

§ 457.171

7 CFR Ch. IV (1-1-10 Edition)

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]

§ 457.171 Cabbage crop insurance provisions.

The Cabbage Crop Insurance Provisions for the 2010 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: Cabbage Crop Insurance Provisions.

1. Definitions

Cabbage. Plants of the family Brassicaceae and the genus Brassica, grown for their compact heads and used for human consumption.

Crop Year. In lieu of the definition contained in section 1 of the Basic Provisions, a period of time that begins on the first day of the earliest planting period and continues through the last day of the insurance period for the latest planting period. The crop year is designated by the calendar year in which the cabbage planted in the latest planting period is normally harvested.

Damaged cabbage production. Fresh market cabbage that fails to grade U.S. Commercial or better in accordance with the United States Standards for Grades of Cabbage, or processing cabbage that fails to grade U.S. No. 2 or better in accordance with the United States Standards for Grades of Cabbage for Processing 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, 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. Cutting of the cabbage plant to sever the head from the stalk.

Hundredweight. One hundred pounds avoirdupois.

Inspected transplants. Cabbage plants that have been found to meet the standards of the public agency responsible for the inspection process within the State in which they are grown.

Marketable cabbage. Cabbage that is sold or grades at least:

(a) U.S. Commercial for fresh market cabbage; or

(b) U.S. No. 2 for processing cabbage.

Planted acreage. In addition to the definition contained in section 1 of the Basic Provisions, cabbage plants and seeds must initially be planted in rows wide enough to permit mechanical cultivation. Cabbage planted or seeds 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 processing cabbage for human consumption, that possesses all licenses and permits for processing cabbage 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 cabbage within a reasonable amount of time after harvest.

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

- (a) The producer's commitment to plant and grow cabbage, and to sell and deliver the cabbage production to the processor;
- (b) The processor's commitment to purchase all the production stated in the processor contract; and
- (c) A price per hundredweight that will be paid for the production.

Timely planted. In lieu of the definition contained in section 1 of the Basic Provisions, cabbage planted during a planting period designated in the Special Provisions.

Type. A category of cabbage as designated 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 planting period if separate planting periods are designated in the Special Provisions.
- (b) In addition to the requirements of section 34 of the Basic Provisions, optional units may also be established by type if separate types are designated 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 for all the cabbage 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 cabbage type designated in the Special Provisions.

- (b) The price elections you choose for each type must bear the same percentage relationship to the maximum price election offered by us for each type. For example, if you selected 100 percent of the maximum price election for one type, you must also select 100 percent of the maximum price election for all other types.

4. Contract Changes

In accordance with the provisions of section 4 of the Basic Provisions, the contract change dates are the following calendar dates preceding the cancellation dates:

- (a) April 30 in Florida; Brooks, Colquitt, Tift, and Toombs Counties, Georgia; and Texas;
- (b) November 30 in Alaska; Rabun County, Georgia; Illinois; Michigan; New York; North Carolina; Ohio; Oregon; Pennsylvania; Virginia; Washington; and Wisconsin; or
- (c) As designated in the Special Provisions for all other states and counties.

5. Cancellation and Termination Dates

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

State and counties	Cancellation and termination dates
Brooks, Colquitt, Tift, and Toombs Counties, Georgia; Texas	July 1.
Florida	August 15.
Oregon, Washington	February 1.
Rabun County, Georgia; North Carolina	February 28.
Alaska, Illinois, Michigan, New York, Ohio, Pennsylvania, Virginia, and Wisconsin	March 15.
All other states and counties	As designated in the Special Provisions.

6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, to insure your processing cabbage, you must provide a copy of all your processor contracts to us on or before the acreage reporting date.

7. Insured Crop

- (a) In accordance with the provisions of section 8 of the Basic Provisions, the crop insured will be all the cabbage types in the county for which a premium rate is provided by the actuarial documents, in which you have a share, and that are:

- (1) Planted with inspected transplants, if such transplants are required by the Special Provisions;
- (2) If direct seeded, planted with hybrid seed unless otherwise permitted by the Special Provisions;
- (3) Planted within the planting periods as designated in the Special Provisions;
- (4) Planted to be:
 - (i) Harvested and sold as fresh cabbage; or
 - (ii) Grown and sold as processing cabbage 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

§ 457.171

7 CFR Ch. IV (1-1-10 Edition)

(5) Unless allowed by the Special Provisions:

- (i) Not interplanted with another crop; and
- (ii) Not sold by direct marketing.

(b) Under the processor contract, you will be considered to have a share in the insured crop to the extent you retain control of the acreage on which the cabbage 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 cabbage under specified conditions and at a stipulated price.

(c) A processing cabbage producer who is also a processor may establish an insurable interest if the following additional 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 "processor" contained in these Crop Provisions.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(a) We will not insure any acreage that does not meet the rotation requirements contained in the Special Provisions.

(b) Any acreage of the insured crop damaged before the end of the planting period, to the extent that a 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.

(c) For processing cabbage, 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

(a) 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:

- (1) The date we accept your application; or
- (2) When the cabbage is planted in each planting period.

(b) In addition to the provisions of section 11 of the Basic Provisions, the end of the insurance period will be the earlier of:

(1) The date the crop should have been harvested; or

(2) The following applicable calendar date after planting;

(i) Alaska: October 1;

(ii) Florida:

(A) February 15 for the fall planting period;

(B) April 15 for the winter planting period;

and

(C) May 31 for the spring planting period;

(iii) Brooks, Colquitt, Tift, and Toombs Counties, Georgia:

(A) January 15 for the fall planting period;

and

(B) June 15 for the spring planting period;

(iv) Rabun County, Georgia:

(A) September 15 for the spring planting period; and

(B) October 31 for the summer planting period;

(v) Illinois, Michigan, New York, Ohio, and Pennsylvania:

(A) September 30 for the spring planting period; and

(B) November 25 for the summer planting period;

(vi) North Carolina:

(A) July 10 for the spring planting period;

and

(B) December 31 for the fall planting period;

(vii) Oregon: December 31;

(viii) Texas:

(A) December 31 for the summer planting period;

(B) February 15 for the fall planting period;

and

(C) April 30 for the winter planting period;

(ix) Virginia:

(A) July 31 for the early spring planting period;

(B) September 15 for the spring planting period; and

(C) November 15 for the summer planting period;

(x) Washington: December 31;

(xi) Wisconsin: November 5; and

(xii) All other states and counties as provided in the Special Provisions.

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) Wildlife;

(4) Insects or plant disease, but not damage due to insufficient or improper application of control measures;

(5) Earthquake;

(6) Volcanic eruption; or

(7) Failure of the irrigation water supply, if caused by a cause of loss specified in sections 10(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 damage or loss of production due to:

(1) Failure to market the cabbage for any reason other than actual physical damage from an insured cause of loss that occurs during the insurance period (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, etc.); or

(2) Damage that occurs or becomes evident after the end of the insurance period, including, but not limited to, damage that occurs or becomes evident after the cabbage has been placed in storage.

11. Replanting Payments

(a) In accordance with the provisions of 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) No replanting payment will be made on acreage planted prior to the initial planting date or after the end of the final planting period as designated by the Special Provisions.

(c) In accordance with the provisions of section 13(c) of the Basic Provisions, the maximum amount of the replanting payment per acre is the number of hundredweight specified in the Special Provisions multiplied by your price election, multiplied by your insured share. The fresh market cabbage price election will be used to determine processing cabbage replanting payments in counties where both fresh market and processing cabbage are insurable.

(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 attributable to your share. The premium will not be reduced.

(e) In lieu of the provisions contained in section 13 of the Basic Provisions that limit a replanting payment to one each crop year, only one replanting payment will be made for acreage replanted during each planting period within the crop year, if separate planting periods are allowed by the Special Provisions.

12. Duties In The Event of Damage or Loss

(a) Failure to meet the requirements of this section 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) In lieu of the provisions of section 14(a)(2)(Your Duties) of the Basic Provisions, so that we may inspect the insured crop, you must give us notice within 72 hours of your initial discovery of damage if such discovery occurs more than 15 days prior to harvest of the acreage.

(c) In addition to the provisions of section 14 of the Basic Provisions, so that we may inspect the insured crop, you must give us notice:

(1) Immediately if damage is discovered 15 days or less prior to the beginning of harvest or during harvest.

(2) At least 15 days prior to the beginning of harvest, if direct marketing of the insured crop is allowed by the Special Provisions, and you intend to direct market any of the crop.

(3) At least 15 days before the earlier of:

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

(ii) The beginning of harvest, if any production will be harvested for a use other than as indicated on the acreage report.

(d) After you have provided the applicable notice required by sections 12(b) and (c), we will conduct an appraisal to determine your production to count for the purposes of section 13(d).

(1) Except as provided in section 12(e), you must not dispose of or sell the damaged crop, or store the insured crop, until after we have appraised it and given you written consent to do so.

(2) If additional damage occurs after this appraisal, except for stored cabbage, we will conduct another appraisal.

(3) These appraisals, and any acceptable records provided by you, will be used to determine your production to count in accordance with section 13(d).

(e) In accordance with the requirements of section 14(a)(3)(Your Duties) of the Basic Provisions, if you initially discover damage to any insured cabbage 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 3 rows 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 completion of harvest on the unit.

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 such production records were not provided; and

§ 457.171

7 CFR Ch. IV (1-1-10 Edition)

(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 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 you produced a crop sufficient to fulfill the processor contract(s) forming the basis of the insurance guarantee;

(b) The extent of any damaged cabbage production must be determined not later than the date the cabbage is placed in storage if the production is stored prior to sale, or the date the cabbage is delivered to a buyer, wholesaler, packer, processor, or other handler if production is not stored.

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

(1) Multiplying the insurable acreage by its respective production guarantee (per acre), by type if applicable;

(2) Multiplying each result in section 13(c)(1) by the respective price election, by type if applicable;

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

(4) Multiplying the total production to count of each type, if applicable (see section 13(d)), by its respective price election;

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

(6) Subtracting the results in section 13(c)(5) from the results of section 13(c)(3); and

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

For example:

For a basic unit you have 100 percent share in 100 acres of cabbage, 50 acres for fresh market and 50 acres for processing as sauerkraut, with a production guarantee (per acre) of 400 hundredweight per acre for fresh market and 400 hundredweight per acre for processing as sauerkraut and a price election of \$5.00 per hundredweight for fresh market and \$1.90 per hundredweight for processing as sauerkraut. You are only able to harvest 9,000 hundredweight of fresh market cabbage and 9,000 hundredweight of cabbage for sauerkraut because an insured cause of loss has reduced production. Your total indemnity would be calculated as follows:

(1) 50 acres × 400 hundredweight = 20,000 hundredweight guarantee for the fresh market acreage.

50 acres × 400 hundredweight = 20,000 hundredweight guarantee for the processing as sauerkraut acreage.

(2) 20,000 hundredweight guarantee × \$5.00 price election = \$100,000 value of guarantee for the fresh market cabbage.

20,000 hundredweight guarantee × \$1.90 price election = \$38,000 value of guarantee for processing as sauerkraut.

(3) \$100,000 + \$38,000 = \$138,000 total value of guarantee.

(4) 9,000 hundredweight × \$5.00 price election = \$45,000 value of production to count for the fresh market acreage.

9,000 hundredweight × \$1.90 price election = \$17,100 value of production to count for the acreage for processing as sauerkraut.

(5) \$45,000 + \$17,100 = \$62,100 total value of production to count.

(6) \$138,000 - \$62,100 = \$75,900 loss.

(7) \$75,900 × 100 percent share = \$75,900 indemnity payment.

(d) The total production to count (in hundredweight) of marketable cabbage 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 meet the requirements contained in section 12;

(C) That is 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) All production lost due to uninsured causes;

(iii) All unharvested marketable production;

(iv) All 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 production that is considered damaged cabbage production but is sold will be adjusted for quality as follows:

- (1) Dividing the amount received per hundredweight of such damaged cabbage production by the applicable price election; and
- (2) Multiplying the result by the number of hundredweight of damaged cabbage production.

14. Late and Prevented Planting

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

[74 FR 8709, Feb. 26, 2009, as amended at 74 FR 26281, June 2, 2009]

§ 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 MPC/CEO policy when losses under the MPC 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 MPC dollar amount of insurance.

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

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

MPC dollar amount of insurance—The value of the insurance coverage for each unit provided under the MPC 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).

MPC indemnity—The indemnity determined for each unit under the MPC policy

to which CEO is attached, not including replant and prevented planting payments or any indemnity payable under CEO.

MPC indemnity factor—A factor determined by dividing the MPC indemnity by the MPC 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 MPC policy.

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

6. With respect to the coverage provided under CEO:

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

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

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

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