 of the Basic Provisions, if you intend to claim an indemnity on any unit:

(a) You also must give us notice not later than 72 hours after the earliest of:

(1) The time you discontinue harvest of any acreage on the unit;

(2) The date harvest normally would start if any acreage on the unit will not be harvested; or

(3) The calendar date for the end of the insurance period.

(b) If insurance is permitted by the Special Provisions or by written agreement on acreage with production that will be sold by direct marketing, 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 the value of your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal if you notify us that additional damage has occurred. These appraisals, and/or any acceptable production records provided by you, will be used to determine the value of your production to count.

(c) 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 dollar amount of insurance (per acre) for the applicable stage if such failure results in our inability to accurately determine the value of production.

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(e));

(3) Totalling 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 fifty-five percent; and

(5) Multiplying the result of section 14(b)(4) by your share.

For example:

You have a 100 percent share in 65.3 acres of fresh market sweet corn in the unit (15.0 acres in stage 1 and 50.3 acres in the final stage), with a dollar amount of insurance of $600 per acre. The 15.0 acre field was damaged by flood and appraisals of the crop determined there was no potential production to be counted. From the 50.3 acre field, you are only able to harvest 5,627 containers of sweet corn. The net value of all sweet corn production sold ($3.11 per container) is greater than the Minimum Value per container ($2.50). The 5,627 containers sold × $3.11 average net value per container = $17,500 value of your production to count. Your indemnity would be calculated as follows:

1 15.0 acres × $600 amount of insurance = $9,000 and
50.3 acres × $600 amount of insurance = $30,180;
2 $9,000 × .65 (percent for stage 1) = $5,850 and
$30,180 × 1.00 (percent for final stage) = $30,180;
3 $5,850 + $30,180 = $36,030 amount of insurance for the unit;
4 $36,030 − $17,500 value of production to count = $18,530 loss;
5 $18,530 × 100 percent share = $18,530 indemnity payment.

(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;

(iv) For which you fail to provide acceptable production records; or

(v) From which insurable production is sold by direct marketing and you fail to meet the requirements contained in section 13(b) of these Crop Provisions;

(2) The value of the following appraised sweet corn production will not be less than the dollar amount obtained by multiplying the number of containers of appraised sweet corn by the minimum value for the planting period:

(i) Unharvested marketable sweet corn production (unharvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count unless such production is later harvested and sold for any purpose);

(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 value of all harvested production of sweet corn from the insurable acreage, except production that is sold by direct marketing as specified in section (c)(4) below:

(i) For sold production, will be the greater of:

(A) The dollar amount obtained by multiplying the total number of containers of sweet corn sold by the minimum value; or

(B) The dollar amount obtained by multiplying the average net value per container from all sweet corn sold by the total number of all containers of sweet corn sold.

(ii) For marketable sweet corn production that is not sold, will be the dollar amount obtained by multiplying the number of containers of such sweet corn by the minimum value 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 to count unless such production is sold.

(4) If all the requirements of insurability are met, the value of insurable production that is sold by direct marketing will be the greater of:

(i) The actual value received by you for direct marketed production; or

(ii) The dollar amount obtained by multiplying the total number of containers of appraised sweet corn sold by direct marketing by the minimum value.

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 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) of these Crop Provisions, the total value of harvested production that is not sold by direct marketing will be determined as follows:

(1) The dollar amount obtained by multiplying the average net value per container from all sweet corn sold (this result may not be less than the minimum value option amount if such amount is provided in the Special Provisions) by the total number of all containers of sweet corn sold;

(2) For marketable sweet corn production that is not sold, the value of such production will be the dollar amount obtained by multiplying the total number of containers of such sweet corn by the minimum value for the planting period. Harvested production that is damaged or defective due to insurable causes and is not marketable will not be included as production to count.

(c) If all the requirements of insurability are met, the value of insurable production that is sold by direct marketing will be the greater of:

(1) The actual value received by you for direct marketed production; or

(2) The dollar amount obtained by multiplying the total number of containers of sweet corn sold by direct marketing by the minimum value.

(d) 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; 72 FR 54523, Sept. 26, 2007; 72 FR 62767, Nov. 7, 2007]

§ 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 2007 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.

1. Definitions

Base contract price. The price for farmers' stock peanuts stipulated in the sheller contract, without regard to discounts or incentives that may apply, not to exceed the price election times the price factor specified in the Special Provisions.

Farmers' stock peanuts. Picked or threshed peanuts produced in the United States, 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 customarily marketed by producers.

Green peanuts. Peanuts that are harvested and marketed prior to maturity without drying or removal of moisture either by natural or artificial means.

Handler. A person who is a sheller, a buying point, a marketing association, or has a contract with a sheller or a marketing association to accept all of the peanuts marketed through the marketing association for the crop year. The handler acquires peanuts for resale, domestic consumption, processing, exportation, or crushing through a business involved in buying and selling peanuts or peanut products.

Harvest. The completion of digging and threshing and removal of peanuts from the field.

Marketing association. A cooperative approved by the Secretary of the United States Department of Agriculture to administer payment programs for peanuts.

Planted acreage. In addition to the requirement in the definition in the Basic Provisions, peanuts must initially be planted in a row pattern which permits mechanical cultivation, or that allows the peanuts to be cared for in a manner recognized by agricultural experts as a good farming practice. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Price election. In addition to the definition in the Basic Provisions, the price election for peanuts insured in accordance with a sheller contract will be the base contract price specified in the sheller contract.

Price factor. The factor specified in the Special Provisions that places limits on the base contract price.

Sheller. Any business enterprise regularly engaged in processing peanuts for human consumption; that possesses all licenses and permits for processing peanuts 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 peanuts within a reasonable amount of time after harvest.

Sheller contract. A written agreement between the producer and a sheller, or the producer and a handler, containing at a minimum:

(a) The producer's commitment to plant and grow peanuts, and to deliver the peanut production to the sheller or handler;

(b) The sheller's or handler's commitment to purchase all the production stated in the sheller contract (an option to purchase is not a commitment); and

(c) A base contract price.

If the agreement fails to contain any of these terms, it will not be considered a sheller contract.

2. Unit Division

In accordance with the Basic Provisions, basic and optional units are applicable, unless limited 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) The price election percentage you choose for peanuts which are not insured in accordance with a sheller contract (may also include peanuts in excess of the amount required to fulfill your sheller contract) and for peanuts insured in accordance with a sheller contract must have the same percentage relationship to the maximum price election offered by us for peanuts not insured in accordance with a sheller contract. For example, if you choose 100 percent of the maximum price election for peanuts not insured in accordance with a sheller contract, you must also choose 100 percent of the applicable price election for peanuts insured in accordance with a sheller contract.

(b) You may not insure more pounds of peanuts than your production guarantee (per acre) multiplied by the number of acres that will be planted to peanuts. For the purposes of determining the guarantee, premiums, indemnities, replant payments, and prevented planting payments:

(1) Where all production of peanuts is grown under one or more sheller contracts, you may elect a price election to cover all insurable peanuts that is the base contract price contained in such sheller contracts or the price contained in the Special Provisions.

(2) Where some peanuts are grown under one or more sheller contracts but some peanuts are not grown under a sheller contract, you may elect:

(i) The price election contained in the Special Provisions to cover all insurable peanuts; or

(ii) The price election using the base contract price for peanuts grown under a sheller contract and the price contained in the Special Provisions for peanuts not grown under a sheller contract.

(3) Where none of the peanuts are grown under a sheller contract, the price election will be the price contained in the Special Provisions.

(c) Any peanuts excluded from the sheller contract at any time during the crop year will be insured at the price election specified in the Special 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:

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, except New Mexico, Oklahoma, and Virginia.	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 provide a copy of all sheller contracts to us on or before the acreage reporting date if you wish to insure your peanuts in accordance with your sheller contract.

7. [Reserved]

8. Insured Crop

(a) 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:

(1) In which you have a share;

(2) That are planted for the purpose of marketing as farmers' stock peanuts;

(3) That are a type of peanut designated in the Special Provisions as being insurable;

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Planted for the purpose of harvesting as green peanuts;

(ii) Interplanted with another crop; or

(iii) Planted into an established grass or legume; and

(5) Whether or not the peanuts are grown in accordance with a sheller contract (if not grown in accordance with the sheller contract, the peanuts will be valued at the price election issued by FCIC for the purposes of determining the production guarantee, premium, and indemnity).

(b) You will be considered to have a share in the insured crop if, under the sheller contract, you retain control of the acreage on which the peanuts are grown, you are at risk of a production loss, and the sheller contract provides for delivery of the peanuts to the sheller or handler and for a stipulated base contract price.

(c) A peanut producer who is also a sheller or handler 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 sheller or handler must execute and adopt a resolution that contains the same terms as a sheller contract. Such resolution will be considered a sheller contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of a sheller 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 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.

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) 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) Except as specified in section 12(a)(1), you must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions; and

(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 and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of:

(1) 20.0 percent of the production guarantee, multiplied by your price election, multiplied by your share; or

(2) $80.00 multiplied by your insured share.

(c) If there are different base contract prices or you also have insurable peanuts not grown under a contract:

(1) If the sheller contracts are for different types of peanuts or one type of peanut is grown under a sheller contract and another is not, replanting payments will be valued using the price election elected by you for the planted acreage, as applicable (For an example, you have two sheller contracts and the base contract price is $0.23 per pound for Runner type peanuts, then $0.23 per pound will be used for the value of any replanted Runner type peanut acreage. If the base contract price is $0.21 per pound for Spanish type peanuts, then $0.21 per pound will be used for the value of any replanted Spanish type peanut acreage.

(2) If the sheller contracts are for the same type of peanuts but they have different base contract prices:

(i) If the peanuts under each sheller contract are insured in separate optional units, each respective price election from each sheller contract will apply to each respective unit; or

(ii) If all or some of peanuts under both sheller contracts are insured in the same unit, then the replanted acreage will be prorated to each contract based on the number of acres needed to fulfill each contract (For example, if there are 20 acres in the unit and 10 were replanted, the production guarantee per acre for the unit is 2,000 pounds per acre, and the contract for $0.23 was for 25,000 pounds and the contract for $0.21 was for 15,000 pounds, then the acreage under the $0.23 contract constitutes 62.5 percent of the acreage in the unit (25,000/40,000) and the other sheller contract 37.5 percent of the acreage (15,000/40,000). Of the 10 acres replanted, 6.25 acres (10 × .625) would be paid at the $0.23 price election and 3.75 acres (10 × .375) would be paid at the $0.21 price election).

(3) If the peanuts are not grown under a contract, the replanting payments will be valued using the price election as specified in the Special Provisions. If the unit has peanuts grown under a sheller contract and peanuts not grown under a sheller contract, the replanted acreage must be prorated between the contract and non-contract acreage by determining the acreage grown under a contract and the remaining acreage in the unit (For example, if there are 20 acres in the unit and 10 were replanted, the production guarantee per acre for the unit is 2,000 pounds per acre, there is a sheller contract for $0.23 for 25,000 pounds, the remaining peanuts are not grown under a sheller contract, and the price election in the Special Provisions is for $0.20. The peanuts under the sheller contract constitute 62.5 percent (25,000/40,000) of the acreage in the unit and remaining peanuts constitute 37.5 percent (40,000 − 25,000/40,000) of the acreage. Of the 10 acres replanted, 6.25 acres (10 × .625) would be paid with the liability based on the $0.23 price election and 3.75 acres (10 × .375) would be paid with the liability based on the $0.20 price election).

(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 your price election and production guarantee for the crop type that is replanted and insured. A revised acreage report will be required to reflect the replanted type, if applicable.

13. Duties in the Event of Damage or Loss

Representative samples are required in accordance with section 14 of the Basic Provisions.

14. 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 for 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 number of insured acres by the respective production guarantee (per acre) for peanuts insured under a sheller contract or not insured under a sheller contract, as applicable;

(2) Multiplying each result of section 14(b)(1) by the applicable price election for peanuts insured at the base contract price or the price election specified in the Special Provisions, as applicable;

(3) Totaling the results of section 14(b)(2);

(4) Multiplying the production to count by the respective price election (If you have one or more sheller contracts, we will value your production to count by using your highest price election first and will continue in decreasing order to your lowest price election based on the amount of peanuts insured at each price election);

(5) Totaling the results of section 14(b)(4);

(6) Subtracting the result of section 14(b)(5) from the result of section 14(b)(3); and

(7) Multiplying the result in section 14(b)(6) by your share.

Example #1 (without a sheller contract):

You have 100 percent share in 25 acres of Valencia peanuts in the unit, with a production guarantee (per acre) of 2,000 pounds, the price election specified in the Special Provisions is $0.17 per pound, and your production to count is 43,000 pounds.

(1) 25 acres × 2,000 pounds = 50,000 pound guarantee;

(2) 50,000 pound guarantee × $0.17 price election specified in the Special Provisions = $8,500.00 guarantee;

(3) 43,000 pounds of production to count × $0.17 price election specified in the Special Provisions = $7,310.00;

(4) $8,500.00 guarantee − $7,310.00 = $1,190.00; and

(5) $1,190.00 × 1.000 = $1,190.00; Indemnity = $1,190.00.

Example #2 (with a sheller contract):

You have 100 percent share in 25 acres of Valencia peanuts in the unit, with a production guarantee (per acre) of 2,000 pounds. You have two sheller contracts, the first is for 25,000 pounds, price election (contract) is $0.23 per pound, and the second is for 10,000 pounds, price election (contract) is $0.21 per pound. The price election (non-contract) specified in the Special Provisions is $0.17 per pound, and your production to count is 43,000 pounds.

(1) 25 acres × 2,000 pounds = 50,000 pound guarantee;

(2) 25,000 pounds contracted × $0.23 price election (contract) = $5,750.00;

10,000 pounds contracted × $0.21 price election (contract) = $2,100.00;

50,000 pound guarantee − 25,000 pounds contracted − 10,000 pounds contracted = 15,000 pounds not contracted;

15,000 pounds not contracted × $0.17 price election (non-contract) specified in the Special Provisions = $2,550.00;

(3) $5,750.00 + $2,100.00 + $2,550.00 = $10,400.00 guarantee;

(4) 43,000 pounds of production to count:

25,000 pounds contracted × $0.23 price election (contract) = $5,750.00;

10,000 pounds contracted × $0.21 price election (contract) = $2,100.00;

43,000 pounds of production to count − 25,000 pounds contracted (at $0.23 per pound) − 10,000 pounds contracted (at $0.21 per pound) = 8,000 pounds;

8,000 pounds × $0.17 price election (non-contract) specified in the Special Provisions = $1,360.00;

(5) $5,750.00 + $2,100.00 + $1,360.00 = $9,210.00;

(6) $10,400.00 guarantee − $9,210.00 = $1,190.00; and

(7) $1,190.00 × 1.000 = $1,190.00;

Indemnity = $1,190.00.

(c) The total production to count (in pounds) from all insurable acreage on the unit will include all appraised and harvested production.

(d) 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(e));

(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 the 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.

(e) Mature peanuts may be adjusted for quality when production has been damaged by an insured cause of loss.

(1) To enable us to determine the number of pounds, price per pound, and the quality of production for any peanuts that qualify for quality adjustment, we must be given the opportunity to have such peanuts inspected and graded before you dispose of them.

(2) 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 number of pounds, price per pound, and quality of such peanuts.

(3) Such production to count will be reduced if the price per pound received for damaged peanuts is less than 85 percent of the price election by:

(i) Dividing the price per pound for the damaged peanuts, as determined by us in accordance with section 14(e)(1), received for the insured type of peanuts by the applicable price election; and

(ii) Multiplying this result by the number of pounds of such production.

15. Prevented Planting

(a) Your prevented planting coverage will be 50 percent of your production guarantee for timely planted acreage. If you have 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.

(b) In addition to the provisions of section 17(i) of the Basic Provisions, if there are different base contract prices or you also have insurable peanuts not grown under a contract:

(1) If the sheller contracts are for different types of peanuts or one type of peanut is grown under a sheller contract and another is not, the liability will be determined using the price election elected by you for planted acreage, as applicable (For an example, you have two sheller contracts and the base contract price is $0.23 per pound for Runner type peanuts, then $0.23 per pound will be used for the value of any prevented planting Runner type peanut acreage. If the base contract price is $0.21 per pound for Spanish type peanuts, then $0.21 per pound will be used for the value of any prevented planting Spanish type peanut acreage.

(2) If the sheller contracts are for the same type of peanuts but they have different base contract prices:

(i) If the peanuts grown under each sheller contract are insured in separate optional units, the liability will be determined using each respective price election for the prevented planting acreage in each respective unit; or

(ii) If all or some of the peanuts grown under the sheller contracts are

insured in the same unit, then the liability for each contract must be determined separately using the respective price election and the number of eligible prevented planting acres to which the liability applies and will be determined by prorating prevented planting acreage to each contract based on the number of acres needed to fulfill each contract (For example, if there are 20 acres in the unit and 10 were prevented from planting, the production guarantee per acre for the unit is 2,000 pounds per acre, and the contract for $0.23 was for 25,000 pounds and the contract for $0.21 was for 15,000 pounds, then the acreage under the $0.23 contract constitutes 62.5 percent (25,000/40,000) of the acreage in the unit and the other contract 37.5 percent (15,000/40,000) of the acreage. Of the 10 acres prevented from planting, 6.25 acres (10 × .625) would be paid with the liability based on the $0.23 price election and 3.75 acres (10 × .375) would be paid with the liability based on the $0.21 price election).

(3) If the peanuts are not grown under a contract, the liability for such peanuts will be based on the price election as specified in the Special Provisions. If the unit has peanuts grown under a sheller contract and peanuts not grown under a sheller contract, the eligible prevented planting acreage must be determined by determining the acreage grown under a contract and the remaining acreage in the unit (For example, if there are 20 acres in the unit and 10 were prevented from planting, the production guarantee per acre for the unit is 2,000 pounds per acre, there is a sheller contract for $0.23 for 25,000 pounds, the remaining peanuts are not grown under a sheller contract, and the price election in the Special Provisions is for $0.20. The peanuts under the sheller contract constitute 62.5 percent (25,000/40,000) of the acreage in the unit and remaining peanuts constitute 37.5 percent (40,000 − 25,000/40,000) of the acreage. Of the 10 acres prevented from planting, 6.25 acres (10 × .625) would be paid with the liability based on the $0.23 price election and 3.75 acres (10 × .375) would be paid with the liability based on the $0.20 price election).

[71 FR 55997, Sept. 26, 2006]

§ 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 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.

(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 non-irrigated 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 2009 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

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 contract price. The price per pound stipulated in the processor/seed company 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 processor/seed company.

Combining. A mechanical process that separates the peas from the pods and other vegetative matter and places 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. Peas (*Pisum sativum L.*) grown under the terms of a processor/seed

company contract for the purpose of producing seed to be used in planting a future year's crop.

Dry peas. Peas (*Pisum sativum L.*), Austrian Peas (*Pisum sativum spp arvense*), Lentils (*Lens culinaris Medik.*), Chickpeas (*Cicer arietinum L.*), and other types as listed on the Special Provisions.

Harvest. Combining of dry peas. Dry peas that are swathed prior to combining are not considered harvested.

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, unless otherwise specified in the Special Provisions.

Nurse crop (companion crop). A crop planted into the same acreage as another crop to improve the growing conditions for the crop with which it is grown, and that is intended to be harvested separately.

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:

(a) Contract seed peas unless the processor/seed company will accept the production under the terms of the processor/seed company contract.

(b) Fall-planted dry peas more than 25 days after the final planting date for the corresponding spring-planted type of dry peas.

(c) All other dry peas more than 25 days after the final planting date unless replanting is generally occurring in the area.

Price election. In addition to the provisions of the definition contained in the Basic Provisions, the price election for contract seed peas will be the percentage you elect (not to exceed 100 percent) of the base contract price and used for the purposes of determining premium and indemnity for contract seed peas under this policy.

Processor/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.

Processor/seed company contract. A written agreement between the producer and the processor/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 processor/seed company;

(b) The processor/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.

Swathed. Severance of the stem and pods from the ground without removal of the seeds from the pods and placing them into windrows.

Type. A category of dry peas identified as a type in the Special Provisions.

Windrow. Dry peas where the plants are cut and placed in a row.

2. Unit Division

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, separate optional units may be established for each dry pea type as specified on the Special Provisions. Contract seed peas and dry pea types not grown under a processor/seed company contract may qualify for separate optional units even if they share a common variety provided each dry pea type is grown on separate acreage and the production is kept separate.

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

(a) In accordance with the requirements of section 3(b)(1) of the Basic Provisions, you may select only one coverage level for each type listed on the Special Provisions. However, if you elect the Catastrophic Risk Protection (CAT) level of insurance for any dry pea type, the CAT level of coverage will be applicable to all insured dry pea acreage in the county.

(b) In addition to the requirements of section 3 of the Basic Provisions:

(1) If the Special Provisions do not designate separate price elections by type, you may select only one price election for all dry peas in the county insured under this policy.

(2) If the Special Provisions designate separate price elections by type, you may select one price election for each dry pea type so designated in the Special Provisions even if the prices for each type are the same. 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 75 percent of the maximum price election for another type.

(c) In addition to the requirements of section 3 of the Basic Provisions, in counties with both a fall and spring sales closing date for the insured crop:

(1) If you do not have any insured fall-planted dry pea acreage covered under the Winter Coverage Option, you may change your coverage level or percentage of price election until the spring sales closing date; or

(2) If you have any insured fall-planted dry pea acreage covered under the Winter Coverage Option, you may not change your coverage level or percentage of price election after the fall sales closing date.

(d) If a dry pea type is added after the sales closing date, we will assign:

(1) A coverage level equal to the lowest coverage level you selected for any other dry pea types; and

(2) A price election percentage equal to:

(i) 100 percent of the price election if you elected additional coverage; and

(ii) 55 percent of the price election if you elected catastrophic level of coverage.

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 processor/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 for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are planted for harvesting once maturity is reached as:

(i) Dry peas; or

(ii) Contract seed peas, if the processor/seed company contract is executed on or before the acreage reporting; 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;

(iii) Planted as a nurse crop; or

(iv) Planted to plow down, graze, harvest as hay, or otherwise not harvest as a mature dry pea crop.

(b) You will be considered to have a share in the insured crop if, under the processor/seed company contract, you retain control of the acreage on which the dry peas are grown, you are at risk of loss (i.e., if there is a reduction in quantity or quality of your dry pea production, you will receive less income under the contract), and the processor/seed company contract is in effect for the entire insurance period.

(c) In counties for which the actuarial documents provide premium rates for the Winter Coverage Option (see section 15), coverage is available for dry peas between the time coverage begins and the spring final planting date. Coverage under the option is effective only if you qualify under the terms of the option and you elect the option by the sales closing date.

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 producers in the surrounding area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant.

(c) Whenever the Special Provisions designate both fall and spring final planting dates:

(1) Any fall-planted dry peas 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 fall-planted type of dry peas to maintain insurance based on the fall-planted type unless we agree that replanting is not practical. If it is not practical to replant to a fall-planted type of dry peas but it is practical to replant to a spring-planted type, you must replant to a spring-planted type to keep your insurance coverage based on the fall-planted type in force.

(2) Any fall-planted dry pea acreage that is replanted to a spring-planted type when it was practical to replant the fall-planted type will be insured as the spring-planted type and the production guarantee, premium and price election applicable to the spring-planted type will be used. In this case, the acreage will be considered to be initially planted to the spring-planted type.

(3) Notwithstanding section 8(d)(1) and (2), if you have elected coverage under the Winter Coverage Option (if available in the county), insurance will be in accordance with the option.

(d) Whenever the Special Provisions designate only a spring final planting date, any acreage of a fall-planted dry pea crop 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.

(1) The fall-planted dry pea crop will be insured as a spring-planted type for the purpose of the production guarantee, premium and price election.

(2) 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 prior to the spring final planting date.

(3) Any acreage of such fall-planted dry peas 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-planted type of dry pea unless we agree it is not practical to replant. No replanting payment will be made.

(4) If fall-planted acreage is not to be insured it must be recorded on the acreage report as uninsured fall-planted acreage.

9. Insurance Period

9. Insurance Period.

In accordance with the provisions of section 11 of the Basic Provisions, and subject to the provisions provided by the Winter Coverage Option (see section 15) if you elect such option, the insurance period is as follows:

(a) Coverage for fall-planted dry peas not covered by the Winter Coverage Option will begin on the earlier of April 15 or the date we agree to accept the acreage for insurance, but not before March 1, unless otherwise specified on the Special Provisions.

(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 is normally 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. 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 11(a)(1)) and in the Winter Coverage Option (see section 15), if applicable;

(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) When the Winter Coverage Option is in effect for the acreage, damage must occur after the fall final planting date in those counties where both a fall and spring final planting date are designated;

(6) Replanting payments are not available for damaged fall planted dry pea acreage if you have not elected to cover such acreage under the Winter Coverage Option; and

(7) 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) The maximum amount of the replanting payment per acre will be the lesser of 20.0 percent of the production guarantee or 200 pounds, multiplied by your price election, multiplied by your share, unless otherwise stated in the Special Provisions.

(c) 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.

(d) Replanting payments will be calculated using the price election and production guarantee for the dry pea type that is replanted and insured. For example, if damaged

smooth green and yellow pea acreage is replanted to lentils, the price election and production guarantee applicable to lentils 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 fall-planted type of dry peas replanted to a spring-planted type that retains insurance based on the production guarantee and price election for the fall-planted type; and

(2) Any acreage replanted at a reduced seeding rate into a partially damaged stand of the insured crop.

12. Duties in the Event of Damage or Loss

Representative samples are required in accordance with section 14 of the Basic Provisions.

13. 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 units, we will combine all optional units for which acceptable records of production were not provided; or

(2) 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 dry 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 13(b)(1) by the respective price election;

(3) Totaling the results of section 13(b)(2);

(4) Multiplying the insured acreage of each contract seed pea variety by its respective production guarantee;

(5) Multiplying each result of section 13(b)(4) by the applicable base contract price;

(6) Multiplying each result of section 13(b)(5) by your selected price election percentage;

(7) Totaling the results of section 13(b)(6);

(8) Totaling the results of section 13(b)(3) and section 13(b)(7);

(9) Multiplying the total production to be counted of each dry pea type, excluding contract seed peas, if applicable (see section 13(d)), by the respective price elections;

(10) Totaling the value of all contract seed pea production (see section 13(c));

(11) Totaling the results of section 13(b)(9) and section 13(b)(10);

(12) Subtracting the result of section 13(b)(11) from the result in section 12(b)(8); and

(13) Multiplying the result of section 13(b)12 by your share.

For example:

In this example, you have not elected optional units by type. You have a 100 percent share in 100 acres of spring-planted smooth green dry edible peas in the unit, with a 70 percent guarantee of 4,000 pounds per acre and a price election of $0.09 per pound. Your selected price election percentage is 100 percent. You are only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000-pound guarantee;

(2) 400,000-pound guarantee × $0.09 price election = $36,000.00 value of guarantee;

(9) 200,000-pound production to count × $0.09 price election = $18,000.00 value of production to count;

(12) $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 share = $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 65 percent guarantee of 5,000 pounds per acre and a base contract 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-pound guarantee for the spring-planted smooth green dry edible pea type;

(2) 400,000-pound guarantee × $0.09 price election = $36,000.00 value of guarantee for the spring-planted smooth green dry edible pea type;

(4) 100 acres × 5,000 pounds = 500,000-pound production to count for the contract seed pea type;

(5) 500,000-pound guarantee × $0.40 base contract 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-pound production to count × $0.09 price election = $18,000.00 value of production to count for the spring-planted smooth green dry edible pea type;

(10) 450,000-pound production to count × $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 share = $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 mature production meeting the objective, measurable minimum quality requirements (e.g., size, germination percentage) contained in the processor/seed company contract, and for mature production that does not meet such requirements due to uninsured causes:

(i) Multiplying the local market price or base contract 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 objective, measurable minimum quality requirements (e.g., size, germination percentage) contained in the processor/seed company 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 dry 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 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 dry pea production that does not qualify as contract seed peas under the policy terms or does not meet the objective, measurable minimum quality requirements (e.g., size, germination percentage) contained in the processor/seed company contract, may be adjusted for quality deficiencies.

(1) Production will be eligible for quality adjustment in accordance with the following, unless otherwise specified in the Special Provisions:

(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 13(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.

14. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have 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.

15. Winter Coverage Option

(a) In the event of a conflict between this section and sections 1 through 14 of these Crop Provisions, this section will control.

(b) You must have purchased additional coverage under the Dry Pea Crop Provisions in order to select this option.

(c) In return for payment of the additional premium designated in the actuarial documents, this option is available in counties for which the actuarial documents provide premium rates for the Winter Coverage Option.

(d) This option is available only in counties for which the Special Provisions designate both a fall final planting date and a spring final planting date.

(e) You must select this option on your application for insurance, or on a form approved by us, on or before the sales closing date for the initial year in which you wish to insure dry peas under this option.

(1) Failure to do so means you have rejected this coverage for the dry pea crop planted in the fall and this option is void.

(2) This option will continue in effect until canceled or coverage under the Dry Pea Crop Provisions is canceled or terminated.

(3) This option 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 section 15(g) preceding the crop year for which the cancellation of this option is to be effective.

(4) You may change your coverage level or percentage of price election for dry pea types until the spring sales closing date if you have selected this option, but do not have any insured fall planted acreage or your fall planted acreage is not eligible for this option.

(f) Coverage under this option 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.

(g) If you elect this option for dry peas initially planted in the fall, the following dates will be applicable to all your fall-planted and spring-planted dry peas in the county:

(1) Contract change date is June 30 preceding the cancellation date;

(2) Cancellation date is September 30; and

(3) Termination date is November 30. For a policy with amounts due, when the sales closing date is prior to the previous crop year termination date, such policies will terminate for the current crop year even if insurance attached prior to the termination date. Such termination will be considered effective as of the sales closing date and no insurance will be considered to have attached for the crop year and no indemnity, prevented planting or replant payment will be owed.

(h) All notices of damage must be provided to us not later than 15 days after the spring final planting date designated in the Special Provisions.

(i) All insurable acreage of each fall planted dry pea type covered under this option must be insured.

(j) The amount of any indemnity paid under the terms of this option will be subject to any reduction specified in the Basic Provisions for multiple crop benefits in the same crop year.

(k) Whenever any acreage of dry peas planted in the fall 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:

(1) Continue to care for the damaged dry peas. By doing so, coverage will continue under the terms of the Basic Provisions, these Crop Provisions and this option;

(2) Replant the acreage to an appropriate type of insured dry peas, if it is practical, and receive a replanting payment in accordance with the terms of section 11. By doing so, coverage will continue under the terms of the Basic Provisions, these Crop Provisions and this option, and the production guarantee for the dry pea type planted in the fall will remain in effect; or

(3) Destroy the remaining crop on such acreage:

(i) By destroying the remaining crop, you agree to accept an appraised amount of production determined in accordance with section 13(d)(1) of these Crop 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 13.

(ii) You may use such acreage for any purpose, including planting and separately insuring any other crop if such insurance is available.

(iii) If you elect to plant and elect to insure spring-planted dry pea acreage of the same dry pea type (you must elect whether or not you want insurance on the spring-planted acreage of the same dry pea type at the time we release the fall-planted acreage), you must pay additional premium for insurance. Such acreage will be insured in accordance with the policy provisions that are applicable to acreage that is initially planted in the spring to the same dry pea type, and you must:

(A) Plant the spring-planted acreage 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 fall-planted dry pea acreage; and

(B) Store or market the production in a manner which permits us to verify the amount of spring-planted production separately from any fall-planted production. In the event you are unable to provide records of production that are acceptable to us, the spring-planted acreage will be considered to be a part of the original fall-planted unit.

[62 FR 65744, Dec. 16, 1997, as amended at 63 FR 36157, July 2, 1998; 67 FR 55691, Aug. 30, 2002; 73 FR 51582, Sept. 4, 2008]

§ 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 2008 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; Kansas; Maine; Massachusetts; Michigan; Minnesota; Montana; Nebraska; Nevada; San Juan County, New Mexico; New York; North Dakota; Ohio; Oregon; Pennsylvania; Rhode Island; South Dakota; Utah; Washington; Wisconsin; and Wyoming; and any other states or counties if allowed by the Special Provisions.

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 that were entered into the potato certified seed program and that meet all requirements for production to be used to produce a seed crop for the next crop year or a potato crop for harvest for commercial uses in the next crop year.

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. The United States standards used to determine the quality (grade) deficiencies will be: For potatoes produced for chipping, the United States Standards for Grades of Potatoes for Chipping; for potatoes produced for processing, the United States Standards for Grades of Potatoes for Processing; for potatoes produced for seed, the United States Standards for Grades of Seed Potatoes; and for all other potatoes, the United States Standards for Grades of Potatoes. The quantity and number of samples required will be determined in accordance with procedure issued by FCIC.

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.

Potato certified seed program. The state program administered by a public agency responsible for the seed certification process within the state in which the seed is produced.

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 90 percent of your price election. This requirement is not applicable to the certified seed endorsement price election.

(c) The price election for unharvested acreage will apply to any acreage of potatoes damaged to the extent that similarly situated producers in the area would not normally care for the potatoes even if you choose to continue to care for or harvest them. Potatoes that are lifted to the soil surface and not removed from the field will

also receive the price election for unharvested 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×b×c×d×e×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;

(e) October 25 in Kansas; and

(f) October 31 in Humboldt, Modoc, and Siskiyou Counties, California; Connecticut; Idaho; Massachusetts; San Juan County, New Mexico; 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 $3.60 per hundredweight. (The price election for unharvested acreage is 90.0 percent of your elected price election ($4.00 × 0.90 = $3.60.)) 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 harvested acreage, and

15,000 hundredweight guarantee × $3.60 price election = $54,000.00 value of guarantee for the unharvested acreage;

(3) $60,000.00 + $54,000.00 = $114,000.00 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 × $3.60 = $12,600.00 value of production to count for the unharvested acreage;

(5) $40,000.00 + $12,600.00 = $52,600.00 total value of production to count;

(6) $114,000.00 − $52,600.00 = $61,400.00 loss; and

(7) $61,400.00 loss × 100 percent = $61,400.00 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, including unharvested production on insured acreage you intend to put to another use or abandon, or acreage damaged by insurable causes and for which you cease to provide further care, 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 cease providing care for the crop. This unharvested production may be adjusted in accordance with sections 11(e), (f), and (g); and the value of all unharvested production will be calculated using the reduced price

election determined in section 2(b). 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 completed no later than 21 days after the end of the insurance period (if the Northern Potato Storage Coverage Endorsement is applicable, samples must be obtained within 60 days after the end of the insurance period and quality (grade) determinations must be completed with 21 days of sampling); and

(3) Prior to any grade inspection, you must notify us of the intended use of the potatoes so the appropriate United States standards will be applied (We may request previous sales records to verify your claimed intended use or base the intended use on the type of potato grown if such potatoes are not usually grown for the intended use you reported).

(f) Potato production to count 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 to count that is eligible for quality adjustment, as specified in section 11(e), with 5.1 percent damage or more (by weight) will be determined as follows:

(1) If a price is agreed upon between you and a buyer within 21 days (60 days if the Northern Potato Storage Coverage endorsement is applicable), after the end of the insurance period, or the production is delivered to a buyer within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production will be determined by:

(i) Dividing the price per hundredweight received or that will be received by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the 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); and

(ii) Multiplying the result (not to exceed 1.0) by the number of hundredweight of sold or to be sold production (We may verify this after the production has actually been sold); or

(2) If a price is not agreed upon between you and a buyer and the production is not delivered within 21 days (60 days if the Northern Storage Coverage Endorsement is applicable) after the end of the insurance period, and that remain in storage 22 or more days (61 or more days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production will be the greater of:

(i) The amount determined by:

(A) Dividing the price per hundredweight that is received, or will be received after the end of the applicable insurance period, by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the 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); and

(B) Multiplying the result of section 11(g)(2)(i)(A) (not to exceed 1.0) by the number of hundredweight of sold or to be sold production (We may verify this after the production has actually been sold); or

(ii) The amount of production determined by:

(A) Reducing any harvested or appraised production:

(*1*) By 0.1 percent for each 0.1 percent damage through 5.0 percent;

(*2*) By 0.5 percent for each 0.1 percent of damage from 5.1 percent through 6.0 percent;

(*3*) By 1.0 percent for each 0.1 percent of damage from 6.1 through 13.5 percent; or

(B) Including 15 percent of the production when damage is in excess of 13.5 percent.

(iii) For any production discarded:

(A) Within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production to count will be:

(*1*) Zero if we determine the production could not have been sold; or

(*2*) Determined in accordance with section 11(g)(2)(ii) if we determine the production could have been sold; or

(B) Later than 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production to count will be adjusted in accordance with section 11(g)(2)(ii).

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, as amended at 72 FR 61282, Oct. 30, 2007]

§ 457.143 Northern potato crop insurance—quality endorsement.

The Northern Potato Crop Insurance Quality Endorsement Provisions for the 2008 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 Quality Endorsement

1. Definitions

Percentage factor. 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 4 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 so that such a combination would be the functional equivalent of 4 years of records.

2. 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.

3. 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.

4. 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.

5. We will adjust the production to count determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions for potatoes that do not meet U.S. No. 2 grade requirements from unharvested acreage or harvested acreage that is stored or is marketed after a grade inspection due to:

(a) Internal defects as long as the number of potatoes with such defects are in excess of the tolerances allowed for the U.S. No. 2 grade potatoes on a lot basis and are not separable from undamaged production using methods used by the packers or processors to whom you normally deliver your potato production as follows:

(1) If a price is agreed upon between you and a buyer within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable) after the end of the insurance period, or the production is delivered to a buyer within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable) after the end of the insurance period, the amount of production will be determined by (adjustment under section 5(a)(1) or 5(a)(2)(i) will not be performed if it already has been performed under the terms of section 11(g) of the Northern Potato Crop Provisions):

(i) Dividing the price received or that will be received per hundredweight by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the 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); and

(ii) Multiplying the result (not to exceed 1.0) by the number of hundredweight of sold or to be sold production (We may verify this after the production has actually been sold); or

(2) If a price is not agreed upon between you and a buyer and the production is not delivered within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable) after the end of the insurance period, and the potatoes remain in storage 22 or more days (61 or more days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production will be the greater of:

(i) The amount of production determined by:

(A) Dividing the price per hundredweight that is received, or will be received after the end of the applicable insurance period, by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the 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); and

(B) Multiplying the result of section 5(a)(2)(i)(A) (not to exceed 1.0) by the number of hundredweight of sold or to be sold production (We may verify this after the production has actually been sold); or

(ii) The amount of production determined as follows:

(A) The combined weight of sampled potatoes grading U.S. No. 2 or better (the amount of potatoes grading U.S. No. 2 will be based on a grade inspection completed no later than 21 days after the end of the insurance period (if the Northern Potato Storage Coverage Endorsement is applicable), samples must be obtained within 60 days after the end of the insurance period and a grade inspection completed within 21 days of sampling) and are damaged by freeze or tuber rot will be divided by the total sample weight;

(B) The percentage determined in section 5(a)(2)(ii)(A) will be divided by the applicable percentage factor; and

(C) The result of section 5(a)(2)(ii)(B) will be multiplied by the amount of production to count determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions.

(b) Factors other than those specified in section 5(a), in accordance with section 5(a)(2)(ii).

6. For any production that qualifies for adjustment in accordance with section 5(a) and that is discarded:

(a) Within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production to count will be:

(1) Zero if we determine the production could not have been sold; or

(2) Determined in accordance with section 5(a)(2)(ii) if we determine the production could have been sold; or

(b) Later than 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production to count will be adjusted in accordance with section 5(a)(2)(ii).

7. 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.

8. Production to count for potatoes destroyed, stored or marketed without a grade inspection will be 100 percent of the gross weight of such potatoes.

9. All determinations must be based upon a grade inspection.

10. The actuarial documents may provide ''U.S. No. 1 grade'' in place of ''U.S. No. 2 grade'' as used in this endorsement.

(a) If both U.S. No.1 and U.S. No. 2 grades are available in the actuarial documents, you may elect U.S. No. 1 or 2 grade by potato type or group, if separate types or groups are specified in the Special Provisions.

(b) If both fresh and processing types are specified in the actuarial documents, you cannot elect the fresh type for any potatoes grown for processing or chipping.

[62 FR 65335, Dec. 12, 1997, as amended at 72 FR 61283, Oct. 30, 2007]

§457.144 Northern potato crop insurance—processing quality endorsement.

The Northern Potato Crop Insurance Processing Quality Endorsement Provisions for the 2008 and succeeding crop years are as follows:

1. Definitions

Broker. Any business enterprise regularly engaged in the buying and selling of processing potatoes, that possesses all licenses and permits as required by the state in which it operates, and when required, has the necessary facilities or the contractual access to such facilities, with enough equipment to accept and transfer processing potatoes to the broker within a reasonable amount of time after harvest or the typical storage period.

Percentage factor. The term as defined in the Northern Potato Quality Endorsement.

Processor. Any business enterprise regularly engaged in processing potatoes for human consumption, that possesses all licenses and permits for processing potatoes 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 processing potatoes grown under a processing contract within a reasonable amount of time after harvest or the typical storage period.

Processor contract. A written agreement between the producer and processor, or between a producer and a broker, containing at a minimum:

(a) The producer's commitment to plant and grow processing potatoes, and to deliver the potato production to the processor or broker;

(b) The processor's or broker's commitment to purchase all the production stated in the processing contract; and

(c) A price or pricing mechanism to determine the value of delivered production.

2. To be eligible for coverage under this endorsement, you must have a:

(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:

(1) Cancellation of your Northern Potato Quality Endorsement will automatically result in cancellation of this endorsement;

(2) 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: and

(b) Processor contract executed with a processor or broker for the potato types insured under this endorsement that is applicable for the crop year:

(1) A copy of the processor contract must be submitted to us on or before the acreage reporting date for potatoes; and

(2) Failure to timely provide the processor contract will result in no coverage under this endorsement and coverage will be provided only under the terms of the Northern Potato Crop Provisions and Northern Potato Quality Endorsement.

3. 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 Northern Potato Quality Endorsement subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Crop Provisions or Northern Potato Quality Endorsement and this endorsement, this endorsement will control.

4. All terms of the Northern Potato Quality Endorsement not modified by this endorsement will be applicable to acreage covered under this endorsement.

5. If you elect this endorsement, all insurable acreage of production under contract with the processor or broker must be insured under this endorsement; however:

(a) When the processor contract requires the processor or broker to purchase a stated amount of production, rather than all of the production from a stated number of acres, the insurable acres will be determined by dividing the stated amount of production by the approved yield for the acreage; and

(b) The number of acres insured under this endorsement will not exceed the actual number of acres planted to the potato types needed to fulfill the contract.

6. Potato lots may be adjusted in accordance with section 8 if such potatoes:

(a) Fail to meet the standards in section 7(a), (b), (c), or (d), or a standard contained in the processor contract, for the same quality factors specified in section 7(a), (b), (c), or (d), if such standard is less stringent;

(b) Have a value less than the maximum price election; and

(c) Fail to meet the applicable standards and are not separable from undamaged production using methods used by processors to whom you normally deliver your potato production.

7. To qualify for a quality reduction under this endorsement, the potatoes must:

(a) Fail to meet the applicable U.S. No. 2 grade requirements due to internal defects as long as the number of potatoes with such defects are in excess

of the tolerance allowed for U.S. No. 2 grade potatoes;

(b) Have a specific gravity lower than 1.074;

(c) Have a fry color of No. 3 or darker due to either sugar exceeding 10 percent or sugar ends exceeding 19 percent; or

(d) Have an Agtron rating lower than 58.

8. In lieu of the provisions contained in section 5 of the Northern Potato Quality Endorsement, production to count determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions, from unharvested acreage or harvested acreage that is stored or is marketed after a grade inspection determined in section 10, will be adjusted in accordance with sections 8(a) or 8(b), whichever is applicable, (adjustment under section 8(a) or 8(b)(1) will not be performed if it already has been performed under the terms of section 11(g) of the Northern Potato Crop Provisions):

(a) If a price is agreed upon between you and a buyer within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable) after the end of the insurance period, or the production is delivered to a buyer within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production will be determined by:

(1) Dividing the price per hundredweight received or that will be received by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (If the 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); and

(2) Multiplying the result of section 8(a)(1) (not to exceed 1.0) by the number of hundredweight of sold or to be sold production (We may verify this after the production has actually been sold); or

(b) If a price is not agreed upon between you and a buyer and the production is not delivered within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, and the production remains in storage 22 or more days (61 or more days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production will be the greater of:

(1) The amount of production determined by:

(i) Dividing the price per hundredweight that is received, or that will later be received after the end of the applicable insurance period, by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the 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); and

(ii) Multiplying the result of section 8(b)(1)(i) (not to exceed 1.0) by the number of hundredweight of sold or to be sold production (We may verify this after the production has actually been sold); or

(2) The amount of production determined as follows:

(i) The combined weight of sampled potatoes that grade U.S. No. 2 or better (the amount of potatoes grading U.S. No. 2 or better will be based on a grade inspection completed no later than 21 days after the end of the insurance period, if the Northern Potato Storage Coverage Endorsement is applicable; samples must be obtained within 60 days after the end of the insurance period and grade inspection completed within 21 days of sampling) and are damaged by freeze or tuber rot will be divided by the total sample weight;

(*A*) The percentage determined in section 8(b)(2)(i) will be divided by the applicable percentage factor; and

(B) The result of section 8(b)(2)(i)(A) will be multiplied by the amount of production to count determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions.

(c) The production to count for potatoes that have a value less than the maximum price election due to factors other than those specified in section 7

will be adjusted in accordance with section 8(b)(2).

9. For any production that qualifies for adjustment in accordance with section 7 and that is discarded:

(a) Within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production to count will be:

(1) Zero if we determine the production could not have been sold; or

(2) Determined in accordance with section 8(b)(2) if we determine the production could have been sold; or

(b) Later than 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production to count will be adjusted in accordance with section 8(b)(2).

10. All quality determinations must be based upon a grade inspection using the United States Standards for Grades of Potatoes for Processing or the United States Standards for Grades of Potatoes for Chipping.

11. The actuarial documents may provide ''U.S. No. 1 grade'' in place of ''U.S. No. 2 grade'' as used in this endorsement. If both U.S. No. 1 and 2 grades are available in the actuarial documents, you may elect U.S. No. 1 or 2 grade by potato type or group, if separate types or groups are specified in the Special Provisions.

[72 FR 61284, Oct. 30, 2007]

§ 457.145 Potato crop insurance—certified seed endorsement.

The Potato Crop Insurance Certified Seed Endorsement Provisions for the 2008 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 accordance with section 8, since your insurance period is not extended in this endorsement, any additional premium paid for coverage under the Northern Potato Storage Coverage Endorsement will not apply to the additional coverage provided under the terms of this endorsement. 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 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 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 4 below.

4. 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:

(a) Multiply the average number of your acres entered into and passing certification in the potato certified seed program the 3 previous calendar years by 1.25 and divide this result by the number of acres grown by you for certified seed in the current crop year; and

(b) Multiply the result of section 4(a) (not to exceed 1.0) by the production guarantee for certified seed for the current crop year.

5. 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.

6. All potatoes insured for certified seed production must be produced and managed in accordance with the regulations, standards, practices, and procedures required for certification under the potato certified seed program. Any production that does not qualify as certified seed because of varietal mixing or your failure to meet any requirements under the potato certified seed program will be considered as lost due to uninsured causes.

7. 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 7(a) by the dollar amount per hundredweight contained in the Special Provisions for production covered under this endorsement;

(c) Totaling the results of section 7(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 7(d) from the result of section 7(c); and

(f) Multiplying the result of section 7(e) by your share.

8. 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. In lieu of the provisions in section 14(c) of the Basic Provisions specifying that any claim for indemnity must be filed not later than 60 days after the end of the insurance period, your claim for indemnity must be filed by the later of:

(a) Sixty (60) days after the end of the insurance period; or

(b) Thirty (30) days after you receive notice from the state certifying agency that production has failed certification.

9. 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.

10. Failure to meet any requirements for seed to be used to produce a subsequent seed crop will not be covered. All the production that meets requirements for certified seed used to produce a commercial crop will be included in production to count.

[62 FR 65337, Dec. 12, 1997, as amended at 64 FR 71271, Dec. 21, 1999; 72 FR 61286, Oct. 30, 2007]

§457.146 Northern potato crop insurance—storage coverage endorsement.

The Northern Potato Crop Insurance Storage Coverage Endorsement Provisions for the 2008 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 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. In lieu of section 9(b)(1) of the Northern Potato Crop Provisions, the extended coverage provided by this endorsement will be applicable but 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) The potatoes damaged by an insurance cause of loss fail to meet any of the following standards or a less stringent standard for the same quality factors specified below, contained in the processor contract, if applicable, (this coverage is applicable only to production covered under the Northern Potato Processing Quality Endorsement):

(i) A specific gravity lower than 1.074;

(ii) A fry color of No. 3 or darker due to either sugar exceeding 10 percent or sugar ends exceeding 19 percent; or

(iii) An Agtron rating lower than 58.

(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 with any of the quality deficiencies specified in section 5(a) is determined based on samples obtained no later than 60 days after the end of the insurance period and the potatoes are evaluated and quality (grade) determinations are made by us, a laboratory approved by us, a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, or us, in accordance with the United States Standards for Grades of Potatoes:

(1) Samples of damaged production must be obtained by us or a party approved by us prior to the sale or disposal of any lot of potatoes; and

(2) If production is not sold or disposed of within 60 days after the end of the insurance period, samples must be obtained within 60 days after the end of the insurance period and a quality (grade) determination must be completed within 21 days of sampling.

[62 FR 65337, Dec. 12, 1997, as amended at 72 FR 61286, Oct. 30, 2007]

§ 457.147 Central and Southern potato crop insurance provisions.

The Central and Southern Potato Crop Insurance Provisions for the 2009 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; all New Mexico counties except San Juan; North Carolina; Oklahoma; Texas; and Virginia; and other states or counties if allowed by the Special Provisions.

1. Definitions

Certified seed. Potatoes that were entered into the potato certified seed program and that meet all requirements for production to be used to produce a seed crop for the next crop year or a potato crop for harvest for commercial uses in the next crop year.

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. The United States standards used to determine the quality (grade) deficiencies will be: For potatoes produced for chipping, the United States Standards for Grades of Potatoes for Chipping; for potatoes produced for processing, the United States Standards for Grades of Potatoes for Processing; for potatoes produced for seed, the United States Standards for Grades of Seed Potatoes; and for all other potatoes, the United States Standards for Grades of Potatoes. The quantity and number of samples required will be determined in accordance with procedure issued by FCIC.

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.

Potato certified seed program. The state program administered by a public agency responsible for the seed certification process within the state in which the seed is produced.

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 90 percent of your price election.

(c) The price election for unharvested acreage will apply to any acreage of potatoes damaged to the extent that similarly situated producers in the area would not normally care for the potatoes even if you choose to continue to care for or harvest them. Potatoes that are lifted to the soil surface and not removed from the field will also receive the price election for unharvested 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, December 31, or January 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, Osceola, and Brevard Counties, Florida, and all Florida counties lying south thereof.	September 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.	November 30.
Alabama; Georgia; Missouri; and All Florida Counties except Pinellas, Hillsborough, Polk, Osceola, and Brevard Counties, Florida, and all Florida counties to the south thereof.	December 31.
Delaware; Maryland; New Jersey; North Carolina; and Virginia	January 31.
Oklahoma; and Haskell and Knox Counties, Texas	February 28.
Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Lamb, Parmer, Swisher, and Yoakum counties, Texas; and all New Mexico counties except San Juan County.	March 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; 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.

(c) August 15 in North Carolina; Oklahoma; and Haskell and Knox Counties, Texas.

(d) August 31 in Virginia.

(e) In Alabama; California; Florida; and Georgia; the dates established by the Special Provisions for each planting period; and

(f) October 15 in Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Lamb, Parmer, Swisher, and Yoakum Counties, Texas; Delaware; Maryland; New Jersey; and all counties in New Mexico except San Juan.

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 or becomes evident 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;

(5) $60,000.00 − $40,000.00 = $20,000.00 loss; and

(6) $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 $3.60 per hundredweight. (The price election for unharvested acreage is 90.0 percent of your elected price election ($4.00 × 0.90 = $3.60.)) 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 harvested acreage, and

15,000 hundredweight guarantee × $3.60 price election = $54,000.00 value of guarantee for the unharvested acreage;

(3) $60,000.00 + $54,000.00 = $114,000.00 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 × $3.60 = $12,600.00 value of production to count for the unharvested acreage;

(5) $40,000.00 + $12,600.00 = $52,600.00 total value of production to count;

(6) $114,000.00 − $52,600.00 = $61,400.00 loss; and

(7) $61,400.00 loss × 100 percent = $61,400.00 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, including unharvested production on insured acreage you intend to put to another use or abandon, or acreage damaged by insurable causes and for which you cease to provide further care, 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 cease providing care for the crop. This unharvested production may be adjusted in accordance with sections 12(e), and the value of all unharvested production will be calculated using the reduced price election determined in section 3(b). 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) Only marketable lots of mature potatoes will be production to count for loss adjustment purposes, except for production specified in 12(e)(1):

(1) Production not meeting the standards for grading U.S. No. 2 due to external defects will be determined on an individual basis for all harvested and unharvested potatoes if we determine it is or would be practical to separate the damaged production;

(2) All determinations must be based upon a grade inspection; and

(3) Prior to any grade inspection, you must notify us of the intended use of the potatoes so the appropriate United States Standard will be applied (We may request previous sales records to verify your claimed intended use or base the intended use on the type of potato grown if such potatoes are not usually grown for the intended use you reported).

(4) 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 lots meet the standards for grading U.S. No. 2 grade or better on a sample basis.

(5) 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.

(6) Unless included in section 12(e)(4) or (5), 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) Does not meet the standards for grading U.S. No. 2 grade or better due to internal defects; or

(iii) Does not meet the standards for grading U.S. No. 2 grade or better due to external defects, 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, as amended at 72 FR 61287, Oct. 30, 2007]

§ 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, 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; 71 FR 74456, Dec. 12, 2006]

§ 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 amount of insurance established 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; 71 FR 74456, Dec. 12, 2006]

§ 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 2008 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

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 contained in the Basic Provisions, 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 contained in the Basic Provisions, 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 this definition 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 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 (unless otherwise specified in the Special Provisions) as follows:

(a) October 10 for North Dakota, South Dakota, and Wyoming; and

(b) October 31 for all other states.

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 due to a cause of loss specified in sections 8(a) through (g) that also 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.

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 bushel guarantee − 800 bushel production to count = 700 bushel loss;

(3) 700 bushels × $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 bushels, 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.

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 per day for the first through the tenth day; and

(b) Three percent per day 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 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.

[67 FR 3037, Jan. 23, 2002, as amended at 67 FR 5925, Feb. 8, 2002; 72 FR 48229, Aug. 23, 2007]

§ 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]

§457.168 Mustard crop insurance provisions.

The Mustard Crop Insurance Provisions for the 2009 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:
Mustard Crop Insurance Provisions.

1. Definitions

Base contract price. The price per pound (U.S. dollars) stipulated in the processor contract (without regard to discounts or incentives) that will be used to determine your price election.

Harvest. Combining or threshing for seed. A crop that is swathed prior to combining is not considered harvested.

Mustard. A crop of the family *Cruciferae*.

Planted acreage. In addition to the definition contained in the Basic Provisions, mustard seed must be planted in rows. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Processor. Any business enterprise regularly engaged in buying and processing mustard, that possesses all licenses and permits for processing mustard 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 mustard 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 mustard of the types specified in the Special Provisions and to deliver the 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 (U.S. dollars).

Salvage price. The cash price per pound (U.S. dollars) for mustard qualifying for quality adjustment in accordance with section 13 of these Crop Provisions.

Swathed. Severance of the stem and seed pods from the ground and placing into windrows without removal of the seed from the pod.

Type. A category of mustard identified as a type in the Special Provisions.

Windrow. Mustard that is swathed and placed in a row.

2. Unit Division

In addition to the requirements of section 34 of the Basic Provisions, optional units may also be established by type, if types are designated on the Special Provisions.

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 base contract price percentage for all the mustard in the county insured under this policy unless the Special Provisions allow different base contract prices by type.

(b) If base contract prices are allowed by type, you can select one base contract price for each type designated in the Special Provisions. The base contract prices you choose must have the same percentage relationship to the base contract price (maximum price) offered for each type. For example, if you choose 100 percent of the maximum price for a specific type, you must also choose 100 percent of the maximum price for all other types.

(c) If there are multiple base contract prices within the same unit, each will be considered a separate price election that will be multiplied by the number of insurable acres under applicable processor contract. These amounts will be totaled to determine the premium, liability, and indemnity for the unit.

(d) To determine the total production guarantee, apply the lesser of the:

(1) Contracted acres multiplied by the production guarantee (per acre);

(2) Planted acres multiplied by the production guarantee (per acre);

(3) Total production stated in the contract; or

(4) For acreage and production contracts only, the contracted acres multiplied by the contracted production (per acre).

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 in 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 mustard in the county for which a premium rate is provided by the actuarial table:

(1) In which you have a share;

(2) That is planted for harvest as seed;

(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; or

(iii) Planted following the harvest of any other crop in the same crop year.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acres on which the mustard is grown, your income from the insured crop is dependent on the amount of production delivered, and the processor contract provides for delivery of the mustard under specified conditions and at a stipulated base contract price.

(c) A commercial mustard 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 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.

(b) We will not insure any acreage that does not meet the rotation requirements, if applicable, contained in the Special Provisions.

(c) Insurable acreage will be:

(1) For acreage only based processor contracts and acreage and production based processor contracts which specify a maximum number of acres, the lesser of:

(i) The planted acres; or

(ii) The maximum number of acres specified in the contract;

(2) For production only based processor contracts, the lesser of:

(i) The number of acres determined by dividing the production stated in the processor contract by the approved yield; or

(ii) The planted acres.

9. 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 unless otherwise stated 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 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; and

(h) Failure of the irrigation water supply, if applicable, caused by a cause of loss specified in section 10(a) through (g) that occurs during the insurance period.

11. 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 the remaining stand will not produce at least 90 percent of the production guarantee for the acreage, and it is practical to replant or we require you to replant in accordance with section 8(a).

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee (per acre) or 175 pounds, multiplied by the base contract price applicable to the acreage to be replanted, multiplied by your insured share.

(c) When the mustard 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 that is attributable to your share. 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 that we may require 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.

(1) In the event you are unable to provide separate acceptable production records:

(i) For any optional units, we will combine all optional units for which acceptable production records were not provided; or

(ii) 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.

(2) For any processor contract that stipulates only the amount of production to be delivered, and not withstanding 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 contract(s) forming the basis of the insurance guarantee

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insurable acreage of each type, if applicable, determined in accordance with section 8(c), by its respective production guarantee (per acre);

(2) Multiplying each result in section 13(b)(1) by the respective base contract price for each type, if applicable;

(3) Totaling the results in section 13(b)(2);

(4) Multiplying the production to be counted for each type, if applicable (see section 13(c), by its respective base contract price (If you have multiple processor contracts with varying base contract prices within the same unit, we will value your production to count by using your highest base contract price first and will continue in decreasing order to your lowest base contract price based on the amount of production insured at each base contract price);

(5) Totaling the results in section 13(b)(4);

(6) Subtracting the total in section 13(b)(5) from the total in section 13(b)(3); and

(7) Multiplying the result in section 13(b)(6) by your share.

Example # 1 (with one base contract price for the unit):

You have 100 percent share in 20 acres of mustard in a unit with a 650-pound production guarantee (per acre) and a base contract price of $0.15 per pound. Due to insurable causes, you are only able to harvest 10,000 pounds and there is no appraised production. Your indemnity would be calculated as follows:

(1) 20 acres × 650 pounds = 13,000 pound production guarantee;

(2) 13,000 pounds × $0.15 base contract price = $1,950 value of guarantee;

(3) $1,950 total value of guarantee;

(4) 10,000 pounds × $0.15 base contract price = $1,500 value of production to count;

(5) $1,500 total value of production to count;

(6) $1,950 − $1,500 = $450 loss; and

(7) $450 × 100 percent = $450 indemnity payment.

Example # 2 (with two base contract prices for the same unit):

You have 100 percent share in 20 acres of mustard in a unit with a 650-pound production guarantee (per acre), 10 acres with a base contract price of $0.15 per pound, and 10 acres with a base contract price of $0.10 per pound. Due to insurable causes, you are only able to harvest 8,500 pounds and there is no appraised production. Your indemnity would be calculated as follows:

(1) 10 acres × 650 pounds = 6,500-pound production guarantee × $0.15 base contract price = $975 value guarantee;

(2) 10 acres × 650 pounds = 6,500-pound production guarantee × $0.10 base contract price = $650 value guarantee;

(3) $975 + $650 = $1,625 total value guarantee;

(4) 6,500 pounds of production to count × $0.15 base contract price (higher base contract price) = $975 value of production to count;

(5) 2,000 pounds of production to count × $0.10 base contract price (lower base contract price) = $200 value of production to count;

(6) $975 + $200 = $1,175 total value of production to count;

(7) $1,625 total value guarantee—$1,175 total value of production to count = $450 loss; and

(8) $450 × 100 percent = $450 indemnity payment.

(c) The total production to count (in pounds) from all insurable acreage in 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 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 13(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;

(2) All harvested production from the insurable acreage; and

(3) Any other uninsurable mustard production that is delivered to fulfill the processor contract.

(d) Mature mustard 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) Mustard production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 10.0 percent. We may obtain samples of the production to determine the moisture content.

(2) Mustard production will be eligible for quality adjustment only if:

(i) Deficiencies in quality result in the mustard not meeting the requirements for acceptance under the processor contract because of damaged seeds (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 mustard production only if:

(i) The deficiencies, substances, or conditions specified in section 13(d)(2) resulted from a cause of loss specified in section 10 that occurs within the insurance period; and

(ii) The deficiencies, substances, or conditions specified in section 13(d)(2) result in a salvage price less than the base contract price; and

(iii) All determinations of these deficiencies, substances, or conditions specified in section 13(d)(2) are made using samples of the production obtained by us, by the processor identified in the processor contract for the insured acreage, or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader in accordance with the Directive for Inspection of Mustard Seed, provided by the Federal Grain Inspection Service or such other directive or standards that may be issued by FCIC.

(4) Mustard production that is eligible for quality adjustment, as specified in sections 13(d)(2) and (3), will be reduced by multiplying the quality adjustment factors contained in the Special Provisions (if quality adjustment factors are not contained in the Special Provisions, the quality adjustment factor is determined by dividing the salvage price by the base contract price (not to exceed 1.000)) by the number of pounds remaining after any reduction due to excessive moisture (the moisture-adjusted gross pounds) of the damaged or conditioned production.

(i) The salvage 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:

(A) Discounts used to establish the salvage price will be limited to those that are usual, customary, and reasonable.

(B) The salvage price will not include any reductions for:

(1) Moisture content;

(2) Damage due to uninsured causes;

(3) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the mustard; except, if the salvage price can be increased by conditioning, we may reduce the salvage price, after the production has been conditioned, by the cost of conditioning but not lower than the salvage price before conditioning; and

(ii) We may obtain salvage prices from any buyer of our choice. If we obtain salvage prices from one or more buyers located outside your local market area, we will reduce such price by the additional costs required to deliver the mustard to those buyers.

(iii) Factors not associated with grading under the Directive for Inspection of Mustard Seed, provided by the Federal Grain Inspection Service or such other directive or standards that may be issued by FCIC 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.

14. Late Planting

In lieu of section 16(a) of the Basic Provisions, the production guarantee (per acre) 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.

15. 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 (per acre) for timely planted acreage. When a portion of the insurable acreage within the unit is prevented from being planted, and there is more than one base contract price applicable to acreage in the unit, the lowest base contract price will be used in calculating any prevented planting payment. 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.

[73 FR 11320, Mar. 3, 2008; 73 FR 17243, Apr. 1, 2008]

§ 457.169 Mint crop insurance provisions.

The Mint Crop Insurance Provisions for the 2008 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:

Mint Crop Insurance Provisions

1. Definitions

Adequate Stand. A population of live mint plants that equals or exceeds the minimum required number of plants or percentage of ground cover, as specified in the Special Provisions.

Appraisal. A method of determining potential production by harvesting and distilling a representative sample of the mint crop.

Cover crop. A small grain crop seeded into mint acreage to reduce soil erosion and wind damage.

Cutting. Severance of the upper part of the mint plant from its stalk and roots.

Distillation. A process of extracting mint oil from harvested mint plants by heating and condensing.

Existing mint. Mint planted for harvest during a previous crop year.

Ground cover. Mint plants, including mint foliage and stolons, grown on insured acreage.

Harvest. Removal of mint from the windrow.

Mint. A perennial spearmint or peppermint plant of the family Labiatae and the genus *Mentha* grown for distillation of mint oil.

Mint oil. Oil produced by the distillation of harvested mint plants.

New mint. Mint planted for harvest for the first time.

Planted acreage. In addition to the definition in the Basic Provisions, land in which mint stolons have been placed in a manner appropriate for the planting method and at the correct depth

into a seedbed that has been properly prepared.

Pound. 16 ounces avoirdupois.

Sales closing date. In lieu of the definition contained in the Basic Provisions, if you select the Winter Coverage Option, application for the Winter Coverage Option will include application for the spring insurance period and must be submitted by the sales closing date for the Winter Coverage Option contained in the Special Provisions. Coverage may not be changed between the end of the Winter Coverage Option insurance period and the beginning of the spring insurance period. If you do not elect the Winter Coverage Option, application must be made by the spring sales closing date contained in the Special Provisions and all policy changes must be made by that date. If you later elect the Winter Coverage Option, you may select your coverage under the Winter Coverage Option.

Stolon. A stem at or just below the surface of the ground that produces new mint plants at its tips or nodes.

Type. A category of mint identified as a type in the Special Provisions.

Windrow. Mint that is cut and placed in a row.

2. Unit Division

A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each mint type designated in the Special Provisions.

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 only select one price election for all the mint in the county insured under this policy unless the actuarial documents provide different price elections by type, in which case you may only select one price election for each type designated in the actuarial documents. 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 specific type, you must also choose 100 percent of the maximum price election for other types.

(b) In addition to the provisions in section 3 of the Basic Provisions, you must report:

(1) The total amount of mint oil produced from insurable acreage for all cuttings for each unit;

(2) Any damage to or removal of mint plants or stolons; any change in practices; or any other circumstance that may reduce the expected yield below the yield upon which the production guarantee is based, and the number of affected acres;

(3) The stand age;

(4) The date existing mint acreage was planted;

(5) The date new mint acreage was initially planted; and

(6) The type of mint.

(c) If you fail to notify us of any circumstance that may reduce your yields or insurable acres from previous levels, we will reduce your production guarantee and insurable acres at any time we become aware of the circumstance based on our estimate of the effect of damage to or removal of mint plants or stolons; stand age; change in practices; and any other circumstance that may affect the yield potential or insurable acres of the insured crop.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is June 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation date is September 30 and the termination date is November 30. If your policy is terminated after insurance has attached for the subsequent crop year, coverage will be deemed not to have attached to the acreage for the subsequent crop year.

6. Insured Crop

(a) In accordance with the provisions of section 8 of the Basic Provisions, the crop insured will be all mint types 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 and distillation for mint oil;

(3) That have an adequate stand by the date coverage begins; and

(4) That have been:

(i) Inspected and accepted by us for the first crop year you are insured; or

(ii) Certified by you as having an adequate stand on the date coverage begins after the first crop year you are insured unless an inspection is required under section 8(b).

(b) In lieu of the provisions of section 8 of the Basic Provisions that prohibit insurance of a second crop harvested following the same crop in the same crop year, multiple harvests of mint on the same acreage will be considered as one mint crop.

(c) In addition to the coverages provided in these Crop Provisions, you may also elect the Winter Coverage Option in accordance with section 13.

7. Insurable Acreage

(a) Mint interplanted with a cover crop will not be considered interplanted for the purposes of section 9 of the Basic Provisions if the cover crop is destroyed prior to its maturity and is not harvested as grain.

(b) In addition to the provisions of section 9 of the Basic Provisions, unless allowed by written agreement, we will not insure any acreage that:

(1) Does not meet rotation requirements contained in the Special Provisions; or

(2) Exceeds existing mint age limitations contained in the Special Provisions.

8. Insurance Period

In lieu of the provisions of section 11 of the Basic Provisions:

(a) Coverage begins on each unit or part of a unit for acreage with an adequate stand on the following calendar dates:

(1) June 16 in Indiana, Montana, and Wisconsin;

(2) May 16 in Washington; and

(3) For all other states, the date as provided in the Special Provisions.

(b) For the year of application, for when you have reported planting mint during the Winter Coverage Option insurance period, or for any insurance period following the payment of an indemnity or a reported loss where the crop was determined to not have an adequate stand, we will inspect all mint acreage within the two-week period before coverage begins (If you have elected the Winter Coverage Option, such inspection will occur not later than November 15).

(1) Insurance will attach on the date coverage begins, as specified in section 8(a), unless we inspect the acreage during the two-week period and determine it does not meet insurability requirements as specified in section 2 of the Basic Provisions, the application, or these Crop Provisions.

(2) You must provide any information we require for the crop or to determine the condition of the crop.

(c) Coverage ends for each unit or part of a unit at the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Final adjustment of a loss;

(3) The final cutting for the crop year;

(4) Abandonment of the crop; or

(5) The following calendar date:

(i) September 30 in Indiana and Wisconsin;

(ii) October 15 in Montana;

(iii) October 31 in Washington; and

(iv) For all other states, the date as provided in the Special Provisions.

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;

(3) Insects or plant disease (except Verticillium Wilt disease), but not damage due to insufficient or improper application of control measures;

(4) Wildlife;

(5) Earthquake;

(6) Volcanic eruption; or

(7) Failure of the irrigation water supply, if caused by an insured cause of loss listed in sections 9(a)(1) through (6) 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 any loss of production that:

(1) Occurs after harvest;

(2) Is due to your failure to distill the crop, unless such failure is due to actual physical damage to the crop caused by an insured cause of loss that occurs during the insurance period; or

(3) Is due to Verticillium Wilt disease.

10. Duties In The Event of Damage or Loss

In addition to your duties contained in section 14 of the Basic Provisions, if you discover that any insured mint is damaged, or if you intend to claim an indemnity on any unit:

(a) You must give us notice of probable loss at least 15 days before the beginning of any cutting or immediately if probable loss is discovered after cutting has begun or when cutting should have begun; and

(b) You must timely harvest and completely distill a sample of the crop on any acreage you do not intend to harvest, as designated by us, to determine if an indemnity is due.

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) We may defer appraisals until the crop reaches maturity or the date mint harvest is general in the area.

(c) 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 11(c)(1) by the respective price election for each type, if applicable;

(3) Totaling the results of section 11(c)(2);

(4) Multiplying the total production to be counted (see section 11(d)) of each type, if applicable, by its respective price election;

(5) Totaling the results of section 11(c)(4);

(6) Subtracting the result in section 11(c)(5) from the result of section 11(c)(3); and

(7) Multiplying the result in section 11(c)(6) by your share.

For example:

Assume that you have a 100 percent share in 100 acres of peppermint in the unit, with a production guarantee of 50 pounds of oil per acre and a price election of $12 per pound. Because an insured cause of loss has reduced production, you only harvest and distill 2,500 pounds of peppermint oil. Your indemnity would be calculated as follows:

(1) 100 acres × 50 pounds = 5,000 pound production guarantee;

(2) 5,000 pound production guarantee × $12 price election = $60,000 value of production guarantee;

(3) 2,500 pounds production to count × $12 price election = $30,000 value of production to count;

(4) $60,000 − $30,000 = $30,000 loss; and

(5) $30,000 × 100 percent share = $30,000 indemnity payment.

(d) The total production to count (in pounds of oil) 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) For which you fail to meet the requirements contained in section 10 of these Crop Provisions;

(D) That is damaged solely by uninsured causes; or

(E) For which you fail to provide production records that are acceptable to us;

(ii) All production lost due to uninsured causes;

(iii) All unharvested production;

(iv) All potential production on insured acreage that you intend to put to another use or abandon with our consent:

(A) If you do not elect to continue to care for the crop, we may give you our 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, the amount of production to count will be not less than the production guarantee per acre); 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 the appraised production at the time the crop reaches maturity.

(2) All harvested production from the insurable acreage.

(e) Harvested production must be distilled to determine production to count.

(f) Any oil distilled from plants growing in the mint will be counted as mint oil on a weight basis.

(g) You are responsible for the cost of distilling samples for loss adjustment purposes.

12. Late and Prevented Planting.

The late and prevented planting provisions of the Basic Provisions are not applicable.

13. Winter Coverage Option

(a) The provisions of this option are continuous and will be attached to and made part of your insurance policy if:

(1) You elect the Winter Coverage Option on your application, or on a form approved by us, on or before the fall sales closing date for the crop year in which you wish to insure mint 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) This option provides a production guarantee equal to 60 percent of the production guarantee determined under section 3 of these Crop Provisions.

(c) If you elect this option, all of the insurable acreage in the county will be insured by this option.

(d) In addition to the requirements of section 6 of the Basic Provisions, any acreage of new mint planted after the applicable acreage reporting date must be certified by you and reported to us within two weeks of planting.

(e) In lieu of section 6(a) of these Crop Provisions, the crop insured will be all mint types 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 and distillation as mint oil;

(3) That have an adequate stand on the date coverage begins (newly planted mint types must be reported in accordance with section 8(b) but they must be reported as uninsured unless they have an adequate stand by the date coverage begins); and

(4) That has been:

(i) Inspected and accepted by us for the first crop year you are insured (We will inspect all mint acreage and will notify you of the acceptance or rejection of your application not later than November 15. 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 the Basic Provisions, the application, or these Crop Provisions);

(ii) Inspected and accepted by us not later than November 15 for the crop year following the payment of an indemnity or a reported loss unless the crop was determined to have an adequate stand (If we determined there was an adequate stand after the loss was reported, no inspection is necessary); or

(iii) Certified by you as having an adequate stand on the date coverage begins unless an inspection is required under section 13(e)(4)(ii).

(f) Coverage under this option begins:

(1) On existing mint acreage with an adequate stand at 12:01 a.m. on the calendar date listed below:

(i) October 1 in Indiana and Wisconsin;

(ii) October 16 in Montana;

(iii) November 1 in Washington; and

(iv) For all other states, the date as provided in the Special Provisions.

(2) On new mint acreage, that has an adequate stand by the date coverage begins as specified in section 13(f)(1).

(g) Coverage under this option ends on the unit or part of the unit at 11:59 p.m. on the calendar date listed below:

(1) June 15 in Indiana, Montana, and Wisconsin;

(2) May 15 in Washington; and

(3) For all other states, the date as provided in the Special Provisions.

(h) In lieu of section 10(a) of these Crop Provisions, you must give notice of probable loss within 72 hours after you discover any insured mint is damaged and does not have an adequate stand, but no later than the date coverage ends for this option.

(i) In addition to the requirements of section 10 of these Crop Provisions, you must give us notice if you want our consent to put any mint acreage to another use before a determination can be made if there is an adequate stand on the acreage. We will inspect the acreage and you must agree in writing no payment or indemnity will be made for the acreage put to another use. The total production to be counted for acreage put to another use with our consent in accordance with this section will not be less than the approved yield.

(j) In addition to section 11(a) of these Crop Provisions we will make a Winter Coverage Option payment only on acreage that had an adequate stand on the date that insurance attached if the adequate stand was lost due to an insured cause of loss occurring within the Winter Coverage Option insurance period and the acreage consists of at least 20 acres or 20 percent of the insurable planted acres in the unit.

(k) In lieu of section 11(b) of these Crop Provisions, we may defer appraisals until the date coverage ends under this option.

(l) In lieu of section 11(c) of these Crop Provisions, in the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying 60 percent by your production guarantee per acre;

(2) Multiplying the result in section 13(l)(1) by the number of acres that do not have an adequate stand;

(3) Multiplying the result in section 13(l)(2) by the price election; and

(4) Multiplying the result in section 13(l)(3) by your share.

For example:

Assume that you have a 100 percent share in 100 acres of mint with a production guarantee of 50 pounds of oil per acre and a price election of $12 per pound. Also assume that you do not have an adequate stand on 50 acres by the date coverage ends for this option because an insured cause has damaged the stand. Your Winter Coverage Option payment would be calculated as follows:

(1) 60 percent × 50 pound production guarantee = 30 pound production guarantee per acre;

(2) 30 pound production guarantee per acre × 50 acres without an adequate stand = 1,500 pounds;

(3) 1,500 pounds × $12 price election = $18,000; and

(4) $18,000 × 100 percent share = $18,000 Winter Coverage Option payment.

(m) In lieu of section 11(d) of these Crop Provisions, the population of live mint plants to be counted from insurable acreage on the unit will be not less than the population of live mint plants in an adequate stand for acreage:

(1) That is abandoned;

(2) That is put to another use without our consent;

(3) For which you fail to meet the requirements contained in section 13(h); or

(4) That is damaged solely by uninsured causes.

(n) Acreage for which a Winter Coverage Option payment has been made is no longer insurable under the Crop Provisions for the current crop year. Any mint production subsequently harvested from uninsured acreage for the crop year and not kept separate from production from insured acreage will be considered production to count.

(o) Acreage for which a Winter Coverage Option payment has been made will receive an amount of production of zero when computing subsequent year's approved yield.

(p) Sections 11(e), (f), and (g) of these Crop Provisions do not apply to this option.

[72 FR 24527, May 3, 2007, as amended at 72 FR 29055, May 24, 2007]

§ 457.170 Cultivated wild rice crop insurance provisions.

The Cultivated Wild Rice Crop Insurance Provisions for the 2009 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: Cultivated Wild Rice Crop Provisions.

1. Definitions

Approved laboratory. A testing facility approved by us to determine the recovery percentage from samples of cultivated wild rice.

Cultivated Wild Rice. A member of the grass family Zizania Palustris L., adapted for growing in man-made flood irrigated fields known as paddies.

Finished weight.

(a) The green weight delivered to a processor multiplied by the determined recovery percentage;

(b) The green weight stored for seed multiplied by either the determined recovery percentage or the standard recovery percentage in accordance with section 11(d); or

(c) The appraised green weight multiplied by either the determined recovery percentage or the standard recovery percentage in accordance with section 11(d).

Flood irrigation. Intentionally covering the planted acreage with water and maintaining it at a proper depth throughout the growing season.

Green weight. The total weight in pounds of the green cultivated wild rice production that was appraised, delivered to a processor, or stored for seed.

Harvest. Combining or threshing the cultivated wild rice for grain or seed.

Initially planted. The first occurrence of planting the insured crop on insurable acreage for the crop year.

Planted acreage. In addition to the definition contained in the Basic Provisions, land on which an adequate amount of seed is initially spread onto the soil surface by any appropriate method (including shattering for the second and succeeding years) and subsequently is mechanically incorporated into the soil at the proper depth, will be considered planted, unless otherwise provided by the Special Provisions or actuarial documents.

Processor. A business that converts green weight to a product ready for commercial sale using appropriate equipment and methods such as separating immature kernels, fermenting or curing, parching, de-hulling, and scarifying.

Recovery percentage. The ratio of finished weight to green weight of the cultivated wild rice. As specified in section 11(d), the recovery percentage is either:

(a) The determined recovery percentage for a sample as determined by an approved laboratory; or

(b) The standard recovery percentage provided in the Special Provisions.

Shatter. The act of mature seeds naturally falling to the ground from a cultivated wild rice plant.

2. Unit Division

Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

3. Insurance Guarantee, 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 percentage of the maximum price election for all the cultivated wild rice insured under this policy in the county.

(b) The insurance guarantee per acre is expressed as pounds of finished weight.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is:

(a) November 30 preceding the cancellation date for counties with a February 28 cancellation date; and

(b) June 30 preceding the cancellation date for counties with a September 30 cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State	Cancellation date	Termination date
Mendocino, Glenn, Butte, and Sierra Counties, California; and all California Counties south thereof.	February 28	February 28.
Minnesota; All Other California Counties; and All Other States	September 30	November 30.

6. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the cultivated wild rice in the county grown on insurable acreage 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; and

(3) That is grown in man-made flood irrigated fields.

(b) Section 8(b)(3) of the Basic Provisions is not applicable to the cultivated wild rice seed that naturally shatters and is subsequently mechanically incorporated into the soil.

7. Insurance Period

In accordance with section 11 of the Basic Provisions, the calendar date for the end of the insurance period is:

(a) For Minnesota, September 30 of the calendar year the crop is normally harvested;

(b) For California, October 15 of the calendar year the crop is normally harvested; and

(c) For all other states, the date provided in the Special Provisions.

8. Causes of Loss

(a) In accordance with 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 8(a)(1) through (7) that occurs during the insurance period, drought, or the intrusion of saline water.

(b) In addition to the causes not insured against in section 12 of the Basic Provisions, we will not insure against any loss of production due to:

(1) The crop not being timely harvested unless such delay in harvesting is solely and directly due to adverse weather conditions which preclude harvesting equipment from entering and moving about the field; or

(2) The application of saline water, except as specified in section 8(a) of these crop provisions.

9. Replanting Payments

The provisions of section 13 of the Basic Provisions are not applicable.

10. Duties in the Event of Damage or Loss

Representative samples are required in accordance with section 14 of the Basic Provisions.

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 such production records 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 its respective production guarantee;

(2) Multiplying the 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, (see section 11(c)

through (d)) 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)(3); and

(7) Multiplying the result of section 11(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of cultivated wild rice in the unit, with a guarantee of 400 pounds per acre and a price election of $1.00 per pound. You are only able to harvest 20,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 400 pounds = 40,000 pound guarantee;

(2) 40,000 pounds × $1.00 per pound price election = $40,000 value of guarantee;

(3) 20,000 pounds × $1.00 per pound price election = $20,000 value of production to count;

(4) $40,000 − $20,000 = $20,000 loss; and

(5) $20,000 × 100 percent share = $20,000 indemnity payment.

(c) The total production to count (finished 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) 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 green weight production must be adjusted 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 green weight will be multiplied by the recovery percentage subject to the following:

(1) We may obtain samples of the production to determine the recovery percentage.

(2) The determined recovery percentage will be used to calculate your loss only if:

(i) All determined recovery percentages are established using samples of green weight production obtained by us or by the processor for sold or processed production; and

(ii) The samples are analyzed by an approved laboratory.

(3) If the conditions of section 11(d)(2) are not met, the standard recovery percentage will be used.

12. Late Planting

The provisions of section 16 of the Basic Provisions are not applicable.

13. Prevented Planting

The provisions of section 17 of the Basic Provisions are not applicable.

[73 FR 11316, Mar. 3, 2008]

§457.172 Coverage Enhancement Option.

The Coverage Enhancement Option for the 2009 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: Coverage Enhancement Option.

Both FCIC and reinsured policies:

COVERAGE ENHANCEMENT OPTION

1. Definitions

CEO coverage level—The coverage level percentage contained in the actuarial documents where the Coverage Enhancement Option (CEO) is available and selected by you. This percentage is applicable under the combined MPCI/CEO policy when losses under the MPCI policy exceed the deductible and an indemnity is owed.

CEO dollar amount of insurance—The value of the additional insurance coverage for each unit provided by the CEO, which is determined by multiplying the CEO coverage level by the total value of the insured crop by unit and subtracting the MPCI dollar amount of insurance.

MPCI—Multiple Peril Crop Insurance, the plan of insurance offered by the Federal Crop Insurance Corporation as published at 7 CFR part 457.

MPCI coverage level—The coverage level percentage you selected in the underlying MPCI policy to which CEO is attached.

MPCI dollar amount of insurance—The value of the insurance coverage for each unit provided under the MPCI policy (the amount of insurance selected by you for dollar or similar plans of insurance, multiplied by the number of acres in the unit if such amount of insurance is on a per acre basis, or the amount determined by multiplying your production guarantee (per acre), times the price election, times the number of acres in the unit).

MPCI indemnity—The indemnity determined for each unit under the MPCI policy to which CEO is attached, not including replant and prevented planting payments or any indemnity payable under CEO.

MPCI indemnity factor—A factor determined by dividing the MPCI indemnity by the MPCI dollar amount of insurance for each unit. This factor is used to ensure that the indemnity paid under the CEO is proportional to the amount of loss and indemnity paid under the MPCI policy.

Total value of the insured crop by unit—The value of the crop that is determined by dividing the MPCI dollar amount of insurance for each unit by the MPCI coverage level.

2. CEO is only available for insured crops where the actuarial documents contain a CEO coverage level. If there is a conflict between the terms of CEO and any other provision of your policy, the terms of the CEO will control.

3. To be eligible for CEO coverage on the insured crop, you must:

(a) Have an MPCI policy in force for the insured crop (or for citrus fruit, citrus trees, and stone fruit or other crops, as applicable, the insured type) and comply with all terms and conditions of such policy.

(b) Elect CEO in writing and choose a CEO coverage level (at least 5 percent higher than the MPCI coverage level), by the sales closing date for the insured crop.

(c) Elect a level of coverage greater than the Catastrophic Risk Protection (CAT) coverage level and a 100 percent price election. CEO is not available for the CAT level of coverage.

4. CEO is continuous and will remain in effect for as long as you continue to have a MPCI policy in effect for the insured crop, the actuarial documents contain a CEO coverage level, or until it is canceled by you or terminated by us on or before the cancellation or termination date, as applicable.

5. The premium for your policy will be determined by:

(a) Totaling the MPCI dollar amount of insurance and the CEO dollar amount of insurance; and

(b) Multiplying the result of section 5(a) by the premium rate for the insured crop applicable to your MPCI coverage level

6. With respect to the coverage provided under CEO:

(a) All acreage of the insured crop insured under your MPCI policy will be covered under the CEO;

(b) The amount of any replant or prevented planting payment that is payable under the MPCI policy will not be affected by the CEO;

(c) An indemnity will be payable under the CEO only after the underlying MPCI deductible is met and an MPCI indemnity is paid; and

(d) The total indemnity for each unit (MPCI coverage plus CEO) cannot exceed the combination of both the MPCI and CEO dollar amounts of insurance.

7. If you elect CEO and a MPCI indemnity is paid on any unit, CEO will pay a portion of the loss not paid under the deductible of the MPCI policy depending on the CEO coverage level you select (For example, if you selected a 50 percent MPCI coverage level, selected an 85 percent CEO coverage level, and had 60 percent loss of the insured crop, the total amount of indemnity paid under both the MPCI policy and the CEO would be equal to approximately 51 percent of the total value of the insured crop by unit). See the example in section 8.

8. In addition to the settlement of claim section for the applicable Crop Provisions, your indemnity will be computed for each unit as follows:

(a) Determine the MPCI indemnity factor;

(b) Determine the total value of the insured crop by unit;

(c) Determine the CEO dollar amount of insurance; and

(d) Multiply the MPCI indemnity factor times the CEO dollar amount of insurance to determine the indemnity under the CEO.

Example: Assume a policy with one unit; an MPCI coverage level of 50 percent and a CEO coverage level of 85 percent; 100% share; a $120,000 MPCI dollar amount of insurance; and a $72,000 payable indemnity under the MPCI portion of the policy.

Your indemnity would be calculated as follows:

(a) $72,000 MPCI loss ÷ by $120,000 MPCI dollar amount of insurance = .60 MPCI indemnity factor;

(b) $120,000 MPCI dollar amount of insurance, divided by the MPCI coverage level of .50 results in $240,000 total value of the insured crop by unit;

(c) $240,000 total value of the insured crop by unit multiplied by the CEO coverage level .85, equals $204,000, and subtracting $120,000 MPCI dollar amount of insurance equals $84,000 CEO dollar amount of insurance;

(d) .60 MPCI indemnity factor × $84,000 CEO dollar amount of insurance = $50,400 unit indemnity under the CEO.

NOTE: The total unit indemnity is $122,400 ($72,000 MPCI indemnity plus $50,400 CEO indemnity).

[73 FR 43610, July 28, 2008, as amended at 73 FR 80295, Dec. 31, 2008]

PART 458 [RESERVED]