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

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Subpart G—Actual Production History

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

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

§ 400.51 Availability of actual production history program.

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

7 CFR part 457—Common Crop Insurance Regulations; and all special provisions thereto unless specifically excluded by the special provisions.

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

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

§ 400.52 Definitions.

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

(a) *APH*. Actual Production History.

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

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

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

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

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

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

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

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

the policy definition. If the land is summerfallowed the next calendar year, that calendar year is not a crop year for the purpose of APH.

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

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

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

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

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

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

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

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

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

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

§ 400.53 Yield certification and acceptability.

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

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

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

(3) Production reported for more than one crop year must be continuous. A year in which no acreage was planted to the crop on a unit or no acreage was planted to a practice, type, or variety requiring an APH yield will not be considered a break in continuity. Assigned yields, at the discretion of the FCIC, may be used to maintain continuity of yield data of file. Production on uninsured (for those years a crop insurance policy under the Federal Crop Insurance Act is in effect) or uninsurable acreage (for other years of the period) will not be used to determine APH yield unless production from such acreage is commingled with production from insured or insurable acreage.

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

needed, so that the claim conforms to the records submitted at that time.

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

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

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

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

§ 400.54 Submission and accuracy of production reports.

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

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

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

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

§ 400.55 Qualification for actual production history coverage program.

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

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

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

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

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

(4) If acceptable production records containing information for only the

three most recent crop years are provided, the three actual yields and one unadjusted T or D-Yield are used to complete the database and calculate the approved APH yield.

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

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

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

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

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

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

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

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

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

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

(3) For perennial crops:

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

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

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

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

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

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

(i) FCIC may use any production report available under the provisions of any crop insurance contract, whether continuous or not, involving the interests of the person's insured crops in determining the approved APH yield.

§ 400.56 Administrative appeal exhaustion.

The insured may appeal the approved APH yield in accordance with the procedures contained in 7 CFR part 400, subpart J. Administrative remedies through the appeal process must be exhausted prior to any action for judicial

review. The approved APH yield determined as a result of the appeal process will be the yield applicable to the crop year.

§ 400.57 [Reserved]

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

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

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

§§ 400.65–400.66 [Reserved]

Subpart I [Reserved]

Subpart J—Appeal Procedure

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

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

§ 400.90 Definitions.

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

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

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

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

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

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

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

FAOB. Financial and Accounting Operations Branch.

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

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

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

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

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

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

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

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

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

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

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

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

Secretary. The Secretary of Agriculture.

USDA. United States Department of Agriculture.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003; 74 FR 8704, Feb. 26, 2009]

§ 400.91 Applicability.

(a) This subpart applies to:

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

(i) Contracts of insurance insured by FCIC; and

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

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

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

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

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

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

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

(2) Compliance with terms and conditions of insurance;

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

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

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

(e) Notwithstanding any other provision, this subpart does not apply to any decision made by the Agency that is generally applicable to all similarly situated program participants. Such decisions are also not appealable to NAD. If the Agency determines that a decision is not appealable because it is a matter of general applicability, the participant must obtain a review by the Director of NAD in accordance with 7 CFR 11.6(a) of the Agency's determination that the decision is not appealable before the participant may file suit against the Agency.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003; 74 FR 8704, Feb. 26, 2009]

§ 400.92 Appeals.

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

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

the conclusion of the administrative review or mediation.

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

§ 400.93 Administrative review.

(a) With respect to adverse decisions, an appellant may seek one administrative review or seek mediation under § 400.94.

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

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

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

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

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003; 74 FR 8704, Feb. 26, 2009]

§ 400.94 Mediation.

For adverse decisions only:

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

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

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

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

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

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

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

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

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

[67 FR 13251, Mar. 22, 2002, as amended at 74 FR 8704, Feb. 26, 2009]

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

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

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

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

§ 400.96 Judicial review.

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

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

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

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

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

§ 400.97 Reservations of authority.

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

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

§ 400.98 Reconsideration process.

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

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

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

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

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

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

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

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

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

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

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

[68 FR 37720, June 25, 2003]

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

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

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

§400.115 Purpose.

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

§400.116 Definitions.

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

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

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

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

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

(e) *Delinquent debt* means (1) any debt owed to FCIC that has not been paid by the termination date specified in the applicable contract of insurance, or other due date for payment contained in any other agreement, or notification of indebtedness, and (2) any overdue amount owed to FCIC by a debtor which is the subject of an installment payment agreement which the debtor has failed to satisfy under the terms of such agreement.

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

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

§400.117 Determination of delinquency.

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

§400.118 Demand for payment.

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

§400.119 Notice to debtor; credit reporting agency.

(a) In accordance with guidelines established by the Manager, FCIC, the Comptroller who is responsible for disclosure of information with respect to delinquent debts to a credit reporting

agency shall send written notice to the delinquent debtors that FCIC intends to disclose credit information to a credit reporting agency on a regular basis. In addition, delinquent debtors are to be informed:

(1) Of the basis for the indebtedness;

(2) That the payment is overdue;

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

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

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

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

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

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

§ 400.120 Subsequent disclosure and verification.

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

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

(c) FCIC shall obtain satisfactory assurances from each reporting agency to which information will be provided that the agency is in compliance with the provisions of all laws and regulations of the United States relating to providing credit information.

§ 400.121 Information disclosure limitations.

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

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

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

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

§ 400.122 Attempts to locate debtor.

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

§ 400.123 Request for review of the indebtedness.

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

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

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

§ 400.124 Disclosure to credit reporting agencies.

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

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

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

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

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

§ 400.125 Notice to debtor, collection agency.

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

§ 400.126 Referral of delinquent debts to contract collection agencies.

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

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

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

§ 400.127 [Reserved]

§ 400.128 Definitions.

(a) *Agency* means (1) An Executive Agency as defined by 5 U.S.C. 105, the United States Postal Service, and the United States Postal Rate Commission, or (2) A Military Department, as defined by section 102 of Title 5 U.S.C.

(b) *Debt* means:

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

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

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

(ii) False claims for services and travel reimbursement;

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

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

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

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

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

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

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

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

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

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

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

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

[53 FR 3, Jan. 4, 1988]

§ 400.129 Salary offset.

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

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

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

(d) Salary offset may be used by FCIC to collect debts which arise from delinquent FCIC premium payments or delinquent repayment plans and other debts arising from, but not limited to, such sources as program theft, embezzlement, fraud, salary overpayments, underwithholding of any amounts due and payable for life and health insurance, advance travel payments, overpaid indemnities, and any amount owed by present or former employees from loss of federal funds through negligence and other matters. The debt does not have to be reduced to judgment and does not have to be covered by a security instrument.

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

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

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

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

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

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

[53 FR 3, Jan. 4, 1988]

§400.130 Notice requirements before offset.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[53 FR 4, Jan. 4, 1988]

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

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

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

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

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

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

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

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

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

[53 FR 4, Jan. 4, 1988]

§ 400.132 Hearings.

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

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

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

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

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

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

[53 FR 5, Jan. 4, 1988]

§ 400.133 Written decision following a hearing.

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

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

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

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

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

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

(b) [Reserved]

[53 FR 5, Jan. 4, 1988]

§ 400.134 Review of FCIC record related to the debt.

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

[53 FR 5, Jan. 4, 1988]

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

The employee may propose, in response to a notice of intent, a written agreement to repay the debt as an alternative to salary offset. The proposed written agreement to repay the debt must be received by the FCIC official within 30 calendar days of the date of

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

[53 FR 5, Jan. 4, 1988]

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

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

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

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

[53 FR 5, Jan. 4, 1988]

§ 400.137 Procedures for salary offset; types of collection.

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

[53 FR 5, Jan. 4, 1988]

§ 400.138 Procedures for salary offset; methods of collection.

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

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

[53 FR 5, Jan. 4, 1988]

§ 400.139 Nonwaiver of rights.

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

[53 FR 5, Jan. 4, 1988]

§ 400.140 Refunds.

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

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

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

[53 FR 5, Jan. 4, 1988]

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

Under the provisions of 31 U.S.C. 3720A, the (IRS) may be requested to collect a legally enforceable debt owing to any Federal agency by offset against a taxpayer's Federal income tax refund. This section provides policies and

procedures to implement IRS tax refund offsets in accordance with the provisions set forth in § 301.6402–6T of 26 CFR chapter I.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[53 FR 5, Jan. 4, 1988]

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

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

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

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

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

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

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

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

(1) The debt is past due; and

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

(3) Which is at least $25.00.

[53 FR 6, Jan. 4, 1988]

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

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

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

§400.161 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§400.162 Qualification ratios.

The sixteen qualification ratios include:

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

(b) Three ratios used by A.M. Best Company found in §400.170(d)(2) (v), (viii), and (x) and referenced in Best's

Key Rating Guide, A.M. Best, Ambest Road, Oldwick, N.J. 08858–0700;

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

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

[60 FR 57903, Nov. 24, 1995]

§ 400.163 Applicability.

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

[60 FR 57903, Nov. 24, 1995]

§ 400.164 Availability of the Standard Reinsurance Agreement.

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

§ 400.165 Eligibility for Standard Reinsurance Agreements.

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

§ 400.166 Obligations of the Corporation.

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

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

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

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

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

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

§ 400.167 Limitations on Corporation's obligations.

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

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

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

(c) The Corporation will not reinsure any policy sold by the Company to a producer after the date Company receives notice that the Corporation has

determined that the producer is ineligible to receive Federal Crop Insurance.

§400.168 Obligations of participating insurance company.

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

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

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

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

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

(c) The Company shall provide the Corporation, on forms approved by the Corporation all information that the Corporation may deem relevant in the administration of the Agreement, including a list of all applicants determined to be ineligible for crop insurance coverage and all insured producers cancelled or terminated from insurance, along with the reason for such action, the crop program, and the amount of coverage for each.

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

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

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

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

§400.169 Disputes.

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

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

(c) A company may also request reconsideration by the Deputy Administrator of Insurance Services of a decision of the Corporation rendered under any Corporation bulletin or directive which bulletin or directive does not interpret, explain, or restrict the terms of the reinsurance agreement. The company, if it disputes the Corporation's determination, must request a

reconsideration of that determination in writing, within 45 days of the receipt of the determination.Such determinations will not be appealable to the Civilian Board of Contract Appeals.

(d) Appealable final administrative determinations of the Corporation under paragraph (a) or (b) of this section may be appealed to the Civilian Board of Contract Appeals in accordance with 48 CFR part 6102.

[65 FR 3782, Jan. 25, 2000, as amended at 72 FR 31438, June 7, 2007]

§ 400.170 General qualifications.

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

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

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

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

MINIMUM SURPLUS TABLE

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

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

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

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

(1) Annual and Quarterly Statutory Financial Statements;

(2) Statutory Management Discussion & Analysis;

(3) Most recent State Insurance Department Examination Report;

(4) Actuarial Opinion of Reserves;

(5) Annual Audited Financial Report; and

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

[60 FR 57903, Nov. 24, 1995]

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

An insurer exempt by the insurance department of the states where they are licensed from filing an Annual Statutory Financial Statement must, in addition to the requirements of § 400.170 (a), (b), (c) and (d), submit an Annual Statutory Financial Statement

audited by a Certified Public Accountant in accordance with generally accepted auditing standards, which if not exempted, would have been filed with the insurance department of any state in which it is licensed.

[60 FR 57904, Nov. 24, 1995]

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

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

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

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

[60 FR 57904, Nov. 24, 1995]

§ 400.173 [Reserved]

§ 400.174 Notification of deviation from financial standards.

An insurer must immediately advise FCIC if it deviates from compliance with any of the requirements of this chapter. FCIC may require the insurer to update its financial statements during the year. FCIC may terminate the reinsurance agreement if the Company is out of compliance with the requirements of this chapter.

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

§ 400.175 Revocation and non-acceptance.

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

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

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

§ 400.176 State action preemptions.

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

(b) No policy of insurance reinsured by the Corporation and no claim, settlement, or adjustment action with respect to any such policy shall provide a basis for a claim of punitive or compensatory damages or an award of attorney fees or other costs against the Company issuing such policy, unless a determination is obtained from the Corporation that the Company, its employee, agent or loss adjuster failed to comply with the terms of the policy or procedures issued by the Corporation and such failure resulted in the insured receiving a payment in an amount that is less than the amount to which the insured was entitled.

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

§ 400.177 [Reserved]

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

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

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

§ 400.201 Applicability of standards.

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

§ 400.202 Definitions.

For the purpose of these Standards:

(a) *Agency Sales and Service Contract or the Contract* means the written agreement between the Federal Crop Insurance Corporation (Corporation) and a private entity (Contractor) for the purpose of selling and servicing Federal Crop Insurance policies and includes, but is not limited to, the following:

(1) The Agency Sales and Service Contract;

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

(3) The annual approved Plan or Operation; and

(4) Any amendment adopted by the parties.

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

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

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

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

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

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

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

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

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

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

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

(m) *3780 protocol*—means the data communications protocol (standard) that is a binary synchronous communications (BSC), International Business

Systems (IBM)-defined, byte controlled communications protocol, using control characters and synchronized transmission of binary coded data.

§ 400.203 Financial statement and certification.

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

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

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

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

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

§ 400.204 Notification of deviation from standards.

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

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

Non-compliance with these standards will result in:

(a) The denial of a Contract; or

(b) Termination of an existing Contract.

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

§ 400.206 Financial qualifications for acceptability.

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

§ 400.207 Representative licensing and certification.

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

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

(1) Multiple peril crop insurance;

(2) Crop hail insurance;

(3) Casualty insurance;

(4) Property insurance;

(5) Liability insurance; or

(6) Fire insurance and allied lines.

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

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

§ 400.208 Term of the contract.

(a) The term of the Contract shall commence on July 1 or when signed.

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

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

§ 400.209 Electronic transmission and receiving system.

Any Contractor under the Contract is required to:

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

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

(c) Maintain Corporation approval of the electronic system as a condition to the electronic transmission and reception of data by the Contractor;

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

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

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

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

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

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

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

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

(7) Store backup data and physical documents.

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

§ 400.210 [Reserved]

Subpart N [Reserved]

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

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

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

§ 400.301 Basis, purpose, and applicability.

The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), to prescribe the procedures for nonstandard determinations and the assignment of assigned yields or premium rates in conformance with the intent of section 508 of the Act (7 U.S.C. 1508). These regulations are applicable to all policies of insurance insured or reinsured by the Corporation under the Act and on those policies where the insurance coverage or indemnities are based on determinations applicable to the individual insured. These regulations will not be applicable to any policy where the amount of coverage or indemnities are based on the experience of the area.

[62 FR 22876, Apr. 28, 1997]

§ 400.302 Definitions.

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

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

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

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

Corporation means the Federal Crop Insurance Corporation.

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

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

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

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

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

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

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

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

NCS means nonstandard classification system.

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

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

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

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

§ 400.303 Initial selection criteria.

(a) Nonstandard classification procedures in this subpart initially apply

when all of the following insurance experience criteria (including any applicable adjustment in § 400.303(d)) for the crop have been met:

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

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

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

(4) Either of the following apply:

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

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

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

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

(1) Insurance experience of a person will include:

(i) Insurance experience of the person;

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

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

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

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

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

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

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

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

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

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

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

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

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

may be implemented by FCIC if allowed in the Special Provisions.

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

§ 400.304 Nonstandard Classification determinations.

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

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

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

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

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

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

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

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

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

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

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

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

§ 400.305 Assignment of Nonstandard Classifications.

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

(b) Nonstandard classification assignment will be made each year, for the year identified on the assignment forms, and are not subject to change under the provisions of this subpart by the Corporation for that year when included in the actuarial tables for the county, except as a result of a request for reconsideration as provided in section 400.309, or as the result of appeals under 7 CFR part 11.

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

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

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

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

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

§ 400.306 Spouses and minor children.

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

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

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

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

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

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

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

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

§ 400.307 Discontinuance of participation.

If the person has discontinued participation in the crop insurance program, the person will still be included on the NCS list in the county until the person has discontinued participation as a policyholder or a person with a substantial beneficial interest in a policyholder for at least 10 consecutive crop years. The most recent nonstandard classification assigned will be continued from year to year until participation has been renewed for at least one crop year and at least three years of insurance experience have occurred in the current base period. A nonstandard classification will no longer be applicable to the person or the person on identified acreage if the Corporation determines the person is deceased.

[62 FR 22877, Apr. 28, 1997]

§ 400.308 Notice of Nonstandard Classification.

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

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

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

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

§ 400.309 Requests for reconsideration.

(a) Any person to be assigned a nonstandard classification under this subpart will be notified of and allowed not less that 30 days from the date notice is received to request reconsideration before the nonstandard classification becomes effective. The request will be considered to have been made when received, in writing, by the Corporation.

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

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

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

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

(1) Errors and omissions in insurance experience;

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

(3) Typographical errors.

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

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

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

Subpart P—Preemption of State Laws and Regulations

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

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

§ 400.351 Basis and applicability.

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

§ 400.352 State and local laws and regulations preempted.

(a) No State or local governmental body or non-governmental body shall have the authority to promulgate rules or regulations, pass laws, or issue policies or decisions that directly or indirectly affect or govern agreements, contracts, or actions authorized by this part unless such authority is specifically authorized by this part or by the Corporation.

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

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

(2) Tax premiums associated with policies issued hereunder;

(3) Exercise approval authority over policies issued;

(4) Levy fines, judgments, punitive damages, compensatory damages, or judgments for attorney fees or other costs against companies, employees of companies including agents and loss adjustors, or Federal employees arising out of actions or inactions on the part of such individuals and entities authorized or required under the Federal Crop Insurance Act, the regulations, any contract or agreement authorized by the Federal Crop Insurance Act or by regulations, or procedures issued by the Corporation (Nothing herein precludes such damages being imposed against the company if a determination is obtained from FCIC that the company, its employee, agent or loss adjuster failed to comply with the terms of the policy or procedures issued by FCIC and such failure resulted in the insured receiving a payment in an amount that is less than the amount to which the insured was entitled); or

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

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

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

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

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

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

§ 400.401 Basis and purpose and applicability.

(a) The regulations contained in this subpart are issued pursuant to the Act to prescribe procedures for the collection, use, and confidentiality of Social Security Numbers (SSN) and Employer Identification Numbers (EIN) and related records.

(b) These regulations are applicable to:

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

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

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

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

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

§ 400.402 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

System of records. Records established and maintained by FCIC or the insurance provider containing SSN or EIN data, name, address, city and State, applicable policy numbers, and other information related to multiple peril crop insurance policies as required by

FCIC, from which information is retrieved by a personal identifier including, but not limited to the SSN, EIN, or name.

[62 FR 28608, May 27, 1997]

§ 400.403 Required system of records.

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

[62 FR 28608, May 27, 1997]

§ 400.404 Policyholder responsibilities.

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

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

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

(3) Determining the amount of indemnities;

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

(5) Determining eligibility for crop insurance program participation or other United States Department of Agriculture benefits.

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

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

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

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

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

[62 FR 28608, May 27, 1997]

§ 400.405 Agent and loss adjuster responsibilities.

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

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

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

(3) Determining eligibility for program participation; and

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

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

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

[62 FR 28609, May 27, 1997]

§ 400.406 Insurance provider responsibilities.

The insurance provider is required to collect and record the SSN or EIN on

each application or on any other form required by FCIC.

[62 FR 28609, May 27, 1997]

§ 400.407 Restricted access.

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

[62 FR 28609, May 27, 1997]

§ 400.408 Safeguards and storage.

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

[62 FR 28609, May 27, 1997]

§ 400.409 Unauthorized disclosure.

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

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

§ 400.410 Penalties.

Unauthorized disclosure of SSN's or EIN's by any person may subject that person, and the person soliciting the unauthorized disclosure, to civil or criminal sanctions imposed under various Federal statutes, including 26 U.S.C. 7613, 5 U.S.C. 552a, and 42 U.S.C. 408.

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

§ 400.411 Obtaining personal records.

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

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

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

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

§ 400.412 Record retention.

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

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

[62 FR 28609, May 27, 1997]

§ 400.413 [Reserved]

Subpart R—Administrative Remedies for Non-Compliance

AUTHORITY: 7 U.S.C. 1506(l), 1506(o), and 7 U.S.C. 1515(h)

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

§ 400.451 General.

(a) FCIC has implemented a system of administrative remedies in its efforts to ensure program compliance and prevent fraud, waste, and abuse within the Federal crop insurance program. Such remedies include civil fines and disqualifications under the authority of section 515(h) of the Act (7 U.S.C. 1515(h)); government-wide suspension and debarment under the authority of 48 CFR part 9, 48 CFR part 409, and 7 CFR part 3017; and civil fines and assessments under the authority of the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812).

(b) The provisions of this subpart apply to all participants in the Federal crop insurance program, including but not limited to producers, agents, loss adjusters, approved insurance providers and their employees or contractors, as well as any other persons who may provide information to a program participant and meet the elements for imposition of one or more administrative remedies contained in this subpart.

(c) Any remedial action taken pursuant to this subpart is in addition to any other actions specifically provided in applicable crop insurance policies, contracts, reinsurance agreements, or other applicable statutes and regulations.

(d) This rule is applicable to any violation occurring on and after January 20, 2009.

(e) The purpose of the remedial actions authorized in this subpart are for the protection of the public interest from potential harm from persons who have abused the Federal crop insurance program, maintaining program integrity, and fostering public confidence in the program.

[73 FR 76887, Dec. 18, 2008]

§ 400.452 Definitions.

For purposes of this subpart:

Act. Has the same meaning as the term in section 1 of the Common Crop Insurance Policy Basic Provisions (7 CFR 457.8).

Affiliate. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the disqualification, suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the disqualified, suspended, debarred, ineligible, or voluntarily excluded person.

Agency. The person authorized by an approved insurance provider, or its designee, to sell and service a crop insurance policy under the Federal crop insurance program.

Agent. Has the same meaning as the term in 7 CFR 400.701.

Agricultural commodity. Has the same meaning as the term in section 1 of the Common Crop Insurance Policy Basic Provisions (7 CFR 457.8).

Approved insurance provider. Has the same meaning as the term in 7 CFR 400.701.

Benefit. Any advantage, preference, privilege, or favorable consideration a person receives from another person in exchange for certain acts or considerations. A benefit may be monetary or non-monetary.

FCIC. Has the same meaning as the term in 7 CFR 400.701.

Key employee. Any person with primary management or supervisory responsibilities or who has the ability to direct activities or make decisions regarding the crop insurance program.

Knows or has reason to know. When a person, with respect to a claim or statement:

(1)(i) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(ii) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(iii) Acts in reckless disregard of the truth or falsity of the claim or statement; and

(2) No proof of specific intent is required.

Managing general agent. Has the same meaning as the term in 7 CFR 400.701.

Material. A violation that causes or has the potential to cause a monetary loss to the crop insurance program or it adversely affects program integrity, including but not limited to potential harm to the program's reputation or allowing persons to be eligible for benefits they would not otherwise be entitled.

Participant. Any person who obtains any benefit that is derived in whole or in part from funds paid by FCIC to the approved insurance provider or premium paid by the producer. Participants include but are not limited to producers, agents, loss adjusters, agencies, managing general agencies, approved insurance providers, and any

person associated with the approved insurance provider through employment, contract, or agreement.

Person. An individual, partnership, association, corporation, estate, trust or other legal entity, any affiliate or principal thereof, and whenever applicable, a State or political subdivision or agency of a State. ''Person'' does not include the United States Government or any of its agencies.

Policy. Has the same meaning as the term in section 1 of the Common Crop Insurance Policy Basic Provisions (7 CFR 457.8).

Preponderance of the evidence. Proof by information that, when compared with the opposing evidence, leads to the conclusion that the fact at issue is probably more true than not.

Principal. A person who is an officer, director, owner, partner, key employee, or other person within an entity with primary management or supervisory responsibilities over the entity's federal crop insurance activities; or a person who has a critical influence on or substantive control over the federal crop insurance activities of the entity.

Producer. A person engaged in producing an agricultural commodity for a share of the insured crop, or the proceeds thereof.

Provides. Means to make available, supply or furnish with. The term includes any transmission of the information from one person to another person. For example, a producer writes information on forms and gives it to the agent and the agent transmits that information to the insurance provider. In both instances, the information is ''provided'' for the purpose of this rule.

Reinsurance agreement. Has the same meaning as the term in 7 CFR 400.161, except that such agreement is only between FCIC and the approved insurance provider.

Requirement of FCIC. Includes, but is not limited to, formal communications, such as a regulation, procedure, policy provision, reinsurance agreement, memorandum, bulletin, handbook, manual, finding, directive, or letter, signed or issued by a person authorized by FCIC to provide such communication on behalf of FCIC, that requires a particular participant or group of participants to take a specific action or to cease and desist from a taking a specific action (e-mails will not be considered formal communications although they may be used to transmit a formal communication). Formal communications that contain a remedy in such communication in the event of a violation of its terms and conditions will not be considered a requirement of FCIC unless such violation arises to the level where remedial action is appropriate. (For example, multiple violations of the same provision in separate policies or procedures or multiple violations of different provisions in the same policy or procedure.)

Violation. Each act or omission by a person that satisfies all required elements for the imposition of a disqualification or a civil fine contained in § 400.454.

Willful and intentional. To provide false or inaccurate information with the knowledge that the information is false or inaccurate at the time the information is provided; the failure to correct the false or inaccurate information when its nature becomes known to the person who made it; or to commit an act or omission with the knowledge that the act or omission is not in compliance with a ''requirement of FCIC'' at the time the act or omission occurred. No showing of malicious intent is necessary.

[73 FR 76887, Dec. 18, 2008]

§ 400.453 Exhaustion of administrative remedies.

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

§ 400.454 Disqualification and civil fines.

(a) Before any disqualification or civil fine is imposed, FCIC will provide the affected participants and other persons with notice and an opportunity for a hearing on the record in accordance with 7 CFR part 1, subpart H.

(1) Proceedings will be initiated when the Manager of FCIC files a complaint with the Hearing Clerk, United States Department of Agriculture.

(2) Disqualifications become effective:

(i) On the date specified in the order issued by the Administrative Law Judge or Judicial Officer, as applicable, or if no date is specified in the order, the date that the order was issued.

(ii) With respect to a settlement agreement with FCIC, the date contained in the settlement agreement or, if no date is specified, the date that such agreement is executed by FCIC.

(3) Disqualification and civil fines may only be imposed if a preponderance of the evidence shows that the participant or other person has met the standards contained in §400.454(b). FCIC has the burden of proving that the standards in §400.454(b) have been met.

(4) Disqualification and civil fines may be imposed regardless of whether FCIC or the approved insurance provider has suffered any monetary losses. However, if there is no monetary loss, disqualification will only be imposed if the violation is material in accordance with §400.454(c).

(b) Disqualification and civil fines may be imposed on any participant or person who willfully and intentionally:

(1) Provides any false or inaccurate information to FCIC or to any approved insurance provider with respect to a policy or plan of insurance authorized under the Act either through action or omission to act when there is knowledge that false or inaccurate information is or will be provided; or

(2) Fails to comply with a requirement of FCIC.

(c) When imposing any disqualification or civil fine:

(1) The gravity of the violation must be considered when determining:

(i) Whether to disqualify a participant or other person;

(ii) The amount of time that a participant or other person should be disqualified;

(iii) Whether to impose a civil fine; and

(iv) The amount of a civil fine that should be imposed.

(2) The gravity of the violation includes consideration of whether the violation was material and if it was material:

(i) The number or frequency of incidents or duration of the violation;

(ii) Whether there is a pattern or prior history of violation;

(iii) Whether and to what extent the person planned, initiated, or carried out the violation;

(iv) Whether the person has accepted responsibility for the violation and recognizes the seriousness of the misconduct that led to the cause for disqualification or civil fine;

(v) Whether the person has paid all civil and administrative liabilities for the violation;

(vi) Whether the person has cooperated fully with FCIC (In determining the extent of cooperation, FCIC may consider when the cooperation began and whether the person disclosed all pertinent information known to that person at the time);

(vii) Whether the violation was pervasive within the organization;

(viii) The kind of positions held by the persons involved in the violation;

(ix) Whether the organization took prompt, appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence;

(x) Whether the principals of the organization tolerated the offense;

(xi) Whether the person brought the violation to the attention of FCIC in a timely manner;

(xii) Whether the organization had effective standards of conduct and internal control systems in place at the time the violation occurred;

(xiii) Whether the organization has taken appropriate disciplinary action against the persons responsible for the violation;

(xiv) Whether the organization had adequate time to eliminate the violation that led to the cause for disqualification or civil fine;

(xv) Other factors that are appropriate to the circumstances of a particular case.

(3) The maximum term of disqualification and civil fines will be imposed against:

(i) Participants and other persons, except insurance providers who:

(A) Commit multiple violations in the same crop year or over several crop years; or

(B) Commit a single violation but such violation results in an overpayment of more than $100,000;

(ii) Approved insurance providers who:

(A) Commit a single violation resulting in an overpayment in excess of $100,000; and

(B) Commit multiple acts of violations resulting in an overpayment in excess of $500,000; and

(iii) Any participant or person who commits such other action or omission of so serious a nature that imposition of the maximum is appropriate.

(d) With respect to the imputing of conduct:

(1) The conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, in violation of § 400.454(b) may be imputed to that organization when such conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the violation is evidence of knowledge, approval or acquiescence.

(2) The conduct of any organization in violation of § 400.454(b) may be imputed to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, knows, or had reason to know of such conduct.

(3) The conduct of one organization in violation of § 400.454(b) may be imputed to another organization when such conduct occurred in connection with a partnership, joint venture, joint application, association or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

(4) If such conduct is imputed, the person to whom the conduct is imputed to may be subject to the same disqualification and civil fines as the person from whom the conduct is imputed. The factors contained in § 400.454(c)(2) will be taken into consideration with respect to the person to whom the conduct is being imputed.

(e) With respect to disqualifications:

(1) If a person is disqualified and that person is a:

(i) Producer, the producer will be precluded from receiving any monetary or non-monetary benefit provided under all of the following authorities, or their successors:

(A) The Act;

(B) The Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7333 *et seq.*) or any successor statute;

(C) The Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*) or any successor statute;

(D) The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*) or any successor statute;

(E) The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*) or any successor statute;

(F) Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*) or any successor statute;

(G) The Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*) or any successor statute; and

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

(ii) Participant or other person, other than a producer, such participant or person will be precluded from participating in any way in the Federal crop insurance program and receiving any monetary or non-monetary benefit under the Act.

(2) With respect to the term of disqualification:

(i) The minimum term will be not less than one year from the effective date determined in § 400.454(a)(2);

(ii) The maximum term will be not more than five years from the effective date determined in § 400.454(a)(2); and

(iii) Disqualification is to be imposed only in one-year increments, up to the maximum five years.

(3) Once a disqualification becomes final, the name, address, and other

identifying information of the participant or other person shall be entered into the Ineligible Tracking System (ITS) maintained by FCIC in accordance with 7 CFR part 400, subpart U, and this information along with a list of the programs that the person is disqualified from shall be promptly reported to the General Services Administration for listing in the Excluded Parties List System (EPLS) in accordance with 7 CFR part 3017, subpart E.

(i) It is a participant's responsibility to periodically review the ITS and EPLS to determine those participants and other persons who have been disqualified.

(ii) No participant may conduct business with a disqualified participant or other person if such business directly relates to the Federal crop insurance program, or if, through the business relationship, the disqualified participant or other person will derive any monetary or non-monetary benefit from a program administered under the Act.

(iii) If a participant or other person does business with a disqualified participant or other person, such participant may be subject to disqualification under this section.

(iv) Continuing to make payments to a disqualified person to fulfill pre-existing contractual or statutory obligations after the business relationship is terminated will not be considered as doing business with a disqualified person unless such payment is used as a means to circumvent the disqualification process.

(f) With respect to civil fines:

(1) A civil fine may be imposed for each violation.

(2) The amount of such civil fine shall not exceed the greater of:

(i) The amount of monetary gain, or value of the benefit, obtained as a result of the false or inaccurate information provided, or the amount obtained as a result of noncompliance with a requirement of FCIC; or

(ii) $10,000.

(3) Civil fines are debts owed to FCIC.

(i) A civil fine that is either imposed under with this subpart, or agreed to through an executed settlement agreement with FCIC, must be paid by the specified due date. If the due date is not specified in the order issued by the Administrative Law Judge or Judicial Officer, as applicable, or the settlement agreement, it shall be 30 days after the date the order was issued or the settlement agreement signed by FCIC.

(ii) Any civil fine imposed under this section is in addition to any debt that may be owed to FCIC or to any approved insurance provider, such an overpaid indemnity, underpaid premium, or other amounts owed.

(iii) FCIC, in its sole discretion, may reduce or otherwise settle any civil fine imposed under this section whenever it considers it appropriate or in the best interest of the USDA.

(4) The ineligibility procedures established in 7 CFR part 400, subpart U are not applicable to ineligibility determinations made under this section for nonpayment of civil fines.

(5) If a civil fine has been imposed and the person has not made timely payment for the total amount due, the person is ineligible to participate in the Federal crop insurance program until the amount due is paid in full.

(g) With respect to any person that has been disqualified or is otherwise ineligible due to non-payment of civil fines in accordance with § 400.454(f):

(1) With respect to producers:

(i) All existing insurance policies will automatically terminate as of the next termination date that occurs during the period of disqualification and while the civil fine remains unpaid;

(ii) No new policies can be purchased, and no current policies can be renewed, between the date that the producer is disqualified and the date that the disqualification ends; and

(iii) New application for insurance cannot be made for any agricultural commodity until the next sales closing date after the period of disqualification has ended and the civil fine is paid in full.

(2) With respect to all other persons:

(i) Such person may not be involved in any function related to the Federal crop insurance program during the disqualification or ineligibility period (including the sale, service, adjustment, data transmission or storage, reinsurance, etc. of any crop insurance policy)

or receive any monetary or non-monetary benefit from a program administered under the Act.

(ii) If the person is an agent or insurance agency, the producers may cancel their policies sold and serviced by the disqualified agent and rewrite the policy with another agent. If the producer does not cancel and rewrite the policy with another agent, the approved insurance provider must assign the policies to a different agent or agency to service during the period of disqualification or ineligibility. Policies that have been assigned to another agent or agency by the insurance provider will revert back to the disqualified agent or agency after the period of disqualification has ended provided all civil fines are paid in full and the producer does not cancel and rewrite the policy with a different agent or agency;

(iii) If the person is an approved insurance provider, the approved insurance provider shall not sell, or authorize to be sold, any new policies or may not renew, or authorize the renewal of, existing policies, as determined by FCIC, during the period of disqualification or ineligibility. Nothing in this provision affects the approved insurance provider's responsibilities with respect to the service of existing policies.

(h) Imposition of disqualification or a civil fine under this section is in addition to any other administrative or legal remedies available under this section or other applicable law including, but not limited to, debarment and suspension.

[73 FR 76888, Dec. 18, 2008]

§ 400.455 Governmentwide debarment and suspension (procurement).

(a) For all transactions undertaken pursuant to the Federal Acquisition Regulations, FCIC will proceed under 48 CFR part 9, subpart 9.4 or 48 CFR part 409 when taking action to suspend or debar persons involved in such transactions, except that the authority to suspend or debar under these provisions will be reserved to the Manager of FCIC, or the Manager's designee.

(b) Any person suspended or debarred under the provisions of 48 CFR part 9, subpart 9.4 or 48 CFR part 409 will not be eligible to contract with FCIC or the Risk Management Agency and will not be eligible to participate in or receive any benefit from any program under the Act during the period of ineligibility. This includes, but is not limited to, being employed by or contracting with any approved insurance provider that sells, services, or adjusts policies offered under the authority of the Act. FCIC may waive this provision if it is satisfied that the person who employs the suspended or debarred person has taken sufficient action to ensure that the suspended or debarred person will not be involved, in any way, with FCIC or receive any benefit from any program under the Act.

[73 FR 76890, Dec. 18, 2008]

§ 400.456 Governmentwide debarment and suspension (nonprocurement).

(a) FCIC will proceed under 7 CFR part 3017 when taking action to suspend or debar persons involved in nonprocurement transactions.

(b) Any person suspended or debarred under the provisions of 7 CFR part 3017, will not be eligible to contract with FCIC or the Risk Management Agency and will not be eligible to participate in or receive any benefit from any program under the Act during the period of ineligibility. This includes, but is not limited to, being employed by or contracting with any approved insurance provider, or its contractors, that sell, service, or adjust policies either insured or reinsured by FCIC. FCIC may waive this provision if it is satisfied that the approved insurance provider or contractors have taken sufficient action to ensure that the suspended or debarred person will not be involved in any way with the Federal crop insurance program or receive any benefit from any program under the Act.

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

[73 FR 76890, Dec. 18, 2008]

§ 400.457 Program Fraud Civil Remedies Act.

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

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

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

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

(d) Civil penalties and assessments imposed pursuant to this section are in addition to any other remedies that may be prescribed by law or imposed under this subpart.

[58 FR 53110, Oct. 14, 1993, as amended at 73 FR 76891, Dec. 18, 2008]

§400.458 Scheme or device.

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

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

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

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

[60 FR 37324, July 20, 1995, as amended at 73 FR 76891, Dec. 18, 2008]

§§400.459–400.500 [Reserved]

Subpart S [Reserved]

Subpart T—Federal Crop Insurance Reform, Insurance Implementation

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

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

§400.650 Purpose.

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

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

§400.651 Definitions.

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

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

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

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

Approved yield. The actual production history (APH) yield, calculated and approved by the verifier, used to determine the production guarantee by summing the yearly actual, assigned, adjusted or unadjusted transitional yields and dividing the sum by the number of yields contained in the database, which will always contain at least four yields.

The database may contain up to 10 consecutive crop years of actual or assigned yields. The approved yield may have yield adjustments elected under applicable policy provisions, or other limitations according to FCIC approved procedures applied when calculating the approved yield.

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

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

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

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

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

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

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

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

Linkage requirement. The legal requirement that a producer must obtain at least catastrophic risk protection coverage for any crop of economic significance as a condition of receiving benefits for such crop from certain other USDA programs in accordance with § 400.655, unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

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

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

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

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

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

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

§ 400.652 Insurance availability.

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

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

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

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

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

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

§ 400.653 Determining crops of economic significance.

To be eligible for certain other program benefits under § 400.655 the following conditions will apply with respect to crops of economic significance if the producer does not execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(a) If a producer planted a crop of economic significance in the preceding crop year, and does not intend to plant the same crop in the present crop year, the producer does not have to obtain insurance coverage or execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop in the present crop year to comply with the linkage requirements. However, if the producer later decides to plant that crop, the producer will be unable to obtain insurance after the sales closing date and must execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop to be eligible for benefits as specified in § 400.655. Failure to execute such a waiver will require the producer to refund any benefits already received under a program specified in § 400.655.

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

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

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

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

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

uses the same type of price for all crops in the county.

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

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

§ 400.654 Application and acreage report.

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

(b) In order to remain eligible for certain farm programs, as specified in § 400.655, a producer must obtain at least catastrophic risk protection on all crops of economic significance, if catastrophic risk protection is available in the county, unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

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

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

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

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

(4) If the producer plants a substitute crop that is a crop of economic significance, the producer must obtain CAT coverage, if available, to comply with the linkage requirements specified in § 400.655. The producer may not substitute a crop under this provision if the producer has signed or intends to sign a waiver for emergency crop loss assistance for the crop year.

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

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

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

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

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

§ 400.655 Eligibility for other program benefits.

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

(a) Benefits under the Agricultural Market Transition Act;

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

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

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

§§ 400.656–400.657 [Reserved]

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

SOURCE: 79 FR 2079, Jan. 13, 2014, unless otherwise noted.

§ 400.675 Purpose.

This subpart prescribes conditions under which a person may be determined to be ineligible to participate in any program administered under the authority of the Federal Crop Insurance Act. This subpart also establishes the criteria for regaining eligibility.

§ 400.676 [Reserved]

§ 400.677 Definitions.

As used in this subpart:

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

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

Authorized person means any current or past officer, employee, elected official, managing general agent, agent, or contractor of an insurance provider, FCIC, or any other government agency whose duties require access to the ITS to administer the Act.

Controlled substance has the same meaning provided in 7 CFR 3021.610.

Conviction means a judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of no contest.

Date of delinquency means: The termination date specified in the applicable policy for administrative fees and premiums owed for insurance issued under the authority of the Act, and any interest and penalties on those amounts, if applicable; and the due date specified in the notice to the person of the amount due for any other amounts due the insurance provider or FCIC for insurance issued under the authority of the Act. Other amounts due include, but are not limited to, indemnities, prevented planting payments, or replant payments found not to have been earned or that were overpaid, premium billed with a due date after the termination date for the crop year in which premium is earned, and any interest, administrative fees, and penalties on such amounts, if applicable. Payments postmarked or received before the date of delinquency by the insurance provider or its agent for debts owed to the insurance provider, or by FCIC for debts owed to FCIC, are not delinquent.

Debt means an amount of money that has been determined to be owed by any person to FCIC or an insurance provider, excluding money owed to an insurance provider's agent, under any program administered under the Act. The debt may have arisen from nonpayment of interest, penalties, premium, or administrative fee; overpayment of indemnity, prevented planting or replant payment; cost of collection; or other causes. A debt does not include debts discharged in bankruptcy.

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

Delinquent debt means a debt that is not satisfied on or before the date of delinquency. To avoid delinquency or ineligibility due to a delinquent debt, a debtor may enter into a written payment agreement acceptable to the insurance provider or FCIC to pay any such debt as long as all payments are made by the due dates specified in such written payment agreement. A delinquent debt does not include debts discharged in bankruptcy or any debt to an insurance provider's agent.

Employer Identification Number (EIN) means a Tax Identification Number issued by the Internal Revenue Service used to identify a business entity, and may also be referred to as a Federal Tax Identification Number.

Excluded Parties List System (EPLS) means a list maintained by the General

Services Administration that provides a source of current information about persons who are excluded or disqualified from covered transactions, including the date the person was determined ineligible and the date the period of ineligibility ends.

Federal Crop Insurance Corporation (FCIC) means a wholly owned government corporation within the USDA.

Ineligible person means a person who is denied participation in any program administered under the authority of the Act.

Ineligible Tracking System (ITS) means an electronic system to identify persons who are ineligible to participate in any program pursuant to this subpart.

Insurance Provider means a legal entity which has entered into a Standard Reinsurance Agreement, Livestock Price Reinsurance Agreement, or other reinsurance agreement, as applicable, with FCIC for the applicable reinsurance year.

Livestock Price Reinsurance Agreement means a cooperative financial assistance agreement between FCIC and an insurance provider to deliver eligible livestock price insurance contracts under the authority of the Act and establishes the terms and conditions under which FCIC will provide subsidy and reinsurance on eligible livestock price insurance policies sold.

Meaningful opportunity to contest means the opportunity for the insured to resolve disagreements with a decision by the insurance provider through requesting a review of the decision by the insurance provider, mediation, arbitration, or judicial review, as applicable.

Person means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or political subdivision or agency of a State. ''Person'' does not include the United States Government or any agency thereof.

Qualified alien has the same meaning provided in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641).

Social Security Number (SSN) means an individual's Social Security Number as issued under the authority of the Social Security Act.

Standard Reinsurance Agreement (SRA) means a cooperative financial assistance agreement between FCIC and an insurance provider to deliver eligible crop insurance contracts under the authority of the Act and establishes the terms and conditions under which FCIC will provide subsidy and reinsurance on eligible crop insurance policies sold.

Substantial beneficial interest has the same meaning as contained in the applicable policy.

USDA means the United States Department of Agriculture.

United States non-citizen national has the same meaning provided in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. § 1408).

Written payment agreement means a written document between a debtor and the insurance provider, or FCIC, that is signed and dated by all applicable parties to satisfy financial obligations of the debtor with scheduled installment payments under conditions that modify the terms of the original debt in accordance with § 400.681.

§ 400.678 Applicability.

This subpart applies to any program administered under the authority of the Act, including but not limited to:

(a) The catastrophic risk protection plan of insurance;

(b) The additional coverage plans of insurance as authorized under section 508(c) of the Act;

(c) Private insurance products authorized under section 508(h) or 523(d) of the Act and reinsured by FCIC; and

(d) Persons entering contracts or cooperative agreements under sections 506(l), 522(c), 522(d), or 524(a) of the Act.

§ 400.679 Criteria for ineligibility.

Except as otherwise provided, a person is ineligible to participate in any program administered under the authority of the Act if the person meets one or more of the following criteria:

(a) Has a delinquent debt:

(1) The existence and delinquency of the debt must be verifiable.

(2) The person has to be provided a meaningful opportunity to contest the debt.

(3) If the person contests the debt, such action does not delay or preclude:

(i) Effect of the determination of ineligibility;

(ii) Determination or notification of ineligibility in accordance with § 400.682;

(iii) Termination of the applicable crop insurance policies; or

(iv) Ineligible persons being reported in accordance with § 400.682 or the ineligible persons being recorded in the ITS.

(4) If the person is determined not to owe the debt, eligibility is reinstated retroactive to the date of the determination of ineligibility, any applicable policies will be reinstated, and any applicable indemnity, prevented planting or replant payment earned may be paid provided the person has continued to comply with the terms of the policy;

(b) Is an individual and has been convicted of a controlled substance violation according to § 400.680;

(c) Has been disqualified under section 515(h) of the Act.;

(d) Is an individual and is not a United States citizen, United States non-citizen national, or a qualified alien. Such individuals may not be recorded in the ITS; however, such individuals are ineligible under the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. 1611;

(e) Has been suspended or debarred for committing a crime specified in 2 CFR part 180 or 2 CFR part 417, or 7 U.S.C. 2209j (Ineligibility determinations will not be stayed pending review. However, reversal of the determination of ineligibility will reinstate eligibility retroactive to the date of the determination of ineligibility, and any applicable policies will be reinstated);

(f) Has been debarred for knowingly doing business with a person debarred or suspended under 2 CFR part 180 or 2 CFR part 417 or 7 U.S.C. 2209j; or

(g) Has requested the Administrator of the Risk Management Agency for consideration to reinstate their eligibility in accordance with the applicable policy provisions and such request has been denied.

[79 FR 2079, Jan. 13, 2014, as amended at 79 FR 37161, July 1, 2014]

§ 400.680 Controlled substance.

(a) This section implements section 1764 of the Food Security Act of 1985 (Pub. L. 99–198) and Chapter 13 of Title 21 requiring the denial of Federal Benefits, including crop insurance, to individuals convicted of controlled substance violations in accordance with paragraphs (b) and (c) of this section.

(b) Notwithstanding any other provision of law, an individual will be ineligible to participate in any program authorized under the Act, as provided in § 400.683, if the individual is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year.

(c) Notwithstanding any other provision of law, an individual may, as determined by the court, be ineligible to participate in any program authorized under the Act, as provided in § 400.683, if the person is convicted under Federal or State law of possession of or trafficking in a controlled substance.

§ 400.681 Written payment agreement.

(a) Written payment agreements shall:

(1) Require scheduled installment payments that will allow for full repayment of the debt within the time frame allotted in paragraph (a)(2) of this section;

(2) Not exceed two years in duration; and

(3) Not be modified, replaced, or consolidated after it has been executed in accordance with paragraph (b) of this section.

(b) To avoid being determined to be ineligible through the execution of a written payment agreement:

(1) For a debt arising from any unpaid premium, administrative fees, or catastrophic risk protection fees:

(i) Only one written payment agreement is permitted per termination date. A written payment agreement may cover multiple crops provided they all have the same termination date; and

(ii) The written payment agreement must be signed by both parties, the debtor and the insurance provider or FCIC, as applicable, on or before the

termination date specified in the applicable policy to prevent an ineligible determination for a delinquent debt.

(2) For all other debts, the written payment agreement must be signed by both parties, the debtor and the insurance provider or FCIC, as applicable, on or before the due date specified in the notice to the person of the amount due to prevent an ineligible determination for a delinquent debt.

§ 400.682 Determination and notification.

(a) The insurance provider must send a written notice of the debt to the person, including the time frame in which the debt must be paid, and provide the person with a meaningful opportunity to contest the amount or existence of the debt. Once a debtor has filed bankruptcy and the insurance provider is formally informed of such through the court or the debtor, no request for payment of the debt can be made, unless approved in writing by the Office of General Counsel. The debtor may be notified of the amount of debt and ineligibility for crop insurance.

(1) The insurance provider shall evaluate the person's response, if any, and determine if the debt is owed and delinquent.

(2) Upon request by FCIC, the insurance provider shall submit all documentation related to the debt to FCIC.

(b) If an insurance provider or any other person has evidence that a person meets criteria set forth in § 400.679(a), (b), (c), (e) or (f), they must immediately notify FCIC.

(c) After the insurance provider determines a person has met one or more of the criteria in § 400.679 and notifies FCIC, FCIC will issue and mail a Notice of Ineligibility to the person's last known address and to the insurance provider. Notices sent to such address will be conclusively presumed to have been received by that person.

(d) The Notice of Ineligibility will state the criteria upon which the determination of ineligibility has been based, a brief statement of the facts to support the determination, the time period of ineligibility, and the right to appeal the determination to be placed on the ITS in accordance with paragraph (e) of this section.

(e) Within 30 days of receiving the Notice of Ineligibility, the ineligible person may appeal FCIC's determination to be placed on ITS to the National Appeals Division in accordance with 7 CFR part 11. The existence and amount of the debt is determined by the insurance provider, not FCIC; therefore, those determinations are not appealable to the National Appeals Division.

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

(g) No later than 60 days after the termination date, the missed payment date of a previously executed written payment agreement, or the due date specified in the notice to the person of the amount due, as applicable, the ineligible person may request consideration for reinstatement from the Administrator of the Risk Management Agency in accordance with section 2 of the Common Crop insurance Policy Basic Provisions (7 CFR 457.8).

[79 FR 2079, Jan. 13, 2014, as amended at 79 FR 37161, July 1, 2014]

§ 400.683 Period of ineligibility.

(a) The beginning of the period of ineligibility will be:

(1) For ineligibility as a result of a delinquent debt, beginning on the date stated in the applicable policy;

(2) For ineligibility as a result of a conviction under Federal or State law of:

(i) Planting, cultivating, growing, producing, harvesting, or storing a controlled substance, the beginning of the crop year in which the individual is convicted; or

(ii) Possession of or trafficking in a controlled substance, the beginning of the crop year in which the individual is convicted, unless determined otherwise by the court.

(3) For ineligibility as a result of a disqualification, debarment, or suspension under 515(h) of the Act, 2 CFR part 180, 2 CFR part 417, the date the person

was disqualified, debarred, or suspended by debarring official, Administrative Law Judge, or such other person authorized to take such action; and

(4) For debarment under 7 U.S.C. 2209j, the beginning of the crop year in which the person is convicted.

(b) The duration of the period of ineligibility will be:

(1) For ineligibility as a result of a delinquent debt, until the debt has been paid in full discharged in bankruptcy, or the person has executed a written payment agreement.

(2) For ineligibility as a result of a conviction under Federal or State law of:

(i) Planting, cultivating, growing, producing, harvesting, or storing a controlled substance, four crop years succeeding the crop year in which the person was convicted; and

(ii) Possession of a controlled substance or trafficking in a controlled substance, in addition to the time of ineligibility imposed in paragraph (b)(2)(i) of this section, until the period of time imposed by a court has expired.

(3) For ineligibility as a result of a disqualification, debarment, or suspension under section 515(h) of the Act, or 2 CFR part 180 and 2 CFR part 417 until the period of time of disqualification, debarment, or suspension, as applicable, has expired.

(4) For ineligibility as a result of not being a United States citizen, United States non-citizen national, or a qualified alien, until the date such individual becomes a United States citizen, United States non-citizen national, or a qualified alien.

(5) For ineligibility as a result of a conviction falling under 7 U.S.C. 2209j, permanent unless otherwise determined by the Secretary of Agriculture for a period of not less than 10 years.

§ 400.684 Effect of ineligibility.

(a) The effect of ineligibility depends on the basis for the determination.

(1) Persons who are ineligible as a result of a delinquent debt are ineligible for crop insurance authorized under the Act for a certain time period in accordance with § 400.683. Filing for bankruptcy does not make the person eligible for crop insurance or preclude the ineligible person from being placed on the ITS in accordance with § 400.684(b)(1).

(2) Persons who are ineligible as a result of a suspension or debarment are precluded from:

(i) Participating in all programs authorized under the Act, including but not limited to:

(A) Obtaining crop insurance;

(B) Acting as an agent, loss adjuster, insurance provider, or affiliate, as defined in the Standard Reinsurance Agreement or Livestock Price Reinsurance Agreement, or successor agreements;

(C) Entering into any contracts with FCIC under sections 506(l) and section 522(c) of the Act; and

(D) Entering into any cooperative agreements or partnerships under sections 506(l), 522(d) and 524(a) of the Act; and

(ii) Participating in any other covered transaction as specified in 2 CFR part 180 and 2 CFR part 417.

(3) Persons who are ineligible because of disqualification under section 515(h) of the Act are precluded from participating in all programs authorized under the Act indicated in paragraph (a)(2)(i) of this section, and those listed in section 515(h)(3)(B) and (C) of the Act.

(4) Individuals who are ineligible because of a conviction of a violation of the controlled substance provisions or are not a United States citizen, United States non-citizen national, or a qualified alien are precluded from participating in any program authorized under the Act indicated in paragraph (a)(2)(i) of this section.

(5) Persons who are ineligible as a result of a conviction falling under 7 U.S.C. 2209j, are precluded from participating in any program offered by USDA.

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

(1) The ineligible person will be placed on the ITS and may be reported to other government agencies, unless the ineligible person is an individual and the sole reason for ineligibility is because the individual is not a United States citizen, United States non-citizen national, or qualified alien.

(2) If the ineligible person is an individual:

(i) All crop insurance policies in which the ineligible person is the sole insured will terminate if the person is ineligible for any reason other than a controlled substance violation, or be void if the person is ineligible due to conviction of a controlled substance violation according to § 400.680, and the person will remain ineligible for crop insurance for the applicable period specified in § 400.683; and

(ii) The ineligible person must be reported on all policies in which the ineligible person has a substantial beneficial interest in the applicant or insured, and the insured share under such policy will be reduced commensurate with the ineligible person's substantial beneficial interest in the applicant or insured for as long as the ineligible person remains ineligible in accordance with § 400.683.

(3) If the ineligible person is a general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture and is ineligible as a result of:

(i) A delinquent debt:

(A) All partners or members of the ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture will be ineligible;

(B) The ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture and all partners and members of the ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture will remain ineligible for crop insurance for the applicable period specified in § 400.683;

(C) All crop insurance policies in which the ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture is the sole insured will terminate;

(D) All crop insurance policies in which the ineligible partner or member is the sole insured will terminate; and

(E) The ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture and all ineligible partners or members must be reported on any other policy in which they have a substantial beneficial interest in the applicant or insured, and the insured share under such policies will be reduced commensurate with the ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture or the ineligible partners' or members' substantial beneficial interest in the applicant or insured for as long as they remain ineligible in accordance with § 400.683; or

(ii) Meeting the criteria specified in § 400.679(c), (e) or (f):

(A) All crop insurance policies in which the ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture is the sole insured will terminate, and the ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture will remain ineligible for crop insurance for the applicable period specified in § 400.683; and

(B) The ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture must be reported on any other policy in which it has a substantial beneficial interest in the applicant or insured, and the insured share under such policies will be reduced commensurate with the ineligible general partnership's, limited partnership's, limited liability partnership's, limited liability company's, or joint venture's substantial beneficial interest in the applicant or insured for as long as it remains ineligible in accordance with § 400.683.

(4) If the ineligible person is an association, estate, trust, corporation, or other similar entity, and is ineligible as a result of:

(i) A delinquent debt:

(A) Any partners, members, shareholders, administrators, executors, trustees, or grantors may be individually ineligible if the delinquent debt occurred as a result of their actions or inactions, as determined by the insurance provider or FCIC;

(B) All policies in which the ineligible association, estate, trust, corporation, or other similar entity is the sole insured will terminate, and it will remain ineligible for crop insurance for

the applicable period specified in § 400.683.

(C) The ineligible association, estate, trust, corporation, or other similar entity must be reported on any other policy in which it has a substantial beneficial interest in the applicant or insured, and the insured share under such policies will be reduced commensurate with the ineligible entity's substantial beneficial interest in the applicant or insured for as long as the person remains ineligible in accordance with § 400.683;

(D) All policies in which a partner, member, shareholder, administrator, executor, trustee, or grantor determined ineligible according to § 400.684(b)(4)(i)(A) is the sole insured will terminate, and the person will remain ineligible for crop insurance for the applicable period specified in § 400.683; and

(E) The ineligible partner, member, shareholder, administrator, executor, trustee, or grantor must be reported on any other policy in which they have a substantial beneficial interest in the applicant or insured, and the insured share under such policies will be reduced commensurate with the ineligible person's substantial beneficial interest in the applicant or insured for as long as the person remains ineligible in accordance with § 400.683; or

(ii) Meeting the criteria specified in § 400.679(c), (e) or (f):

(A) All crop insurance policies in which the ineligible association, estate, trust, corporation, or other similar entity is the sole insured will terminate, and the ineligible association, estate, trust, corporation, or other similar entity will remain ineligible for crop insurance for the applicable period specified in § 400.683; and

(B) The ineligible association, estate, trust, corporation, or other similar entity must be reported on any other policy in which it has a substantial beneficial interest in the applicant or insured, and the insured share under such policies will be reduced commensurate with the ineligible association, estate, trust, corporation, or other similar entity's substantial beneficial interest in the applicant or insured for as long as it remains ineligible in accordance with § 400.683.

(5) If an applicant or insured is a corporation, partnership, joint venture, trust, corporation, limited liability company, limited liability partnership, limited partnership, or other similar entity that was created to conceal the interest of an ineligible person or to evade the ineligibility determination of a person with a substantial beneficial interest in the applicant or insured, the policy will be void.

(6) All crop insurance policies in which the ineligible person is insured as landlord/tenant will terminate on the next termination date. The other person(s) on such policy may submit a new application for crop insurance coverage on or before the applicable sales closing date to obtain insurance coverage for the crop, if they are otherwise eligible for such coverage.

(c) The spouse and minor child of an individual insured is considered to be the same as the individual for purposes of this subpart and subject to the same ineligibility, except when:

(1) The individual is ineligible due to a conviction of a controlled substance violation in accordance with § 400.680;

(2) The individual is ineligible as a result of a felony conviction for knowingly defrauding the United States in connection with any program administered by USDA;

(3) The individual is ineligible because they are not a United States citizen, United States non-citizen national, or a qualified alien;

(4) The individual is ineligible as a result of a disqualification, debarment, or suspension;

(5) The spouse can prove they are legally separated or otherwise legally separate under the applicable State dissolution of marriage laws; or

(6) The minor child has a separate legal interest in such person or is engaged in a separate farming operation from the individual.

(d) Notwithstanding § 400.684(f), when a policy is voided in accordance with this subpart:

(1) No indemnities or payments will be paid for the voided policy;

(2) Any indemnities or payments already made for the voided policy will be declared overpayments and must be repaid in full; and

(3) No premiums will be due and any premium paid will be refunded except when the policy is void due to a conviction of a controlled substance violation according to § 400.680, in which case the insured will still be required to pay 20 percent of the premium the insured would otherwise be required to pay to offset costs in the servicing of the policy.

(e) When the insured share of a policy is reduced in accordance with this subpart:

(1) Any indemnities or payments commensurate with the share reduced already made will be declared overpayments and must be repaid in full; and

(2) Any premiums paid by the insured commensurate with the share reduced will be refunded.

(f) Any insurance written by an insurance provider to any person who is ineligible under the provisions of this subpart is not eligible for reinsurance by FCIC. All premium subsidies, expenses, or other payments made by FCIC for insurance written for any person who is ineligible under the provisions of this subpart must be immediately refunded to FCIC. However, with regard to policies that would be void due to a conviction of a controlled substance violation according to § 400.680, if the insurance provider follows the procedures of FCIC and the requirements of the regulations, reinsurance will continue to be provided under the reinsurance agreement on the policy unless it is shown that the agent or insurance provider had knowledge of the facts which would indicate ineligibility on the part of the insured and failed to act on that knowledge.

§ 400.685 Criteria for regaining eligibility.

After the period of ineligibility as specified in § 400.683 has ended, the ineligible person is eligible to participate in programs authorized under the Act, provided the person meets all eligibility requirements.

(a) After a person regains eligibility for crop insurance when their policy was terminated or voided, the person must submit a new application for crop insurance coverage on or before the applicable sales closing date to obtain insurance coverage for the crop. If the date of regaining eligibility occurs after the applicable sales closing date for the crop, the person may not participate until the following year unless that crop policy allows for applications to be accepted after the sales closing date.

(b) If a person who was determined ineligible according to this subpart is subsequently determined to be an eligible person for crop insurance through reinstatement, mediation, arbitration, appeal, or judicial review, such person's policies will be reinstated effective at the beginning of the crop year for which the producer was determined ineligible, and such person will be entitled to all applicable benefits under such policies, provided the person meets all eligibility requirements and complies with the terms of the policy.

[79 FR 2079, Jan. 13, 2014, as amended at 79 FR 37161, July 1, 2014]

§ 400.686 Administration and maintenance.

(a) Ineligible producer data will be maintained in a system of records established and maintained by the Risk Management Agency in accordance with the Privacy Act (5 U.S.C. 552a).

(1) The ITS contains identifying information of the ineligible person, including but not limited to, name, address, telephone number, SSN or EIN, reason for ineligibility, and time period of ineligibility.

(2) Information in the ITS may be used by an authorized person. The information may be furnished to other users as may be appropriate or required by law or regulation, including but not limited to, FCIC contracted agencies, other government agencies, credit reporting agencies, and collection agencies, and in response to judicial orders in the course of litigation. The individual information may be made available in the form of various reports and notices.

(3) Supporting documentation regarding the determination of ineligibility and reinstatement or regaining of eligibility will be maintained by FCIC, or its contractors, insurance providers, Federal agencies, and State agencies. This documentation will be maintained

and retained consistent with the electronic information contained within the ITS.

(b) Information may be entered into the ITS by FCIC employees or contractors, or insurance providers.

(c) All persons applying for crop insurance policies or with an existing policy, issued or reinsured by FCIC, will be subject to validation of their eligibility status against the ITS. Applications, transfers, or benefits approved and accepted are considered approved or accepted subject to review of eligibility status in accordance with this subpart.

(d) Insurance providers, partners, cooperators, and contractors must check to ensure that the persons with whom they are doing business are eligible to participate in the programs authorized under the Act. Insurance providers, partners, cooperators, and contractors must check the ITS but the ITS may not include all persons ineligible to receive government benefits, such as persons debarred, disqualified or suspended from receiving government benefits by an agency other than FCIC. Insurance providers, partners, cooperators, and contractors must check other sources that contain ineligible persons, including but not limited to EPLS, or successor list, provide data on persons ineligible to participate in programs authorized under the Act.

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

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

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

§ 400.700 Basis, purpose, and applicability.

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

[74 FR 8705, Feb. 26, 2009]

§ 400.701 Definitions.

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

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

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

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

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

Approved insurance provider. A private insurance company that has been approved by FCIC to provide insurance

coverage to producers participating in programs authorized by the Act.

Board. The Board of Directors of FCIC.

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

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

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

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

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

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

Maintenance. For the purposes of this subpart only, the process of continual support and improvement, as needed, for a policy or plan of insurance, including the periodic review of setting prices, updating premium rates or the rating methodology, updating or modifying policy terms and conditions, and any other actions necessary to provide adequate and meaningful protection for producers, ensure actuarial soundness, or to respond to statutory or regulatory changes.

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

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

Manager. The Manager of FCIC.

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

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

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

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

Nonreinsured supplemental policy (NRS). A policy, endorsement or other

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

USDA. The United States Department of Agriculture.

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

[66 FR 47951, Sept. 17, 2001, as amended at 70 FR 41918, July 20, 2005; 70 FR 44235, Aug. 2, 2005; 74 FR 8705, Feb. 26, 2009]

§ 400.702 Confidentiality of submission and duration of confidentiality.

(a) Prior to approval by the Board, any submission made to the Board under section 508(h) of the Act, including any information generated from

the submission, will be considered confidential commercial or financial information for purposes of 5 U.S.C. 552(b)(4) and will not be released by FCIC to the public, unless the applicant authorizes such release in writing.

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

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

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

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

§ 400.703 Timing of submission.

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

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

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

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

[70 FR 44236, Aug. 2, 2005]

§ 400.704 Type of submission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Reimbursement for maintenance costs, as applicable;

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

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

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

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

(8) A marketing plan;

(9) Any known or anticipated future expansion plans;

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

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

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

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

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

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

(2) The projected demand for the submission, which must be supported by information from market research, producers or producer groups, agents, lending institutions, and other interested parties that provide verifiable evidence of demand; and

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

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

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

(i) All applicable policy provisions; and

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

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

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

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

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

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

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

(5) Focus group results;

(6) Market research studies;

(7) Qualitative market estimates;

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

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

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

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

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

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

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

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

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

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

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

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

(i) A table of contents and introduction;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) A simulation based on the probability distributions used to develop the rates and commodity prices, as applicable, including sensitivity tests

that demonstrate price or yield extremes, and the impact of inappropriate assumptions; or

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

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

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

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

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

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

(j) The ninth section must contain the following:

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

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

(3) Agent and loss adjuster training plans; and

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

(k) The tenth section must contain a written plan, including specifications and details for the systems and software development necessary for the implementation of the submission, if applicable, and the documents that demonstrate the submitter has the capability and resources to develop systems that comply in all respects with the standards established for processing and acceptance of data by the FCIC Data Acceptance System, or successor system, unless otherwise authorized by FCIC. Unless otherwise determined by FCIC, the applicant must consult with FCIC to determine whether their submission can be implemented and administered through the current system;

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

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

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

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

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

(1) Basic and catastrophic risk protection policy provisions;

(2) The commodity provisions and any endorsements;

(3) Underwriting under the underwriting guide;

(4) Eligibility requirements;

(5) Guarantee, indemnity, and premium calculations;

(6) Special Provisions of Insurance;

(7) Actuarial documents;

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

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

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

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

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

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

(i) Any anticipated expansion;

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

(iii) The determination of prices; and

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

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

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

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

[70 FR 44236, Aug. 2, 2005]

§ 400.706 Review of submission.

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

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

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

(3) Inform the applicant of the information RMA deems necessary for the submission to comply with paragraphs (a)(1) and (2) of this section; and

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

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

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

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

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

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

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

(4) For all complete submissions:

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

(A) The submission protects the interests of agricultural producers and taxpayers, is actuarially appropriate, follows appropriate insurance principles, meets the requirements of the Act, does not contain excessive risks, is consistent with USDA's public policy goals, does not increase or shift risk to

any other FCIC reinsured policy, offers coverage that is similar to another policy or plan of insurance and if the producer would further benefit from the submission and can be administered and delivered efficiently and effectively;

(B) The marketing plan is reasonable;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The premium rates are not actuarially appropriate;

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

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

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

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

(i) If the Board intends to disapprove the submission, the applicant will be notified in writing at least 30 days

prior to the Board taking such action. The Board will provide the applicant with a written explanation for the intent to disapprove the submission.

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

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

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

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

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

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

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

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

(l) If the Board fails to take action on a new submission within the prescribed 90-day period in paragraph (g) of this section, or within the time period in accordance with paragraph (e)(3) of this section after receiving the revised submission, such submission will be deemed approved by the Board for the initial reinsurance year designated for the submission. The Board must approve the submission for it to be available for any subsequent reinsurance year.

[70 FR 44238, Aug. 2, 2005]

§ 400.707 Presentation to the Board for approval or disapproval.

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

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

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

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

§ 400.708 Approved submission.

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

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

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

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

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

(b) A submission approved by the Board under this subpart will be made available to all approved insurance providers under the same reinsurance

and subsidy terms and conditions as received by the applicant.

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

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

§ 400.709 Roles and responsibilities.

(a) With respect to the applicant:

(1) The applicant is responsible for:

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

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

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

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

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

(3) Except as provided in paragraph (a)(4) of this section, the applicant is solely liable for any mistakes, errors, or flaws in the submitted policy, plan of insurance, their related materials, or the rates of premium that have been approved by the Board unless the policy or plan of insurance is transferred to FCIC. The applicant remains liable for any mistakes, errors, or flaws that occurred prior to transfer of the policy or plan of insurance to FCIC;

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

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

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

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

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

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

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

(b) With respect to FCIC:

(1) FCIC is responsible for:

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

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

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

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

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

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

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

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

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

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

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

[70 FR 44239, Aug. 2, 2005]

§ 400.710 Preemption and premium taxation.

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

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

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

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

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

[70 FR 44240, Aug. 2, 2005]

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

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

(1) If it is determined to be marketable by the Board, the submission may be eligible for a one-time payment of research and development costs and reimbursement of maintenance costs for

up to four reinsurance years, as determined by the Board, after the date such costs have been approved by the Board.

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

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

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

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

(d) To be considered for reimbursement of:

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

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

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

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

(e) There are limited funds available on an annual fiscal year basis as contained in the Act. Therefore, requests for reimbursement will not be considered in the order in which they are received. Consistent with paragraphs (f), (g), (h), and (k) of this section, if all applicants' requests for reimbursement of research and development costs and maintenance costs in any fiscal year:

(1) Do not exceed the maximum amount authorized by law, the applicants may receive the full amount of reimbursement authorized under these paragraphs; and

(2) Exceed the amount authorized by law, each applicant's reimbursement will be determined by dividing the total amount of each individual applicants' reimbursable costs authorized in paragraphs (f), (g), (h), and (k) of this section by the total amount of the aggregate of all applicants' reimbursable costs authorized in paragraphs (f), (g), (h), and (k) of this section for that year and multiplying the result by the amount of reimbursement authorized under the Act.

(f) The amount of reimbursement for research and development costs, will be determined based on the amount of reimbursement authorized under paragraph (e) of this section, adjusted for the complexity of the policy, plan of insurance, or rates of premium, as determined by FCIC, and the size of the area in which the policy, plan of insurance, or rates of premium may be offered.

(1) Policies or plans of insurance that offer new and innovative coverages that are not currently available will be eligible for a higher reimbursement than policies or plans of insurance that are, or have components that are, based on existing policies or plans of insurance.

(2) Policies or plans of insurance that offer new premium rating or market price methodologies will be eligible for a higher reimbursement than policies or plans of insurance that use existing premium rating or market price methodologies.

(3) Policies or plans of insurance that cover new commodities that are not otherwise covered by crop insurance or that offer innovative coverage and original policy language will be eligible for a higher reimbursement than policies or plans of insurance for commodities for which insurance is currently available.

(4) Policies or plans of insurance that may be offered for sale nationwide or in large geographical regions will be eligible for higher reimbursement than those that are applicable to only a few counties or states or a small geographical region.

(5) Any reimbursement under this subpart will be scored as follows:

(i) Complexity scores:

(A) Basic or Common Provisions:

(*1*) Uses existing policies or plans of insurance: 0.05

(*2*) Contains modifications to existing policies or plans of insurance: 0.10

(*3*) Original (See paragraph (f)(3) of this section): 0.20

(B) Commodity Provisions and Special Provisions:

(*1*) Uses existing policies or plans of insurance: 0.05

(*2*) Contains modifications to existing policies or plans of insurance: 0.10

(*3*) Original (See paragraph (f)(3) of this section): 0.20

(C) Market prices:

(*1*) Uses existing policies or plans of insurance: 0.05

(*2*) Contains modifications to existing policies or plans of insurance: 0.10

(*3*) Original (See paragraph (f)(3) of this section): 0.20

(D) Rates of Premium:

(*1*) Uses existing policies or plans of insurance: 0.05

(*2*) Contains modifications to existing policies or plans of insurance: 0.10

(*3*) Original (See paragraph (f)(3) of this section): 0.20

(E) Underwriting:

(*1*) Uses existing policies or plans of insurance: 0.05

(*2*) Contains modifications to existing policies or plans of insurance: 0.10

(*3*) Original (See paragraph (f)(3) of this section): 0.20

(ii) Geographic scope scores:

(A) Potential national availability: 0.10

(B) Potential county, state or regional availability: 0.05

(6) Policies or plans of insurance that receive a summed total score for both complexity and geographic scope that is:

(i) Equal to or greater than 0.6 may receive the full amount of reimbursement approved by the Board under paragraph (g) of this section;

(ii) Greater than 0.25 but lower than 0.60 will receive a reimbursement that is not greater than 75 percent of the full amount of reimbursement approved by the Board under paragraph (g) of this section; and

(iii) Equal to or less than 0.25 will receive a reimbursement that is not greater than 50 percent of the full amount of reimbursement approved by the Board under paragraph (g) of this section.

(g) For those submissions submitted to the Board for approval after September 17, 2001, research and development costs must be supported by itemized statements and supporting documentation (copies of contracts, billing statements, time sheets, travel vouchers, accounting ledgers, etc.). Actual costs submitted will be examined for reasonableness and may be adjusted at the sole discretion of the Board.

(1) Allowable research and development expense items (directly related to research and development of the submission only) may include the following:

(i) Straight-time hourly wage, exclusive of bonuses, overtime pay, or shift differentials (One line per employee, include job title, total hours, and total dollars. Compensation amounts will be compared with the Occupational Employment Statistics Survey (published each January by the U.S. Department of Labor, Bureau of Labor Statistics) or other substantial wage information as deemed appropriate by the Board);

(ii) Benefit cost per employee (Benefit costs are considered overhead and will be compared with the Employment Cost Index Annual Employer Cost Survey published each March by the U.S. Department of Labor, Bureau of Labor Statistics); and

(iii) Contracted expenses if fully disclosed, documented, and:

(A) The applicant provides a copy of the contract, billing statements, accounting records, etc;

(B) The applicant provides the relationship, if any, between the applicant and the contractor, such as parent company, subsidiary, etc. (Reimbursement may be limited or denied if the contractor is closely associated to the applicant so that they could be considered as one and the same, such as a separate entity being created by the applicant to conduct research and development);

(C) The applicant provides any and all other involvement of the contractor with the applicant, such as being a director, officer, employee, etc., or having common directors, officers, employers, employees, etc. (Reimbursement may be reduced or denied if the contractor is paid a salary or other compensation from the applicant based on this other involvement); and

(D) The contracted expenses are broken out by line item (including all persons who make up the contracted party who had a substantive involvement in the development of the submission), such as:

(*1*) Individual names;

(*2*) Rate of pay;

(*3*) Hours allocated to the submission;

(*4*) Benefit rate; and

(*5*) Overhead;

(iv) Professional fees if fully disclosed, documented, and:

(A) The applicant provides the job title, straight-time hourly wage, total hours, and total dollars;

(B) The applicant provides the relationship, if any, between the applicant and the professional, such as parent company, subsidiary, etc. (Reimbursement may be limited or denied if the contractor is closely associated to the applicant so that they could be considered as one and the same, such as a separate entity being created by the applicant to conduct research and development);

(C) The applicant provides any other involvement of the professional with the applicant, such as being a director, officer, employee, etc., or having common directors, officers, employers, employees, etc. (Reimbursement may be reduced or denied if the contractor is paid a salary or other compensation from the applicant based on this other involvement); and

(D) The professional fees are broken out by line item (including all persons who make up the professional party who had a substantive involvement in the development of the submission), such as;

(*1*) Individual names;

(*2*) Rate of pay;

(*3*) Hours allocated to the submission;

(*4*) Benefit rate; and

(*5*) Overhead;

(v) Travel and transportation (One line per event, include the job title, destination, purpose of travel, lodging cost, mileage, air or other identified transportation costs, food and miscellaneous expenses, other costs, and the total cost);

(vi) Software and computer programming developed specifically to determine appropriate rates, prices, or coverage amounts (Identify the item, include the purpose, and provide receipts or contract or straight-time hourly wage, hours, and total cost.) Software developed to send or receive data between the producer, agent, approved insurance provider or RMA or such other similar software may not be included as an allowable cost); and

(vii) Miscellaneous expenses such as postage, telephone, express mail, and printing (Identify the item, cost per unit, number of items, and total dollars); and

(2) The following expenses are specifically not eligible for research and development and maintenance cost reimbursement:

(i) Copyright or patent fees;

(ii) Training costs;

(iii) State filing fees and expenses;

(iv) Normal ongoing administrative expenses;

(v) Paid or incurred losses;

(vi) Loss adjustment expenses;

(vii) Sales commission;

(viii) Marketing costs;

(ix) Indirect overhead costs;

(x) Lobbying costs;

(xi) Product or applicant liability resulting from the research, development, preparation or marketing of the policy;

(xii) Copyright infringement claims resulting from the research, development, preparation or marketing of the policy;

(xiii) Costs of making program changes as a result of any mistakes, errors or flaws in the policy or plan of insurance; and

(xiv) Costs associated with building rents or space allocation.

(h) Requests for reimbursement of maintenance costs for submissions approved after September 17, 2001, must be supported by itemized statements and supporting documentary evidence for each reinsurance year in the maintenance period. Actual costs submitted will be examined for reasonableness and may be adjusted at the sole discretion of the Board. Maintenance costs for the following activities may be reimbursed:

(1) Expansion of the original submission into additional counties or states;

(2) Non-significant changes to the policy and any related material;

(3) Non-significant or significant changes to the policy as necessary to protect program integrity or as required by Congress; and

(4) Any other activity that qualifies as maintenance.

(i) If the applicant does not reasonably demonstrate that the submission meets the marketing plan or does not follow the criteria set forth in this regulation, the product may be withdrawn at the discretion of the Board and no further maintenance reimbursement will be paid.

(j) Not later than six months prior to the end of the last reinsurance year in which a maintenance reimbursement will be paid, as approved by the Board, the applicant must notify FCIC regarding its election of the treatment of the policy or plan of insurance for subsequent reinsurance years.

(1) The applicant must notify FCIC whether it intends to:

(i) Continue to maintain the policy or plan of insurance and charge approved insurance providers a user fee to cover maintenance expenses for all policies earning premium. It is the sole responsibility of the applicant to collect such fees from the approved insurance providers and any indebtedness for such fees must be resolved by the applicant and approved insurance provider. Applicants may request that FCIC provide the number of policies sold by each approved insurance provider. Such information will be provided not later than 90 days after such request is made or not later than 90 days after the requisite information has been provided to FCIC by the approved insurance provider, whichever is later; or

(ii) Transfer responsibility for maintenance to FCIC.

(2) If the applicant elects to:

(i) Continue to maintain the policy or plan of insurance, the applicant must submit a request for approval of the user fee by the Board at the time of the election; or

(ii) Transfer the policy or plan of insurance to FCIC, FCIC may at its sole discretion, continue to maintain the policy or plan or insurance or elect to withdraw the availability of the policy or plan of insurance.

(3) Requests for approval of the user fee must be accompanied by written documentation to support that the amount requested will only cover maintenance costs.

(4) The Board will approve the amount of user fee that is payable to the applicant by approved insurance providers unless the Board determines that the user fee charged:

(i) Is unreasonable in relation to the maintenance costs associated with the policy or plan of insurance; or

(ii) Unnecessarily inhibits the use of the policy or plan of insurance by other approved insurance providers.

(5) Reasonableness of the user fees will be determined by the Board based on a comparison with the amount of reimbursement for maintenance previously received, the number of policies, the number of approved insurance providers, and the expected total amount of user fees to be received in any reinsurance year.

(6) A user fee unnecessarily inhibits the use of a policy or plan of insurance if it is so high that other approved insurance providers are unable to pay such fees because of the volume of business currently underwritten by the approved insurance provider.

(7) The user fee charged to each approved insurance provider will be considered payment in full for the use of such policy, plan of insurance or rate of premium for the reinsurance year in which payment is made.

(8) If the applicant does not notify FCIC at least six months prior to the last day of the last reinsurance year in which a maintenance reimbursement will be paid, as approved by the Board, ownership of the policy or plan of insurance will be automatically transferred to FCIC beginning with the next reinsurance year.

(k) The Board may consider information from the Equal Access to Justice Act, 5 U.S.C. 504, the Bureau of Labor Statistic's Occupational Employment Statistics Survey, the Bureau of Labor Statistic's Employment Cost Index, and any other information determined applicable by the Board, in making a determination whether to approve a submission for reimbursement of research and development costs, or maintenance costs under this section or the amount of reimbursement.

(l) For the purposes of this section, rights to, or obligations of, research and development cost reimbursement, maintenance cost reimbursement, or user fees cannot be transferred from any individual or entity unless specifically approved in writing by the Board.

(m) Notwithstanding the definition in §400.701, the maintenance period ends for an approved submission once the applicant no longer performs the maintenance responsibilities, as determined by FCIC, or the applicant gives FCIC notice they no longer wish to maintain the submission.

(n) Applicants requesting reimbursement for research and development costs, maintenance costs, or user fees, may present their request in person to the Board prior to consideration for approval.

[66 FR 47951, Sept. 17, 2001, as amended at 70 FR 44241, Aug. 2, 2005]

§400.713 Nonreinsured supplemental (NRS) policy.

(a) Unless notified by FCIC, three hard copies, or an electronic copy in a format approved by RMA, of the new or revised NRS policy and related materials must be submitted to the Deputy Administrator, Research and Development (or successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133-4676, at least 120 days prior to the first sales closing date applicable to the policy.

(b) FCIC will review the NRS policy to determine that it does not materially increase or shift risk to the underlying policy or plan of insurance reinsured by FCIC, reduce or limit the rights of the insured with respect to the underlying policy or plan of insurance, or cause disruption in the marketplace for products reinsured by FCIC.

(1) An NRS policy will be considered to disrupt the marketplace if it adversely affects the sales or administration of reinsured policies, undermines producers' confidence in the Federal crop insurance program, decreases the producer's willingness or ability to use Federally reinsured risk management products, or harms public perception of the Federal crop insurance program.

(2) The applicant, at a minimum, must provide worksheets and examples that establish liability and determine indemnities that demonstrate the performance of the NRS policy under differing scenarios. When the review is complete, FCIC will forward their findings to the applicant.

(c) If the approved insurance provider sells an NRS policy that RMA determines materially increases or shifts risk to the underlying FCIC reinsured policy, reduces or limits the rights of the insured with respect to the underlying policy, or causes disruption in the marketplace for products reinsured by FCIC, reinsurance, A&O subsidy and risk subsidy will be denied on the underlying FCIC reinsured policy for which such NRS policy was sold.

(d) FCIC will respond to the submitter not less than 60 days before the first sales closing date or provide notice why FCIC is unable to respond within the time frame allotted.

[70 FR 44242, Aug. 2, 2005]

Subpart W [Reserved]

Subpart X—Interpretations of Statutory and Regulatory Provisions

SOURCE: 63 FR 70313, Dec. 21, 1998, unless otherwise noted.

§ 400.765 Basis and applicability.

(a) The regulations contained in this subpart prescribe the rules and criteria for obtaining a final agency determination of the interpretation of any provision of the Act or the regulations promulgated thereunder.

(b) Requesters may seek interpretations of those provisions of the Act and the regulations promulgated thereunder that are in effect for the crop year in which the request under this subpart is being made and the three previous crop years.

(c) All final agency determinations issued by FCIC, and published in accordance with § 400.768(f), will be binding on all participants in the Federal crop insurance program.

[63 FR 70313, Dec. 21, 1998, as amended at 64 FR 50246, Sept. 16, 1999]

§ 400.766 Definitions.

Act. The Federal Crop Insurance Act, 7 U.S.C. 1501 *et seq*.

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within the United States Department of Agriculture.

Participant. Any applicant for crop insurance, a producer with a valid crop insurance policy, or a private insurance company with a reinsurance agreement with FCIC or their agents, loss adjusters, employees or contractors.

Regulations. All provisions contained in 7 CFR chapter IV.

§ 400.767 Requester obligations.

(a) All requests for a final agency determination under this subpart must:

(1) Be submitted:

(i) In writing by certified mail, to the Associate Administrator, Risk Management Agency, United States Department of Agriculture, Stop Code 0801, 1400 Independence Avenue, SW., Washington, DC 20250–0801;

(ii) By facsimile at (202) 690–9911;

(iii) By electronic mail at *RMA.CCO@rma.usda.gov;* or

(iv) By overnight delivery to the Associate Administrator, Risk Management Agency, United States Department of Agriculture, Stop 0801, Room 6092–S, 1400 Independence Avenue, SW., Washington DC 20250.

(2) State that it is being submitted under section 506(s) of the Act;

(3) Identify and quote the specific provision in the Act or regulations for which a final agency determination is requested;

(4) State the crop year for which the interpretation is sought;

(5) State the name, address, and telephone number of a contact person affiliated with the request; and

(6) Contain the requester's detailed interpretation of the regulation.

(b) The requestor must advise FCIC if the request for a final agency determination will be used in a lawsuit or the settlement of a claim.

(c) Each request for final agency determination under this subpart must contain no more than one request for an agency interpretation.

[63 FR 70313, Dec. 21, 1998, as amended at 64 FR 50246, Sept. 16, 1999; 71 FR 2135, Jan. 13, 2006; 74 FR 66029, Dec. 14, 2009]

§ 400.768 FCIC obligations.

(a) FCIC will not interpret any specific factual situation or case, such as actions of any participant under the terms of a policy or any reinsurance agreement.

(b) If, in the sole judgement of FCIC, the request is unclear, ambiguous, or incomplete, FCIC will not provide an interpretation, but will notify the requester that the request is unclear, ambiguous or incomplete, within 30 days of such request.

(c) FCIC will provide a final determination of the interpretation to a request that meets all the conditions stated herein to the requester in writing, and at FCIC's discretion in the format in which it was received, within 90 days of the date of receipt by FCIC.

(d) If a requestor is notified that a request is unclear, ambiguous or incomplete under section 400.768(b), the time to respond will be tolled from the date FCIC notifies the requestor until the

date that FCIC receives a clear, complete, and unambiguous request.

(e) If a response is not provided within 90 days, the requestor may assume the interpretation provided is correct for the applicable crop year.

(f) All agency final determinations will be published by FCIC as specially numbered documents on the RMA Internet website.

(g) All final agency determinations are considered matters of general applicability that are not appealable to the National Appeals Division. Before obtaining judicial review of any final agency determination, the person must obtain an administratively final determination from the Director of the National Appeals division on the issue of whether the final agency determination is a matter of general applicability.

PART 401 [RESERVED]

PART 402—CATASTROPHIC RISK PROTECTION ENDORSEMENT

Sec.
402.1 General statement.
402.2 Applicability.
402.3 OMB control numbers.
402.4 Catastrophic Risk Protection Endorsement Provisions.

AUTHORITY: 7 U.S.C. 1506(l), 1506(o).

SOURCE: 61 FR 42985, Aug. 20, 1996, unless otherwise noted.

§ 402.1 General statement.

The Federal Crop Insurance Act, as amended by the Federal Crop Insurance Reform Act of 1994, requires the Federal Crop Insurance Corporation to implement a catastrophic risk protection plan of insurance that provides a basic level of insurance coverage to protect producers in the event of a catastrophic crop loss due to loss of yield or prevented planting, if provided by the Corporation, provided the crop loss or prevented planting is due to an insured cause of loss specified in the crop insurance policy. This Catastrophic Risk Protection Endorsement is a continuous endorsement that is effective in conjunction with a crop insurance policy for the insured crop. Catastrophic risk protection coverage will be offered through approved insurance providers if there are a sufficient number available to service the area. If there are an insufficient number available, as determined by the Secretary, local offices of the Farm Service Agency will provide catastrophic risk protection coverage.

§ 402.2 Applicability.

This Catastrophic Risk Protection Endorsement is applicable to each crop for which catastrophic risk protection coverage is available and for which the producer elects such coverage.

§ 402.3 OMB control numbers.

The information collection activity associated with this rule has been approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563–0053.

[61 FR 42985, Aug. 20, 1996, as amended at 69 FR 48730, Aug. 10, 2004]

§ 402.4 Catastrophic Risk Protection Endorsement Provisions.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Catastrophic Risk Protection Endorsement

(This is a continuous endorsement)

If a conflict exists among the policy, the order of priority is: (1) This Endorsement; (2) Special Provisions; (3) actuarial documents; (4) the Commodity Exchange Price Provisions, if applicable; and (5) any of the policies specified in section 2, with (1) controlling (2), etc.

Terms and Conditions

1. Definitions

Insurance provider. A private insurance company that has been approved by FCIC to provide insurance coverage to producers participating in programs authorized by the Federal Crop Insurance Act.

Zero acreage report. An acreage report filed by you that certifies you do not have a share in the crop for that crop year.

2. Eligibility, Life of Policy, Cancellation, and Termination

(a) You must have one of the following policies in force to elect this Endorsement:

(1) The Common Crop Insurance Policy Basic Provisions (7 CFR 457.8) and applicable

Crop Provisions (catastrophic risk protection coverage is not available under individual revenue plans of insurance such as Revenue Protection and Revenue Protection with Harvest Price Exclusion);

(2) The Area Risk Protection Insurance Basic Provisions (7 CFR 407.9) and applicable Crop Provisions (catastrophic risk protection coverage is not available under area revenue plans of insurance such as Area Revenue Protection or Area Revenue Protection with the Harvest Price Exclusion); or

(3) Other crop policies only if catastrophic risk protection coverage is provided in the applicable crop policy.

(b) You must have made application for catastrophic risk protection on or before the sales closing date for the crop in the county.

(c) You must be a ''person'' as defined in the crop policy to be eligible for catastrophic risk protection coverage.

3. Unit Division

(a) This section is not applicable if you are insured under the Area Risk Protection Insurance Basic Provisions (7 CFR 407.9) and applicable Crop Provisions.

(b) This section is in lieu of the unit provisions specified in the applicable crop policy. For catastrophic risk protection coverage, a unit will be all insurable acreage of the insured crop in the county on the date coverage begins for the crop year:

(1) In which you have one hundred percent (100%) crop share; or

(2) Which is owned by one person and operated by another person on a share basis.

(Example: If, in addition to the land you own, you rent land from five landlords, three on a crop share basis and two on a cash basis, you would be entitled to four units; one for each crop share lease and one that combines the two cash leases and the land you own.)

(c) Further division of the units described in paragraph (b) above is not allowed under this Endorsement.

4. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) Unless otherwise specified in the Special Provisions, catastrophic risk protection coverage will offer protection equal to:

(1) Fifty percent (50%) of your approved yield indemnified at fifty-five percent (55%) of the price election or projected price, as applicable, if you are insured under the Common Crop Insurance Policy Basic Provisions (7 CFR 457.8) and applicable Crop Provisions;

(2) Sixty-five percent (65%) of the expected county yield indemnified at forty-five percent (45%) of the maximum protection per acre if you are insured under the Area Risk Protection Insurance Basic Provisions (7 CFR 407.9) and applicable Crop Provisions; or

(3) A comparable coverage as established by FCIC for other crop policies only if catastrophic risk protection coverage is provided in the applicable crop policy.

(b) If the crop policy denominates coverage in dollars per acre or other measure, or any other alternative method of coverage, such coverage will be converted to the amount of coverage that would be payable at fifty percent (50%) of your approved yield indemnified at fifty-five percent (55%) of the price election.

(c) You may elect catastrophic coverage for any crop insured or reinsured by FCIC on either an individual yield and loss basis or an area yield and loss basis, if both options are offered as set out in the Special Provisions.

5. Report of Acreage

(a) The report of crop acreage that you file in accordance with the crop policy must be signed on or before the acreage reporting date. For catastrophic risk protection, unless the other person with an insurable interest in the crop objects in writing prior to the acreage reporting date and provides a signed acreage report on their own behalf, the operator may sign the acreage report for all other persons with an insurable interest in the crop without a power of attorney. All persons with an insurable interest in the crop, and for whom the operator purports to sign and represent, are bound by the information contained in that acreage report.

(b) For the purpose of determining the amount of indemnity only, your share will not exceed your insurable interest at the earlier of the time of loss or the beginning of harvest. Unless the accepted application clearly indicates that insurance is requested for a partnership or joint venture, insurance will only cover the crop share of the person completing the application. The share will not extend to any other person having an interest in the crop except as may otherwise be specifically allowed in this endorsement. Any acreage or interest reported by or for your spouse, child or any member of your household may be considered your share. A lease containing provisions for both a minimum payment (such as a specified amount of cash, bushels, pounds, etc.) *and* a crop share will be considered a crop share lease. A lease containing provisions for either a minimum payment (such as a specified amount of cash, bushels, pounds, etc.,) *or* a crop share will be considered a cash lease. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the insured crop on such land will be considered as owned by the lessee.

6. Annual Premium and Administrative Fees

(a) Except as provided in paragraphs (f) and (h) of this section and notwithstanding any provision contained in any other policy document, you will not be responsible to pay a

premium, nor will the policy be terminated because the premium has not been paid. FCIC will pay a premium subsidy equal to the premium established for the coverage provided under this endorsement.

(b) In return for catastrophic risk protection coverage, you must pay an administrative fee and premium as specified in paragraph (f) of this section to us within 30 days after you have been billed, unless otherwise authorized in the Federal Crop Insurance Act (You will be billed by the date stated in the actuarial documents);

(1) The administrative fee owed is $300 for each crop in the county unless otherwise specified in the Special Provisions.

(2) Payment of an administrative fee will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop (if you falsely file a zero acreage report you may be subject to criminal and administrative sanctions).

(c) The administrative fee provisions of paragraph (b) of this section do not apply if you are a ''beginning farmer or rancher'' or a ''limited resource farmer'' as defined in the applicable crop policy. The administrative fee will be waived if you request it and you meet the requirements contained in the annual premium provisions of the applicable crop policy.

(d) When a crop policy has provisions to allow you the option to separately insure individual crop types or varieties, you must pay a separate administrative fee in accordance with paragraph (b) of this section for each type or variety you elect to separately insure.

(e) If the administrative fee and premium as specified in paragraph (f) of this section is not paid when due, you, and all persons with an insurable interest in the crop under the same contract, may be ineligible for certain other USDA program benefits.

(f) Effective for any policies with a sales closing date on or after July 1, 2015, you will be responsible for payment of the premium established for the coverage provided under this endorsement if:

(1) USDA determines you have committed a violation of the highly erodible land conservation or wetland conservation provisions of 7 CFR part 12 as amended by the Agricultural Act of 2014; or

(2) You have not filed form AD–1026 or successor form with FSA by June 1 prior to the sales closing date to be properly identified as in compliance with the conservation provisions specified in paragraph (f)(1) of this section (For example, to be eligible for a premium subsidy for a crop with a sales closing date of March 15, 2016, you must have filed your form AD–1026 by June 1, 2015).

(i) Notwithstanding paragraph (f)(2) of this section, if you demonstrate you are a beginning farmer or rancher who has not previously had an insurable interest in a crop or livestock and began farming for the first time after June 30 prior to the sales closing date, you fail to file form AD–1026 or successor form with the FSA, by June 1 after you make application for insurance.

(ii) To be eligible for premium subsidy paid on your behalf by FCIC, it is your responsibility to assure you meet all the requirements for:

(A) Compliance with the conservation provisions specified in paragraph (f)(1) of this section; and

(B) Filing form AD–1026, or successor form, to be properly identified as in compliance with the conservation provisions specified in paragraph (f)(1) of this section.

(g) If the Act expressly authorizes an option or endorsement to be available in addition to the coverage available under this Endorsement (for example, the Supplemental Coverage Option) or any other additional coverage offered under the Federal Crop Insurance Act (for example, the Stacked Income Protection Plan), you will owe a separate annual premium and administrative fee for such option or endorsement if the option or endorsement has been made available in the actuarial documents and you elect to purchase such coverage.

(h) Failure to pay the premium specified in paragraph (f) of this section will result in the termination of the policy and all other policies in accordance with the termination provisions specified in the applicable Basic Provisions.

7. Insured Crop

The crop insured is specified in the applicable crop policy; however, for policies other than those insured under the Area Risk Protection Insurance Basic Provisions, notwithstanding any other policy provision requiring the same insurance coverage on all insurable acreage of the crop in the county, if you purchase additional coverage for a crop, you may separately insure acreage designated as ''high-risk'' land by FCIC under catastrophic risk protection coverage, provided that you execute a High-Risk Land Exclusion Option and obtain a catastrophic risk protection coverage policy with the same insurance provider on or before the applicable sales closing date. You will be required to pay a separate administrative fee for both the additional coverage policy and the catastrophic risk protection coverage policy.

8. Replanting Payment

Notwithstanding any provision contained in any other crop insurance document, no replant payment will be paid whether or not replanting of the crop is required under the policy.

9. Claim for Indemnity

If two or more insured crop types, varieties, or classes are insured within the same unit, and multiple price elections, projected prices, or amounts of insurance are applicable, the dollar amount of insurance and the dollar amount of production to be counted will be determined separately for each type, variety, class, etc., that have separate price elections, projected prices, or amounts of insurance and then totaled to determine the total liability or dollar amount of production to be counted for the unit.

10. Concealment or Fraud

Notwithstanding any provision contained in any other crop insurance document, your CAT policy may be voided by us on all crops without waiving any of our rights, including the right to collect any amounts due:

(a) If at any time you conceal or misrepresent any material fact or commit fraud relating to this or any other contract issued under the authority of the Federal Crop Insurance Act with any insurance provider; and

(b) The voidance will be effective for the crop year during which any such act or omission occurred.

11. Exclusion of Coverage

(a) Options or endorsements that extend the coverage available under any crop policy offered by FCIC will not be available under this endorsement, except for the Supplemental Coverage Option and any other option or endorsement or other additional coverage expressly authorized in the Federal Crop Insurance Act and allowed in the actuarial documents (for example, the Stacked Income Protection Plan). Written agreements are not available for any crop insured under this endorsement.

(b) Notwithstanding any provision contained in any other crop policy, hail and fire coverage and high-risk land may not be excluded under catastrophic risk protection.

[61 FR 42985, Aug. 20, 1996, as amended at 63 FR 40631, July 30, 1998; 64 FR 40740, July 28, 1999; 65 FR 40484, June 30, 2000; 69 FR 48730, Aug. 10, 2004; 73 FR 36408, June 27, 2008; 73 FR 70864, Nov. 24, 2008; 78 FR 52835, Aug. 27, 2013; 79 FR 37161, July 1, 2014]

PARTS 403–406 [RESERVED]

PART 407—AREA RISK PROTECTION INSURANCE REGULATIONS

Sec.

407.1 Applicability.
407.2 Availability of Federal crop insurance.
407.3 Premium rates, amounts of protection, and coverage levels.
407.4 OMB control numbers.
407.5 Creditors.
407.6 [Reserved]
407.7 The contract.
407.8 The application and policy.
407.9 Area risk protection insurance policy.
407.10 Area risk protection insurance for barley.
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407.14 Area risk protection insurance for peanuts.
407.15 Area risk protection insurance for grain sorghum.
407.16 Area risk protection insurance for soybean.
407.17 Area risk protection insurance for wheat.

AUTHORITY: 7 U.S.C. 1506(l), 1506(o).

SOURCE: 78 FR 38507, June 26, 2013, unless otherwise noted.

§ 407.1 Applicability.

The provisions of this part are applicable only to those crops for which a Crop Provision is contained in this part and the crop years specified.

§ 407.2 Availability of Federal crop insurance.

(a) Insurance shall be offered under the provisions of this part on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act (7 U.S.C. 1501–1524) (Act). The crops and counties shall be designated by the Manager of the Federal Crop Insurance Corporation (FCIC) from those approved by the Board of Directors of FCIC.

(b) The insurance is offered through insurance providers reinsured by the 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 coverage contained in this part and part 402 of this chapter directly to the insured through the Department of Agriculture if the Secretary determines that the availability of local agents is not adequate. Those contracts are specifically identified as being offered by FCIC.

(c) No person may have in force more than one insurance policy issued or reinsured by FCIC on the same crop for the same crop year, in the same county, unless specifically approved in writing by FCIC.

(d) Except as specified in paragraph (c) of this section, if a person has more than one contract authorized under the Act that provides coverage for the same loss on the same crop for the same crop year in the same county, all such contracts shall be voided for that crop year and the person will be liable for the premium on all contracts, unless the person can show to the satisfaction of the FCIC that the multiple contracts of insurance were without the fault of the person.

(1) If the multiple contracts of insurance are shown to be without the fault of the person and:

(i) One contract is an additional coverage policy and the other contract is a Catastrophic Risk Protection policy, the additional coverage policy will apply if both policies are with the same insurance provider, or if not, both insurance providers agree, and the Catastrophic Risk Protection policy will be canceled (If the insurance providers do not agree, the policy with the earliest date of application will be in force and the other contract will be canceled); or

(ii) Both contracts are additional coverage policies or both are Catastrophic Risk Protection policies, the contract with the earliest signature date on the application will be valid and the other contract on that crop in the county for that crop year will be canceled, unless both policies are with the same insurance provider and the insurance provider agrees otherwise or both policies are with different insurance providers and both insurance providers agree otherwise.

(2) No liability for indemnity or premium will attach to the contracts canceled as specified in paragraphs (d)(1)(i) and (ii) of this section.

(e) The person must repay all amounts received in violation of this section with interest at the rate contained in the contract (see §407.9, section 22).

(f) A person whose contract with FCIC or with an insurance provider reinsured by FCIC under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain crop insurance under the Act with FCIC or with an insurance provider reinsured by FCIC unless the person can show that the termination was improper and should not result in subsequent ineligibility.

(g) All applicants for insurance under the Act must advise the insurance provider, in writing at the time of application, of any previous applications for insurance or contracts of insurance under the Act within the last 5 years and the present status of any such applications or insurance.

§407.3 Premium rates, amounts of protection, and coverage levels.

(a) The Manager of FCIC shall establish premium rates, amounts of protection, and coverage levels for the insured crop that will be included in the actuarial documents on file in the agent's office. Premium rates, amounts of protection, and coverage levels may be changed from year to year in accordance with the terms of the policy.

(b) At the time the application for insurance is made, the person must elect an amount of protection and a coverage level from among those contained in the actuarial documents for the crop year.

§407.4 OMB control numbers.

The information collection activity associated with this rule has been submitted to OMB for their review and approval.

§407.5 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§407.6 [Reserved]

§407.7 The contract.

(a) The insurance contract shall become effective upon the acceptance by FCIC or the insurance provider of a complete, duly executed application for insurance on a form prescribed or approved by FCIC.

(b) The contract shall consist of the accepted application, Area Risk Protection Insurance Basic Provisions, Crop Provisions, Special Provisions, Actuarial Documents, and any amendments, endorsements, or options thereto.

(c) Changes made in the contract shall not affect its continuity from year to year.

(d) No indemnity shall be paid unless the person complies with all terms and conditions of the contract.

(e) The forms required under this part and by the contract are available at the office of the insurance provider, or such other location as specified by FCIC, if applicable.

§ 407.8 The application and policy.

(a) Application for insurance, developed in accordance with standards established by FCIC, must be made by any person who wishes to participate in the program in order to cover such person's share in the insured crop as landlord, owner-operator, tenant, or other crop ownership interest.

(1) No other person's interest in the crop may be insured under the application.

(2) To obtain coverage, the application must be submitted to the insurance provider on or before the applicable sales closing date on file in the insurance provider's local office.

(b) FCIC or the insurance provider may reject, no longer accept applications, or cancel existing insurance contracts upon the FCIC's determination that the insurance risk is excessive. Such determination must be made not later than 15 days before the cancellation date for the crop and may be made on an area, county, state, or crop basis.

§ 407.9 Area risk protection insurance policy.

This insurance is available for the 2014 and succeeding years.

[FCIC policies]

Department of Agriculture

Federal Crop Insurance Corporation

Area Risk Protection Insurance Policy

[Reinsured policies]

(Appropriate title for insurance provider)

(This is a continuous policy. Refer to Section 2.)

[FCIC policies]

Area Risk Protection Insurance (ARPI) provides protection against widespread loss of revenue or widespread loss of yield in a county. Individual farm revenues and yields are not considered under ARPI and it is possible that your individual farm may experience reduced revenue or reduced yield and you do not receive an indemnity under ARPI.

This is an insurance policy issued by the FCIC, a United States government agency, under the provisions of the Federal Crop Insurance Act (7 U.S.C. 1501–1524) (Act). 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 modified in any way by us, your insurance agent or any employee of USDA. Procedures (handbooks, underwriting rules, manuals, memoranda, and bulletins), issued by us and published on the Risk Management Agency's (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 insured shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to FCIC. Unless the context indicates otherwise, the use of the plural form of a word includes the singular and the singular form of the word includes the plural.

AGREEMENT TO INSURE: In return for the commitment to pay a 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 among the Act, the regulations published at 7 CFR chapter IV, and the procedures as issued by us, the order of priority is: (1) the Act; (2) the regulations; and (3) the procedures as issued by us, with (1) controlling (2), etc. If there is a conflict between the policy provisions published at 7 CFR part 407 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 407 control. The order of priority among the policy is: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) Special Provisions; (3) actuarial documents; (4) the applicable Commodity Exchange Price Provisions; (5) the Crop Provisions; and (6) these Basic Provisions, with (1) controlling (2), etc.

[Reinsured policies]

Area Risk Protection Insurance (ARPI) provides protection against widespread loss of revenue or widespread loss of yield in a county. Individual farm revenues and yields are not considered under ARPI and it is possible that your individual farm may experience reduced revenue or reduced yield and not receive an indemnity under ARPI.

This insurance policy is reinsured by the FCIC under the provisions of Subtitle A of the Federal Crop Insurance Act (7 U.S.C.

1501–1524) (Act). 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. We will use the procedures (handbooks, underwriting rules, manuals, memoranda, and bulletins), as issued by FCIC and published on the Risk Management Agency (RMA's) 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, FCIC will become your insurer, make all decisions in accordance with the provisions of this policy, including any loss payments, and 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 insured shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to the insurance provider providing insurance. Unless the context indicates otherwise, the use of the plural form of a word includes the singular and the singular form of the word includes the plural.

AGREEMENT TO INSURE: In return for the commitment to pay a 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 among the Act, the regulations published at 7 CFR chapter IV, and the procedures as issued by FCIC, the order of priority is: (1) the Act; (2) the regulations; and (3) the procedures as issued by FCIC, with (1) controlling (2), etc. If there is a conflict between the policy provisions published at 7 CFR part 407 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 407 control. The order of priority among the policy is: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) Special Provisions; (3) actuarial documents; (4) Commodity Exchange Price Provisions; (5) the Crop Provisions; and (6) these Basic Provisions, with (1) controlling (2), etc.

Terms and Conditions
Basic Provisions

1. Definitions

Abandon. Failure to continue to care for the crop, or providing care so insignificant as to provide no benefit to the crop.

Acreage report. A report required by section 8 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 actuarial documents by which you are required to submit your acreage report.

Act. Subtitle A of the Federal Crop Insurance Act (7 U.S.C. 1501–1524).

Actuarial documents. The part of the policy that contains information for the crop year which is available for public inspection in your agent's office and published on RMA's Web site, *http://www.rma.usda.gov/*, and which shows available plans of insurance, coverage levels, information needed to determine amounts of insurance, prices, premium rates, premium adjustment percentages, type (commodity types, classes, subclasses, intended uses), practice (irrigated practices, cropping practices, organic practices, intervals), 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 of these provisions, the Catastrophic Risk Protection Endorsement, or the Special Provisions, as applicable.

Agricultural experts. Persons who are employed by the Cooperative Extension System 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. Persons who have a personal or financial interest in you or the crop will not qualify as an agricultural expert. For example, contracting with a person for consulting would be considered to have a financial interest and a person who is a neighbor would be considered to have a personal interest.

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.

Area. The general geographical region in which the insured acreage is located, designated generally as a county but may be a smaller or larger geographical area as specified in the actuarial documents.

Area Revenue Protection. A plan of insurance that provides protection against loss of revenue due to a county level production loss, a price decline, or a combination of both. This plan also includes upside harvest price protection, which increases your policy protection at the end of the insurance period if the harvest price is greater than the projected price and if there is a production loss.

Area Revenue Protection with the Harvest Price Exclusion. A plan of insurance that provides protection against loss of revenue due

to a county level production loss, price decline, or a combination of both. This plan does not provide upside harvest price protection.

Area Risk Protection Insurance (ARPI). Insurance coverage based on an area, not an individual, yield or revenue amount. There are three plans of insurance available under ARPI: Area Revenue Protection, Area Revenue Protection with the Harvest Price Exclusion, and Area Yield Protection.

Area Yield Protection. A plan of insurance that provides protection against loss of yield due to a county level production loss. This plan does not provide protection against loss of revenue or upside harvest price protection.

Assignment of indemnity. A transfer of policy rights, made on our form, and effective when approved by us in writing, whereby you assign your right to an indemnity payment for the crop year only to creditors or other persons to whom you have a financial debt or other pecuniary obligation.

Beginning farmer or rancher. An individual who has not actively operated and managed a farm or ranch in any state, with an insurable interest in a crop or livestock as an owner-operator, landlord, tenant, or sharecropper for more than five crop years, as determined in accordance with FCIC procedures. Any crop year's insurable interest may, at your election, be excluded if earned while under the age of 18, while in full-time military service of the United States, or while in post-secondary education, in accordance with FCIC procedures. A person other than an individual may be eligible for beginning farmer or rancher benefits if all of the substantial beneficial interest holders qualify as a beginning farmer or rancher.

Buffer zone. A parcel of land, as designated in your organic plan, that separates commodities grown under organic practices from 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 (CAT). Coverage equivalent to 65 percent of yield coverage and 45 percent of price coverage, unless otherwise specified in the Special Provisions, and is the minimum level of coverage offered by FCIC, as specified in the actuarial documents for the crop, type, and practice. CAT is not available with Area Revenue Protection or Area Revenue Protection with the Harvest Price Exclusion.

Catastrophic Risk Protection Endorsement. The part of the crop insurance policy that contains provisions of insurance that are specific to CAT.

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.

Class. A specific subgroup of commodity type.

Code of Federal Regulations (CFR). The codification of general 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://ecfr.gpoaccess.gov/.*

Commodity. An agricultural good or product that has economic value.

Commodity Exchange Price Provisions (CEPP). A part of the policy that is used for crops for which ARPI is available, unless otherwise specified. This document includes the information necessary to derive the projected and harvest price for the insured crop, as applicable.

Commodity type. A specific subgroup of a commodity having a characteristic or set of characteristics distinguishable from other subgroups of the same commodity.

Consent. Approval in writing by us allowing you to take a specific action.

Contract. (See ''Policy'')

Contract change date. The calendar date, as specified in the Crop Provisions, by which changes to the policy, if any, will be made available in accordance with section 3 of these Basic Provisions.

Conventional farming practice. A system or process that is necessary to produce a commodity, excluding organic farming practices.

Cooperative Extension System. A nationwide network consisting of a state office located at each state's land-grant university, and local or regional offices. These offices are staffed by one or more agricultural experts who work in cooperation with the National Institute of Food and Agriculture, and who provide information to agricultural producers and others.

County. Any county, parish, political subdivision of a state, or other area specified on the actuarial documents shown on your accepted application, including acreage in a field that extends into an adjoining county if the county boundary is not readily discernible.

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.

Credible data. Data of sufficient quality and quantity to be representative of the county.

Crop. The insurable commodity as defined in the Crop Provisions.

Cropping practice. A method of using a combination of inputs such as fertilizer, herbicide, and pesticide, and operations such as planting, cultivation, etc. to produce the insured crop. The insurable cropping practices are specified in the actuarial documents.

Crop Provisions. The part of the policy that contains the specific provisions of insurance for each insured crop.

Crop year. The period within which the insured crop is normally grown and designated by the calendar year in which the crop is normally harvested.

Days. Calendar days.

Delinquent debt. Has the same meaning as the term defined in 7 CFR part 400, subpart U.

Dollar amount of insurance per acre. The guarantee calculated by multiplying the expected county yield by the projected price and by the protection factor. Your dollar amount of insurance per acre is shown on your Summary of Protection. Following release of the harvest price, your dollar amount of insurance may increase if Area Revenue Protection was purchased and the harvest price is greater than the projected price.

Double crop. Producing two or more crops for harvest on the same acreage in the same crop year.

Expected county revenue. The expected county yield multiplied by the projected price.

Expected county yield. The yield, established in accordance with section 15, contained in the actuarial documents on which your coverage for the crop year is based.

FCIC. The Federal Crop Insurance Corporation, a wholly owned corporation within USDA.

Final county revenue. The revenue determined by multiplying the final county yield by the harvest price with the result used to determine whether an indemnity will be due for Area Revenue Protection and Area Revenue Protection with the Harvest Price Exclusion, and released by FCIC at a time specified in the Crop Provisions.

Final county yield. The yield, established in accordance with section 15, for each insured crop, type, and practice, used to determine whether an indemnity will be due for Area Yield Protection, and released by FCIC at a time specified in the Crop Provisions.

Final planting date. The date contained in the actuarial documents for the insured crop by which the crop must be planted in order to be insured.

Final policy protection. For Area Revenue Protection only, the amount calculated in accordance with section 12(e).

First insured crop. With respect to a single crop year and any specific crop acreage, the first instance that a 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 number. The number assigned to the farm by the local FSA office.

Generally recognized. When agricultural experts or organic agricultural experts, as applicable, are aware of the production method or practice and there is no genuine dispute regarding whether the production method or practice allows the crop to make normal progress toward maturity.

Good farming practices. The production methods utilized to produce the insured crop, type, and practice and allow it to make normal progress toward maturity, which are: (1) for conventional or sustainable farming practices, those generally recognized by agricultural experts for the area; or (2) for organic farming practices, those generally recognized by organic agricultural experts 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.''

Harvest price. A price determined in accordance with the CEPP and used to determine the final county revenue.

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 interest. Your percentage of the insured crop that is at financial risk.

Insurable loss. Damage for which coverage is provided under the terms of your policy, and for which you accept an indemnity payment.

Insurance provider. A private insurance company that has been approved by FCIC to provide insurance coverage to producers participating in programs authorized by the Act.

Insured. The named person as shown on the application accepted by us. This term does not extend to any other person having an insurable interest in the crop (e.g., 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.

Intended use. The expected end use or disposition of the commodity at the time the commodity is reported.

Interval. A period of time designated in the actuarial documents.

Irrigated practice. A method of producing a crop by which water, from an adequate water source, is artificially applied in sufficient amounts by appropriate and adequate irrigation equipment and facilities and at the proper times necessary to produce at least the (1) yield expected for the area; (2) yield used to establish the production guarantee or amount of insurance/coverage on the irrigated acreage planted to the commodity; or (3) producer's established approved yield, as applicable. Acreage adjacent to water, such as but not limited to a pond, lake, river, stream, creek or brook, shall not be considered irrigated based solely on the proximity to the water. The insurable irrigation practices are specified in the actuarial documents.

Liability. (See ''Policy protection.'')

Limited resource farmer. Has the same meaning as the term defined by USDA at *http://www.lrftool.sc.egov.usda.gov* or a successor Web site.

Loss limit factor. Unless otherwise specified in the Special Provisions a factor of .18 is used to calculate the payment factor. This factor represents the percentage of the expected county yield or expected county revenue at which no additional indemnity amount is payable. For example, if the expected county yield is 100 bushels and the final county yield is 18 bushels, then no additional indemnity is due even if the yield falls below 18 bushels. The total indemnity will never be more than 100 percent of the final policy protection.

NASS. National Agricultural Statistics Service, an agency within USDA, or its successor, that publishes the official United States Government yield estimates.

Native sod. Acreage that has no record of being tilled (determined in accordance with information collected and maintained by an agency of the USDA or other verifiable records that you provide and are acceptable to us) for the production of an annual crop on or before February 7, 2014, and on which the plant cover is composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing.

Offset. The act of deducting one amount from another amount.

Organic agricultural experts. Persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education or the Cooperative Extension System, 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. A commodity that is organically produced consistent with section 2103 of the Organic Foods 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 practice. The insurable organic farming practices specified in the actuarial documents.

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.

Payment factor. A factor no greater than 1.0 used to determine the amount of indemnity to be paid in accordance with section 12(g).

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. Except as otherwise specified in the Special Provisions, 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 in accordance with good farming practices for the area.

Policy. The agreement between you and us to insure a commodity and consisting of the accepted application, these Basic Provisions, the Crop Provisions, the Special Provisions, the CEPP, other applicable endorsements or options, the actuarial documents for the insured commodity, the CAT Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Insurance for each commodity in each county will constitute a separate policy.

Policy protection. The liability amount calculated in accordance with section 6(f) unless otherwise specified in the Special Provisions.

Practice. Production methodologies used to produce the insured crop consisting of unique combinations of irrigated practice,

cropping practice, organic practice, and interval as shown on the actuarial documents as insurable.

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 actuarial documents.

Production report. A written record showing your annual production in accordance with section 8. The report contains yield information for the current year, including acreage and production. This report must be supported by written verifiable records from a warehouseman or buyer of the insured crop, by measurement of farm-stored production, or by other records of production approved by us in accordance with FCIC approved procedures.

Production reporting date. The date contained in the actuarial documents by which you are required to submit your production report.

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.

Projected price. A price for each crop, type, and practice as shown in the actuarial documents, as applicable, determined in accordance with the CEPP, Special Provisions or the Crop Provisions, as applicable.

Protection factor (PF). The percentage you choose that is used to calculate the dollar amount of insurance per acre and policy protection.

Replanted crop. The same commodity replanted on the same acreage as the first insured crop for harvest in the same crop year. ARPI does not have a replant provision, therefore, it is only used for first and second crop determinations.

RMA. Risk Management Agency, an agency within USDA.

RMA's Web site. A Web site hosted by RMA and located at *http://www.rma.usda.gov/* or a successor Web site.

Sales closing date. The date contained in the actuarial documents by which an application must be filed and the last date by which you may change your crop insurance coverage for a crop year.

Second crop. With respect to a single crop year, the next occurrence of planting any commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different commodity as the first insured crop, except the term does not include a replanted crop. A cover crop, planted after a first insured crop and planted for the purpose of haying, grazing or otherwise harvesting in any manner or that is hayed or grazed during the crop year, or that is otherwise harvested is considered to be a second crop. A cover crop that is covered by FSA's noninsured crop disaster assistance program (NAP) or receives other USDA benefits associated with forage crops will be considered as planted for the purpose of haying, grazing or otherwise harvesting. A crop meeting the conditions stated herein will be considered to be a second crop regardless of whether or not it is insured.

Share. Your insurable interest in the insured crop as an owner, operator, or tenant.

Special Provisions. The part of the policy that contains specific provisions of insurance for each insured crop that may vary by geographic area, and is available for public inspection in your agent's office and published on RMA's Web site.

State. The state shown on your accepted application.

Subclass. A specific subgroup of class.

Subsidy. The portion of the total premium that FCIC will pay in accordance with the Act.

Subsidy factor. The percentage of the total premium paid by FCIC as a subsidy.

Substantial beneficial interest. An interest held by any person of at least 10 percent in you (e.g., 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). The spouse of any individual applicant or individual insured will be presumed 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 the applicable state dissolution of marriage laws. 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.

Summary of protection. Our statement to you specifying the insured crop, dollar amount of insurance per acre, policy protection, premium and other information obtained from your accepted application, acreage report, and the actuarial documents.

Sustainable farming practice. A system or process for producing a 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.

Tilled. The termination of existing plants by plowing, disking, burning, application of chemicals, or by other means to prepare acreage for the production of an annual crop.

Total premium. The amount of premium before subsidy, calculated in accordance with section 7(e)(1).

Transitional acreage. Acreage on which organic farming practices are being followed that does not yet qualify to be designated as organic acreage.

Trigger revenue. The revenue amount calculated in accordance with section 12(b).

Trigger yield. The yield amount calculated in accordance with section 12(c).

Type. Categories of the insured crop consisting of unique combinations of commodity type, class, subclass, and intended use as shown on the actuarial documents as insurable.

Upside harvest price protection. Coverage provided automatically under the Area Revenue Protection plan of insurance. This coverage increases your final policy protection when the harvest price is greater than the projected price. This coverage is not available under either the Area Revenue Protection with the Harvest Price Exclusion or the Area Yield Protection plans of insurance.

USDA. United States Department of Agriculture.

Verifiable records. Has the same meaning as the term defined in 7 CFR part 400, subpart G.

Void. When the policy is considered not to have existed for a crop year.

Volatility factor. A measure of variation of price over time found in the actuarial documents.

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. In accordance with section 3, FCIC may change the coverage provided from year to year.

(b) The following information must be included on your application for insurance or your application will not be accepted and no coverage will be provided:

(1) Your election of Area Revenue Protection, Area Revenue Protection with the Harvest Price Exclusion, or Area Yield Protection;

(2) The crop with all type and practice combinations insured as shown on the actuarial documents;

(3) Your elected coverage level;

(4) Your elected protection factor;

(5) Identification numbers for you as follows:

(i) You must include your social security number (SSN) if you are an individual (if you are an individual applicant operating as a business, you must provide an employer identification number (EIN) and you must also provide your SSN); or

(ii) You must include your EIN if you are a person other than an individual;

(6) Identification numbers for all persons who have a substantial beneficial interest in you:

(i) The SSN for individuals; or

(ii) The EIN for persons other than individuals and the SSNs for all individuals that comprise the person with the EIN if such individuals also have a substantial beneficial interest in you; and

(7) All other information required on the application to insure the crop.

(c) With respect to SSNs or EINs required on your application:

(1) Your application will not be accepted and no insurance will be provided for the year of application if the application does not contain your SSN or EIN. If your application contains an incorrect SSN or EIN for you, your application will be considered not to have been accepted, no insurance will be provided for the year of application and for any subsequent crop years, as applicable, and such policies will be void if:

(i) Such number is not corrected by you; or

(ii) You correct the SSN or EIN but:

(A) You cannot prove that any error was inadvertent (Simply stating the error was inadvertent is not sufficient to prove the error was inadvertent); or

(B) It is determined that the incorrect number would have allowed you to obtain disproportionate benefits under the crop insurance program, you are determined to be ineligible for insurance or you could avoid an obligation or requirement under any State or Federal law;

(2) With respect to persons with a substantial beneficial interest in you:

(i) The insurance coverage for all crops included on your application will be reduced proportionately by the percentage interest in you of persons with a substantial beneficial interest in you (presumed to be 50 percent for spouses of individuals) if the SSNs

or EINs of such persons are included on your application, the SSNs or EINs are correct, and the persons with a substantial beneficial interest in you are ineligible for insurance;

(ii) Your policies for all crops included on your application, and for all applicable crop years, will be void if the SSN or EIN of any person with a substantial beneficial interest in you is incorrect or is not included on your application and:

(A) Such number is not corrected or provided by you, as applicable;

(B) You cannot prove that any error or omission was inadvertent (Simply stating the error or omission was inadvertent is not sufficient to prove the error or omission was inadvertent); or

(C) Even after the correct SSN or EIN is provided by you, it is determined that the incorrect or omitted SSN or EIN would have allowed you to obtain disproportionate benefits under the crop insurance program, the person with a substantial beneficial interest in you is determined to be ineligible for insurance, or you or the person with a substantial beneficial interest in you could avoid an obligation or requirement under any State or Federal law; or

(iii) Except as provided in sections 2(c)(2)(ii)(B) and (C), your policies will not be voided if you subsequently provide the correct SSN or EIN for persons with a substantial beneficial interest in you and the persons are eligible for insurance;

(d) When any of your policies are void under section 2(c):

(1) You must repay any indemnity that may have been paid for all applicable crops and crop years;

(2) Even though the policies are void, you will still be required to pay an amount equal to 20 percent of the premium that you would otherwise be required to pay; and

(3) If you previously paid premium or administrative fees, any amount in excess of the amount required in section 2(d)(2) will be returned to you.

(e) Notwithstanding any of the provisions in this section, you may be subject to civil, criminal or administrative sanctions if you certify to an incorrect SSN or EIN or any other information under this policy.

(f) If any of the information regarding persons with a substantial beneficial interest in you, changes:

(1) After the sales closing date for the previous crop year, you must revise your application by the sales closing date for the current crop year to reflect the correct information; or

(2) Less than 30 days before the sales closing date for the current crop year, you must revise your application by the sales closing date for the next crop year;

(3) And you fail to provide the required revisions, the provisions in section 2(c)(2) will apply; and

(g) If you are, or a person with a substantial beneficial interest in you is, not eligible to obtain an SSN or EIN, whichever is required, you must request an assigned number for the purposes of this policy from us:

(1) A number will be provided only if you can demonstrate you are, or a person with a substantial beneficial interest in you is, eligible to receive Federal benefits;

(2) If a number cannot be provided for you in accordance with section (2)(g)(1), your application will not be accepted; or

(3) If a number cannot be provided for any person with a substantial beneficial interest in you in accordance with section 2(g)(1), the amount of coverage for all crops on the application will be reduced proportionately by the percentage interest of such person in you.

(h) After acceptance of the application, you may not cancel this policy for the initial crop year unless you choose to insure the entire crop under another Federally reinsured plan of insurance with the same insurance provider on or before the sales closing date. After the first year, the policy will continue in force for each succeeding crop year unless canceled, voided or terminated as provided in this section.

(i) 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.

(j) Any amount due to us for any policy authorized under the Act will be offset from any indemnity due you for this or any other crop insured with us 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 owed to you, the date of payment for the purpose of determining whether you have a delinquent debt will be the date FCIC publishes the final county yield for the applicable crop year.

(k) 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(k)(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(k)(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 overpaid indemnity and any other amounts due, including but not limited to, premium billed with a due date after the termination date for the crop year in which premium is earned, if you

fail to pay the amount owed, including any related interest owed, as applicable, by such due date; or

(C) The termination date for the crop year prior to the crop year in which a scheduled payment is due under a written payment agreement if you fail to pay the amount owed by any payment date in any agreement to pay the debt.

(ii) If you are ineligible and a policy has been terminated in accordance with section 2(k)(2), you will not receive any indemnity, and such ineligibility and termination of the policy may affect your eligibility for benefits under other USDA programs. Any indemnity that may be owed for the policy before it has been terminated will remain owed to you, but may be offset in accordance with section 2(j), unless your policy was terminated in accordance with sections (k)(2)(i)(A), (B) or (D).

(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 premium billing date for the crop year (For policies for which the sales closing date is prior to the 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 will be owed);

(B) For a policy with other amounts due, including but not limited to, premium billed with a due date after the termination date for the crop year in which premium is earned, the termination date immediately following the date you have a delinquent debt (For policies for which the sales closing date is prior to the 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 will be owed);

(C) For all other policies that are issued by us under the authority of the Act, the termination date that coincides with the termination date for the policy with the delinquent debt, or if there is no coincidental termination date, the termination date immediately following the date you become ineligible; or

(D) For execution of a written payment agreement 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 (for this purpose only, the crop year will start the day after the termination date and end on the next termination date, e.g., if the termination date is November 30 and you fail to make a payment on November 15, 2011, your policy will terminate on November 30, 2010, for the 2011 crop year).

(ii) For all policies terminated under section 2(k)(2)(i)(A), (B) or (D), any indemnities paid subsequent to the termination date must be repaid.

(iii) Once the policy is terminated, it cannot be reinstated for the current crop year unless:

(A) The termination was in error;

(B) The Administrator of the Risk Management Agency, at his or her sole discretion, determines that the following conditions are met:

(*1*) In accordance with 7 CFR part 400, subpart U and FCIC issued procedures, you provide documentation that your failure to pay your debt is due to an unforeseen or unavoidable event or an extraordinary weather event that created an impossible situation for you to make timely payment;

(*2*) You remit full payment of the delinquent debt owed to us or FCIC with your request submitted in accordance with section 2(k)(2)(iii)(B)(*3*); and

(*3*) You submit a written request for reinstatement of your policy to us no later than 60 days after the termination date or the missed payment date of a previously executed written payment agreement, or the due date specified in the notice to you of the amount due, if applicable.

(*i*) If authorization for reinstatement is granted, your policies will be reinstated effective at the beginning of the crop year for which you were determined ineligible, and you will be entitled to all applicable benefits under such policies, provided you meet all eligibility requirements and comply with the terms of the policy; and

(*ii*) There is no evidence of fraud or misrepresentation; or

(C) We determine that, in accordance with 7 CFR part 400, subpart U and FCIC issued procedures, the following are met:

(*1*) You can demonstrate:

(*i*) You made timely payment for the amount of premium owed but you inadvertently omitted some small amount, such as the most recent month's interest or a small administrative fee;

(*ii*) The amount of the payment was clearly transposed from the amount that was otherwise due (For example, you owed $832 but you paid $823); or

(*iii*) You made the full payment of the amount owed but the payment was delayed and postmarked by no more than 7 calendar days after the termination date or the missed payment date of a previously executed written payment agreement, or the due date specified in the notice to you of the amount due, as applicable;

(*2*) You remit full payment of the delinquent debt owed to us; and

(*3*) You submit a written request for reinstatement of your policy to us in accordance with 7 CFR part 400, subpart U and applicable procedures no later than 30 days after the termination date or the missed payment date of a previously executed written payment agreement, or the due date specified in the notice to you of the amount due, if applicable; and

(*4*) There is no evidence of fraud or misrepresentation.

(iv) A determination made in section 2(k)(2)(iii)(B) exhausts all administrative remedies for purposes of termination.

(3) To regain eligibility, you must:

(i) Repay the delinquent debt in full;

(ii) Execute a written payment agreement and make payments in accordance with the agreement (we will not enter into a written payment agreement with you if you have previously failed to make a scheduled payment under the terms of any other payment agreement with us or any other insurance provider); or

(iii) Have your debts discharged in bankruptcy.

(4) If you are determined to be ineligible under section 2(k), persons with a substantial beneficial interest in you may also be ineligible until you become eligible again.

(l) In cases where there has been a death, disappearance, judicially declared incompetence, or dissolution of any insured person:

(1) If any married insured dies, disappears, or is judicially declared incompetent, the insured on the policy will automatically convert to the name of the spouse if:

(i) The spouse was included on the policy as having a substantial beneficial interest in the insured; and

(ii) The spouse has a share of the crop.

(2) The provisions in section 2(l)(3) will only be applicable if:

(i) Any partner, member, shareholder, etc., of an insured entity dies, disappears, or is judicially declared incompetent, and such event automatically dissolves the entity; or

(ii) An individual whose estate is left to a beneficiary other than a spouse or left to the spouse and the criteria in section 2(l)(1) are not met, dies, disappears, or is judicially declared incompetent.

(3) If the death, disappearance, or judicially declared incompetence occurred:

(i) More than 30 days before the cancellation date, the policy is automatically canceled as of the cancellation date and a new application must be submitted; or

(ii) Thirty days or less before the cancellation date, or on after the cancellation date, the policy will continue in effect through the crop year immediately following the cancellation date and be automatically canceled as of the cancellation date immediately following the end of the insurance period for the crop year, unless canceled by the cancellation date prior to the start of the insurance period:

(A) A new application for insurance must be submitted on or before the sales closing date for coverage for the subsequent crop year; and

(B) Any indemnity will be paid to the person or persons determined to be beneficially entitled to the payment provided such person or persons comply with all policy provisions and timely pays the premium.

(4) If any insured entity is dissolved for reasons other than death, disappearance, or judicially declared incompetence:

(i) Before the cancellation date, the policy is automatically canceled as of the cancellation date and a new application must be submitted; or

(ii) On or after the cancellation date, the policy will continue in effect through the crop year immediately following the cancellation date and be automatically canceled as of the cancellation date immediately following the end of the insurance period for the crop year, unless canceled by the cancellation date prior to the start of the insurance period.

(A) A new application for insurance must be submitted on or before the sales closing date for coverage for the subsequent crop year; and

(B) Any indemnity will be paid to the person or persons determined to be beneficially entitled to the payment provided such person or persons comply with all policy provisions and timely pays the premium.

(5) If section 2(k)(2) or (4) applies, a remaining member of the insured person or the beneficiary is required to report to us the death, disappearance, judicial incompetence, or other event that causes dissolution of the entity not later than the next cancellation date, except if section 2(k)(3)(ii) applies, notice must be provided by the cancellation date for the next crop year.

(m) We may cancel your policy if no premium is earned for 3 consecutive years.

(n) The cancellation and termination dates are contained in the Crop Provisions.

(o) 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 8(g), and any other consequences, including administrative, criminal or civil sanctions, if any information has been misreported.

(p) If voidance, 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 your policy is voided due to a conviction of the controlled substance provisions of the Food Security Act of 1985 or Title 21, a new application must be filed for the crop.

(1) Insurance coverage will not be provided if you are ineligible under the contract or under any Federal statute or regulation.

(2) Since applications for crop insurance cannot be accepted after the sales closing date, if you make any payment, or you otherwise become eligible, after the sales closing date, you cannot apply for insurance until the next crop year. For example, for the 2012 crop year, if crop A, with a termination date of October 31, 2012, and crop B, with a termination date of March 15, 2013, 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, 2012, and crop A's policy is terminated as of that date. Crop B's policy does not terminate until March 15, 2013, and an indemnity for the 2012 crop year may still be owed. You will not be eligible to apply for crop insurance for any crop until after the amounts owed are paid in full or you have your debts discharged in bankruptcy.

3. Contract Changes

(a) We may change the terms and conditions of this policy from year to year.

(b) Any changes in policy provisions, the CEPP, amounts of insurance, expected county yields, premium rates, and program dates can be viewed on RMA's 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 obvious errors (e.g., the expected county revenue for a county was announced at $2,500 per acre instead of $250 per acre).

(c) After the contract change date, all changes specified in section 3(b) will also be available upon request from your crop insurance agent.

(d) Not later than 30 days prior to the cancellation date for the insured crop you will be provided, in accordance with section 20, a copy of the changes to the Basic Provisions, Crop Provisions, CEPP, if applicable, and Special Provisions.

(e) Acceptance of all the changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

4. 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;

(2) That is a type not generally recognized for the area;

(3) For which the information necessary for insurance (projected price, expected county yield, premium rate, etc.) is not included in the actuarial documents;

(4) That is a volunteer crop;

(5) 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);

(6) That is planted for experimental purposes; or

(7) 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 specific crop, type, or practice is not insurable, it does not mean all other crops, types, or practices are insurable. To be insurable, the use of such crop, type, or practice must be a good faming practice, have been widely used in the county, and meet all the conditions in the Basic Provisions, the Crop Provisions, Special Provisions, and the actuarial documents.

5. Insurable Acreage

(a) Except as provided in section 5(c), the insurable acreage is all of the acreage of the insured crop for which a premium rate is provided by the actuarial documents, in which you have a share, and which is planted in the county listed on your accepted application. The dollar amount of insurance per acre, amount of premium, and indemnity will be calculated separately for each crop, type, and practice shown on the actuarial documents.

(1) The acreage must have been planted and harvested (grazing is not considered harvested for the purposes of this section) or insured (excluding pasture, rangeland, and forage, vegetation and rainfall insurance or any other specific policy listed in the Special Provisions) in at least one of the three previous crop years unless:

(i) Such acreage was not planted:

(A) In at least two of the three previous crop years to comply with any other USDA program;

(B) Due to the crop rotation, the acreage would not have been planted in the previous three years (e.g., a crop rotation of corn, soybeans, and alfalfa; and the alfalfa remained for four years before the acreage was planted to corn again); or

(C) Because a perennial crop was on the acreage in at least two of the previous three crop years;

(ii) Such acreage constitutes five percent or less of the insured planted acreage of the crop, type and practice as shown on the actuarial documents in the county;

(iii) Such acreage was not planted or harvested because it was pasture or rangeland and the crop to be insured is also pasture or rangeland; or

(iv) The Crop Provisions or Special Provisions specifically allow insurance for such acreage.

(b) Only the acreage planted to the insured crop on or before the final planting date, as shown in the actuarial documents, and reported by the acreage reporting date and physically located in the county shown on your accepted application will be insured.

(c) We will not insure any acreage (and any uninsured acreage and production from uninsured acreage will not be included for the purposes of establishing the final county yield):

(1) Where the crop was destroyed or put to another use during the crop year for the purpose of conforming with, or obtaining a payment under, any other program administered by the USDA;

(2) Where we determine you have failed to follow good farming practices for the insured crop;

(3) 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 non-irrigated corn crop after a failed small grain crop on the same acreage in the same crop year is not appropriate for the area);

(4) 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 13 and you intend to collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop acreage. This election must be made for all first insured crop acreage that may be subject to an indemnity reduction if the first insured crop is insured under this policy, or on a first insured crop unit basis if the first insured crop is not insured under this policy (e.g., if the first insured crop under this policy consists of 40 acres, or the first insured crop unit insured under another policy contains 40 planted acres, then no second crop can be insured on any of the 40 acres). In this case:

(i) If the first insured crop is insured under ARPI, you must provide written notice to us of your election not to insure acreage of a second crop by the acreage reporting date for the second crop if it is insured under ARPI, or before planting the second crop if it is insured under any other policy;

(ii) If the first insured crop is not insured under ARPI, at the time the first insured crop acreage is released by us or another insurance provider who insures the first insured crop (if no acreage in the first insured crop unit is released, this election must be made by the earlier of acreage reporting date for the second crop or when you sign the claim for the first insured crop);

(iii) If you fail to provide a notice as specified in section 5(c)(5)(i) or 5(c)(5)(ii), the second crop acreage will be insured in accordance with applicable policy provisions and you must repay any overpaid indemnity for the first insured crop;

(iv) 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

(v) You must report the crop acreage that will not be insured on the applicable acreage report; and

(5) 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 organic agricultural experts 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 the same crop year in at least two of the last four years in which the insured crop was grown on the acreage; 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 5(c)(5)(i).

(d) Except as provided in section 5(e), in the states of Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota, during the first four crop years of planting on native sod acreage that has been tilled and is planted to an annual crop, after February 7, 2014, such acreage may be insured if the requirements of section 5(a) have been met but will, for additional coverage policies;

(1) Notwithstanding the provisions in section 6, receive a liability that is based on a 65 percent of the protection factor; and

(2) Receive a premium subsidy that is 50 percentage points less than would otherwise be provided on acreage not qualifying as native sod. If the premium subsidy applicable to these acres is less than 50 percent before the reduction, you will receive no premium subsidy.

(e) Section 5(d) is not applicable to areas of native sod acreage that is five acres or less in the county.

6. Coverage, Coverage Levels, Protection Factor, and Policy Protection

(a) For all acreage of the insured crop in the county, you must select the same plan of insurance (e.g., all Area Revenue Protection, all Area Revenue Protection with the Harvest Price Exclusion, or all Area Yield Protection), if such plans are available on the actuarial documents.

(b) You must choose a protection factor:

(1) Unless otherwise specified in the Special Provisions from a range of 80 percent to 120 percent;

(2) As a whole percentage from amounts specified; and

(3) For each crop, type, and practice (you may choose a different protection factor for each crop, type, and practice).

(c) You may select any coverage level shown on the actuarial documents for each crop, type, and practice.

(1) For Area Revenue Protection and Area Revenue Protection with the Harvest Price Exclusion:

(i) CAT level of coverage is not available; and

(ii) With respect to additional level of coverage, you may select any coverage level specified in the actuarial documents for each crop, type, and practice. For example: You may choose a 75 percent coverage level for one crop, type, and practice (such as corn irrigated practice) and a 90 percent coverage level for another crop, type, and practice (corn non-irrigated practice).

(2) For Area Yield Protection:

(i) CAT level of coverage is available, and you may select the CAT level of coverage for any crop, type, and practice;

(ii) With respect to additional level of coverage, you may select any coverage level specified in the actuarial documents for each crop, type, and practice. For example: You may choose a 75 percent coverage level for one crop, type, and practice (corn irrigated practice) and a 90 percent coverage level for another crop, type, and practice (corn non-irrigated practice); and

(iii) You may have CAT level of coverage on one type and practice shown on the actuarial documents for the crop, and additional coverage on another type and practice for the same crop. You may also have different additional levels of coverage by type and practice.

(d) You may change the plan of insurance, protection factor, or coverage level, for the following crop year by giving written notice to us not later than the sales closing date for the insured crop.

(e) Since this is a continuous policy, if you do not select a new plan of insurance, protection factor, and coverage level on or before the sales closing date, we will assign the same plan of insurance, protection factor, and coverage level as the previous year.

(f) Policy protection for ARPI plans of insurance is calculated as follows:

(1) Multiply the dollar amount of insurance per acre for each crop, type, and practice by the number of acres insured for such crop, type and practice; and

(2) Multiply the result of paragraph (1) by your share.

(g) If the projected price cannot be calculated for the current crop year under the provisions contained in the CEPP and you previously chose Area Revenue Protection or Area Revenue Protection with the Harvest Price Exclusion:

(1) Area Revenue Protection and Area Revenue Protection with the Harvest Price Exclusion will not be provided and you will automatically be covered under the Area Yield Protection plan of insurance for the current crop year unless you cancel your coverage by the cancellation date or change your plan of insurance by the sales closing date;

(2) Notice of availability of the projected price will be provided on RMA's Web site by the date specified in the applicable projected price definition contained in the CEPP;

(3) The projected price will be determined by FCIC and will be released by the date specified in the applicable projected price definition contained in the CEPP; and

(4) Your coverage will automatically revert back to Area Revenue Protection or Area Revenue Protection with the Harvest Price Exclusion, whichever is applicable, for the next crop year that revenue protection is available unless you cancel your coverage by the cancellation date or change your plan of insurance by the sales closing date.

7. Annual Premium and Administrative Fees

(a) The administrative fee:

(1) For CAT level of coverage will be an amount specified in the CAT Endorsement or the Special Provisions, as applicable;

(2) For additional levels of coverage is $30, or an amount specified in the Special Provisions, as applicable;

(3) Is payable to us on the premium billing date for the crop;

(4) Must be paid no later than the time premium is due or the amount will be considered a delinquent debt;

(5) If you select coverage in accordance with section 6(c)(2)(iii):

(i) Will be charged for both CAT and additional level of coverage if a producer elects both for the crop in the county; but

(ii) Will not be more than one additional and one CAT administrative fee no matter how many different coverage levels you choose for different type and practice combinations you insure for the crop in the county;

(6) Will be waived if you request it and:

(i) You qualify as a beginning farmer or rancher;

(ii) You qualify as a limited resource farmer; or

(iii) 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;

(7) 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, civil and administrative sanctions; and

(8) If not paid when due, may make you ineligible for crop insurance and certain other USDA benefits.

(b) The premium is based on the policy protection calculated in section 6(f).

(c) The information needed to determine the premium rate and any premium adjustment percentages that may apply are contained in the actuarial documents.

(d) To calculate the premium and subsidy amounts for ARPI plans of insurance:

(1) Multiply your policy protection from section 6(f) by the applicable premium rate and any premium adjustment percentages that may apply;

(2) Multiply the result of paragraph (1) by the applicable subsidy factor (This is the amount of premium FCIC will pay);

(3) Subtract the result of paragraph (2) from the result of paragraph (1) to calculate the amount of premium you will pay.

(e) The amount of premium calculated in accordance with section 7(d)(3) is earned and payable at the time coverage begins. You will be billed for such premium and applicable administrative fees not earlier than the premium billing date specified in the actuarial documents.

(f) If the amount of premium calculated in accordance with section 7(d)(3) and administrative fees you are required to pay for any acreage exceeds the amount of policy protection for the acreage, coverage for those acres will not be provided (No premium or administrative fee will be due and no indemnity will be paid for such acreage).

(g) Premium or administrative fees owed by you will be offset from an indemnity due you in accordance with section 2(j).

(h) If you qualify as a beginning farmer or rancher, your premium subsidy will be 10 percentage points greater than the premium subsidy that you would otherwise receive, unless otherwise specified in the Special Provisions.

(i) Effective for any policies with a sales closing date on or after July 1, 2015, you will be ineligible for any premium subsidy paid on your behalf by FCIC for any policy issued by us if:

(1) USDA determines you have committed a violation of the highly erodible land conservation or wetland conservation provisions of 7 CFR part 12 as amended by the Agricultural Act of 2014; or

(2) You have not filed form AD–1026, or successor form, with FSA by June 1 prior to the sales closing date to be properly identified as in compliance with the conservation provisions specified in section 7(i)(1) (For example, to be eligible for a premium subsidy for a crop with a sales closing date of March 15, 2016, you must have filed your form AD–1026 by June 1, 2015).

(i) Notwithstanding section 7(i)(2), if you demonstrate you are a beginning farmer or rancher who has not previously had an insurable interest in a crop or livestock and began farming for the first time after June 30 prior to the sales closing date, you fail to file form AD–1026 or successor form with the FSA by June 1 after you make application for insurance.

(ii) To be eligible for premium subsidy paid on your behalf by FCIC, it is your responsibility to assure you meet all the requirements for:

(A) Compliance with the conservation provisions specified in section 7(i)(1) of this section; and

(B) Filing form AD–1026, or successor form, to be properly identified as in compliance with the conservation provisions specified in section 7(i)(1) of this section.

8. Report of Acreage and Production

(a) An annual acreage report must be submitted to us on our form for each insured crop (separate lines for each type and practice) in the county on or before the acreage reporting date contained in the actuarial documents.

(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) The amount of acreage of the crop in the county (insurable and not insurable) in which you have a share, the last date any acreage of the insured crop was planted, and the number of acres planted by such date

(Acreage initially planted after the final planting date must be reported as uninsurable);

(2) Your share at the time coverage begins;

(3) The practice;

(4) The type; and

(5) The land identifier for the crop acreage (e.g., legal description, FSA farm number or common land unit number if provided to you by FSA, etc.) as required on our form.

(d) We will not insure any acreage of the insured crop planted after the final planting date.

(e) Regarding the ability to revise an acreage report you have submitted to us:

(1) You cannot revise any information pertaining to the planted acreage after the acreage reporting date without our consent;

(2) Consent may only be provided if the information on the acreage report is clearly transposed, or you provide adequate evidence that we have or someone from USDA has committed an error regarding the information on your acreage report; and

(3) The provisions in section 8(e)(1) and (2) also pertain to land acquired after the acreage reporting date, and we may choose to insure or not insure the acreage, provided the crop meets the requirements in section 5 and section 8. This requirement does not apply to any acreage acquired through a transfer of coverage in accordance with section 17.

(f) Except as provided in section 8(h), your premium and indemnity, if any, will be based on your insured acreage and share on your acreage report or section 8(e), if applicable.

(g) 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 8.

(h) 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) Except as provided in section 8(h)(2), if you submit information on any report that is different than what is determined to be correct and the information reported on the acreage report results in:

(i) A lower liability than the actual, correct liability determined, the policy protection will be reduced to an amount consistent with the information reported on the acreage report; or

(ii) A higher liability than the actual, correct liability determined, the information contained in the acreage report will be revised to be consistent with the correct information.

(2) If your share is misreported and the share is:

(i) Under-reported at the time of the acreage report, any claim will be determined using the share you reported; or

(ii) Over-reported at the time of the acreage report, any claim will be determined using the share we determine to be correct.

(i) If we discover you have incorrectly reported any information on the acreage report for any crop year, you may be required to provide documentation in subsequent crop years substantiating your report of acreage for those crop years, including, but not limited to, an acreage measurement service at your own expense. If the correction of any misreported information would affect an indemnity that was paid in a prior crop year, such claim will be adjusted and you will be required to repay any overpaid amounts.

(j) You may request an acreage measurement from FSA or a business that provides such measurement service prior to the acreage reporting date, submit documentation of such request and an acreage report with estimated acreage by the acreage reporting date, and if the acreage measurement shows the estimated acreage was incorrect, we will revise your acreage report to reflect the correct acreage:

(1) If an acreage measurement is only requested for a portion of the insured crop, type, and practice, you must separately designate the acreage for which an acreage measurement has been requested;

(2) If an acreage measurement is not provided to us by the time the final county revenue or final county yield, as applicable, is calculated, we may:

(i) Elect to measure the acreage, and finalize your claim in accordance with applicable policy provisions;

(ii) Defer finalization of the claim until the measurement is completed with the understanding that if you fail to provide the measurement prior to the termination date, your claim will not be paid; or

(iii) Finalize the claim in accordance with applicable policy provisions after you provide the acreage measurement to us; and

(3) Premium will still be due in accordance with sections 2(k) and 7 (If the acreage is not measured as specified in section 8(j) and the acreage measurement is not provided to us at least 15 days prior to the premium billing date, your premium will be based on the estimated acreage and will be revised, if necessary, when the acreage measurement is provided);

(4) If the acreage measurement is not provided by the termination date, you will be precluded from providing any estimated acreage for all subsequent crop years;

(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 sections 8(g) and 8(j), the information on the initial acreage report will not be considered misreported for the purposes of section 8(h).

(k) If you do not submit an acreage report by the acreage reporting date, or if you fail to report all acreage, we may elect to determine the insurable acreage, by crop, type, practice, and share, or to deny liability on such acreage. If we deny liability for the unreported acreage, no premium will be due on such acreage and no indemnity will be paid.

(l) An annual production report must be submitted, unless otherwise specified in the Special Provisions, to us on our form for each insured crop (separate lines for each type and practice) in the county by the production reporting date specified in the actuarial documents.

(m) Unless otherwise authorized by FCIC, if you do not submit a production report to us by the production reporting date specified in the actuarial documents, your protection factor for your policy in the following crop year will be limited to the lowest protection factor available.

(n) You must certify to the accuracy of the information on your production report and if you fail to accurately report your production, you will be subject to the provisions in 8(m), unless the information is corrected:

(1) On or before the production reporting date; or

(2) Because the incorrect information was the result of our error or the error of someone from USDA.

(o) If you do not have records to support the information on your production report, you will be subject to the provisions in 8(m).

(p) At any time we discover you have misreported any material information on your production report, you will be subject to the provisions in 8(m).

(q) If you do not submit a production report or you misreported your production report and you switch to another plan of insurance in the following crop year, you will be subject to having a yield assigned in accordance with FCIC procedures.

(r) Errors in reporting acreage, share, and other information required in this section, may be corrected by us at the time we become aware of such errors. However, the provisions regarding incorrect information in this section will apply.

9. Share Insured

(a) Insurance will attach:

(1) Only if the person completing the application has a share in the insured crop; and

(2) Only to that person's share, except that insurance may attach to another person's share of the insured crop if the other person has a share of the crop and:

(i) The application clearly states the insurance is requested for a person other than an individual (e.g., a partnership or a joint venture); or

(ii) The application clearly states you as a landlord will insure your tenant's share, or you as a tenant will insure your landlord's share. If you as a landlord will insure your tenant's share, or you as a tenant will insure your landlord's share, you must provide evidence of the other party's approval (lease, power of attorney, etc.) and such evidence will be retained by us:

(A) You also must clearly set forth the percentage shares of each person on the acreage report; and

(B) For each landlord or tenant, you must report the landlord's or tenant's SSN, EIN, or other identification number we assigned for the purposes of this policy, as applicable.

(b) With respect to your share:

(1) We will consider included in your share under your policy, any acreage or interest reported by or for:

(i) Your spouse, unless such spouse can prove he/she has a separate farming operation, which includes, but is not limited to, separate land (transfers of acreage from one spouse to another is not considered separate land), separate capital, separate inputs, separate accounting, and separate maintenance of proceeds; or

(ii) Your child who resides in your household or any other member of your household, unless such child or other member of the household can demonstrate such person has a separate share in the crop (Children who do not reside in your household are not included in your share); and

(2) If it is determined that the spouse, child or other member of the household has a separate policy but does not have a separate farming operation or share of the crop, as applicable:

(i) The policy for the spouse or child or other member of the household will be void and the policy remaining in effect will be determined in accordance with section 18(c)(1) and (2);

(ii) The acreage or share reported under the policy that is voided will be included under the remaining policy; and

(iii) No premium will be due and no indemnity will be paid for the voided policy.

(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.

10. Insurance Period

Unless specified otherwise in the Crop Provisions, coverage begins at the later of:

(a) 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); or

(b) The date the insured crop is planted.

11. Causes of Loss

(a) ARPI provides protection against loss of revenue or against loss of yield in a county resulting from natural causes of loss that cause the final county yield or the final county revenue to be less than the trigger yield or the trigger revenue.

(b) Failure to follow good farming practices, or planting or producing a crop using a practice that has not been widely recognized as used to establish the expected county yield, is not an insurable cause of loss under ARPI.

12. Triggers, Final Policy Protection, Payment Factor, and Indemnity Calculations

(a) Individual farm revenues and yields are not considered when calculating losses under ARPI. It is possible that your individual farm may experience reduced revenue or reduced yield and you do not receive an indemnity under ARPI.

(b) To calculate the trigger revenue:

(1) For Area Revenue Protection, multiply the expected county yield by the greater of the projected or harvest price and by the coverage level.

(2) For Area Revenue Protection with the Harvest Price Exclusion, multiply the expected county yield by the projected price and by the coverage level.

(c) To calculate the Trigger Yield for Area Yield Protection, multiply the expected county yield by the coverage level.

(d) If the harvest price cannot be calculated for the current crop year under the provisions contained in the CEPP:

(1) Revenue protection will continue to be available; and

(2) The harvest price will be determined and announced by FCIC.

(e) The final policy protection for:

(1) Area Revenue Protection is calculated by:

(i) Multiplying the expected county yield by the greater of the harvest price or the projected price;

(ii) Multiplying the result of subparagraph (i) by your protection factor; and

(iii) Multiplying the result of subparagraph (ii) by your acres and by your share.

(2) Area Revenue Protection with the Harvest Price Exclusion and Area Yield Protection are equal to the policy protection and are calculated by:

(i) Multiplying the expected county yield by the projected price;

(ii) Multiplying the result of subparagraph (i) by your protection factor; and

(iii) Multiplying the result of subparagraph (ii) by your acres and by your share.

(f) An indemnity is due for:

(1) Area Revenue Protection and Area Revenue Protection with the Harvest Price Exclusion if the final county revenue is less than the trigger revenue.

(2) Area Yield Protection if the final county yield is less than the trigger yield.

(g) The payment factor is calculated for:

(1) Area Revenue Protection by:

(i) Subtracting the final county revenue from the trigger revenue to determine the amount of loss;

(ii) Multiplying the expected county yield by the greater of the projected or harvest price and by the loss limit factor;

(iii) Subtracting the result of subparagraph (ii) from the trigger revenue; and

(iv) Dividing the result of subparagraph (i) by the result of subparagraph (iii) to obtain the payment factor.

(2) Area Revenue Protection with the Harvest Price Exclusion by:

(i) Subtracting the final county revenue from the trigger revenue to determine the amount of loss;

(ii) Multiplying the expected county yield by the projected price and by the loss limit factor;

(iii) Subtracting the result of subparagraph (ii) from the trigger revenue; and

(iv) Dividing the result of subparagraph (i) by the result of subparagraph (iii) to obtain the payment factor.

(3) Area Yield Protection by:

(i) Subtracting the final county yield from the trigger yield to determine the amount of loss;

(ii) Multiplying the expected county yield by the loss limit factor;

(iii) Subtracting the result of subparagraph (ii) from the trigger yield; and

(iv) Dividing the result of subparagraph (i) by the result of subparagraph (iii) to obtain the payment factor.

(h) Indemnities for all three ARPI plans of insurance are calculated by multiplying the final policy protection by the payment factor.

(i) Indemnities for all three ARPI plans of insurance are calculated following release of the final county yield and harvest price as specified in the Crop Provisions.

13. Indemnity and Premium Limitations

(a) With respect to acreage where you are due an indemnity for your first insured crop in the crop year, except in the case of double cropping described in section 13(c):

(1) You may elect to not plant or to plant and not insure a second crop on the same acreage for harvest in the same crop year

and collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop; or

(2) You may elect to plant and insure a second crop on the same acreage for harvest in the same crop year (you will pay the full premium and if there is an insurable loss to the second crop, receive the full amount of indemnity that may be due for the second crop, regardless of whether there is a subsequent crop planted on the same acreage) and:

(i) Collect an indemnity payment that is 35 percent of the insurable loss for the first insured crop;

(ii) Be responsible for a premium that is 35 percent of the premium that you would otherwise owe for the first insured crop; and

(iii) If the second crop does not suffer an insurable loss:

(A) Collect an indemnity payment for the other 65 percent of insurable loss that was not previously paid under section 13(a)(2)(i); and

(B) Be responsible for the remainder of the premium for the first insured crop that you did not pay under section 13(a)(2)(ii).

(b) In lieu of the priority contained in the Agreement to Insure section, which states that the Crop Provisions have priority over the Basic Provisions, the reduction in the amount of indemnity and premium specified in section 13(a) of these Basic Provisions, as applicable, will apply to any premium owed or indemnity paid in accordance with the Crop Provisions, and any applicable endorsement. This will apply:

(1) Even if another person plants the second crop on any acreage where the first insured crop was planted; or

(2) If you fail to provide any records we require to determine whether an insurable loss occurred for the second crop.

(c) You may receive a full indemnity for a first insured crop when a second crop is planted on the same acreage in the same crop year, regardless of whether or not the second crop is insured or sustains an insurable loss, if each of the following conditions are met:

(1) It is a practice that is generally recognized by agricultural experts or organic agricultural experts for the area to plant two or more crops for harvest in the same crop year;

(2) The second or more crops are customarily planted after the first insured crop for harvest on the same acreage in the same crop year in the area;

(3) Additional coverage insurance offered under the authority of the Act is available in the county on the two or more crops that are double cropped; and

(4) You provide records acceptable to us of acreage and production that show you have double cropped acreage in at least two of the last four crop years in which the first insured crop was planted, or that show the applicable acreage was double cropped in at least two of the last four crop years in which the first insured crop was grown on it.

(d) The receipt of a full indemnity on both crops that are double cropped is limited to the number of acres for which you can demonstrate you have double cropped or that have been historically double cropped as specified in section 13(c).

(1) If the records you provided are from acreage you double cropped in at least two of the last four crop years, you may apply your history of double cropping to any acreage of the insured crop in the county (e.g., if you have double cropped 100 acres of wheat and soybeans in the county and you acquire an additional 100 acres in the county, you can apply that history of double cropped acreage to any of the 200 acres in the county as long as it does not exceed 100 acres); or

(2) If the records you provided are from acreage that another producer double cropped in at least two of the last four crop years, you may only use the history of double cropping for the same physical acres from which double cropping records were provided (e.g., if a neighbor has double cropped 100 acres of wheat and soybeans in the county and you acquire your neighbor's 100 double cropped acres and an additional 100 acres in the county, you can only apply your neighbor's history of double cropped acreage to the same 100 acres that your neighbor double cropped).

(e) 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.

14. Organic Farming Practices

(a) Insurance will be provided for a crop grown using an organic farming practice for only those acres of the crop that meet the requirements for an organic crop on the acreage reporting date.

(b) If an organic type or practice is shown on the actuarial documents, the projected price, dollar amount of insurance, policy protection, premium rate, etc., for such organic crop, type and practice will be used unless

otherwise specified in the actuarial documents. If an organic type or practice is not shown on the actuarial documents, the projected price, dollar amount of insurance, policy protection, premium rate, etc., for the non-organic crop, type and practice will be used.

(c) If insurance is provided for an organic farming practice as specified in section 14(a) and (b), 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.

(d) 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 14(d)(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.

15. Yields

(a) The data source used for the county yields will be based on the best available data and will be specified in the actuarial documents.

(b) Except as otherwise provided in this section, the data source used to establish the expected county yield will be the data source used to establish the final county yield.

(c) If the data source used to establish the expected county yield is not able to provide credible data to establish the final county yield because the data is no longer available, credible, or reflect changes that may have occurred after the yield was established;

(1) FCIC will determine the final county yield based on the most accurate data available from subsection (g), as determined by FCIC; or

(2) To the extent that practices used during the crop year change from those upon which the expected county yield is based, the final county yield may be adjusted to reflect the yield that would have resulted but for the change in practice. For example, if the county is traditionally 90 percent irrigated and 10 percent non-irrigated, but this year the county is now 50 percent irrigated and 50 percent non-irrigated, the final county yield will be adjusted to an amount as if the county had 90 percent irrigated acreage.

(d) If the final county yield is established from a data source other than that used to establish the expected county yield, FCIC will provide notice of the data source and the reason for the change at the time the final county yield is published.

(e) If yields are based on NASS data, the final county yield will be the most current NASS yield at the time FCIC determines the yield in accordance with the payment dates section of the applicable Crop Provisions.

(f) The final county yield determined by FCIC is considered final for the purposes of establishing whether an indemnity is due and will not be revised for any reason.

(g) Yields used under this insurance program for a crop, may be based on:

(1) Data collected by NASS, if elected by FCIC, regardless of whether such data is published or unpublished; or

(2) Crop insurance data, other USDA data, or other data sources, if elected by FCIC.

16. Assignment of Indemnity

(a) You may assign your right to an indemnity for the crop year only to creditors or other persons to whom you have a financial debt or other pecuniary obligation. You may be required to provide proof of the debt or other pecuniary obligation before we will accept the assignment of indemnity.

(b) All assignments must be on our form and must be provided to us. Each assignment form may contain more than one creditor or other person to whom you have a financial debt or other pecuniary obligation.

(c) Unless you have provided us with a properly executed assignment of indemnity, we will not make any payment to a lienholder or other person to whom you have a financial debt or other pecuniary obligation even if you may have a lien or other assignment recorded elsewhere. Under no circumstances will we be liable:

(1) To any lienholder or other person to whom you have a financial debt or other pecuniary obligation where you have failed to include such lienholder or person on a properly executed assignment of indemnity provided to us; or

(2) To pay to all lienholders or other persons to whom you have a financial debt or other pecuniary obligation any amount greater than the total amount of indemnity owed under the policy.

(d) If we have received the properly executed assignment of indemnity form:

(1) Only one payment will be issued jointly in the names of all assignees and you; and

(2) Any assignee will have the right to submit all notices and forms as required by the policy.

17. 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.

(a) We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred.

(b) The transfer of coverage rights must be on our form and will not be effective until approved by us in writing.

(c) Both you and the transferee are jointly and severally liable for the payment of the premium and administrative fees.

(d) The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

18. Other Insurance

(a) 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.

(b) 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.

(c) 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 CAT 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 CAT 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.

19. Crops as Payment

You must not abandon any crop to us. We will not accept any crop as compensation for payments due us.

20. 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.

(1) Notices required to be given immediately may be by telephone or in person and confirmed in writing.

(2) The time the notice is provided will be determined by the time of our receipt of the written notice.

(3) 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 policy provisions, notices, and communications required to be sent by us to you will be:

(1) Provided by electronic means, unless:

(i) We do not have the ability to transmit such information to you by electronic means; or

(ii) You elect to receive a paper copy of such information;

(2) Sent to the location specified in your records with your crop insurance agent; and

(3) Will be conclusively presumed to have been received by you.

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 (authorized employee of USDA), have the right to examine the insured crop and all records related to the insured crop and this policy, 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 authorized employee of USDA, complete records pertaining to the planting, acres, share, replanting, inputs, production, harvesting and disposition of the insured crop for a period of three years after the end of the crop year or three years after the date of final payment of indemnity, whichever is later. This requirement also applies to all such records for acreage that is not insured.

(c) We, or any authorized employee of USDA, 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, acres, share, 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 authorized employee of USDA 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 all such records will result in a determination that no indemnity is due for the crop year in which such failure occurred.

[FCIC Policies]

22. 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 actuarial documents, provided a minimum of 30 days have passed from the premium billing date.

(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.

(e) 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.

[Reinsured policies]

22. Amounts Due Us

(a) Interest will accrue at the rate of 1.25 percent simple interest per calendar month on any unpaid amount owed to us or on any unpaid administrative fees owed to FCIC.

(1) 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 actuarial documents, provided a minimum of 30 days have passed from the premium billing date.

(2) 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 for any CAT policy and we will collect any unpaid administrative fees and any interest owed thereon for additional coverage policies.

(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.

(1) 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.

(2) 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.

[FCIC Policies]

23. Appeal, Reconsideration, and Administrative and Judicial Review

(a) All determinations required by the policy will be made by us. All expected county yields and final county yields are calculated by us in accordance with section 15. However, calculations of expected county yields and final county yields are matters of general applicability.

(1) Any matter of general applicability is not subject to appeal under 7 CFR part 400, subpart J or 7 CFR part 11.

(2) Your only remedy is judicial review but if you want to seek judicial review of any determination by us that is a matter of general applicability, you must request a determination of non-appealability from the Director of the National Appeals Division in accordance with 7 CFR 11.6 before seeking judicial review.

(3) The timeframe to request a determination of non-appealability from the Director of the National Appeals Division is not later than 30 days after the date the yields are published on the RMA Web site.

(b) If you disagree with our determinations:

(1) Except for determinations specified in section 23(b)(2), obtain an administrative review in accordance with 7 CFR part 400, subpart J or appeal in accordance with 7 CFR part 11; or

(2) For determinations regarding whether you have used good farming practices, request reconsideration in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J.

(c) If you fail to exhaust your administrative remedies under 7 CFR part 11 or the reconsideration process for determinations of good farming practices described in section 23(b)(2), as applicable, you will not be able to resolve the dispute through judicial review.

(d) If reconsideration for good farming practices under 7 CFR part 400, subpart J or appeal under 7 CFR part 11 has been initiated within the time frames specified in those sections and judicial review is sought, any suit against us must be:

(1) Filed not later than one year after the date of the decision rendered in the reconsideration process for good farming practices or administrative review process under 7 CFR part 11; and

(2) Brought in the United States district court for the district in which the insured farm involved in the decision is located.

(e) You may only recover contractual damages from us. Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from us in administrative review, appeal or litigation.

[Reinsured policies]

23. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review

(a) All expected county yields and final county yields are calculated by FCIC in accordance with section 15. However, calculations of expected county yields and final county yields are matters of general applicability.

(1) Any matter of general applicability is not subject to appeal under 7 CFR part 400, subpart J or 7 CFR part 11.

(2) Your only remedy is judicial review but if you want to seek judicial review of any FCIC determination that is a matter of general applicability, you must request a determination of non-appealability from the Director of the National Appeals Division in accordance with 7 CFR 11.6 before seeking judicial review.

(3) The timeframe to request a determination of non-appealability from the Director of the National Appeals Division is not later than 30 days after the date the yields are published on RMA's Web site.

(b) With respect to good farming practices:

(1) We will make preliminary decisions regarding what constitutes a good farming practice.

(2) If you disagree with our decision of what constitutes a good farming practice, you must request a determination from FCIC of what constitutes a good farming practice.

(3) If you do not agree with any determination made by FCIC regarding what constitutes a good farming practice:

(i) 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; or

(ii) You may file suit against FCIC as follows:

(A) You are not required to request reconsideration from FCIC before filing suit;

(B) Any suit must be brought against FCIC in the United States district court for the district in which the insured acreage is located; and

(C) Suit must be filed against FCIC not later than one year after the date:

(*1*) Of the determination made by FCIC regarding what constitutes a good farming practice; or

(*2*) Reconsideration is completed, if reconsideration was requested under section 23(b)(2)(i).

(c) If you elect to bring suit against FCIC after seeking a Director's Review in accordance with section 23(a), such suit must be filed against FCIC in the United States district court for the district in which the insured acreage is located not later than one year after the date of the decision rendered by the Director. Under no circumstances can you recover any punitive, compensatory or any other damages from FCIC.

(d) With respect to any other determination under this policy:

(1) If you and we fail to agree on any determination not covered by sections 23(a) and (c), the disagreement may be resolved through mediation. To resolve any dispute through mediation, you and we must both:

(i) Agree to mediate the dispute;

(ii) Agree on a mediator; and

(iii) Be present or have a designated representative who has authority to settle the case present, at the mediation.

(2) 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), unless otherwise stated in this subsection or 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.

(3) 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 determination that is a matter of general applicability. However, before such interpretation may be challenged in the courts, you must request a determination of non-appealability from the Director of the National Appeals Division not later than 30 days after the date the interpretation was published on RMA's Web site.

(4) 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.

(i) The statement must also include any amounts awarded for interest.

(ii) Failure of the arbitrator to provide such written statement will result in the nullification of all determinations of the arbitrator.

(iii) 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.

(5) Regardless of whether mediation is elected:

(i) 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;

(ii) If you fail to initiate arbitration in accordance with section 23(d)(5)(i) and complete the process, you will not be able to resolve the dispute through judicial review;

(iii) If arbitration has been initiated in accordance with section 23(d)(5)(i) 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

(iv) 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 on all parties.

(6) Any decision rendered in arbitration is binding on you and us unless judicial review is sought in accordance with section 23(d)(5)(iii). Notwithstanding any provision in the rules of the AAA, you and we have the right to judicial review of any decision rendered in arbitration.

(e) 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 27. If there are conflicts between any rules of the AAA and the provisions of your policy, the provisions of your policy will control.

(f) Except as provided in section 23(g), 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 24.

(g) In a judicial review only, you may recover attorney 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 for Compliance/Stop 0806, 1400 Independence Avenue, SW., Washington, DC 20250–0806.

24. 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 final county yield or final county revenue release date as specified in the applicable Crop Provision.

(a) 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.

(b) 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.

25. 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.

26. 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.

(a) Your insurance policy will be canceled if you are determined, by the appropriate Agency, to be in violation of these provisions.

(b) We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less an amount for expenses and handling equal to 20 percent of the premium paid or to be paid by you.

27. 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.

28. 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 will still be required to pay 20 percent of the premium that you would otherwise be required to pay 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.

(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 a commodity affected by a crop loss or a decline in the prices of commodities.

29. Multiple Benefits

(a) If you are eligible to receive an indemnity under an additional coverage plan of insurance and are also eligible to receive benefits for the same loss under any other USDA program, you may receive benefits under both programs, unless specifically limited by the crop insurance contract or by law.

(b) Any amount received for the same loss from any USDA program, in addition to the crop insurance payment, will not exceed the difference between the crop insurance payment and the amount of the loss, unless otherwise provided by law. The amount of loss is the difference between the total value of the insured crop before the loss and the total value of the insured crop after the loss.

(c) FSA or another USDA agency, as applicable, will determine and pay the additional amount due you for any applicable USDA program, after first considering the amount of any crop insurance indemnity.

30. Examples

The following are examples of the calculation of the premium, amount of insurance and indemnity for each of the three plans of insurance under ARPI. Your information will likely be different and you should consult the actuarial documents in your county and the policy information. The following facts are for illustration purposes only and apply to each of the examples.

Producer A farms 100 acres in county X and has a 100 percent share, or 1.000, in those acres. From the actuarial documents in county X, Producer A elects the 75 percent coverage level and a protection factor of 110 percent or 1.10. The actuarial documents in county X also show that the expected county yield is 141.4 bushels per acre, the projected price is $4.00, and the expected county revenue is $565.60. The subsidy factor for the 75 percent coverage level is .55 for revenue coverage and .59 for yield coverage. The loss limit factor is 18 percent or .18. At the end of the insurance period, for county X, FCIC releases a harvest price of $4.57 and a final county yield for county X of 75.0 bushels.

The premium rate is based on the published volatility factor and for this example is .0166 for Area Revenue Protection, .0146 for Area Revenue Protection with Harvest Price Exclusion, and .0116 for Area Yield Protection.

Area Revenue Protection example:

Step 1: Calculate the Dollar Amount of Insurance per Acre

Formula: Expected county yield times projected price times protection factor equals dollar amount of insurance

141.4 bushels × $4.00 × 1.1 = $622.16 dollar amount of insurance per acre

Step 2: Calculate the Policy Protection

Formula: Dollar amount of insurance per acre times acres times share equals policy protection

$622.16 × 100.0 × 1.000 = $62,216 policy protection

Step 3: Calculate the Total Premium

Formula: Policy protection times premium rate equals total premium

$62,216 × .0166 = $1,033 total premium

Step 4: Calculate the Subsidy amount

Formula: Total premium times subsidy factor equals subsidy

$1,033 × .55 = $568 subsidy

Step 5: Calculate the Producer Premium

Formula: Total premium minus subsidy equals producer premium

$1,033 − $568 = $465 producer premium

Step 6: Calculate the Final Policy Protection

Formula: Expected county yield times (greater of projected price or harvest price) times protection factor times acres times share equals Final Policy Protection

141.4 bushels × $4.57 × 1.10 × 100.0 × 1.000 = $71,082 final policy protection

Step 7: Calculate the Final County Revenue

Formula: Final county yield times harvest price equals final county revenue

75.0 bushels × $4.57 = $342.75 final county revenue

Step 8: Calculate the Trigger Revenue

Formula: Expected county yield times (greater of projected price or harvest price) times coverage level equals trigger revenue

141.4 bushels × $4.57 × .75 = $484.65 trigger revenue

Step 9: Calculate the Payment Factor

Formula: (Trigger revenue minus final county revenue) divided by (trigger revenue minus (expected county yield times the greater of projected or harvest price times loss limit factor)) equals payment factor

($484.65 − $342.75) ÷ ($484.65 − (141.4 × $4.57 × .18)) = .385 payment factor

Step 10: Calculate the Indemnity

Formula: Final policy protection times payment factor equals indemnity

$71,082 × .385 = $27,367 indemnity

Area Revenue Protection with Harvest Price Exclusion example:

Step 1: Calculate the Dollar Amount of Insurance per Acre

Formula: Expected county yield times projected price times protection factor equals dollar amount of insurance
141.4 bushels × $4.00 × 1.10 = $622.16 dollar amount of insurance per acre

Step 2: Calculate the Policy Protection

Formula: Dollar amount of insurance per acre times acres times share equals policy protection
$622.16 × 100.0 × 1.000 = $62,216 policy protection

Step 3: Calculate the Total Premium

Formula: Policy protection times rate equals total premium
$62,216 × .0146 rate = $908 total premium

Step 4: Calculate the Subsidy Amount

Formula: Total premium times subsidy factor equals subsidy
$908 × .55 = $499 subsidy

Step 5: Calculate the Producer Premium

Formula: Total premium minus subsidy equals producer premium
$908 − $499 = $409 producer premium

Step 6: Calculate the Final Policy Protection

Use the policy protection amount calculated at the beginning of the insurance period in Step 2
$62,216 policy protection

Step 7: Calculate the Final County Revenue

Formula: Final county yield times harvest price equals final county revenue
75.0 bushels × $4.57 = $342.75 final county revenue

Step 8: Calculate the Trigger Revenue

Formula: Expected county yield times projected price times coverage level equals trigger revenue
141.4 bushels × $4.00 × .75 = $424.20 trigger revenue

Step 9: Calculate the Payment Factor

Formula: (Trigger revenue minus final county revenue) divided by (trigger revenue minus (expected county yield times projected price times loss limit factor)) equals payment factor
($424.20 − $342.75) ÷ ($424.20 − (141.4 × $4.00 × .18)) = .253

Step 10: Calculate the Indemnity

Formula: Final policy protection times payment factor equals indemnity
$62,216 × .253 = $15741 indemnity

Area Yield Protection example:

Step 1: Calculate the Dollar Amount of Insurance per Acre

Formula: Expected county yield times projected price times protection factor equals dollar amount of insurance
141.4 bushels × $4.00 × 1.10 = $622.16 dollar amount of insurance per acre

Step 2: Calculate the Policy Protection

Formula: Dollar amount of insurance per acre times acres times share = policy protection
$622.16 × 100.0 × 1.000 = $62,216 policy protection

Step 3: Calculate the Total Premium

Formula: policy protection times premium rate equals total premium
$62,216 × .0116 rate = $722 total premium

Step 4: Calculate the Subsidy amount

Formula: Total premium times subsidy factor equals subsidy
$722 × .59 subsidy factor = $426 subsidy

Step 5: Calculate the Producer Premium

Formula: Total premium minus subsidy equals producer premium
$722 − $426 = $296 producer premium

Step 6: Calculate the Final Policy Protection

Use the policy protection amount calculated at the beginning of the insurance period in Step 2
$62,216 policy protection

Step 7: Calculate the Trigger Yield

Formula: Expected county yield times coverage level equals trigger yield
141.4 bushels times .75 = 106.1 bushels

Step 8: Calculate the Payment Factor

Formula: (Trigger yield minus final county yield) divided by (trigger yield minus (expected county yield times loss limit factor)) equals payment factor
(106.1 bushels − 75.0 bushels) ÷ (106.1 bushels − (141.4 bushels × .18)) = .386

Step 9: Calculate the Indemnity

Formula: Final policy protection times payment factor equals indemnity
$62,216 times .386 = $24,015 Indemnity

31. Correction of Errors.

(a) In addition to any other corrections allowed in your policy subject to section 31(b), we may correct:

(1) Within 60 days after the sales closing date, any incorrect information on your application or provided by the sales closing

date, including identification numbers for you and any person with a substantial beneficial interest in the you, to ensure that the eligibility information is correct and consistent with information reported by you to any USDA agency;

(2) Within 30 days after the acreage reporting date, information reported to reconcile errors in the information with correct information that has been determined by any USDA agency;

(3) Within 30 days of any subsequent correction of data by FSA, erroneous information corrected as a result of verification of information; and

(4) At any time, any incorrect information if the incorrect information was caused by electronic transmission errors by us or errors made by any agency within USDA in transmitting the information provided by you for purposes of other USDA programs.

(b) Corrections may be made but will not take effect for the current crop year if the correction would allow you to:

(1) Avoid ineligibility requirements for insurance or obtain a disproportionate benefit under the crop insurance program or any related program administered by the Secretary;

(2) Obtain, enhance, or increase an insurance guarantee or indemnity if a cause of loss exists or has occurred before any correction has been made, or avoid premium owed if no loss is likely to occur; or

(3) Avoid an obligation or requirement under any Federal or State law.

[78 FR 38507, June 26, 2013, as amended at 79 FR 2083, Jan. 13, 2014; 79 FR 37162, July 1, 2014]

§ 407.10 Area risk protection insurance for barley.

The barley crop insurance provisions for Area Risk Protection Insurance for the 2014 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Area Risk Protection Insurance

Barley Crop Insurance Provisions

1. Definitions

Harvest. Combining or threshing the barley for grain.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance Basic Provisions, land on which seed is initially spread onto the soil surface by any method and which subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will also be considered planted.

2. Insured Crop

The insured crop will be all barley:

(a) Grown on insurable acreage in the county listed on the accepted application;

(b) Properly planted by the final planting date and reported on or before the acreage reporting date;

(c) Planted with the intent to be harvested;

(d) Not planted into an established grass or legume;

(e) Not interplanted with another crop; and

(f) Not planted as a nurse crop, unless seeded at the normal rate and intended for harvest as grain.

3. Payment Dates

(a) Unless otherwise specified in the Special Provisions the final county revenues and final county yields will be determined prior to April 1 following the crop year.

(b) If an indemnity is due, unless otherwise specified in the Special Provisions we will issue any payment to you prior to May 1 following the crop year and following the determination of the final county revenue or the final county yield, as applicable.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Kit Carson, Lincoln, Elbert, El Paso, Pueblo, Las Animas Counties, Colorado and all Colorado Counties south and east thereof; all New Mexico counties except Taos County; Kansas; Missouri; Illinois; Indiana; Ohio; Pennsylvania; New York; Massachusetts; and all states south and east thereof.	September 30.	June 30.
Arizona; California; and Clark and Nye Counties, Nevada	October 31	June 30.
All Colorado counties except Kit Carson, Lincoln, Elbert, El Paso, Pueblo, and Las Animas Counties and all Colorado counties south and east thereof; all Nevada counties except Clark and Nye Counties; Taos County, New Mexico; and all other states except: Arizona, California, and (except) Kansas, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New York, and Massachusetts and all States south and east thereof.	March 15	November 30.

§ 407.11 Area risk protection insurance for corn.

The corn crop insurance provisions for Area Risk Protection Insurance for the 2014 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Area Risk Protection Insurance

Corn Crop Insurance Provisions

1. Definitions

Harvest. Combining or picking corn for grain or cutting for hay, silage, fodder, or earlage.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance Basic Provisions, corn seed that is broadcast and subsequently mechanically incorporated will not be considered planted.

2. Insured Crop

(a) The insured crop will be all field corn that is:

(1) Yellow dent or white corn, including mixed yellow and white, waxy or high-lysine corn, high-oil corn blends containing mixtures of at least 90 percent high yielding yellow dent female plants with high-oil male pollinator plants, or commercial varieties of high-protein hybrids.

(2) Grown on insurable acreage in the county listed on the accepted application;

(3) Properly planted by the final planting date and reported on or before the acreage reporting date;

(4) Planted with the intent to be harvested; and

(5) Not planted into an established grass or legume or interplanted with another crop.

(b) Corn other than that specified in section 2(a)(1) including but not limited to high-amylose, high-oil or high-protein (except as authorized in section 2(a)(1)), flint, flour, hybrid seed corn, Indian, or blue corn, or a variety genetically adapted to provide forage for wildlife or any other open pollinated corn may be insurable under this policy if specified in the Special Provisions:

(1) The insurability requirements in 2(a) apply to this other corn and additional requirements for insurability may be stated for this other corn in the Special Provisions; and

(2) This other corn will be insured using the yields, rates, and prices for field corn unless otherwise specified in the actuarial documents.

3. Payment Dates

(a) Unless otherwise specified in the Special Provisions the final county revenues and final county yields will be determined prior to April 16 following the crop year.

(b) If an indemnity is due, unless otherwise specified in the Special Provisions we will issue any payment to you prior to May 16 following the crop year and following the determination of the final county revenue or the final county yield, as applicable.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 31	November 30.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas Counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 15.	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina.	February 28.	November 30.
All other Texas counties and all other states	March 15	November 30.

§ 407.12 Area risk protection insurance for cotton.

The cotton crop insurance provisions for Area Risk Protection Insurance for the 2014 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Area Risk Protection Insurance

Cotton Crop Insurance Provisions

1. Definitions

Harvest. Removal of the seed cotton from the stalk.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance Basic Provisions, cotton seed broadcast and subsequently mechanically incorporated will not be considered planted.

2. Insured Crop

(a) The insured crop will be all upland cotton:

(1) Grown on insurable acreage in the county listed on the accepted application;

(2) Properly planted by the final planting date and reported on or before the acreage reporting date;

(3) Planted with the intent to be harvested.

(b) That is not (unless allowed by the Special Provisions):

(1) Colored cotton lint;

(2) Planted into an established grass or legume;

(3) Interplanted with another spring planted crop;

(4) Grown on acreage in which a hay crop was harvested in the same calendar year unless the acreage is irrigated; or

(5) Grown on acreage on which a small grain crop reached the heading stage in the same calendar year unless the acreage is irrigated or adequate measures are taken to terminate the small grain crop prior to heading and less than 50 percent of the small grain plants reach the heading stage.

(c) Cotton other than upland cotton may be insurable under this policy if specified in the Special Provisions:

(1) The insurability requirements in 2(a) apply to other cotton and additional requirements for insurability may be stated for other cotton in the Special Provisions; and

(2) Other cotton will be insured using the yields, rates, and prices for cotton unless otherwise specified in the actuarial documents.

3. Payment Dates

(a) Unless otherwise specified in the Special Provisions the final county revenues and final county yields will be determined prior to July 16 following the crop year.

(b) If an indemnity is due, unless otherwise specified in the Special Provisions we will issue any payment to you prior to August 15 following the crop year and following the determination of the final county revenue or the final county yield, as applicable.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 31	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28.	November 30.
All other Texas counties and all other States	March 15	November 30.

§ 407.13 Area risk protection insurance for forage.

The forage crop insurance provisions for Area Risk Protection Insurance for the 2014 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Area Risk Protection Insurance

Forage Crop Insurance Provisions

1. Definitions

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 the forage from the field, and rotational grazing.

Rotational grazing. The defoliation of the insured forage by livestock, within a pasturing system whereby the forage field is subdivided into smaller parcels and livestock are moved from one area to another, allowing a period of grazing followed by a period for forage regrowth.

2. Insured Crop

The insured crop will be the forage types shown on the actuarial documents:

(a) Grown on insurable acreage in the county listed on the accepted application;

(b) Properly planted by the final planting date and reported on or before the acreage reporting date;

(c) Intended for harvest; and

(d) Not grown with another crop.

3. Insurable Acreage

In addition to section 5 of the Area Risk Protection Insurance Basic Provisions, acreage seeded to forage after July 1 of the previous crop year will not be insurable.

4. Payment Dates

(a) Unless otherwise specified in the Special Provisions the final county yields will be determined prior to May 1 following the crop year.

(b) If an indemnity is due, unless otherwise specified in the Special Provisions we will issue any payment to you prior to May 31 following the crop year and following the determination of the final county yield.

5. Program Dates

November 30 is the cancellation and termination date for all states, or as specified in the Special Provisions. The contract change date is August 31 for all states, or as specified in the Special Provisions.

6. Annual Premium

In lieu of section 7(e) of the Area Risk Protection Insurance Basic Provisions, the annual premium is earned and payable on the acreage reporting date. You will be billed for premium due on the date shown in the actuarial documents. The premium will be determined based on the rate shown on the actuarial documents.

§ 407.14 Area risk protection insurance for peanuts

The peanut crop insurance provisions for Area Risk Protection Insurance for the 2014 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Area Risk Protection Insurance

Peanut Crop Insurance Provisions

1. Definitions

Harvest. The completion of digging and threshing and removal of peanuts from the field.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance 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.

2. Insured Crop

(a) The insured crop will be all peanuts:

(1) Grown on insurable acreage in the county listed on the accepted application;

(2) Properly planted by the final planting date and reported on or before the acreage reporting date;

(3) Planted with the intent to be harvested as peanuts; and

(4) Not planted into an established grass or legume or interplanted with another crop.

3. Payment Dates

(a) Unless otherwise specified in the Special Provisions the final county revenues and or final county yields will be determined prior to June 16 following the crop year.

(b) If an indemnity is due, unless otherwise specified in the Special Provisions we will issue any payment to you prior to July 16 and following the determination of the final county revenue or the final county yield, as applicable.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas and all Texas Counties lying south thereof.	January 15	November 30.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties south and east thereof; and all other states except New Mexico, Oklahoma, and Virginia.	February 28.	November 30.
New Mexico; Oklahoma; Virginia; and all other Texas Counties	March 15	November 30.

§ 407.15 Area risk protection insurance for grain sorghum.

The grain sorghum crop insurance provisions for Area Risk Protection Insurance for the 2014 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Area Risk Protection Insurance

Grain Sorghum Crop Insurance Provisions

1. Definitions

Harvest. Combining or threshing the sorghum for grain or cutting for hay, silage, or fodder.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance Basic Provisions, sorghum seed broadcast and subsequently mechanically incorporated will not be considered planted.

2. Insured Crop

(a) The insured crop will be all sorghum excluding hybrid sorghum seed:

(1) Grown on insurable acreage in the county listed on the accepted application;

(2) Properly planted by the final planting date and reported on or before the acreage reporting date;

(3) Planted with the intent to be harvested; and

(4) Not planted into an established grass or legume or interplanted with another crop.

(b) Other sorghum including hybrid sorghum seed may be insurable under this policy if specified in the Special Provisions:

(1) The insurability requirements in 2(a) apply to these other sorghum and additional requirements for insurability may be stated for these crops in the Special Provisions; and

(2) This other sorghum will be insured using the yields, rates, and prices for sorghum unless otherwise specified in the actuarial documents.

3. Payment Dates

(a) Unless otherwise specified in the Special Provisions the final county revenues and final county yields will be determined prior to April 16 following the crop year.

(b) If an indemnity is due, unless otherwise specified in the Special Provisions we will issue any payment to you prior to May 16 following the crop year and following the determination of the final county revenue or the final county yield, as applicable.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 31	November 30.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 15.	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina.	February 28.	November 30.
All other Texas counties and all other states	March 15	November 30.

§ 407.16 Area risk protection insurance for soybean.

The soybean crop insurance provisions for Area Risk Protection Insurance for the 2014 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Area Risk Protection Insurance

Soybean Crop Insurance Provisions

1. Definitions

Harvest. Combining or threshing the soybeans.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance Basic Provisions, land on which seed is initially spread onto the soil surface by any method and which subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth, will also be considered planted, unless specified otherwise in the Special Provisions.

2. Insured Crop

The insured crop will be all soybeans:

(a) Grown on insurable acreage in the county listed on the accepted application;

(b) Properly planted by the final planting date and reported on or before the acreage reporting date;

(c) Planted with the intent to be harvested; and

(d) Not planted into an established grass or legume or interplanted with another crop.

3. Payment Dates

(a) Unless otherwise specified in the Special Provisions final county revenues and final county yields will be determined prior to April 16 following the crop year.

(b) If an indemnity is due, unless otherwise specified in the Special Provisions we will issue any payment to you prior to May 16 following the crop year and following the determination of the final county revenue or the final county yield, as applicable.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas and all Texas counties lying south thereof.	January 31	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28.	November 30.
All other Texas counties and all other states	March 15	November 30.

§ 407.17 Area risk protection insurance for wheat.

The wheat crop insurance provisions for Area Risk Protection Insurance for the 2014 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Area Risk Protection Insurance

Wheat Crop Insurance Provisions

1. Definitions

Harvest. Combining or threshing the wheat for grain.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance Basic Provisions, land on which seed is initially spread onto the soil surface by any method and which subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will also be considered planted.

2. Insured Crop

The insured crop will be all wheat:

(a) Grown on insurable acreage in the county listed on the accepted application;

(b) Properly planted by the final planting date and reported on or before the acreage reporting date;

(c) Planted with the intent to be harvested;

(d) Not planted into an established grass or legume;

(e) Not interplanted with another crop; and

(f) Not planted as a nurse crop, unless seeded at the normal rate and intended for harvest as grain.

3. Payment Dates

(a) Unless otherwise specified in the Special Provisions the final county revenues and final county yields will be determined prior to April 1 following the crop year.

(b) If an indemnity is due, unless otherwise specified in the Special Provisions we will issue any payment to you prior to May 1 following the crop year and following the determination of the final county revenue or the final county yield, as applicable.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
All Colorado counties except Alamosa, Conejos, Costilla, Rio Grande, and Saguache; all Montana counties except Daniels and Sheridan Counties; all South Dakota counties except Corson, Walworth, Edmonds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton Counties and all South Dakota counties east thereof; all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie Counties; and all other states except Alaska, Arizona, California, Maine, Minnesota, Nevada, New Hampshire, North Dakota, Utah, and Vermont.	September 30.	June 30.
Arizona; California; Nevada; and Utah	October 31	June 30
Alaska; Alamosa, Conejos, Costilla, Rio Grande, and Saguache Counties, Colorado; Maine; Minnesota; Daniels and Sheridan Counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton Counties, South Dakota, and all South Dakota counties east thereof; Vermont; and Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.	March 15	November 30.

PARTS 408–411 [RESERVED]

PART 412—PUBLIC INFORMATION—FREEDOM OF INFORMATION

Sec.
412.1 General statement.
412.2 Public inspection and copying.
412.3 Index.
412.4 Requests for records.
412.5 Appeals.
412.6 Timing of responses to requests.

AUTHORITY: 5 U.S.C. 552 and 7 U.S.C. 1506.

SOURCE: 62 FR 67694, Dec. 30, 1997, unless otherwise noted.

§ 412.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture published at 7 CFR 1.1–1.23, and appendix A, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by this part, and the Risk Management Agency (RMA) govern availability of records of the Federal Crop Insurance Corporation (FCIC) as administration of the crop insurance program for FCIC.

§ 412.2 Public inspection and copying.

(a) Members of the public may request access to the information specified in § 412.2(d) for inspection and copying.

(b) To obtain access to specified information, the public should submit a written request, in accordance with 7 CFR 1.6, to the Appeals, Litigation and Legal Liaison Staff, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, SW, STOP 0807, room 6618–S, Washington, DC 20250–0807, from 9:00 a.m.-4:00 pm., EDT Monday through Friday, except holidays.

(c) When the information requested is not located at the office of the Appeals, Litigation and Legal Liaison Staff, the Appeals, Litigation and Legal Liaison Staff will direct the request to the appropriate office where the information can be obtained. The requester will be informed that the request has been forwarded to the appropriate office.

(d) FCIC will make available for inspection and copying, unless otherwise exempt from publication under sections 552(a)(2)(C) and 552(b):

(1) Final opinions, including concurring and dissenting opinions and orders made in the adjudication of cases; and

(2) Those statements of policy and interpretations that have been adopted by FCIC and RMA and are not published in the FEDERAL REGISTER; and

(3) Administrative staff manuals and instructions to staff that affect a member of the public.

§ 412.3 Index.

5 U.S.C. 552(a)(2) requires that each agency publish, or otherwise make available, a current index of all materials available for public inspection and copying. RMA and FCIC will maintain a current index providing identifying information for the public as to any material issued, adopted, or promulgated by the Agency since July 4, 1967, and required by section 552(a)(2). Pursuant to the Freedom of Information Act provisions, RMA and FCIC have determined that in view of the small number of public requests for such index, publication of such an index would be unnecessary and impracticable. Copies of the index will be available upon request in person or by mail at the address stated in § 412.2(b).

§ 412.4 Requests for records.

The Director of the Appeals, Litigation and Legal Liaison staff, RMA located at the above stated address, is the person authorized to receive Freedom of Information Act and to determine whether to grant or deny such requests in accordance with 7 CFR 1.8.

§ 412.5 Appeals.

Any person whose request under § 412.4 is denied shall have the right to appeal such denial. This appeal shall be submitted in accordance with 7 CFR 1.13 and addressed to the Manager, Federal Crop Insurance Corporation, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 0807, room 6618-S, Washington, DC 20250–0807.

§ 412.6 Timing of responses to requests.

(a) In general, FCIC will respond to requests according to their order of receipt.

(b) Existing responsive documents or information may be maintained in RMA's field offices. Therefore, extra time may be necessary to search and collect the documents.

PARTS 413–456 [RESERVED]

PART 457—COMMON CROP INSURANCE REGULATIONS

Sec.
457.1 Applicability.
457.2 Availability of Federal crop insurance.
457.3 Premium rates, production guarantees or amounts of insurance, coverage levels, and prices at which indemnities shall be computed.
457.4 OMB control numbers.
457.5 Creditors.
457.6 [Reserved]
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457.9 Appropriation contingency.
457.10–457.100 [Reserved]
457.101 Small grains crop insurance.
457.102 Wheat or barley winter coverage endorsement.
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457.106 Texas citrus tree crop insurance provisions.
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457.112 Hybrid sorghum seed crop insurance provisions.
457.113 Coarse grains crop insurance provisions.
457.114–457.115 [Reserved]
457.115 Nursery frost, freeze, and cold damage exclusion option.
457.116 Sugarcane crop insurance provisions.
457.117 Forage production crop insurance provisions.
457.118 Malting barley price and quality endorsement.
457.119 Texas citrus fruit crop insurance provisions.
457.120 [Reserved]
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457.123 Almond crop insurance provisions.
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457.125 Safflower crop insurance provisions.
457.126 Popcorn crop insurance provisions.
457.127 [Reserved]
457.128 Guaranteed production plan of fresh market tomato crop insurance provisions.
457.129 Fresh market sweet corn crop insurance provisions.
457.130 Madacamia tree crop insurance provisions.

457.131 Macadamia nut crop insurance provisions.
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457.133 Prune crop insurance provisions.
457.134 Peanut crop insurance provisions.
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457.136 Tobacco crop insurance provisions.
457.137 Green pea crop insurance provisions.
457.138 Grape crop insurance provisions.
457.139 Fresh market tomato (dollar plan) crop insurance provisions.
457.140 Dry pea crop insurance provisions.
457.141 Rice crop insurance provisions.
457.142 Northern potato crop insurance provisions.
457.143 Northern potato crop insurance—quality endorsement.
457.144 Northern potato crop insurance—processing quality endorsement.
457.145 Potato crop insurance—certified seed endorsement.
457.146 Northern potato crop insurance—storage coverage endorsement.
457.147 Central and Southern potato crop insurance provisions.
457.148 Fresh market pepper crop insurance provisions.
457.149 Table grape crop insurance provisions.
457.150 Dry bean crop insurance provisions.
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457.156–457.157 [Reserved]
457.158 Apple crop insurance provisions.
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457.173 Florida Avocado crop insurance provisions.
457.174 XXX

AUTHORITY: 7 U.S.C. 1506(l) and 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 county or of any individual application upon FCIC's determination that the insurance risk is excessive.

(c) If the producer had a Crop Revenue Coverage, Revenue Assurance, Income Protection, or Indexed Income Protection crop insurance policy in effect for the 2010 crop year and has not canceled or changed such coverage in accordance with such policy, revenue protection will continue in effect under the Common Crop Insurance Policy Basic Provisions and no new application is required. Revenue protection will be at the same coverage level, 100 percent of price, with any applicable options, endorsements, and enterprise or whole-farm unit structures that were in effect the previous year still in effect, as long as all qualifications are met and such coverage remains available.

(1) If the producer had revenue coverage under the Revenue Assurance crop insurance policy for the 2010 crop year and:

(i) The producer had the fall harvest price option, for the 2011 crop year the producer will have revenue protection under the Common Crop Insurance Policy Basic Provisions based on the greater of the projected price or the harvest price; or

(ii) The producer did not have the fall harvest price option, for the 2011 crop year the producer will have revenue protection under the Common Crop Insurance Policy Basic Provisions and the harvest price exclusion.

(2) If the producer had revenue coverage under the Income Protection or Indexed Income Protection crop insurance policy for the 2010 crop year, for the 2011 crop year the producer will have revenue protection under the Common Crop Insurance Policy Basic Provisions and the harvest price exclusion.

(3) If the producer has revenue protection under paragraph (c) of this section, the producer may exclude coverage for hail and fire if the requirements are met.

(d) If the producer had coverage under an Actual Production History crop insurance policy for a crop under the Common Crop Insurance Policy Basic Provisions for the 2010 crop year, and that crop now has revenue protection available, the producer will have yield protection for the crop under the Common Crop Insurance Policy Basic Provisions in effect for the 2011 crop year at the same coverage level, and percentage of price, any applicable options or endorsements, and enterprise unit structures that were in effect the previous year continue in effect, as long as all qualifications are met and such coverage remains available.

(e) If the producer had coverage under Actual Production History or another crop insurance policy for a crop under the Common Crop Insurance Policy Basic Provisions for the 2010 crop year and that crop does not have revenue protection available for the 2011 crop year, the producer will continue with the same crop insurance policy (*e.g.*, Actual Production History or

amount of insurance) until canceled or terminated.

(f) With respect to any crop insurance policy specified in paragraphs (c) through (e) of this section:

(1) The producer may change their coverage (coverage level, percent of price, *etc.*) in accordance with section 3 of the Common Crop Insurance Policy Basic Provisions or the producer may cancel such coverage in accordance with section 2 of the Common Crop Insurance Policy Basic Provisions. If the producer changes their crop insurance policy (*e.g.*, Actual Production History, yield protection, revenue protection, amount of insurance, *etc.*) for any crop year, the producer must elect the coverage level, percentage of price, any applicable options, endorsements, and unit structure (enterprise or whole-farm) that will be in effect under the new crop insurance policy.

(2) If a producer has a properly executed Power of Attorney on file with the insurance provider, such Power of Attorney will remain in effect under the Common Crop Insurance Policy Basic Provisions until it is terminated.

(3) If the producer has a current written agreement in effect for the crop for multiple crop years, such written agreement will remain in effect if the terms of the written agreement are still applicable, the conditions under which the written agreement was provided have not changed, and the crop insurance policy remains with the same insurance provider.

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's 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: (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 Commodity Exchange Price Provisions, as applicable; (4) the Crop Provisions; and (5) 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's 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: (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 Commodity Exchange Price Provisions, as applicable; (4) the Crop Provisions; and (5) 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 information for the crop year which is available for public inspection in your agent's office and published on RMA's Web site and which shows available crop insurance policies, coverage levels, information needed to determine amounts of insurance, prices, 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 Extension System 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 in writing, whereby you

assign your right to an indemnity payment for the crop year only to creditors or other persons to whom you have a financial debt or other pecuniary obligation.

Average yield. The yield calculated by totaling the yearly actual yields, assigned yields in accordance with sections 3(f)(1) (failure to provide production report), 3(h)(1) (excessive yields), and 3(i) (second crop planted without double cropping history on prevented planting acreage), and adjusted or unadjusted transitional yields, and dividing the total by the number of yields contained in the database.

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.

Beginning farmer or rancher. An individual who has not actively operated and managed a farm or ranch in any state, with an insurable interest in a crop or livestock as an owner-operator, landlord, tenant, or sharecropper for more than five crop years, as determined in accordance with FCIC procedures. Any crop year's insurable interest may, at your election, be excluded if earned while under the age of 18, while in full-time military service of the United States, or while in post-secondary education, in accordance with FCIC procedures. A person other than an individual may be eligible for beginning farmer or rancher benefits if all of the substantial beneficial interest holders qualify as a beginning farmer or rancher.

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 is not available with revenue protection.

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 that contains the information necessary to pay the indemnity, as specified in the applicable FCIC issued procedures, and complies with the requirements in section 14.

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.

Commodity Exchange Price Provisions (CEPP). A part of the policy that is used for all crops for which revenue protection is available, regardless of whether you elect revenue protection or yield protection for such crops. This document includes the information necessary to derive the projected price and the harvest price for the insured crop, as applicable.

Consent. Approval in writing by us allowing you to take a specific action.

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 that is necessary to produce an agricultural commodity, excluding organic farming practices.

Cooperative Extension System. A nationwide network consisting of a State office located at each State's land-grant university, and local or regional offices. These offices are staffed by one or more agricultural experts, who work in cooperation with the Cooperative State Research, Education and Extension Service, and who provide information to agricultural producers and others.

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. Has the same meaning as the term defined in 7 CFR part 400, subpart U.

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 same insured crop in the county in which you have a share on the date coverage begins for the crop year, provided the requirements of section 34 are met.

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 organic agricultural experts, 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 organic agricultural expertsfor 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.''

Harvest price. A price determined in accordance with the Commodity Exchange Price Provisions and used to value production to count for revenue protection.

Harvest price exclusion. Revenue protection with the use of the harvest price excluded when determining your revenue protection guarantee. This election is continuous unless canceled by the cancellation date.

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 interest. Your percentage of the insured crop that is at financial risk.

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.

Intended acreage report. A report of the acreage you intend to plant, by crop, for the current crop year and used solely for the purpose of establishing eligible prevented planting acreage, as required in section 17.

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. Your total amount of insurance, value of your production guarantee, or revenue protection guarantee for the unit determined in accordance with the Settlement of Claim provisions of the applicable Crop Provisions.

Limited resource farmer. Has the same meaning as the term defined by USDA at *http://www.lrftool.sc.egov.usda.gov/LRP-D.htm*.

Native sod. Acreage that has no record of being tilled (determined in accordance with information collected and maintained by an agency of the USDA or other verifiable records that you provide and are acceptable to us) for the production of an annual crop on or before February 7, 2014, and on which the plant cover is composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing.

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 experts. Persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education or the Cooperative Extension System, 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, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Insurance for each agricultural

commodity in each county will constitute a separate policy.

Practical to replant. Our determination, after loss or damage to the insured crop, based on all factors, including, but not limited to moisture availability, marketing window, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will be considered to be practical to replant regardless of availability of seed or plants, or the input costs necessary to produce the insured crop such as those that would be incurred for seed or plants, irrigation water, etc.

Premium billing date. The earliest date upon which you will be billed for insurance coverage based on your acreage report. The premium billing date is contained in the Special Provisions.

Prevented planting. Failure to plant the insured crop by the final planting date designated in the Special Provisions for the insured crop in the county, or within any applicable late planting period, due to an insured cause of loss that is general to the surrounding area and that prevents other producers from planting acreage with similar characteristics. Failure to plant because of uninsured causes such as lack of proper equipment or labor to plant the acreage, or use of a particular production method, is not considered prevented planting.

Price election. The amounts contained in the Special Provisions, or in 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. A price election is not applicable for crops for which revenue protection is available.

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 in accordance with section 3. The report contains yield information for previous years, including planted acreage and production. This report must be supported by written verifiable records from a warehouseman or buyer of the insured crop, by measurement of farm-stored production, or by other records of production approved by us on an individual case basis in accordance with FCIC approved procedures.

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.

Projected price. The price for each crop determined in accordance with the Commodity Exchange Price Provisions. The applicable projected price is used for each crop for which revenue protection is available, regardless of whether you elect to obtain revenue protection or yield protection for such crop.

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.

Revenue protection. A plan of insurance that provides protection against loss of revenue due to a production loss, price decline or increase, or a combination of both. If the harvest price exclusion is elected, the insurance coverage provides protection only against loss of revenue due to a production loss, price decline, or a combination of both.

Revenue protection guarantee (per acre). For revenue protection only, the amount determined by multiplying the production guarantee (per acre) by the greater of your projected price or your harvest price. If the harvest price exclusion is elected, the production guarantee (per acre) is only multiplied by your projected price.

RMA's Web site. A Web site hosted by RMA and located at *http://www.rma.usda.gov/or* a successor Web site.

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.

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.

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.

Share. Your insurable 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 (*e.g.*, 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). The spouse of any individual applicant or individual insured will be presumed 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 the applicable State dissolution of marriage laws. 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.

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.

Tilled. The termination of existing plants by plowing, disking, burning, application of chemicals, or by other means to prepare acreage for the production of an annual crop.

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.

Verifiable records. Has the same meaning as the term defined in 7 CFR part 400, subpart G.

Void. When the policy is considered not to have existed for a crop year.

Whole-farm unit. All insurable acreage of all the insured crops planted in the county in which you have a share on the date coverage begins for each crop for the crop year and for which the whole-farm unit structure is available in accordance with section 34.

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).

Yield protection. A plan of insurance that only provides protection against a production loss and is available only for crops for which revenue protection is available.

Yield protection guarantee (per acre). When yield protection is selected for a crop that has revenue protection available, the amount determined by multiplying the production guarantee by your projected price.

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. In accordance with section 4, FCIC may change the coverage provided from year to year.

(b) With respect to your application for insurance:

(1) You must include your social security number (SSN) if you are an individual (if you are an individual applicant operating as a business, you may provide an employer identification number (EIN) but you must also provide your SSN); or

(2) You must include your EIN if you are a person other than an individual;

(3) In addition to the requirements of section 2(b)(1) or (2), you must include the following for all persons who have a substantial beneficial interest in you:

(i) The SSN for individuals; or

(ii) The EIN for persons other than individuals and the SSNs for all individuals that comprise the person with the EIN if such individuals also have a substantial beneficial interest in you;

(4) You must include:

(i) Your election of revenue protection, yield protection, or other available plan of insurance; coverage level; percentage of price election or percentage of projected price, as applicable; crop, type, variety, or class; and any other material information required on the application to insure the crop; and

(ii) All the information required in section 2(b)(4)(i) or your application will not be accepted and no coverage will be provided;

(5) Your application will not be accepted and no insurance will be provided for the year of application if the application does not contain your SSN or EIN. If your application contains an incorrect SSN or EIN for you, your application will be considered not to have been accepted, no insurance will be provided for the year of application and for any subsequent crop years, as applicable, and such policies will be void if:

(i) Such number is not corrected by you; or

(ii) You correct the SSN or EIN but:

(A) You cannot prove that any error was inadvertent (Simply stating the error was inadvertent is not sufficient to prove the error was inadvertent); or

(B) It is determined that the incorrect number would have allowed you to obtain disproportionate benefits under the crop insurance program, you are determined to be ineligible for insurance or you could avoid an obligation or requirement under any State or Federal law;

(6) With respect to persons with a substantial beneficial interest in you:

(i) The insurance coverage for all crops included on your application will be reduced proportionately by the percentage interest in you of persons with a substantial beneficial interest in you (presumed to be 50 percent for spouses of individuals) if the SSNs or EINs of such persons are included on your application, the SSNs or EINs are correct, and the persons with a substantial beneficial interest in you are ineligible for insurance;

(ii) Your policies for all crops included on your application, and for all applicable crop years, will be void if the SSN or EIN of any person with a substantial beneficial interest in you is incorrect or is not included on your application and:

(A) Such number is not corrected or provided by you, as applicable;

(B) You cannot prove that any error or omission was inadvertent (Simply stating the error or omission was inadvertent is not sufficient to prove the error or omission was inadvertent); or

(C) Even after the correct SSN or EIN is provided by you, it is determined that the incorrect or omitted SSN or EIN would have allowed you to obtain disproportionate benefits under the crop insurance program, the person with a substantial beneficial interest in you is determined to be ineligible for insurance, or you or the person with a substantial beneficial interest in you could avoid an obligation or requirement under any State or Federal law; or

(iii) Except as provided in sections 2(b)(6)(ii)(B) and (C), your policies will not be voided if you subsequently provide the correct SSN or EIN for persons with a substantial beneficial interest in you and the persons are eligible for insurance;

(7) When any of your policies are void under sections 2(b)(5) or (6):

(i) You must repay any indemnity, prevented planting payment or replant payment that may have been paid for all applicable crops and crop years;

(ii) Even though the policies are void, you will still be required to pay an amount equal to 20 percent of the premium that you would otherwise be required to pay; and

(iii) If you previously paid premium or administrative fees, any amount in excess of the amount required in section 2(b)(7)(ii) will be returned to you;

(8) Notwithstanding any of the provisions in this section, if you certify to an incorrect SSN or EIN, or receive an indemnity, prevented planting payment or replant payment and the SSN or EIN was not correct, you may be subject to civil, criminal or administrative sanctions;

(9) If any of the information regarding persons with a substantial beneficial interest in you changes after the sales closing date for the previous crop year, you must revise your application by the sales closing date for the current crop year to reflect the correct information. However, if such information changed less than 30 days before the sales closing date for the current crop year, you must revise your application by the sales

closing date for the next crop year. If you fail to provide the required revisions, the provisions in section 2(b)(6) will apply; and

(10) If you are, or a person with a substantial beneficial interest in you is, not eligible to obtain a SSN or EIN, whichever is required, you must request an assigned number for the purposes of this policy from us:

(i) A number will be provided only if you can demonstrate you are, or a person with a substantial beneficial interest in you is, eligible to receive Federal benefits;

(ii) If a number cannot be provided for you in accordance with section 2(b)(10)(i), your application will not be accepted; or

(iii) If a number cannot be provided for any person with a substantial beneficial interest in you in accordance with section 2(b)(10)(i), the amount of coverage for all crops on the application will be reduced proportionately by the percentage interest of such person in you.

(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(e) (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; or

(C) The termination date for the crop year prior to the crop year in which a scheduled payment is due under a written payment agreement if you fail to pay the amount owed by any payment date in any agreement to pay the debt.

(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)(A), (B) or (D).

(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 (For policies for which the sales closing date is prior to the 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);

(B) For a policy with other amounts due, the termination date immediately following the date you have a delinquent debt (For policies for which the sales closing date is prior to the 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);

(C) For all other policies that are issued by us under the authority of the Act, the termination date that coincides with the termination date for the policy with the delinquent debt or, if there is no coincidental termination date, the termination date immediately following the date you become ineligible; or

(D) For execution of a written payment agreement 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 (for this purpose only, the crop year will start the day after the termination date and end on the next termination date, *e.g.*, if the termination date is November 30 and you fail to make a payment on November 15, 2011, your

policy will terminate on November 30, 2010, for the 2011 crop year).

(ii) For all policies terminated under sections 2(f)(2)(i)(A), (B), or (D), 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:

(A) The termination was in error;

(B) The Administrator of the Risk Management Agency, at his or her sole discretion, determines that the following are met:

(*1*) In accordance with 7 CFR part 400, subpart U and FCIC issued procedures, you provide documentation that your failure to pay your debt is due to an unforeseen or unavoidable event or an extraordinary weather event that created an impossible situation for you to make timely payment;

(*2*) You remit full payment of the delinquent debt owed to us or FCIC with your request submitted in accordance with section 2(f)(2)(iii)(B)(*3*); and

(*3*) You submit a written request for reinstatement of your policy to us no later than 60 days after the termination date or the missed payment date of a previously executed written payment agreement, or the due date specified in the notice to you of the amount due, if applicable.

(*i*) If authorization for reinstatement is granted, your policies will be reinstated effective at the beginning of the crop year for which you were determined ineligible, and you will be entitled to all applicable benefits under such policies, provided you meet all eligibility requirements and comply with the terms of the policy; and

(*ii*) There is no evidence of fraud or misrepresentation; or

(C) We determine that, in accordance with 7 CFR part 400, subpart U and FCIC issued procedures, the following are met:

(*1*) You can demonstrate:

(*i*) You made timely payment for the amount of premium owed but you inadvertently omitted some small amount, such as the most recent month's interest or a small administrative fee;

(*ii*) The amount of the payment was clearly transposed from the amount that was otherwise due (For example, you owed $832 but you paid $823); or

(*iii*) You made the full payment of the amount owed but the payment was delayed and postmarked by no more than 7 calendar days after the termination date or the missed payment date of a previously executed written payment agreement, or the due date specified in the notice to you of the amount due, as applicable.

(*2*) You remit full payment of the delinquent debt owed to us; and

(*3*) You submit a written request for reinstatement of your policy to us in accordance with 7 CFR part 400, subpart U and applicable procedures no later than 30 days after the termination date or the missed payment date of a previously executed written payment agreement, or the due date specified in the notice to you of the amount due, if applicable; and

(*4*) There is no evidence of fraud or misrepresentation.

(iv) A determination made in section 2(f)(2)(iii)(B) exhausts all administrative remedies for purposes of termination.

(3) To regain eligibility, you must:

(i) Repay the delinquent debt in full;

(ii) Execute a written payment agreement and make payments in accordance with the agreement (We will not enter into a written payment agreement with you if you have previously failed to make a scheduled payment under the terms of any other payment agreement with us or any other insurance provider); or

(iii) Have your debts discharged in bankruptcy.

(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 2011 crop year, if crop A, with a termination date of October 31, 2010, and crop B, with a termination date of March 15, 2011, 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, 2010, and crop A's policy is terminated as of that date. Crop B's policy does not terminate until March 15, 2011, and an indemnity for the 2010 crop year may still be owed. If you enter into a written payment agreement on September 25, 2011, the earliest date by which you can obtain crop insurance for crop A is to apply for crop insurance by the October 31, 2011, sales closing date and for crop B is to apply for crop insurance by the March 15, 2012, sales closing date. If you fail to make a payment that was scheduled to be made on April 1, 2012, your policy will terminate as of October 31, 2011, for crop A, and March 15, 2012, for crop B, and no indemnity, prevented planting payment or replant 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 have your debts discharged 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) In cases where there has been a death, disappearance, judicially declared incompetence, or dissolution of any insured person:

(1) If any married individual insured dies, disappears, or is judicially declared incompetent, the named insured on the policy will automatically convert to the name of the spouse if:

(i) The spouse was included on the policy as having a substantial beneficial interest in the named insured; and

(ii) The spouse has a share of the crop.

(2) The provisions in section 2(g)(3) will be applicable if:

(i) Any partner, member, shareholder, *etc.*, of an insured entity dies, disappears, or is judicially declared incompetent, and such event automatically dissolves the entity; or

(ii) An individual, whose estate is left to a beneficiary other than a spouse or left to the spouse and the criteria in section 2(g)(1) are not met, dies, disappears, or is judicially declared incompetent.

(3) If section 2(g)(2) applies and the death, disappearance, or judicially declared incompetence occurred:

(i) More than 30 days before the cancellation date, the policy is automatically canceled as of the cancellation date and a new application must be submitted; or

(ii) Thirty days or less before the cancellation date, or after the cancellation date, the policy will continue in effect through the crop year immediately following the cancellation date and be automatically canceled as of the cancellation date immediately following the end of the insurance period for the crop year, unless canceled by the cancellation date prior to the start of the insurance period:

(A) A new application for insurance must be submitted prior to the sales closing date for coverage for the subsequent crop year; and

(B) Any indemnity, replant payment or prevented planting payment will be paid to the person or persons determined to be beneficially entitled to the payment and such person or persons must comply with all policy provisions and pay the premium.

(4) If any insured entity is dissolved for reasons other than death, disappearance, or judicially declared incompetence:

(i) Before the cancellation date, the policy is automatically canceled as of the cancellation date and a new application must be submitted; or

(ii) On or after the cancellation date, the policy will continue in effect through the crop year immediately following the cancellation date and be automatically canceled as of the cancellation date immediately following the end of the insurance period for the crop year, unless canceled by the cancellation date prior to the start of the insurance period:

(A) A new application for insurance must be submitted prior to the sales closing date for coverage for the subsequent crop year; and

(B) Any indemnity, replant payment or prevented planting payment will be paid to the person or persons determined to be beneficially entitled to the payment and such person or persons must comply with all policy provisions and pay the premium.

(5) If section 2(g)(2) or (4) applies, a remaining member of the insured person or the beneficiary is required to report to us the death, disappearance, judicial incompetence, or other event that causes dissolution not later than the next cancellation date, except if section 2(g)(3)(ii) applies, notice must be provided by the cancellation date for the next crop year. If notice is not provided timely, the provisions of section 2(g)(2) or (4) will apply retroactive to the date such notice should have been provided and any payments made after the date the policy should have been canceled must be returned.

(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 other 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) With respect to the insurance choices:

(1) For all acreage of the insured crop in the county, unless one of the conditions in section 3(b)(2) exists, you must select the same:

(i) Plan of insurance (*e.g.*, yield protection, revenue protection, actual production history, amount of insurance, *etc.*);

(ii) Level of coverage (all catastrophic risk protection or the same level of additional coverage); and

(iii) Percentage of the available price election, or projected price for yield protection. For revenue protection, the percentage of price is specified in section 3(c)(2). If different prices are provided by type or variety, insurance will be based on the price provided for each type or variety and the same price percentage will apply to all types or varieties.

(2) You do not have to select the same plan of insurance, level of coverage or percentage of available price election or projected price if:

(i) 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; or

(ii) You have additional coverage for the crop in the county and the acreage has been designated as ''high-risk'' by FCIC. In such case, you will be able to exclude coverage for the high-risk land under the additional coverage policy and insure such acreage under a separate Catastrophic Risk Protection Endorsement, provided the Catastrophic Risk Protection Endorsement is obtained from the same insurance provider from which the additional coverage was obtained. If you have revenue protection and exclude high-risk land, the catastrophic risk protection coverage will be yield protection only for the excluded high-risk land.

(iii) You have additional coverage for the crop in the county, and the actuarial documents provide for separate coverage by irrigated and non-irrigated practices for the crop.

(A) You may select one coverage level for all irrigated acreage and one coverage level for all non-irrigated acreage. For example: You may choose a 65 percent coverage level for all irrigated acreage (corn irrigated practice) and an 80 percent coverage level for all non-irrigated acreage (corn non-irrigated practice).

(B) If the Crop Provisions allow the option to separately insure individual crop types or varieties, and the actuarial documents provide for separate coverage, you may select coverage levels by irrigated and non-irrigated practice for each separate type or variety.

(c) With respect to revenue protection, if available for the crop:

(1) You may change to another plan of insurance and change your coverage level or elect the harvest price exclusion by giving written notice to us not later than the sales closing date for the insured crop;

(2) Your projected price and harvest price will be 100 percent of the projected price and harvest price issued by FCIC;

(3) If the harvest price exclusion is:

(i) Not elected, your projected price is used to initially determine the revenue protection guarantee (per acre), and if the harvest price is greater than the projected price, the revenue protection guarantee (per acre) will be recomputed using your harvest price; or

(ii) Elected, your projected price is used to compute your revenue protection guarantee (per acre);

(4) Your projected price is used to calculate your premium, any replant payment, and any prevented planting payment; and

(5) If the projected price or harvest price cannot be calculated for the current crop year under the provisions contained in the Commodity Exchange Price Provisions:

(i) For the projected price:

(A) Revenue protection will not be provided and you will automatically be covered under the yield protection plan of insurance for the current crop year unless you cancel your coverage by the cancellation date or change your plan of insurance by the sales closing date;

(B) Notice will be provided on RMA's Web site by the date specified in the applicable projected price definition contained in the Commodity Exchange Price Provisions;

(C) The projected price will be determined by FCIC and will be released by the date specified in the applicable projected price definition contained in the Commodity Exchange Price Provisions; and

(D) Your coverage will automatically revert to revenue protection for the next crop year that revenue protection is available unless you cancel your coverage by the cancellation date or change your coverage by the sales closing date; or

(ii) For the harvest price:

(A) Revenue protection will continue to be available; and

(B) The harvest price will be determined and announced by FCIC.

(d) With respect to yield protection, if available for the crop:

(1) You may change to another plan of insurance and change your percentage of price and your coverage level by giving written notice to us not later than the sales closing date for the insured crop;

(2) The percentage of the projected price selected by you multiplied by the projected price issued by FCIC is your projected price that is used to compute the value of your production guarantee (per acre) and the value of the production to count; and

(3) Since the projected price may change each year, if you do not select a new percentage of the projected price on or before the

sales closing date, we will assign a percentage which bears the same relationship to the percentage that was in effect for the preceding year (*e.g.*, if you selected 100 percent of the projected price for the previous crop year and you do not select a new percentage for the current crop year, we will assign 100 percent for the current crop year).

(e) With respect to all plans of insurance other than revenue protection and yield protection (*e.g.*, APH, dollar amount plans of insurance, *etc.*):

(1) 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.

(i) You must select the additional price election or amount of insurance on or before the sales closing date for the insured crop.

(ii) These additional price elections or amounts of insurance will not be less than those available on the contract change date.

(iii) If you elect the additional price election or amount of insurance, any claim settlement and amount of premium will be based on your additional price election or amount of insurance.

(2) You may change to another plan of insurance or change your coverage level, amount of insurance or percentage of the price election, as applicable, for the following crop year by giving written notice to us not later than the sales closing date for the insured crop.

(3) Your amount of insurance will be the amount of insurance issued by FCIC multiplied by the coverage level percentage you elected. Your price election will be the price election issued by FCIC multiplied by the percentage of price you elected.

(4) Since the amount of insurance or price election may change each year, if you do not select a new amount of insurance or percentage of the price election on or before the sales closing date, we will assign an amount of insurance or percentage of the price election which bears the same relationship to the amount of insurance or percentage of the price election that was in effect for the preceding year (*e.g.*, if you selected 100 percent of the price election for the previous crop year and you do not select a new percentage of the price election for the current crop year, we will assign 100 percent of the price election for the current crop year).

(f) You must report all production of the crop (insured and uninsured) 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 or as specified in section 18:

(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.

(g) It is your responsibility to accurately report all information that is used to determine your approved yield.

(1) You must certify to the accuracy of this information on your production report.

(2) If you fail to accurately report any information or if you do not provide any required records, you will be subject to the provisions regarding misreporting contained in section 6(g), unless the information is corrected:

(i) On or before the production reporting date; or

(ii) Because the incorrect information was the result of our error or the error of someone from USDA.

(3) 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(f)(1) and 7 CFR part 400, subpart G for those crop years for which you do not have such records.

(4) At any time we discover you have misreported any material information used to determine your approved yield or your approved yield is not correct, the following actions will be taken, as applicable:

(i) We will correct your approved yield for the crop year such information is not correct, and all subsequent crop years;

(ii) We will correct the unit structure, if necessary;

(iii) Any overpaid or underpaid indemnity or premium must be repaid; and

(iv) You will be subject to the provisions regarding misreporting contained in section 6(g)(1), unless the incorrect information was the result of our error or the error of someone from USDA.

(h) In addition to any consequences in section 3(g), 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(f)(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);

(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;

(ii) The current year's insurable 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); and

(iii) We determine there is no valid agronomic basis to support the approved yield; 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.

(i) 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(i)(1) to the amount of appraised or harvested production for all of the insured planted acreage; and

(3) Dividing the total in section 3(i)(2) by the total number of acres in the unit.

(j) 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. If you elected a whole-farm unit, you may exclude hail and fire coverage only if allowed by the Special Provisions.

(k) 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.

(l) Notwithstanding any other provision, if you qualify as a beginning farmer or rancher and were previously involved in a farming or ranching operation, including involvement in the decision-making or physical involvement in the production of the crop or livestock on the farm, for any acreage obtained by you, you may receive a yield that is the higher of:

(1) The actual production history of the previous producer of the crop or livestock on the acreage you were previously involved with; or

(2) Your actual production history.

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, price elections or the Commodity Exchange Price Provisions, if applicable, can be viewed on RMA's Web site not later than the contract change date contained in the Crop Provisions (except as allowed herein or as specified in section 3). We may only revise this information after the contract change date to correct clear errors (*e.g.*, the price for oats 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, Crop Provisions, Commodity Exchange Price Provisions, if applicable, and Special Provisions not later than 30 days prior to the cancellation date for the insured crop. If available from us, you may elect to receive these documents and changes electronically. Acceptance of the changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

5. Exclusion of Yields.

If provided in the actuarial documents, you may elect to exclude any actual yield for any crop year when FCIC determines for a county, or its contiguous counties, the per planted acre yield was at least 50 percent below the simple average of the per acre planted yield for the crop in the county for the previous 10 consecutive crop years.

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) The amount of acreage of the crop in the county (insurable and not insurable) in which you have a share and the date the insured crop was planted on the unit as follows:

(i) The last date any timely planted acreage was planted and the number of acres planted by such date; and

(ii) The date of planting and the number of acres planted per day for acreage planted during the late planting period (If you fail to report the number of acres planted on a daily basis, all acreage planted in the late planting period will be presumed to have been planted on the last day planting took place in the late planting period for the purposes of section 16);

(2) Your share at the time coverage begins;

(3) The practice;

(4) The type; and

(5) The land identifier for the crop acreage (*e.g.*, legal description, FSA farm serial number or common land unit number if provided to you by FSA, *etc.*) as required on our form.

(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:

(i) On or before the acreage reporting date, you can change any information on any initially submitted acreage report, except as

provided in section 6(d)(2)(iii) (*e.g.*, you can correct the reported share, add acreage of the insured crop that was prevented from being planted, *etc.*);

(ii) After the acreage reporting date, you cannot revise any information on the acreage report (*e.g.*, if you have failed to report prevented planting acreage on or before the acreage reporting date, you cannot revise it after the acreage reporting date to include prevented planting acreage) but we will revise information that is clearly transposed or if you provide adequate evidence that we or someone from USDA have committed an error regarding the information on your acreage report; and

(iii) You cannot revise your initially submitted acreage report at any time to change the insured crop, or type, that was reported as prevented from being planted;

(3) You may request an acreage measurement from FSA or a business that provides such measurement service prior to the acreage reporting date, submit documentation of such request and an acreage report with estimated acreage by the acreage reporting date, and if the acreage measurement shows the estimated acreage was incorrect, we will revise your acreage report to reflect the correct acreage:

(i) If an acreage measurement is only requested for a portion of the acreage within a unit, you must separately designate the acreage for which an acreage measurement has been requested;

(ii) If an acreage measurement is not provided to us by the time we receive a notice of loss, we may:

(A) Defer finalization of the claim until the measurement is completed, and:

(*1*) Make all necessary loss determinations, except the acreage measurement; and

(*2*) Finalize the claim in accordance with applicable policy provisions after you provide the acreage measurement to us (If you fail to provide the measurement, your claim will not be paid); or

(B) Elect to measure the acreage, and:

(*1*) Finalize your claim in accordance with applicable policy provisions; and

(*2*) Estimated acreage under this section will not be accepted from you for any subsequent acreage report; and

(iii) Premium will still be due in accordance with sections 2(e) and 7. If the acreage is not measured as specified in section 6(d)(3)(ii) and the acreage measurement is not provided to us at least 15 days prior to the premium billing date, your premium will be based on the estimated acreage and will be revised, if necessary, when the acreage measurement is provided. If the acreage measurement is not provided by the termination date, you will be precluded from providing any estimated acreage for all subsequent crop years.

(4) 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

(5) If the acreage report has been revised in accordance with section 6(d)(1), (2), or (3), 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) Except as provided in section 6(g)(2), 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) If your share is misreported and the share is:

(i) Under-reported, any claim will be determined using the share you reported; or

(ii) Over-reported, any claim will be determined using the share we determine to be correct.

(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 your price election or your projected price, as applicable, 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 your 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 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 beginning farmer or rancher;

(ii) You qualify as a limited resource farmer; or

(iii) 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) 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).

(g) If you qualify as a beginning farmer or rancher, your premium subsidy will be 10 percentage points greater than the premium subsidy that you would otherwise receive, unless otherwise specified in the Special Provisions.

(h) Effective for any policies with a sales closing date on or after July 1, 2015, you will be ineligible for any premium subsidy paid on your behalf by FCIC for any policy issued by us if:

(1) USDA determines you have committed a violation of the highly erodible land conservation or wetland conservation provisions of 7 CFR part 12 as amended by the Agricultural Act of 2014; or

(2) You have not filed form AD–1026, or successor form, with FSA by June 1 prior to the sales closing date to be properly identified as in compliance with the applicable conservation provisions specified in section 7(h)(1).

(i) Notwithstanding section 7(h)(2), if you demonstrate you are a beginning farmer or rancher who has not previously had an insurable interest in a crop or livestock and began farming for the first time after June 30 prior to the sales closing date, you fail to file form AD–1026 or successor form with the FSA, by June 1 after you make application for insurance.

(ii) To be eligible for premium subsidy paid on your behalf by FCIC, it is your responsibility to assure you meet all the requirements for:

(A) Compliance with the conservation provisions specified in section 7(h)(1) of this section; and

(B) Filing form AD–1026, or successor form, to be properly identified as in compliance with the conservation provisions specified in section 7(h)(1) of this section.

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 non-irrigated 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, amount of insurance, projected price and harvest price, as applicable, premium rate, *etc.*) is not included in the actuarial documents, unless such information is provided by a written agreement in accordance with section 18;

(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) All acreage planted to the insured crop in the county in which you have a share:

(1) Except as provided in section 9(a)(2), is insurable if the acreage has been planted and harvested or insured (including insured acreage that was prevented from being planted) in any one of the three previous crop years. Acreage that has not been planted and harvested (grazing is not considered harvested for the purposes of section 9(a)(1)) or insured in at least one of the three previous crop years may still be insurable if:

(i) Such acreage was not planted:

(A) In at least two of the three previous crop years to comply with any other USDA program;

(B) Due to the crop rotation, the acreage would not have been planted in the previous three years (*e.g.*, a crop rotation of corn, soybeans, and 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 on the acreage in at least two of the previous three crop years;

(ii) Such acreage constitutes five percent or less of the insured planted acreage in the unit;

(iii) Such acreage was not planted or harvested because it was pasture or rangeland, the crop to be insured is also pasture or rangeland, and the Crop Provisions, Special Provisions, or a written agreement specifically allow insurance for such acreage; or

(iv) The Crop Provisions, Special Provisions, or a written agreement specifically allow insurance for such acreage; or

(2) Is not insurable if:

(i) The only crop that has been planted and harvested on the acreage in the three previous crop years is a cover, hay (except wheat harvested for hay) or forage crop (except insurable silage). However, such acreage may be insurable only if:

(A) The crop to be insured is a hay or forage crop and the Crop Provisions, Special Provisions, or a written agreement specifically allow insurance for such acreage; or

(B) The hay or forage crop was part of a crop rotation;

(ii) The acreage has been strip-mined. However, such acreage may be insurable only if:

(A) An agricultural commodity, other than a cover, hay (except wheat harvested for hay), or forage crop (except insurable silage) has been harvested from the acreage for at least five crop years after the strip-mined land was reclaimed; or

(B) A written agreement specifically allows insurance for such acreage;

(iii) The actuarial documents do not provide the information necessary to determine the premium rate, unless insurance is allowed by a written agreement;

(iv) The insured crop is damaged and it is practical to replant the insured crop, but the insured crop is not replanted;

(v) The acreage is interplanted, unless insurance is allowed by the Crop Provisions;

(vi) The acreage is otherwise restricted by the Crop Provisions or Special Provisions;

(vii) The acreage is planted in any manner other than as specified in the policy provisions for the crop unless a written agreement specifically allows insurance for such planting;

(viii) The acreage is 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 (*e.g.*, 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:

(A) 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 or successor provisions (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;

(B) 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

(C) You must report the crop acreage that will not be insured on the applicable acreage report; or

(ix) The acreage is 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 organic agricultural experts 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:

(A) You must provide records acceptable to us that show:

(*1*) 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

(*2*) The applicable acreage has had three or more crops produced and harvested on it in the same crop year in at least two of the last four years in which the insured crop was grown on the acreage; and

(B) 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)(2)(ix)(A).

(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 a premium rate is not provided for an irrigated practice, you may either report and insure the irrigated acreage as ''non-irrigated,'' or report the irrigated acreage as not insured (If you elect to insure such acreage under a non-irrigated practice, your irrigated yield will only be used to determine your approved yield if you continue to use a good irrigation practice. If you do not use a good irrigation practice, you will receive a yield determined in accordance with section 3(h)(3)).

(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) Except as provided in section 9(f), in the states of Iowa, Minnesota, Montana, Nebraska, North Dakota, or South Dakota, during the first four crop years of planting on native sod acreage that has been tilled and is planted to an annual crop after February 7, 2014, such acreage may be insured if the requirements of section 9(a) have been met but will:

(1) Notwithstanding the provisions in section 3 regarding your production guarantee, receive a production guarantee (per acre) that is based on 65 percent of the transitional yield for the county; and

(2) For additional coverage policies, receive a premium subsidy that is 50 percentage points less than would otherwise be provided on acreage not qualifying as native sod. If the premium subsidy applicable to these acres is less than 50 percent before the reduction, you will receive no premium subsidy.

(f) Section 9(e) is not applicable to areas of native sod acreage that is five acres or less in the county.

10. Share Insured

(a) Insurance will attach:

(1) Only if the person completing the application has a share in the insured crop; and

(2) Only to that person's share, except that insurance may attach to another person's share of the insured crop if the other person has a share of the crop and:

(i) The application clearly states the insurance is requested for a person other than an individual (*e.g.*, a partnership or a joint venture); or

(ii) The application clearly states you as a landlord will insure your tenant's share, or you as a tenant will insure your landlord's share. If you as a landlord will insure your tenant's share, or you as a tenant will insure your landlord's share, you must provide evidence of the other party's approval (lease, power of attorney, *etc.*) and such evidence will be retained by us:

(A) You also must clearly set forth the percentage shares of each person on the acreage report; and

(B) For each landlord or tenant, you must report the landlord's or tenant's social security number, employer identification number, or other identification number we assigned for the purposes of this policy, as applicable.

(b) With respect to your share:

(1) We will consider to be included in your share under your policy, any acreage or interest reported by or for:

(i) Your spouse, unless such spouse can prove he/she has a separate farming operation, which includes, but is not limited to, separate land (transfers of acreage from one spouse to another is not considered separate land), separate capital, separate inputs, separate accounting, and separate maintenance of proceeds; or

(ii) Your child who resides in your household or any other member of your household, unless such child or other member of the household can demonstrate such person has a separate share in the crop (Children who do not reside in your household are not included in your share); and

(2) If it is determined that the spouse, child or other member of the household has a separate policy but does not have a separate farming operation or share of the crop, as applicable:

(i) The policy for one spouse or child or other member of the household will be void and the policy remaining in effect will be determined in accordance with section 22(a)(1) and (2);

(ii) The acreage or share reported under the policy that is voided will be included under the remaining policy; and

(iii) No premium will be due and no indemnity will be paid for the voided policy.

(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 on each unit or part of a unit at the earliest of:

(1) Total destruction of the insured crop;

(2) Harvest of the insured crop;

(3) Final adjustment of a loss on a unit;

(4) The calendar date contained in the Crop Provisions or Special Provisions for the end of the insurance period;

(5) Abandonment of the insured crop; or

(6) As otherwise specified in the Crop Provisions.

(c) Except as provided in the Crop Provisions or applicable endorsement, in addition to the requirements of section 11(b), coverage ends on any acreage within a unit once any event specified in section 11(b) occurs on that acreage. Coverage only remains in effect on acreage that has not been affected by an event specified in section 11(b).

12. Causes of Loss

Insurance is provided only to protect against unavoidable, naturally occurring events. A list of the covered naturally occurring events is contained in the applicable Crop Provisions. All other causes of loss, including but not limited to the following, are not covered:

(a) Any act by any person that affects the yield, quality or price of the insured crop (*e.g.*, chemical drift, fire, terrorism, *etc.*);

(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, or the inability to prepare the land for irrigation using your established irrigation method (*e.g.*, furrow irrigation), unless the failure, breakdown or inability is due to a cause of loss specified in the Crop Provisions.

(1) 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.

(2) 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). If the crops to be replanted are in a whole-farm unit, the 20 acres or 20 percent requirement is to be applied separately to each crop to be replanted in the whole-farm unit.

(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:

(1) The lesser of your actual cost for replanting or the amount specified in the Crop Provisions or Special Provisions; or

(2) If the Crop Provisions or Special Provisions specify that your actual cost will not be used to determine your replant payment, the amount determined in accordance with the Crop Provisions or Special 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 the case of damage or loss of production or revenue to any insured crop, you must protect the crop from further damage by providing sufficient care.

(b) Notice provisions:

(1) For a planted crop, when there is damage or loss of production, you must give us notice, by unit, within 72 hours of your initial discovery of damage or loss of production (but not later than 15 days after the end of the insurance period, even if you have not harvested the crop).

(2) For crops for which revenue protection is elected, if there is no damage or loss of production, you must give us notice not later than 45 days after the latest date the harvest price is released for any crop in the unit where there is a revenue loss.

(3) In the event you are prevented from planting an insured crop that has prevented planting coverage, you must notify us within 72 hours after:

(i) 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

(ii) You determine you will not be able to plant the insured crop within any applicable late planting period.

(4) 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.

(5) If you fail to comply with these notice requirements, any loss or prevented planting claim will be considered solely due to an uninsured cause of loss for the acreage for which such failure occurred, unless we determine that we have the ability to accurately adjust the loss. If we determine that we do not have the ability to accurately adjust the loss:

(i) For any prevented planting claim, no prevented planting coverage will be provided and no premium will be owed or prevented planting payment will be paid; or

(ii) For any claim for indemnity, no indemnity will be paid but you will still be required to pay all premiums owed.

(c) Representative samples:

(1) If representative samples are required by the Crop Provisions, you must leave representative samples of the unharvested crop intact:

(i) If you report damage less than 15 days before the time you will begin harvest or during harvest of the damaged unit; or

(ii) At any time when required by us.

(2) The samples must be left intact until we inspect them or until 15 days after completion of harvest on the remainder of the unit, whichever is earlier.

(3) 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 rows, if the crop is planted in rows, or if the crop is not planted in rows, the longest dimension of the field.

(4) 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.

(d) Consent:

(1) You must obtain consent from us before, and notify us after you:

(i) Destroy any of the insured crop that is not harvested;

(ii) Put the insured crop to an alternative use;

(iii) Put the acreage to another use; or

(iv) Abandon any portion of the insured crop.

(2) We will not give consent for any of the actions in section 14(d)(1)(i) through (iv) if it is practical to replant the crop or until we have made an appraisal of the potential production of the crop.

(3) Failure to obtain our consent will result in the assignment of an amount of production or value to count in accordance with the Settlement of Claim provisions of the applicable Crop Provisions.

(e) Claims:

(1) Except as otherwise provided in your policy, you must submit a claim declaring the amount of your loss by the dates shown in section 14(e)(3), unless you:

(i) Request an extension in writing by such date and we agree to such request (Extensions will only be granted if the amount of the loss can not be determined within such time period because the information needed to determine the amount of the loss is not available); or

(ii) Have harvested farm-stored grain 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).

(A) For policies that require APH, if such extension continues beyond the date you are required to submit your production report, you will be assigned the previous year's approved yield as a temporary yield in accordance with applicable procedures.

(B) Any extension does not extend any date specified in the policy by which premiums, administrative fees, or other debts owed must be paid.

(C) Damage that occurs after the end of the insurance period (for example, while the harvested crop production is in storage) is not covered; and

(2) Failure to timely submit a claim or provide the required information necessary to determine the amount of the claim will result in no indemnity, prevented planting payment or replant payment:

(i) Even though no indemnity or replant payment is due, you will still be required to pay the premium due under the policy for the unit; or

(ii) Failure to timely submit a prevented planting claim will result in no prevented planting coverage and no premium will be due.

(3) You must submit a claim not later than:

(i) For policies other than revenue protection, 60 days after the date the insurance period ends for all acreage in the unit (When there is acreage in the unit where the insurance period ended on different dates, it is the last date the insurance period ends on the unit. For example, if a unit has corn acreage that was put to another use on July 15 and corn acreage where harvest was completed on September 30, the claim must be submitted not later than 60 days after September 30); or

(ii) For revenue protection, the later of:

(A) 60 days after the last date the harvest price is released for any crop in the unit; or

(B) The date determined in accordance with section 14(e)(3)(i).

(4) To receive any indemnity (or receive the rest of an indemnity in the case of acreage that is planted to a second crop), prevented planting payment or replant payment, you must, if applicable:

(i) Provide:

(A) A complete harvesting, production, and marketing record of each insured crop by unit including separate records showing the same information for production from any acreage not insured.

(B) Records as indicated below if you insure any acreage that may be subject to an indemnity reduction as specified in section 15(e)(2):

(*1*) Separate records of production from such acreage for all insured crops planted on the acreage (*e.g.*, 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 separate records for such acreage, we will allocate the production of each crop to the acreage in proportion to our liability for the acreage; or

(*2*) If there is no loss on the unit that includes acreage of the second crop, no separate records need to be submitted for the second crop and you can receive the rest of the indemnity for the first insured crop.

(C) Any other information we may require to settle the claim.

(ii) Cooperate with us in the investigation or settlement of the claim, and, as often as we reasonably require:

(A) Show us the damaged crop;

(B) Allow us to remove samples of the insured crop; and

(C) Provide us with records and documents we request and permit us to make copies.

(iii) Establish:

(A) The total production or value received for the insured crop on the unit;

(B) That any loss occurred during the insurance period;

(C) That the loss was caused by one or more of the insured causes specified in the Crop Provisions; and

(D) That you have complied with all provisions of this policy.

(iv) Upon our request, or that of any USDA employee authorized to conduct investigations of the crop insurance program, submit to an examination under oath.

(5) Failure to comply with any requirement contained in section 14(e)(4) will result in denial of the claim and any premium will still be owed, unless the claim denied is for prevented planting.

Our Duties—

(f) 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.

(g) 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.

(h) 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.

(i) We recognize and apply the loss adjustment procedures established or approved by the Federal Crop Insurance Corporation.

(j) For revenue protection, we may make preliminary indemnity payments for crop production losses prior to the release of the harvest price if you have not elected the harvest price exclusion.

(1) First, we may pay an initial indemnity based upon your projected price, in accordance with the applicable Crop Provisions provided that your production to count and share have been established; and

(2) Second, after the harvest price is released, and if it is not equal to the projected price, we will recalculate the indemnity payment and pay any additional indemnity that may be due.

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 (If you fail to provide verifiable records of harvested production, no indemnity will be paid and you will be required to return any previously paid indemnity for the unit that was based on an appraised amount of 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 our form used to exclude fire and hail.

(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 cultural experts 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).

(1) If the records you provided are from acreage you double cropped in at least two of the last four crop years, you may apply your history of double cropping to any acreage of the insured crop in the county (*e.g.*, if you have double cropped 100 acres of wheat and

soybeans in the county and you acquire an additional 100 acres in the county, you can apply that history of double cropped acreage to any of the 200 acres in the county as long as it does not exceed 100 acres); or

(2) If the records you provided are from acreage that another producer double cropped in at least two of the last four crop years, you may only use the history of double cropping for the same physical acres from which double cropping records were provided (*e.g.*, if a neighbor has double cropped 100 acres of wheat and soybeans in the county and you acquire your neighbor's 100 double cropped acres and an additional 100 acres in the county, you can only apply your neighbor's history of double cropped acreage to the same 100 acres that your neighbor double cropped).

(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 are prevented from planting the insured crop on insurable acreage by an insured cause of loss 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 on your acreage report any insurable acreage of the insured crop that was prevented from being planted; and

(3) You did not plant the insured crop during or after the late planting period. Acreage planted to the insured crop during or after the late planting period 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 cannot increase your elected or assigned prevented planting coverage level for any crop year if a cause of loss that could prevent planting (even though it is not known whether such cause will actually prevent planting) has occurred during the prevented planting insurance period specified in section 17(a)(1)(i) or (ii) and prior to your request 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 the 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) Prevented planting coverage will be provided against:

(1) Drought, failure of the irrigation water supply, failure or breakdown of irrigation equipment or facilities, or the inability to prepare the land for irrigation using your established irrigation method, due to an insured cause of loss only if, on the final planting date (or within the late planting period if you elect to try to plant the crop), you provide documentation acceptable to us to establish:

(i) 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. The documentation for prolonged period of dry weather 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

(ii) For irrigated acreage:

(A) Due to an insured cause of loss, there is not a reasonable expectation of having adequate water to carry out an irrigated practice or you are unable to prepare the land for irrigation using your established irrigation method:

(*1*) If you knew or had reason to know on the final planting date or during the late planting period that your water will be reduced, no reasonable expectation exists; and

(*2*) Available water resources will be verified using information from State Departments of Water Resources, U.S. Bureau of Reclamation, Natural Resources Conservation Service or other sources whose business includes collection of water data or regulation of water resources; or

(B) The irrigation equipment or facilities have failed or broken down if such failure or breakdown is due to an insured cause of loss specified in section 12(d).

(2) Causes other than drought, failure of the irrigation water supply, failure or breakdown of the irrigation equipment or facilities, or your inability to prepare the land for irrigation using your established irrigation method, provided the cause of loss is specified in the Crop Provisions. However, if it is possible for you to plant on or prior to the final planting date when other producers in the area are planting and you fail to plant, no prevented planting payment will be made.

(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 as follows:

(i) If you have planted any crop in the county for which prevented planting insurance was available (you will be considered to have planted if your APH database contains actual planted acres) or have received a prevented planting insurance guarantee in any one or more of the four most recent crop years, and the insured crop is not required to be contracted with a processor to be insured:

(A) The number of eligible acres will be the maximum number of acres certified for APH purposes, or insured acres reported, for the crop in any one of the four 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)).

(B) If you acquire additional land for the current crop year, the number of eligible acres determined in section 17(e)(1)(i)(A) 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:

(*1*) You submit proof to us that you acquired additional acreage for the current crop year by any of the methods specified in section 17(f)(12);

(*2*) The additional acreage was acquired in time to plant it for the current crop year using good farming practices; and

(*3*) No cause of loss has occurred at the time you acquire the acreage that may prevent planting (except acreage you lease the previous year and continue to lease in the current crop year).

(C) If you add adequate irrigation facilities to your existing non-irrigated acreage or if

you acquire additional land for the current crop year that has adequate irrigation facilities, the number of eligible acres determined in section 17(e)(1)(i)(A) for irrigated acreage of a crop may be increased by multiplying it by the ratio of the total irrigated acres that you are farming this year (if greater) to the total irrigated acres that you farmed in the previous year, provided the conditions in sections 17(e)(1)(i)(B)(*1*), (*2*) and (*3*) are met. If there were no irrigated acres in the previous year, the eligible irrigated acres for a crop will be limited to the lesser of the number of eligible non-irrigated acres of the crop or the number of acres on which adequate irrigation facilities were added.

(ii) If you have not planted any crop in the county for which prevented planting insurance was available (you will be considered to have planted if your APH database contains actual planted acres) or have not received a prevented planting insurance guarantee in all of the four most recent crop years, and the insured crop is not required to be contracted with a processor to be insured:

(A) The number of eligible acres will be:

(*1*) The number of acres specified on your intended acreage report, which must be submitted to us by the sales closing date for all crops you insure for the crop year and that is accepted by us; or

(*2*) The number of acres specified on your intended acreage report, which must be submitted to us within 10 days of the time you acquire the acreage and that is accepted by us, if, on the sales closing date, you do not have any acreage in a county and you subsequently acquire acreage through a method described in section 17(f)(12) in time to plant it using good farming practices.

(B) The total number of acres listed on the intended acreage report may not exceed the number of acres of cropland in your farming operation at the time you submit the intended acreage report.

(C) If you acquire additional acreage after we accept your intended acreage report, the number of acres determined in section 17(e)(1)(ii)(A) may be increased in accordance with section 17(e)(1)(i)(B) and (C).

(D) Prevented planting coverage will not be provided for any acreage included on the intended acreage report or any increased amount of acreage determined in accordance with section 17(e)(1)(ii)(C) if a cause of loss that may prevent planting occurred before the acreage was acquired, as determined by us.

(iii) For any crop that must be contracted with a processor to be insured:

(A) The number of eligible acres will be:

(*1*) 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;

(*2*) 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 (for the purposes of establishing the number of prevented planting acres, any reductions applied to the transitional yield for failure to certify acreage and production for four prior years will not be used); or

(*3*) Notwithstanding sections 17(e)(1)(iii)(A)(*1*) and (*2*), 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.

(B) 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 will determine the number of eligible acres based on the number of acres or amount of production you had contracted in the county 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 will be based on the contract price in place for 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.

(2) Any eligible acreage determined in accordance with 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 (If the crop is in a whole-farm unit, the 20 acre or 20 percent requirement will be applied separately to each crop in the whole-farm unit). 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 unless:

(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 (*e.g.*, where rotation requirements would not be met or you already planted the total number of acres specified in the processor contact);

(2) For which the actuarial documents do not provide the information needed to determine the 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, excluding share arrangements, unless:

(i) It is a practice that is generally recognized by agricultural experts or organic agricultural experts in the area to plant the insured crop for harvest following harvest of the first insured crop, and additional coverage insurance offered under the authority of the Act is available in the county for both crops in the same crop year;

(ii) For the insured crop that is prevented from being planted, you provide records acceptable to us of acreage and production that show, in at least two of the last four crop years:

(A) You have double cropped acreage on which the insured crop that is prevented from being planted in the current crop year was grown (You may apply your history of double cropping to any acreage of the insured crop in the county (*e.g.*, if you have double cropped 100 acres of wheat and soybeans in the county and you acquire an additional 100 acres in the county, you can apply that history of double cropped acreage to any of the 200 acres in the county as long as it does not exceed 100 acres)); or

(B) The acreage you are prevented from planting in the current crop year was double cropped with the insured crop that is prevented from being planted (You may only use the history of double cropping for the same physical acres from which double cropping records were provided (*e.g.*, if a neighbor has double cropped 100 acres of wheat and soybeans in the county and you acquire your neighbor's 100 double cropped acres and an additional 100 acres in the county, you can only apply your neighbor's history of double cropped acreage to the same 100 acres that your neighbor double cropped)); and

(iii) The amount of acreage you are double cropping in the current crop year does not exceed the number of acres for which you provided the records required in section 17(f)(4)(ii);

(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 the acreage would have remained fallow for crop rotation purposes or on which any pasture or forage crop is in place on the acreage during the time planting of the insured crop generally occurs in the area. Cover plants that are seeded, transplanted, or that volunteer:

(i) More than 12 months prior to the final planting date for the insured crop that was prevented from being planted will be considered pasture or a forage crop that is in place (*e.g.*, the cover crop is planted 15 months prior to the final planting date and remains in place during the time the insured crop would normally be planted); or

(ii) Less than 12 months prior to the final planting date for the insured crop that was prevented from being planted will not be considered pasture or a forage crop that is in place;

(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 (including, but not limited to, sufficient equipment and manpower) available to plant and produce a crop with the expectation of producing at least the yield used to determine your production guarantee or amount of insurance. Evidence that you previously had planted the crop on the unit will be considered adequate proof unless:

(i) There has been a change in the availability of inputs since the crop was last planted that could affect your ability to plant and produce the insured crop;

(ii) We determine you have insufficient inputs to plant the total number of insured

crop acres (*e.g.*, you will not receive a prevented planting payment if you have sufficient inputs to plant only 80 acres but you have already planted 80 acres and are claiming prevented planting on an additional 100 acres); or

(iii) Your planting practices or rotational requirements show 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:

(i) Types for which separate projected prices or price elections, as applicable, 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 (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)(ii) or (iii); and

(ii) 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 may 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), we will use acreage from another crop insured for the current crop year for which you have remaining eligible prevented planting acreage.

(1) The crop first used for this purpose will be the insured crop that would have a prevented planting payment most similar to the payment for the crop that was prevented from being planted.

(i) If there are still insufficient eligible prevented planting acres, the next crop used will be the insured crop that would have the next closest prevented planting payment.

(ii) In the event payment amounts based on other crops are an equal amount above and below the payment amount for the crop that was prevented from being planted, eligible acres for the crop with the higher payment amount will be used first.

(2) The prevented planting payment and premium will be based on:

(i) The crop that was prevented from being planted if the insured crop with remaining eligible acreage would have resulted in a higher prevented planting payment than would have been paid for the crop that was prevented from being planted; or

(ii) The crop from which eligible acres are being used if the insured crop with remaining eligible acreage will result in a lower prevented planting payment than would have been paid for the crop that was prevented from being planted.

(3) For example, assume you were prevented from planting 200 acres of corn and you 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 and 90 acres of grain sorghum eligibility that would result in a $30 per acre payment. Your prevented planting coverage will be based on 100 acres of corn ($40 per acre), 90 acres of grain sorghum ($30 per acre), and an additional 10 acres of corn (using potato eligible acres and paid as corn at $40 per acre). Your prevented planting payment would be $7,100 ($4,000 + $2,700 + $400).

(4) Prevented planting coverage will be allowed as specified in section 17(h) only if the crop that was prevented from being planted meets all the 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 whose eligible acres are being used.

(5) An additional administrative fee will not be due as a result of using eligible prevented planting acreage as specified in section 17(h).

(i) The prevented planting payment for any eligible acreage within a unit will be determined by:

(1) Multiplying 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, by:

(i) Your amount of insurance per acre; or

(ii) The amount determined by multiplying the production guarantee (per acre) for timely planted acreage of the insured crop (or type, if applicable) by your price election or your projected price, whichever is applicable;

(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 (including renewal of a 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, the crop; practice, type or variety; guarantee; premium rate; and projected price, harvest price, price election or amount of insurance, as applicable, or the information needed to determine such variable terms. If the written agreement is for a county:

(1) That has a price election or amount of insurance stated in the Special Provisions, or an addendum thereto, for the crop, practice, type or variety, the written agreement will contain the price election or amount of insurance stated in the Special Provisions, or an addendum thereto, for the crop, practice, type or variety;

(2) That does not have price elections or amounts of insurance stated in the Special Provisions, or an addendum thereto, for the crop, practice, type or variety, the written agreement will contain a price election or amount of insurance that does not exceed the price election or amount of insurance contained in the Special Provisions, or an addendum thereto, for the county that is used to establish the other terms of the written agreement, unless otherwise authorized by the Crop Provisions;

(3) For which revenue protection is not available for the crop, but revenue protection is available in the State for the crop, the written agreement will contain the information used to establish the projected price and harvest price, as applicable, for that State; or

(4) In a State for which revenue protection is not available for the crop, but revenue protection is available for the crop in another State, the written agreement is available for yield protection only, and will contain the information needed to determine the projected price for the crop from another State as determined 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 canceled 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 on or before the sales closing date (*e.g.*, 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 is requested:

(i) On or before the acreage reporting date to:

(A) Insure unrated land, or an unrated practice, type or variety of a crop; although, if required by FCIC, such written agreements

may be approved only after appraisal of the acreage by us and:

(*1*) The crop's potential is equal to or exceeds 90 percent of the yield used to determine your production guarantee or amount of insurance; and

(*2*) You sign the written agreement no later than the date the first field is appraised or by the expiration date for you to accept the offer, whichever comes first; 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, 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;

(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; or

(3) For adding land or a crop to either an existing written agreement or a request for a written agreement, provided the request is submitted by the applicable deadline specified in section 18;

(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 in which the crop was planted during the base period and verifiable records of actual yields if required by FCIC;

(iii) Evidence from agricultural experts or organic agricultural experts, 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) and the FSA farm serial number including tract and field numbers, if available. The submission must also include an FSA aerial photograph, or field boundaries derived by a Geographic Information System or Global Positioning System, 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 signed by you (only for crop policies 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 signed by you (only for crop policies 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 applicable 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);

(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 applicable deadline specified in sections 18(a) or (e); or

(4) The request is not authorized by the policy;

(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 organic agricultural experts determine 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 delivered to us, or postmarked, not later than the expiration date for you to accept the offer;

(3) We accept the written agreement offer; and

(4) The crop meets the minimum appraisal amount specified in section 18(e)(2)(i)(A)(*1*), if applicable;

(j) Multi-year 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(a), unless otherwise specified by FCIC;

(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); and

(o) If you disagree with any determination made by FCIC under section 18, you may obtain administrative review in accordance with 7 CFR part 400, subpart J or appeal in accordance with 7 CFR part 11, unless you have failed to comply with the provisions contained in section 18(g) or section 18(i)(2) or (4).

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:

(1) Except for determinations specified in section 18(g), section 18(i)(2) or section 20(b)(2) or (3), 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);

(2) 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), you may 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 administration review process; or

(3) Any determination made by us that is a matter of general applicability is not subject to administrative review under 7 CFR part 400, subpart J or appeal under 7 CFR part 11. If you want to seek judicial review of any determination that is a matter of general applicability, you must request a determination of non-appealability from the Director of the National Appeals Division in accordance with 7 CFR part 11.6 prior to seeking judicial review.

(c) If you fail to exhaust your right to appeal, you will not be able to resolve the dispute through judicial review.

(d) You are not required to exhaust your right to reconsideration prior to seeking judicial review. If you do not request reconsideration and you elect to file suit, such suit must be brought in accordance with section 20(e)(2) and must be filed not later than one year after the date the determination regarding whether you used good farming practices was made.

(e) 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.

(f) 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 determination that is a matter of general applicability.

(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) With respect to good farming practices:

(1) We will make decisions regarding what constitutes a good farming practice and determinations of assigned production for uninsured causes for your failure to use good farming practices.

(i) If you disagree with our decision of what constitutes a good farming practice, you must request a determination from FCIC of what constitutes a good farming practice before filing any suit against FCIC.

(ii) If you disagree with our determination of the amount of assigned production, you must use the arbitration or mediation process contained in this section.

(iii) You may not sue us for our decisions regarding whether good farming practices were used by you.

(2) FCIC will make determinations regarding what constitutes a good farming practice. If you do not agree with any determination made by FCIC:

(i) 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; or

(ii) You may file suit against FCIC.

(A) You are not required to request reconsideration from FCIC before filing suit.

(B) Any suit must be brought against FCIC in the United States district court for the district in which the insured acreage is located.

(C) Suit must be filed against FCIC not later than one year after the date:

(*1*) Of the determination; or

(*2*) Reconsideration is completed, if reconsideration was requested under section 20(d)(2)(i).

(e) Except as provided in sections 18(n) or (o), or 20(d) or (k), 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).

(k) Any determination made by FCIC that is a matter of general applicability is not subject to administrative review under 7 CFR part 400, subpart J or appeal under 7 CFR part 11. If you want to seek judicial review of any FCIC determination that is a matter of general applicability, you must request a determination of non-appealability from the Director of the National Appeals Division in accordance with 7 CFR 11.6 before seeking judicial review.

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);

(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 calendar date for the end of the insurance period for the crop year for which you initially certified such records, unless such records have already been provided to us (*e.g.*, if you are a new insured and you certify 2007 through 2010 crop year production records in 2011 to determine your approved yield for the 2011 crop year, you must retain all records from the 2007 through 2010 crop years through the 2014 crop year. If you subsequently certify records of the 2011 crop year in 2012 to determine your approved yield for the 2012 crop year, you must retain the 2011 crop year records through the 2015 crop year and so forth for each subsequent year of production records certified); and

(3) While you are not required to maintain records beyond the record retention period specified in section 21(b)(2), at any time, if we or FCIC have evidence that you, or anyone assisting you, knowingly misreported any information related to any yield you have certified, we or FCIC will replace all yields in your APH database determined to be incorrect with the lesser of an assigned yield determined in accordance with section 3 or the yield determined to be correct:

(i) If an overpayment has been made to you, you will be required to repay the overpaid amount; and

(ii) Replacement of yields in accordance with section 21(b)(3) does not exempt you from other sanctions applicable under the terms of the policy or any applicable law.

(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(f)(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 section 22(b), the amount of loss from fire will be the difference between the total value of the insured crop before the fire and the total value of the insured crop after the fire. This amount will be determined in accordance with the provisions in section 35.

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 an amount for expenses and handling equal to 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 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 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 for any catastrophic risk protection policy and we will collect any unpaid administrative fees and any interest owed thereon for additional coverage policies.

(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. Correction of Errors.

(a) In addition to any other corrections allowed in your policy subject to section 25(b), we may correct:

(1) Within 60 days after the sales closing date, any incorrect information on your application or provided by the sales closing date, including identification numbers for you and any person with an substantial beneficial interest in the you, to ensure that the eligibility information is correct and consistent with information reported by you to any USDA agency;

(2) Within 30 days after the acreage reporting date, information reported to reconcile errors in the information with correct information that has been determined by any USDA agency;

(3) Within 30 days of any subsequent correction of data by FSA, erroneous information corrected as a result of verification of information; and

(4) At any time, any incorrect information if the incorrect information was caused by electronic transmission errors by us or errors made by any agency within USDA in transmitting the information provided by you for purposes of other USDA programs.

(b) Corrections may be made but will not take effect for the current crop year if the correction would allow you to:

(1) Avoid ineligibility requirements for insurance or obtain a disproportionate benefit under the crop insurance program or any related program administered by the Secretary;

(2) Obtain, enhance, or increase an insurance guarantee or indemnity if a cause of loss exists or has occurred before any correction has been made, or avoid premium owed if no loss is likely to occur; or

(3) Avoid an obligation or requirement under any Federal or State law.

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 will still be required to pay 20 percent of the premium that you would otherwise be required to pay 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.

(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 FCIC; 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.

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

(a) You may assign your right to an indemnity for the crop year only to creditors or other persons to whom you have a financial debt or other pecuniary obligation. You may

be required to provide proof of the debt or other pecuniary obligation before we will accept the assignment of indemnity.

(b) All assignments must be on our form and must be provided to us. Each assignment form may contain more than one creditor or other person to whom you have a financial debt or other pecuniary obligation.

(c) Unless you have provided us with a properly executed assignment of indemnity, we will not make any payment to a lienholder or other person to whom you have a financial debt or other pecuniary obligation even if you may have a lien or other assignment recorded elsewhere. Under no circumstances will we be liable:

(1) To any lienholder or other person to whom you have a financial debt or other pecuniary obligation where you have failed to include such lienholder or person on a properly executed assignment of indemnity provided to us; or

(2) To pay to all lienholders or other persons to whom you have a financial debt or other pecuniary obligation any amount greater than the total amount of indemnity owed under the policy.

(d) If we have received the properly executed assignment of indemnity form:

(1) Only one payment will be issued jointly in the names of all assignees and you; and

(2) Any assignee will have the right to submit all loss notices and forms as required by the policy.

(e) If you have suffered a loss from an insurable cause and fail to file a claim for indemnity within the period specified in section 14(e), the assignee may submit the claim for indemnity not later than 30 days after the period for filing a claim 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. [Reserved]

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. Units

(a) You may elect an enterprise unit or whole-farm unit in accordance with the following:

(1) For crops for which revenue protection is available, you may elect:

(i) An enterprise unit if you elected revenue protection or yield protection; or

(ii) A whole-farm unit if you elected:

(A) Revenue protection and revenue protection is provided unless limited by the Special Provisions; or

(B) Yield protection only if whole-farm units are allowed by the Special Provisions;

(2) For crops for which revenue protection is not available, enterprise units or whole-farm units are available only if allowed by the Special Provisions;

(3) You must make such election on or before the earliest sales closing date for the insured crops in the unit and report such unit structure on your acreage report:

(i) For counties in which the actuarial documents specify a fall or winter sales closing date and a spring sales closing date, you may change your unit election on or before the spring sales closing date (earliest spring sales closing date for crops in the unit if electing a whole-farm unit) if you do not have any insured fall planted acreage of the insured crop;

(ii) 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; and

(iii) These units may not be further divided except as specified herein;

(4) For an enterprise unit:

(i) To qualify, an enterprise unit must contain all of the insurable acreage of the same insured crop in:

(A) Two or more sections, if sections are the basis for optional units where the insured acreage is located;

(B) Two or more section equivalents determined in accordance with FCIC issued procedures, if section equivalents are the basis for optional units where the insured acreage is located or are applicable to the insured acreage;

(C) Two or more FSA farm serial numbers, if FSA farm serial numbers are the basis for optional units where the insured acreage is located;

(D) Any combination of two or more sections, section equivalents, or FSA farm serial numbers, if more than one of these are the basis for optional units where the acreage is located or are applicable to the insured acreage (*e.g.*, if a portion of your acreage is located where sections are the basis for optional units and another portion of your acreage is located where FSA farm serial numbers are the basis for optional units, you may qualify for an enterprise unit based on a combination of these two parcels);

(E) One section, section equivalent, or FSA farm serial number that contains at least 660 planted acres of the insured crop. You may qualify under this paragraph based only on the type of parcel that is utilized to establish optional units where your insured acreage is located (*e.g.*, if having two or more sections is the basis for optional units where the insured acreage is located, you may qualify for an enterprise unit if you have at least 660 planted acres of the insured crop in one section); or

(F) Two or more units established by written agreement; and

(ii) At least two of the sections, section equivalents, FSA farm serial numbers, or units established by written agreement in section 34(a)(4)(i)(A), (B), (C), (D), or (F) must each have planted acreage that constitutes at least the lesser of 20 acres or 20 percent of the insured crop acreage in the enterprise unit. If there is planted acreage in more than two sections, section equivalents, FSA farm serial numbers or units established by written agreement in section 34(a)(4)(i)(A), (B), (C), (D), or (F), these can be aggregated to form at least two parcels to meet this requirement. For example, if sections are the basis for optional units where the insured acreage is located and you have 80 planted acres in section one, 10 planted acres in section two, and 10 planted acres in section three, you may aggregate sections two and three to meet this requirement.

(iii) The crop must be insured under revenue protection or yield protection, unless otherwise specified in the Special Provisions;

(iv) If you want to change your unit structure from enterprise units to basic or optional units in any subsequent crop year, you must maintain separate records of acreage and production:

(A) For each basic unit, to be eligible to use records to establish the production guarantee for the basic unit; or

(B) For optional units, to qualify for optional units and to be eligible to use such records to establish the production guarantee for the optional units;

(v) If you do not comply with the production reporting provisions in section 3(f) for the enterprise unit, your yield for the enterprise unit will be determined in accordance with section 3(f)(1);

(vi) You must separately designate on the acreage report each section or other basis in section 34(a)(4)(i) you used to qualify for an enterprise unit; and

(vii) If we discover you do not qualify for an enterprise unit and such discovery is made:

(A) On or before the acreage reporting date, your unit division will be based on the basic or optional units, whichever you report on your acreage report and qualify for; or

(B) At any time after the acreage reporting date, we will assign the basic unit structure; and

(viii) If allowed by the actuarial documents, you may elect separate enterprise units for irrigated and non-irrigated practices.

(A) You may elect one enterprise unit for all irrigated practices and one enterprise unit for all non-irrigated practices.

(B) You must separately meet the requirements in section 34(a)(4) for each enterprise unit.

(C) If we discover you do not qualify for an enterprise unit for the irrigated and non-irrigated practices and such discovery is made:

(*1*) On or before the acreage reporting date, you may elect to insure all acreage of the crop in the county in one enterprise unit provided you meet the requirements in section 34(a)(4), or your unit division will be based on basic or optional units, whichever you report on your acreage report and qualify for; or

(*2*) At any time after the acreage reporting date, your unit structure will be one enterprise unit provided you meet the requirements in section 34(a)(4). Otherwise, we will assign the basic unit structure.

(5) For a whole-farm unit:

(i) To qualify:

(A) All crops in the whole-farm unit must be insured:

(*1*) Under revenue protection (if you elected the harvest price exclusion for any crop, you must elect it for all crops in the whole-farm unit), unless the Special Provisions allow whole-farm units for another plan of insurance and you insure all crops in the whole-farm unit under such plan (*e.g.*, if you plant corn and soybeans for which you have elected revenue protection and you plant canola for which you have elected yield protection, the corn, soybeans and canola would

be assigned the unit structure in accordance with section 34(a)(5)(v));

(*2*) With us (*e.g.*, if you insure your corn and canola with us and your soybeans with a different insurance provider, the corn, soybeans and canola would be assigned the unit structure in accordance with section 34(a)(5)(v)); and

(*3*) At the same coverage level (*e.g.*, if you elect to insure your corn and canola at the 65 percent coverage level and your soybeans at the 75 percent coverage level, the corn, soybeans and canola would be assigned the unit structure in accordance with section 34(a)(5)(v));

(B) A whole-farm unit must contain all of the insurable acreage of at least two crops; and

(C) At least two of the insured crops must each have planted acreage that constitutes 10 percent or more of the total planted acreage liability of all insured crops in the whole-farm unit (For crops for which revenue protection is available, liability will be based on the applicable projected price only for the purpose of section 34(a)(5)(i)(C));

(ii) You will be required to pay separate administrative fees for each crop included in the whole-farm unit;

(iii) You must separately designate on the acreage report each basic unit for each crop in the whole-farm unit;

(iv) If you want to change your unit structure from a whole-farm unit to basic or optional units in any subsequent crop year, you must maintain separate records of acreage and production:

(A) For each basic unit, to be eligible to use such records to establish the production guarantee for the basic units; or

(B) For optional units, to qualify for optional units and to be eligible to use such records to establish the production guarantee for the optional units; and

(v) If we discover you do not qualify for a whole-farm unit for at least one insured crop because, even though you elected revenue protection for all your crops:

(A) You do not meet all of the other requirements in section 34(a)(5)(i), and such discovery is made:

(*1*) On or before the acreage reporting date, your unit division for all crops for which you elected a whole-farm unit will be based on basic or optional units, whichever you report on your acreage report and qualify for; or

(*2*) At any time after the acreage reporting date, we will assign the basic unit structure for all crops for which you elected a whole-farm unit; or

(B) It was not possible to establish a projected price for at least one of your crops, your unit division will be based on the unit structure you report on your acreage report and qualify for only for the crop for which a projected price could not be established, unless the remaining crops in the unit would no longer qualify for a whole-farm unit, in such case your unit division for the remaining crops will be based on the unit structure you report on your acreage report and qualify for.

(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); and

(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.

(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 where the boundaries are readily discernible:

(i) In the absence of sections, we may consider parcels of land legally identified by other methods of measure, such as Spanish grants, provided the boundaries are readily discernible, if such parcels can be considered as the equivalent of sections for unit purposes in accordance with FCIC issued procedures; or

(ii) In the absence of sections as described in section 34(c)(1) or other methods of measure used to establish section equivalents as described in section 34(c)(1)(i), optional units may be established if each optional unit is located in a separate FSA farm serial number in accordance with FCIC issued procedure;

(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) Any amount received for the same loss from any USDA program, in addition to the crop insurance payment, will not exceed the difference between the crop insurance payment and the actual amount of the loss, unless otherwise provided by law. The amount of the actual loss is the difference between the total value of the insured crop before the loss and the total value of the insured crop after the loss.

(1) For crops for which revenue protection is not available:

(i) If you have an approved yield, the total value of the crop before the loss is your approved yield times the highest price election for the crop; and

(ii) If you have an approved yield, the total value of the crop after the loss is your production to count times the highest price election for the crop; or

(iii) If you have an amount of insurance, the total value of the crop before the loss is the highest amount of insurance available for the crop; and

(iv) If you have an amount of insurance, the total value of the crop after the loss is your production to count times the price contained in the Crop Provisions for valuing production to count.

(2) For crops for which revenue protection is available and:

(i) You elect yield protection:

(A) The total value of the crop before the loss is your approved yield times the applicable projected price (at the 100 percent price level) for the crop; and

(B) The total value of the crop after the loss is your production to count times the applicable projected price (at the 100 percent price level) for the crop; or

(ii) You elect revenue protection:

(A) The total value of the crop before the loss is your approved yield times the higher of the applicable projected price or harvest price for the crop (If you have elected the harvest price exclusion, the applicable projected price for the crop will be used); and

(B) The total value of the crop after the loss is your production to count times the harvest price for the crop.

(c) FSA or another USDA agency, as applicable, 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 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 canceled 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 transitional yield for the crop year in which the yield is being replaced, unless you qualify as a beginning farmer or rancher in which case the excluded actual

yield will be replaced with a yield equal to 80 percent of the applicable transitional 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 transitional 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 transitional 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 canceled 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]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §457.8, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§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 2011 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Small Grains Crop Provisions

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. As defined in the Basic Provisions, except that the references to ''final planting date'' contained in the definition in the Basic Provisions are replaced with the ''latest final planting date.''

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) Revenue protection is not available for your oats, rye, flax, or buckwheat. Therefore, if you elect to insure such crops by the sales closing date, they will only be protected against a loss in yield;

(b) Revenue protection is available for wheat and barley. Therefore, if you elect to insure your wheat or barley:

(1) You must elect to insure your wheat or barley with either revenue protection or yield protection by the sales closing date; and

(2) In counties with both fall and spring sales closing dates for the insured crop:

(i) If you do not have any insured fall planted acreage of the insured crop, you may change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, until the spring sales closing date; or

(ii) If you have any insured fall planted acreage of the insured crop, you may not change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, 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 as follows, unless otherwise specified in the Special Provisions:

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, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, Dubuque and all Iowa counties north thereof; all Nebraska counties except Box Butte, Dawes, and Sheridan; 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, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, and Dubuque Counties, Iowa, and all Iowa counties north thereof; Massachusetts; all Montana counties except Daniels, Roosevelt, Sheridan, and Valley; Box Butte, Dawes, and Sheridan Counties, Nebraska; New York; Oregon; Rhode Island; all South Dakota counties except Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Minnehaha 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; and 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, Roosevelt, Sheridan, and Valley Counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, and Minnehaha 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.

Crop, state and county	Cancellation date	Termination date
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.
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 a written agreement allows insurance for such mixture. The production from such mixture will be considered as the predominate grain on a weight basis); and

(3) That is not, unless insurance is allowed by a written agreement:

(i) Interplanted with another crop except as allowed in section 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.

(b) Buckwheat will be insured only if it is produced under a contract with a business enterprise equipped with facilities appropriate to handle and store buckwheat production. The contract must be executed by you and the business enterprise, in effect for the crop year, and a copy provided to us no later than the acreage reporting date. To be considered a contract, the executed document must contain:

(1) A requirement that you plant, grow and deliver buckwheat to the business enterprise;

(2) The amount of production that will be accepted or a statement that all production from a specified number of acres will be accepted;

(3) The price to be paid for the contracted production or a method to determine such price; and

(4) Other such terms that establish the obligations of each party to the contract.

(c) 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.

(d) In counties for which the actuarial table provides premium rates for the Wheat or Barley Winter Coverage Endorsement (7 CFR 457.102), 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.

(e) 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 accordance with section 11 of the Basic Provisions, and subject to any provisions provided by the Wheat or Barley Winter Coverage Endorsement (if elected by you):

(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:

(A) 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.

(B) 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, projected price, and harvest price applicable to the spring type will be used. In this case, the acreage will be considered to be initially planted to the spring type.

(C) Notwithstanding sections 7(a)(2)(iii)(A) and (B), 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 endorsement.

(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 determine, in writing, that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. However, if we fail to inspect the acreage by the spring final planting date, insurance will attach as specified in section 7(a)(2)(v)(C).

(A) Your request for coverage must include the location and number of acres of fall planted barley or wheat.

(B) The fall planted barley or fall planted wheat will be insured as a spring type for the purpose of the production guarantee, premium, projected price, and harvest price, if applicable.

(C) 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.

(D) 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.

(E) If fall planted acreage is not to be insured it must be recorded on the acreage report as uninsured fall planted acreage.

(b) The calendar date for the end of the insurance period is the following applicable date:

(1) September 25 in Alaska;

(2) July 31 in Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, North Carolina, South Carolina and Tennessee; or

(3) October 31 in all other states.

8. Causes of Loss

In addition to the provisions under section 12 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;

(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; or

(i) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.

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 is considered appropriate by agricultural experts for the insured crop, type and practice.

(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) Unless otherwise specified in the Special Provisions, the amount of the replanting payment per acre will be:

(1) The lesser of 20 percent of the production guarantee or the number of bushels for the applicable crop specified below:

(i) Two bushels for flax or buckwheat;

(ii) Four bushels for wheat; or

(iii) Five bushels for barley or oats;

(2) Multiplied by:

(i) Your price election for oats, flax or buckwheat; or

(ii) Your projected price for wheat or barley; and

(3) Multiplied by your share.

(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 or your projected price, as applicable, and your production guarantee for the crop type that is replanted and insured. For example, if damaged spring wheat is replanted to durum wheat, your projected price 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 your production guarantee and your price election or your projected price, as applicable, 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; 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

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 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 number of insured acres of each insured crop or type, as applicable by your respective:

(i) Yield protection guarantee (per acre) if you elected yield protection for barley or wheat;

(ii) Production guarantee (per acre) and your price election for oats, rye, flax, or buckwheat; or

(iii) Revenue protection guarantee (per acre) if you elected revenue protection for barley or wheat;

(2) Totaling the results of section 11(b)(1)(i), (ii), or (iii), whichever is applicable;

(3) Multiplying the production to count of each insured crop or type, as applicable, by your respective:

(i) Projected price for wheat or barley if you elected yield protection;

(ii) Price election for oats, rye, flax, or buckwheat; or

(iii) Harvest price if you elected revenue protection;

(4) Totaling the results of section 11(b)(3)(i), (ii), or (iii), whichever is applicable;

(5) Subtracting the result of section 11(b)(4) from the result of section 11(b)(2); and

(6) Multiplying the result of section 11(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of wheat in the unit with a production guarantee (per acre) of 45 bushels, your projected price is $3.40, your harvest price is $3.45, and your production to count is 2,000 bushels.

If you elected yield protection:

(1) 50 acres × (45 bushel production guarantee × $3.40 projected price) = $7,650.00 value of the production guarantee

(3) 2,000 bushel production to count × $3.40 projected price = $6,800.00 value of the production to count

(5) $7,650.00 − $6,800.00 = $850.00

(6) $850.00 × 1.000 share = $850.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (45 bushel production guarantee × $3.45 harvest price) = $7,762.50 revenue protection guarantee

(3) 2,000 bushel production to count × $3.45 harvest price = $6,900.00 value of the production to count

(5) $7,762.50 − $6,900.00 = $862.50

(6) $862.50 × 1.000 share = $863.00 indemnity.

(c) The total production to count (in bushels) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) For oats, rye, flax, or buckwheat, and barley or wheat under yield protection, not less than the production guarantee (per acre), and for barley or wheat under revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (per acre) 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

(2) All harvested production from the insurable acreage.

(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 additional coverage 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; 75 FR 15875, Mar. 30, 2010]

§ 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 2011 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Cotton Crop Provisions

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 (per acre). In lieu of the definition contained in the Basic Provisions, 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 of the Basic Provisions, you must elect to insure your cotton with either revenue protection or yield protection by the sales closing date.

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:

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 31.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, 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 of the Basic Provisions, 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; or

(3) Interplanted with another spring planted crop.

6. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(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 of the Basic Provisions, 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 of the Basic Provisions, 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;

(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; or

(i) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.

9. Duties in the Event of Damage or Loss

(a) In addition to your duties under section 14 of the Basic Provisions, in the event of damage or loss, the cotton stalks must remain intact for our inspection. 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.

(b) Representative samples are required in accordance with section 14 of the Basic Provisions.

10. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the number of insured acres by your respective:

(i) Yield protection guarantee (per acre) if you elected yield protection; or

(ii) Revenue protection guarantee (per acre) if you elected revenue protection;

(2) Totaling the results of section 10(b)(1)(i) or 10(b)(1)(ii), whichever is applicable;

(3) Multiplying the production to count by your:

(i) Projected price if you elected yield protection; or

(ii) Harvest price if you elected revenue protection;

(4) Totaling the results of section 10(b)(3)(i) or 10(b)(3)(ii), whichever is applicable;

(5) Subtracting the result of section 10(b)(4) from the result of section 10(b)(2); and

(6) Multiplying the result of section 10(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of cotton in the unit with a production guarantee (per acre) of 525 pounds, your projected price is $.65, your harvest price is $.70, and your production to count is 25,000 pounds.

If you elected yield protection:

(1) 50 acres × (525 pound production guarantee × $.65 projected price) = $17,062.50 value of the production guarantee

(3) 25,000 pound production to count × $.65 projected price = $16,250.00 value of production to count

(5) $17,062.50 − $16,250.00 = $812.50

(6) $812.50 × 1.000 share = $813.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (525 pound production guarantee × $.70 harvest price) = $18,375.00 revenue protection guarantee

(3) 25,000 pound production to count × $.70 harvest price = $17,500.00 value of the production to count

(5) $18,375.00 − $17,500.00 = $875.00

(6) $875.00 × 1.000 share = $875.00 indemnity.

(c) The total production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) For yield protection, not less than the production guarantee and for revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (per acre) 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 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 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 85 percent of price quotation ''B.''

(1) Price B is defined as the Upland Cotton National Average Loan Rate determined by FSA, or as specified in the Special Provisions.

(2) Price A is defined as the loan value per pound for the bale determined in accordance with the FSA Schedule of Premiums and Discounts for the applicable crop year, or as specified in the Special Provisions.

(3) If eligible for adjustment, the amount of production to count will be determined by multiplying the number of pounds of such production by the factor derived from dividing price quotation ''A'' by 85 percent 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 additional coverage 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; 75 FR 15878, 15879, Mar. 30, 2010; 75 FR 59057, Sept. 27, 2010]

§ 457.105 Extra long staple cotton crop insurance provisions.

The extra long staple cotton crop insurance provisions for the 2014 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

ELS Cotton Crop Provisions

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 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 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:

States	Cancellation and termination dates
New Mexico	March 15.
All other States	Feb. 28.

5. Insured Crop

In accordance with section 8 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 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 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 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 of the Basic Provisions, 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. 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.

(b) Representative samples are required in accordance with section 14 of the Basic Provisions.

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 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;

(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 Price A is less than 85 percent of Price B.

(1) Price B is defined as the Extra Long Staple Cotton National Average Loan Rate determined by FSA, or as specified in the Special Provisions.

(2) Price A is defined as the loan value per pound for the bale determined in accordance with the FSA Schedule of Premiums and Discounts for the applicable crop year, or as specified in the Special Provisions.

(3) 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 A by 85 percent of Price 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) Mature AUP cotton harvested or appraised from acreage originally planted to ELS cotton in the same growing season will be reduced by the factor obtained by dividing the price per pound for AUP cotton by the price per pound for ELS cotton. The prices used for AUP and ELS cotton will be calculated using the Upland Cotton National Average Loan Rate determined by FSA and the Extra Long Staple Cotton National Average Loan Rate determined by FSA, or as specified in the Special Provisions.

11. Late Planting.

(a) A late planting period is applicable to ELS cotton, if allowed by the Special Provisions.

(b) If the Special Provisions do not provide for a late planting period, 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; 76 FR 32068, June 3, 2011; 78 FR 70487, Nov. 26, 2013]

§457.106 Texas citrus tree crop insurance provisions.

The Texas Citrus Tree Crop Insurance Provisions for the 2011 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

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 National Institute of Food and Agriculture 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(b) (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 7 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; 75 FR 15879, Mar. 30, 2010; 76 FR 4804, Jan. 27, 2011]

§ 457.107 Florida citrus fruit crop insurance provisions.

The Florida Citrus Fruit Crop Insurance Provisions for the 2014 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

Age class. Trees in the unit are grouped by age, with each insurable age group of a particular citrus fruit commodity, commodity type, and intended use receiving a Reference Maximum Dollar Amount shown in the actuarial documents that is used to calculate the amount of insurance for the unit.

Amount of insurance (per acre). The dollar amount determined by multiplying the Reference Maximum Dollar Amount shown on the actuarial documents for each applicable combination of commodity type, intended use, and age class of trees, within a citrus fruit commodity, 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 commodity. Citrus fruit as follows:

(1) Oranges;

(2) Grapefruit;

(3) Tangelos;

(4) Mandarins/Tangerines;

(5) Tangors;

(6) Lemons;

(7) Limes; and

(8) Any other citrus fruit commodity designated in the actuarial documents.

Citrus fruit group. A designation in the Special Provisions used to identify combinations of commodity types and intended uses within a citrus fruit commodity that may be grouped together for the purposes of electing coverage levels and identifying the insured crop.

Commodity type. A specific subgroup of a commodity having a characteristic or set of characteristics distinguishable from other subgroups of the same commodity.

Excess wind. A natural movement of air that has sustained speeds exceeding 58 miles per hour (50 knots) recorded at the U.S. National Weather Service (NWS) reporting station (reported as MAX SUST (KT)), the Florida Automated Weather Network (FAWN) reporting station (reported as 10m Wind (mph)), or any other weather reporting station identified in the Special Provisions operating nearest to the insured acreage 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.

Intended use. The producer's expected end use or disposition of the commodity at the time the commodity is reported. Insurable intended uses will be specified in the Special Provisions.

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.

Unmarketable. Citrus fruit that cannot be processed into products for human consumption.

2. Unit Division

(a) Basic units will be established in accordance with section 1 of the Basic 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 group that you elect to insure. If different amounts of insurance are available for commodity types within a citrus fruit group, you must select the same coverage level for each commodity type. For example, if you choose the 75 percent coverage level for one commodity type, you must also choose the 75 percent coverage level for all other commodity types within that citrus fruit group.

(b) The production reporting requirements contained in section 3 of the Basic Provisions are not applicable.

(c) You must report, by the acreage reporting date designated in the actuarial documents:

(1) Any event or action that could reduce the yield per acre of the insured citrus fruit commodity (including but not limited to removal of trees, any damage, disease, change in cultural practices, or any other circumstance that may reduce the productive capacity of the trees) and the number of affected acres;

(2) The number of trees on insurable and uninsurable acreage, including interplanted trees;

(3) The age of the trees and the planting pattern; and

(4) Any other information we request in order to establish your amount of insurance.

(d) We will reduce insurable acreage or the amount of insurance or both, as necessary:

(1) Based on our estimate of the effect of the interplanted trees on the insured commodity type;

(2) Following a decrease in plant stand;

(3) If cultural practices are performed that may reduce the productive capacity of the trees;

(4) If disease or damage occurs to the trees that may reduce the productive capacity of the trees; or

(5) Any other circumstance that may reduce the productive capacity of the trees or that may reduce the yield per acre from previous levels.

(e) If you fail to notify us of any circumstance that may reduce the acreage, the productive capacity of the trees, or the yield per acre from previous levels, we will reduce the acreage or amount of insurance or both as necessary any time we become aware of the circumstance.

(f) 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.

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 insured crop will be all acreage of each citrus fruit group 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 commodity 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 15 of the calendar year);

(3) Of ''Meyer Lemons,'' ''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 commodity type not specified as insurable in the Special Provisions.

(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.

(f) For citrus fruit for which fresh fruit coverage is available as designated in the actuarial documents:

(1) Management records must be available upon request to verify good fresh citrus fruit production practices were followed from the beginning of bloom stage until harvest; and

(2) Unless otherwise provided in the Special Provisions:

(i) Acceptable fresh fruit sales records must be provided upon request from at least one of the previous three crop years; or

(ii) For fresh fruit acreage new to the operation or for acreage in the initial year of fresh fruit production, a current year fresh fruit marketing contract must be provided to us upon request.

7. Insurable Acreage

(a) In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance attaching to interplanted acreage:

(1) Citrus fruit from trees interplanted with another commodity type or another agricultural commodity is insurable unless we inspect the acreage and determine it does not meet the requirements contained in your policy.

(2) If the citrus fruit is from trees interplanted with another commodity type or another agricultural commodity, acreage will be prorated according to the percentage of the acres occupied by each of the interplanted commodity types or agricultural commodities. 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.

(3) The combination of the citrus fruit acreage and the interplanted acreage cannot exceed the physical amount of acreage.

(b) In addition to section 9 of the Basic Provisions, any acreage of citrus fruit that has been abandoned is not insurable.

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, so we may determine the condition of the acreage 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 navel oranges, Orlando tangelos and tangerines;

(ii) February 28 for early-season oranges and all other tangelos;

(iii) March 31 for mid-season oranges and temples;

(iv) April 30 for lemons and limes;

(v) May 15 for murcotts; and

(vi) June 30 for grapefruit and late–season oranges.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(1) Acreage acquired after the acreage reporting date for the crop year is not insurable unless a transfer of coverage and right

to indemnity is executed in accordance with section 28 of the Basic Provisions.

(2) If you relinquish your insurable share on any insurable acreage of citrus fruit on or before the acreage reporting date of the crop year, insurance will not attach, no premium will be due, and no indemnity payable, for such acreage for that 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 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; 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 applicable combination of commodity type, intended use, and age class of trees in the unit and multiplying that result by your share;

(2) Calculating the average percent of damage to the fruit within each respective combination of commodity type, intended use, and age class of trees, 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 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 combination of commodity type, intended use, and age class of trees, to determine the value of all damage; and

(6) Totaling all such results of section 10(b)(5) for all applicable combinations of commodity types, intended uses, and age classes of trees in the unit 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 commodity type, intended use, and age class 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) Any individual citrus fruit will be considered 100 percent damaged, if due to an insurable cause of loss it is:

(1) On the ground and unmarketable; or

(2) Unmarketable because it is immature, unwholesome, decomposed, adulterated, or otherwise unfit for human consumption.

(d) Any citrus fruit that can be processed into products for human consumption will be considered marketable. The percent of damage for the marketable citrus fruit (excluding citrus fruit sold as fresh or damaged due to uninsured causes) will be determined by:

(1) Subtracting the juice content of the marketable citrus fruit (excluding citrus fruit sold as fresh or damaged due to uninsured causes) from:

(i) 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

(ii) The default juice content provided in the Special Provisions, if at least three years

of acceptable juice records are not furnished or the citrus fruit is insured as fresh;

(2) Subtracting the juice content of the marketable citrus fruit (excluding citrus fruit sold as fresh or damaged due to uninsured causes) from the official weight per box for the applicable commodity type provided in the Special Provisions;

(3) Dividing the result of section 10(d)(1) by the result of 10(d)(2);

(4) Dividing the official weight per box for the applicable commodity type provided in the Special Provisions by:

(i) 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

(ii) The default juice content provided in the Special Provisions, if at least three years of acceptable juice records are not furnished or the citrus fruit is insured as fresh; and

(5) Multiplying the result of section 10(d)(3) by the result of 10(d)(4); and

(6) For citrus fruit insured as fresh that has a Fresh Fruit Factor listed in the Special Provisions, making an additional adjustment to the percent of damage by:

(i) Subtracting the result of section 10(d)(5) from 1;

(ii) Multiplying the result of section 10(d)(6)(i) by the applicable Fresh Fruit Factor located in the Special Provisions; and

(iii) Adding the result of section 10(d)(6)(ii) to the result of section 10(d)(5).

(e) Notwithstanding section 10(d), for citrus fruit insured as fresh, unless otherwise provided in the Special Provisions, any individual citrus fruit not meeting the applicable United States Standards for packing as fresh fruit due to an insured cause of loss will be considered 100 percent damaged, except that the percent of damage for any production sold for an alternative use will be adjusted in accordance with section 10(d).

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, as amended at 77 FR 75519, Dec. 21, 2012; 78 FR 4305, Jan. 22, 2013; 78 FR 22411, Apr. 16, 2013]

§ 457.108 Sunflower seed crop insurance provisions.

The sunflower seed crop insurance provisions for the 2011 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Sunflower Seed Crop Provisions

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 of the Basic Provisions, you must elect to insure your sunflowers with either revenue protection or yield protection by the sales closing date.

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 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 of the Basic Provisions:

(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 of the Basic Provisions, 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 of the Basic Provisions, 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;

(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; or

(i) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.

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) Except as specified in section 9(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.

(b) Unless otherwise specified in the Special Provisions, the amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 175 pounds, multiplied by your projected price, multiplied by your share.

(c) When the crop 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.

(d) If the acreage is replanted to an insured crop type that is different than the insured crop type originally planted on the acreage:

(1) The production guarantee, premium, and projected price and harvest price, as applicable, will be adjusted based on the replanted type;

(2) Replanting payments will be calculated using your projected price and production guarantee for the crop type that is replanted and insured; and

(3) A revised acreage report will be required to reflect the replanted type, as 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 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 number of insured acres by your respective:

(i) Yield protection guarantee (per acre) if you elected yield protection; or

(ii) Revenue protection guarantee (per acre) if you elected revenue protection;

(2) Totaling the results of section 11(b)(1)(i) or 11(b)(1)(ii), whichever is applicable;

(3) Multiplying the production to count by your:

(i) Projected price if you elected yield protection; or

(ii) Harvest price if you elected revenue protection;

(4) Totaling the results of section 11(b)(3)(i) or 11(b)(3)(ii), whichever is applicable;

(5) Subtracting the result of section 11(b)(4) from the result of section 11(b)(2); and

(6) Multiplying the result of section 11(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of sunflowers in the unit with a production guarantee (per acre) of 1,250 pounds, your projected price is $.11, your harvest price is $.12, and your production to count is 54,000 pounds.

If you elected yield protection:

(1) 50 acres × (1,250 pound production guarantee × $.11 projected price) = $6,875.00 value of the production guarantee

(3) 54,000 pound production to count × $.11 projected price = $5,940.00 value of production to count

(5) $6,875.00 − $5,940.00 = $935.00

(6) $935.00 × 1.000 share = $935.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (1,250 pound production guarantee × $.12 harvest price) = $7,500.00 revenue protection guarantee

(3) 54,000 pound production to count × $.12 harvest price = $6,480.00 value of the production to count

(5) $7,500.00 − $6,480.00 = $1,020.00

(6) $1,020.00 × 1.000 share = $1,020.00 indemnity.

(c) The total production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) For yield protection, not less than the production guarantee, and for revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection 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 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 sections 11(d)(2) and (3), will be reduced in accordance with quality adjustment factor provisions 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. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have additional coverage and pay an additional premium, you may increase your 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; 75 FR 15879, 15880, Mar. 30, 2010]

§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 2015 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

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 that grades U.S. Number 2 processing or better, unless otherwise provided in the Special Provisions, or that is sold (even if failing to meet any U.S. or applicable state grading standard).

Ton. Two thousand (2,000) pounds avoirdupois.

2. Unit Division

(a) Optional units may either be established in accordance with section 34(c) of the Basic Provisions or by non-contiguous land, but not both.

(b) In addition to establishing optional units in accordance with section 2(a), optional units may be established by type if allowed by the Special Provisions. The requirements of section 34 of the Basic Provisions that require the crop to be planted in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit are not applicable for optional units by type.

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 different coverage levels and percent of price elections for each type in the county as specified in the Special Provisions, unless you elect Catastrophic Risk Protection (CAT) on any type.

(1) For example, if you choose 75 percent coverage level and 100 percent of the maximum price election for one type, you may choose 65 percent coverage level and 75 percent of the maximum price election for another type. However, if you elect the CAT level of coverage for any pear type, the CAT level of coverage will be applicable to all insured pear acreage for all types in the county.

(2) Notwithstanding section 3(b)(2) of the Basic Provisions, pear types will not be considered as separate crops and will not be subject to separate administrative fees.

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions (§ 457.8), by type:

(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.

(c) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any situation listed in sections 3(b)(1) through (b)(4). If the situation occurred:

(1) Before the beginning of the insurance period, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the situation was due to an insured or uninsured cause of loss (If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce the yield used to establish your production guarantee at any time we become aware of the circumstance);

(2) After the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) After the beginning of the insurance period and you fail to notify us by the production reporting date, production lost due to uninsured causes equal to the amount of the reduction in yield used to establish your production guarantee will be applied in determining any indemnity (see section 11(c)(1)(ii)). We will reduce the yield used to establish your production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees.

(d) 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 (§ 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 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 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 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 of the Basic Provisions:

(1) For the year of application, coverage begins:

(i) In California, on February 1, except that 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, except that 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) 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:

(i) September 15 for all types of summer or fall pears;

(ii) October 15 for all types of winter pears; or

(iii) As otherwise provided for specific types in the Special Provisions.

(4) 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.

(b) In addition to the provisions of section 11 of the Basic Provisions (§457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable interest on any insurable acreage of pears on or before the acreage reporting date of any crop year, insurance will not be considered to have attached to, and no premium will be due, and no indemnity paid, for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 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;

(5) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period;

(6) Insects, but not damage due to insufficient or improper application of pest control measures; or

(7) Plant disease, but not damage due to insufficient or improper application of disease control measures.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions (§457.8), we will not insure against damage or loss of production due to:

(1) Failure of the fruit to color properly; or

(2) 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

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples in accordance with our procedures.

(b) In addition to the requirements of section 14 of the Basic Provisions (§ 457.8), the following will apply:

(1) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(2) 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.

(3) 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 type if applicable, by its respective production guarantee;

(2) Multiplying the results of section 11(b)(1) by your price election for each type, if applicable;

(3) Totaling the results of section 11(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, by your 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.

Basic Coverage Example:

You have a 100 percent share of a 20-acre pear orchard located in a state other than California. You elect 100 percent of the $500/ton price election. You have a production guarantee of 15 tons/acre; you are only able to produce 10 tons of pears per acre. Your indemnity will be calculated as follows:

(1) 20 acres × 15 tons/acre = 300-ton production guarantee;

(2) $500/ton (100 percent of the price election) × 300-ton production guarantee;

(3) = $150,000 value of production guarantee;

(4) 20 acres × 10 tons = 200-ton production to count;

(5) $500/ton (100 percent of the price election) × 200-ton production to count = $100,000 value of production to count;

(6) $150,000 value of production guarantee—$100,000 value of production to count = $50,000 loss; and

(7) $50,000 × 100 percent share = $50,000 indemnity payment.

[END OF EXAMPLE]

(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 165 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 type, subtracting this result from 1.000, and multiplying this difference (if positive) by the number of tons of such pears.

(d) Any pear production not graded or appraised prior to the earlier of the time pears are placed in storage or the date the pears are delivered to a packer, processor, or other handler will not be considered damaged pear production and will be considered production to count.

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

13. Fresh Pear Quality Adjustment Endorsement

In the event of a conflict between the Pear Crop Insurance Provisions and this option, this option will control. Insured who select this option cannot receive less than the indemnity due under section 11.

(a) This endorsement applies to any crop year, provided:

(1) The insured pears are located in a State designated for such coverage on the actuarial documents and for which there is designated a premium rate for this endorsement;

(2) All the pear trees in the unit are managed for the production of fresh market pears (Units that are not managed for the production of fresh market pears do not qualify for this endorsement);

(3) You have not elected to insure your pears under the CAT Endorsement;

(4) You elect 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 agree to pay the additional premium designated in the actuarial documents for this optional coverage); and

(5) You or we do 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 of this endorsement by you.

(b) If the fresh pear production is damaged by an insured cause of loss, and if eleven percent (11%) or more of the harvested and appraised production does not grade at least U.S. Number 1 in accordance with the United States Standards for Grades of Summer and Fall Pears or the United States Standards for Grades of Winter Pears, as applicable, 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.

(3) If you sell more of your fresh pear production as U.S. Number 1 or better than the quantity of pears determined to grade U.S. Number 1 or better in the appraisal, the quantity of such sold production exceeding the amount determined to grade U.S. Number 1 or better in the appraisal will be included as production to count under this option.

(c) Marketable production that grades less than U.S. Number 1 due to uninsurable causes not covered by this endorsement will not be reduced.

(d) Any adjustments that reduce your production to count under this option will not be applicable when determining production to count for Actual Production History purposes.

Fresh Pear Quality Adjustment Example:

You have a 100 percent share of a 20-acre pear orchard. You have a production guarantee of 15 tons/acre. You elect 100 percent of the $500/ton price election. You are only able to produce 10 tons/acre and only 7.5 tons/acre grade U.S. Number 1 or better (7.5 × 20 = 150 tons). Your indemnity would be calculated as follows:

(1) 20 acres × 15 tons per acre = 300 tons production guarantee;

(2) 300 tons production guarantee × $500/ton = $150,000 value of production guarantee;

(3) The value of fresh pear production to count is determined as follows:

(i) 200 tons harvested production minus 150 tons that graded U.S. Number 1 or better = 50 tons failing to make grade;

(ii) 50 tons failing grade/200 tons of production = 25 percent of production failing to grade U.S. Number 1;

(iii) 25 percent minus 10 percent = 15 percent in excess of 10 percent allowance failing to make grade;

(iv) 15 percent × 2 = 30 percent total quality adjustment for pears failing to grade U.S. Number 1;

(v) 200 tons production × 30 percent quality adjustment = 60 tons of pears failing to make grade;

(vi) 200 tons production minus 60 tons failing to make grade = 140 tons of quality adjusted fresh pear production to count;

(vii) 140 tons of quality adjusted fresh pear production to count × $500/ton price election = $70,000 value of fresh pear production to count;

(4) $150,000 value of production guarantee minus $70,000 value of fresh pear production to count = $80,000 value of loss;

(5) $80,000 value of loss × 100 percent share = $80,000 indemnity payment.

[61 FR 57580, Nov. 7, 1996; 62 FR 2007, Jan. 15, 1997, as amended at 62 FR 65167, Dec. 10, 1997; 65 FR 47837, Aug. 4, 2000; 75 FR 15880, 15881, Mar. 30, 2010; 79 FR 43602, July 28, 2014]

§ 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 2011 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Coarse Grains Crop Provisions

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, 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 as silage) determined by multiplying the approved yield per acre 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

In addition to the requirements of section 3 of the Basic Provisions, you must elect to insure your corn, grain sorghum, or soybeans with either revenue protection or yield protection by the sales closing date.

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:

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 31.
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.	January 31.

State and county	Cancellation and termination dates
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28.
All other Texas counties and all other states	March 15.

5. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, 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 section 5(b)(1); or

(ii) Planted into an established grass or legume.

(b) For corn only, in addition to the provisions of section 5(a), the corn crop insured will be all corn that is:

(1) Planted for harvest either as grain or as silage (see section 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, high-oil corn blends containing mixtures of at least 90 percent high yielding yellow dent female plants with high-oil male pollinator plants, or commercial varieties of high-protein hybrids, and excluding:

(i) High-amylose, high-oil or high-protein (except as authorized in section 5(b)(2)), 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 section 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 section 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 agree that it is not practical to replant.

7. 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) 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:	
(1) Connecticut, Delaware, Idaho, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and West Virginia.	October 20.
(2) All other 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 of the Basic Provisions, 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;

(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; or

(i) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.

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) Except as specified in section 9(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.

(b) Unless otherwise specified in the Special Provisions, the amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or the number of bushels (tons for corn insured as silage) for the applicable crop specified below, multiplied by your projected price, multiplied by your share:

(1) 8 bushels for corn grain;

(2) 1 ton for corn silage;

(3) 7 bushels for grain sorghum; and

(4) 3 bushels for soybeans.

(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) If the acreage is replanted to an insured crop type that is different than the insured crop type originally planted on the acreage:

(1) The production guarantee, premium, and projected price and harvest price, as applicable, will be adjusted based on the replanted type;

(2) Replanting payments will be calculated using your projected price and production guarantee for the crop type that is replanted and insured; and

(3) A revised acreage report will be required to reflect the replanted type, as applicable.

10. Duties in the Event of Damage or Loss

(a) Representative samples are required in accordance with section 14 of the Basic Provisions.

(b) For any corn unit that has separate dates for the end of the insurance period (grain and silage), in lieu of the requirement contained in section 14 of the Basic Provisions to provide notice within 72 hours of your initial discovery of damage (but not later than 15 days after the end of the insurance period), you must provide notice within 72 hours of your initial discovery of damage (but not later than 15 days after the latest end of the insurance period applicable to the unit).

(c) If you will harvest any acreage in a manner other than as you reported it for coverage (*e.g.*, you reported planting it to harvest as grain but will harvest the acreage for silage, or you reported planting it to harvest as silage but will harvest the acreage for grain), you must notify us before harvest begins. Failure to timely provide notice will result in production to count determined in accordance with section 11(c)(1)(i)(E).

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 number of insured acres of each insured crop or type, as applicable, by your respective:

(i) Yield protection guarantee (per acre) if you elected yield protection; or

(ii) Revenue protection guarantee (per acre) if you elected revenue protection;

(2) Totaling the results of section 11(b)(1)(i) or 11(b)(1)(ii), whichever is applicable;

(3) Multiplying the production to count of each insured crop or type, as applicable, by your respective:

(i) Projected price if you elected yield protection; or

(ii) Harvest price if you elected revenue protection;

(4) Totaling the results of section 11(b)(3)(i) or 11(b)(3)(ii), whichever is applicable;

(5) Subtracting the result of section 11(b)(4) from the result of section 11(b)(2); and

(6) Multiplying the result of section 11(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of corn in the unit with a production guarantee (per acre) of 115 bushels, your projected price is $2.25, your harvest price is $2.20, and your production to count is 5,000 bushels.

If you elected yield protection:

(1) 50 acres × (115 bushel production guarantee × $2.25 projected price) = $12,937.50 value of the production guarantee

(3) 5,000 bushel production to count × $2.25 projected price = $11,250.00 value of the production to count

(5) $12,937.50 − $11,250.00 = $1,687.50

(6) $1,687.50 × 1.000 share = $1,688.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (115 bushel production guarantee × $2.25 projected price) = $12,937.50 revenue protection guarantee

(3) 5,000 bushel production to count × $2.20 harvest price = $11,000.00 value of the production to count

(5) $12,937.50 − $11,000.00 = $1,937.50

(6) $1,937.50 × 1.000 share = $1,938.00 indemnity.

(c) The total production to count (in bushels for corn insured as grain or in tons for corn insured as silage) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) For yield protection, not less than the production guarantee, or for revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (per acre) 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) For which you fail to give us notice before harvest begins if you report planting the corn to harvest as grain but harvest it as silage or you report planting the corn to harvest as silage but harvest it as grain.

(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 you will 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 coarse grain production (excluding corn insured 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 as silage will be adjusted for excess moisture and quality only as specified in section 11(e).

(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 sections 11(d) (2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions.

(e) For corn insured 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 the calendar date for the end of the insurance period as specified in section 7(b), we may increase the silage production to count to a 65 percent moisture equivalent to reflect the normal moisture content of silage harvested during the normal silage harvesting period.

(f) 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 additional coverage 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; 75 FR 15881, 15882, 15883, Mar. 30, 2010]

§§ 457.114–457.115 [Reserved]

§ 457.116 Sugarcane crop insurance provisions.

The Sugarcane Crop Insurance Provisions for the 2011 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Sugarcane Crop Provisions

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(f) 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)(2)(iv) 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; 75 FR 15883, Mar. 30, 20100]

§ 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 price and quality endorsement.

The malting barley price and quality endorsement provisions for the 2011 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:

Small Grains Crop Insurance Malting Barley Price and Quality Endorsement

(This is a continuous endorsement. Refer to section 2 of the Basic Provisions.)

In return for your payment of premium for the coverage contained herein, this endorsement will be attached to and made part of the Basic Provisions and Small Grains Crop Provisions, subject to the terms and conditions described herein.

1. Definitions

Additional value price. The value per bushel determined in accordance with section 3 of Option A or section 3 of Option B, as applicable.

Approved malting variety. A variety of barley specified in the Special Provisions.

Brewery. A facility where malt beverages are commercially produced for human consumption.

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.

Crop year. In addition to the definition in the Basic Provisions and only for APH purposes under the terms of this endorsement, the period within which the crop is actually grown and designated by the calendar year in which the insured crop is normally harvested.

Licensed grain grader. A person authorized by the U.S. Department of Agriculture to inspect and grade barley in accordance with the U.S. Standards for malt barley.

Malt. A substance produced by germinating barley under controlled conditions and then drying it.

Malt extract. A substance made by adding warm water to ground malt and separating the liquid from the solid. In some cases, the

liquid extract may be condensed or evaporated to a syrup or powder.

Malting barley contract. An agreement in writing:

(a) Between the producer and a brewery or a business enterprise that produces or sells malt or malt extract to a brewery, or a business enterprise owned by such brewery or business;

(b) That specifies the amount of contracted production, the purchase price or a method to determine such price; and

(c) That establishes the obligations of each party to the agreement.

Malting barley price agreement. An agreement that meets all conditions required for a malting barley contract except that it is executed with a business enterprise that is not described in the definition of a malting barley contract, but that normally contracts to purchase malting barley production and has facilities appropriate to handle and store malting barley production.

Objective test. A determination made by a qualified person using standardized equipment that is widely used in the malting industry that follows a procedure approved by the:

(a) American Society of Brewing Chemists when determining percent germination;

(b) Federal Grain Inspection Service when determining quality factors other than percent germination; or

(c) Food and Drug Administration (FDA) when determining concentrations of mycotoxins or other substances or conditions identified by the FDA as being injurious to human or animal health.

Subjective test. A determination:

(a) Made by a person using olfactory, visual, touch or feel, masticatory, or other senses unless performed by a licensed grain grader;

(b) That uses non-standardized equipment; or

(c) 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.

2. This endorsement provides coverage for malting barley production and quality losses at a price per bushel greater than that offered under the Small Grains Crop Provisions.

3. You must have the Basic Provisions and the Small Grains Crop Provisions in force to elect to insure malting barley under this endorsement.

4. You must elect either Option A or Option B on or before the sales closing date:

(a) No coverage will be provided under:

(1) Either Option A or Option B of this endorsement if you fail to elect 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; or

(2) Option B of this endorsement if you have not met the production requirements specified in section 1(a) of Option B (in such case, you will only have coverage under the Small Grains Crop Provisions unless you elect coverage under Option A on or before the sales closing date);

(b) 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;

(c) Your election (Option A or Option B) will continue from year to year unless you cancel or change your election on or before the sales closing date, or your coverage is otherwise canceled or terminated under the terms of your policy; and

(d) In counties with both fall and spring sales closing dates, you may elect this endorsement until the spring sales closing date only if you do not have any fall planted acreage of approved malting barley varieties.

5. All acreage in the county planted to approved malting varieties that is insurable under the Small Grains Crop Provisions for feed barley and your elected Option will be insured under this endorsement, except any acreage on which you produce seed under the terms of the seed contract.

6. In lieu of the definitions and provisions regarding units and unit division in the Basic Provisions and the Small Grains Crop Provisions, all malting barley acreage in the county insured under this endorsement will be considered as one basic unit regardless of whether such acreage is owned, rented for cash, or rented for a share of the crop. Your shares in the malting barley acreage insured under this endorsement must be designated separately on the acreage report. For example, if you have 100 percent share in 50 acres and 75 percent share in 10 acres you must list the 50 acres separately from the 10 acres on your acreage report and include the percent share for each.

7. You must select a percentage of the additional value price on or before the sales closing date (you can select only one percentage even if more than one additional value price is applicable, and this percentage must be 100 percent or less). In the event you choose a percentage less than 100 percent of the additional value price, we will multiply that percentage by the additional value price specified in Option A or Option B, as applicable, to determine the additional value price applicable to this endorsement.

8. The additional premium amount for this coverage will be determined by multiplying your malting barley production guarantee (per acre) by your additional value price, by the premium rate, by the acreage planted to approved malting barley varieties, by your share at the time coverage begins. The premium rate you pay will be adjusted by a malting barley factor contained in the actuarial documents, as applicable.

9. In addition to the reporting requirements contained in section 6 of the Basic Provisions, you must provide all the information required by the Option you elect.

10. In accordance with section 14 of the Basic Provisions:

(a) We will settle your claim within 30 days if all production:

(1) Meets the quality criteria specified in section 14(a)(2) of this endorsement; or

(2) Grades U.S. No. 4 or worse in accordance with the grades and grade requirements for the subclasses six-rowed and two-rowed barley, or for the class barley in accordance with the Official United States Standards for Grain; and

(3) Is not accepted by a buyer for malting purposes; or

(b) Whenever any production fails one or more of the quality criteria specified in section 14(a)(2) of this endorsement and grades U.S. No. 3 or better, we will not agree upon the amount of loss until the earlier of:

(1) The date you sell, feed, donate, or otherwise utilize such production for any purpose; or

(2) May 31 of the calendar year immediately following the calendar year in which the insured malting barley is normally harvested. If you still retain any insured production on or after this date, we will:

(i) Defer completion of your claim if you agree to such deferment; or

(ii) If you do not agree to defer your claim, we will complete your claim; however, no adjustment for quality deficiencies will be made and all remaining unsold insured production will be considered to have met the quality standards specified in this endorsement.

11. This endorsement for malting barley does not provide prevented planting coverage. Such coverage is only provided in accordance with the provisions of the Small Grains Crop Provisions for feed barley.

12. 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 under section 14. Failure to keep production separate as required herein will result in denial of your claim for indemnity.

13. In the event of loss or damage covered by this endorsement, we will settle your claim by:

(a) Multiplying the insured acreage by your malting barley production guarantee (per acre) determined in accordance with section 2 of Option A or Option B, as applicable;

(b) Multiplying the result in section 13(a) by your respective additional value price per bushel;

(c) Multiplying the number of bushels of production to count determined in accordance with section 14 by your additional value price per bushel (If more than one additional value price is applicable, the highest additional value price will be used until the number of bushels covered at the higher additional value price is reached and the remainder of the production will be multiplied by the lower additional value price. For example, if variety A is grown under a malting barley price agreement and 1000 bushels of variety A are insured using an additional value price of $0.68 per bushel but only 500 bushels of variety A are produced, the 500 bushels would be valued at $0.68 per bushel and all other production of other varieties will be valued at the lower additional value price unless such production is acceptable under the terms of the malting barley price agreement, in which case 500 bushels of the other varieties would also be valued at $0.68 per bushel);

(d) Subtracting the result of section 13(c) from the result in section 13(b); and

(e) Multiplying the result of section 13(d) by your share.

14. The amount of production to be counted 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), (ii) and (iv) of the Small Grains Crop Provisions;

(2) Harvested production and unharvested production that meets, or would meet if properly handled, either the acceptable percentage or parts per million standard contained in any applicable malting barley contract or malting barley price agreement for protein, plump kernels, thin kernels, germination, blight damaged, injured by mold, mold damaged, injured by sprout, injured by frost, frost damaged, and mycotoxins or other substances or conditions identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human health, or the following quality standards (additional or different quality standards may be specified or made available in the Special Provisions), whichever is less stringent:

	Six-rowed Malting Barley	Two-rowed Malting Barley
Protein (dry basis)	14.0% maximum	13.5% 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.

	Six-rowed Malting Barley	Two-rowed Malting Barley
Injured by sprout	1.0% maximum	1.0% maximum.
Injured by frost	5.0% maximum	5.0% maximum.
Frost damaged	0.4% maximum	0.4% maximum.
Mycotoxins	2.0 ppm maximum	2.0 ppm maximum.

(3) Harvested production that does not meet the quality standards contained in section 14(a)(2), but is accepted by a buyer. If the price received is less than the total of the additional value price and the feed barley projected price announced by FCIC, the production to count may be reduced or the values used to settle the claim may be adjusted in accordance with sections 14(b), (c), and (d).

(b) For the quantity of production that qualifies under section 14(a)(3), the amount of production to count will be determined by:

(1) Subtracting the projected price for feed barley from the sale price per bushel of the damaged production (If the sale price is less than the market value of the damaged production, the sale price will be the market value);

(2) Subtracting the weighted average cost per bushel for conditioning the production, if any, (not to exceed the discount you would have received had you sold the barley without conditioning, for example, if the price per bushel of the production without conditioning is $2.80 and the price for such production after conditioning is $2.90, the discount is $0.10 and the cost of conditioning can not exceed $0.10 per bushel) from the result of section 14(b)(1);

(3) Dividing the result of section 14(b)(1) or (2), as applicable, by 100 percent of the additional value price (The weighted average additional value price will be used in the event more than one additional value price is applicable, for example, if 1000 bushels of variety A are insured with an additional value price of $0.68 and 500 bushels are insured with an additional value price of $0.40, the weighted average additional value price would be $0.59); and

(4) Multiplying the result of section 14(b)(3) (if less than zero, no production will be counted; or, if more than 1.000, no adjustment will be made) by the number of bushels of damaged production.

(c) No reduction in the amount of production to count will be allowed for:

(1) Moisture content;

(2) Damage due to uninsured causes;

(3) Costs or reduced value associated with drying, handling, processing, or quality factors other than those contained in section 14(a)(2); or

(4) Any other costs associated with normal handling and marketing of malting barley.

(d) 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.

OPTION A (FOR MALTING BARLEY PRODUCTION, REGARDLESS OF WHETHER GROWN UNDER A MALTING BARLEY CONTRACT OR PRICE AGREEMENT)

1. To be eligible for coverage under this option:

(a) You must provide us with 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 2011 crop year, records must be provided for the 2006 through the 2009 crop years, if malting barley varieties were planted in each of those crop years);

(1) Failure to provide acceptable records or reports as required herein will make you ineligible for coverage under this endorsement; and

(2) You must provide these records to us no later than the production reporting date specified in the Basic Provisions; and

(b) If you produce malting barley under a malting barley contract or malting barley price agreement, you must provide us with a copy of your current crop year contract or agreement on or before the acreage reporting date if you want the additional value price based on such contract or price agreement. All terms and conditions of the contract or agreement, including the contract price or future contract price, must be specified in the contract or agreement and be effective on or before the acreage reporting date.

2. Your malting barley production guarantee (per acre) will be the lesser of:

(a) The production guarantee (per acre) for feed barley for acreage planted to approved malting varieties calculated in accordance with the Basic Provisions; or

(b) A yield per acre calculated by:

(1) Dividing the number of bushels of malting barley sold each year by the number of acres planted to approved malting barley varieties in each respective year;

(2) Adding the results of section 2(b)(1);

(3) Dividing the result of section 2(b)(2) by the number of years approved malting barley varieties were planted; and

(4) Multiplying the result of section 2(b)(3) by your coverage level.

3. The additional value price per bushel will be determined as follows:

(a) For production grown under a malting barley contract or a malting barley price agreement, the additional value price per bushel will be the following amount, as applicable:

(1) The sale price per bushel established in the malting barley contract or malting barley price agreement (not including discounts or incentives that may apply) minus the projected price for barley;

(2) The amount per bushel for malting barley (not including discounts or incentives that may apply) above a feed barley price that is determined at a later date, provided the method of determining the price is specified in the malting barley contract or malting barley price agreement; or

(3) If your malting barley contract or malting barley price agreement has a variable price option, you must select a price or a method of determining a price that will be treated as the sale price and your additional value price per bushel will be calculated under section 3(a)(1) or (2), as applicable.

(b) The additional value price per bushel designated in the actuarial documents will be used if:

(1) Production is not grown under a malting barley contract or malting barley price agreement; or

(2) The malting barley contract or malting barley price agreement is not provided to us by the acreage reporting date.

(c) Under no circumstances will the additional value price exceed $1.25 per bushel.

(d) The number of bushels eligible for coverage using an additional value price determined in section 3(a) will be the lesser of:

(1) The amount determined by multiplying the number of acres planted to an approved malting barley variety by your malting barley production guarantee (per acre) determined in accordance with section 2; or

(2) The amount determined by multiplying the number of bushels specified in the malting barley contract or malting barley price agreement by your coverage level.

(e) Under no circumstances will the number of bushels determined in section 3(d) that will receive an additional value price determined in accordance with section 3(a) exceed the amount determined by multiplying 125 percent of the greatest number of acres that you certified for malting barley APH purposes in any crop year contained in your malting barley APH database by your malting barley production guarantee (per acre) determined in accordance with section 2. Any bushels in excess of this amount will be insured using the additional value price designated in the actuarial documents.

4. Loss Example

In accordance with section 13, your loss will be calculated as follows:

(a) Assume the following:

(1) A producer has:

(i) 400 acres of barley insured under the Small Grains Crop Provisions, of which 200 acres are planted to feed barley and 200 acres are planted to an approved malting barley variety;

(ii) 100 percent share;

(iii) A feed barley approved yield of 55 bushels per acre;

(iv) A malting barley approved yield, based on malting barley sales records and the number of acres planted to approved malting barley varieties, of 52 bushels per acre;

(v) Selected the 75 percent coverage level; and

(vi) Provided a malting barley price agreement by the acreage reporting date for the sale of 5,720 bushels at $2.72 per bushel;

(2) The projected price for feed barley is $1.92 per bushel;

(3) The additional value price per bushel from the actuarial documents is $0.40;

(4) In accordance with section 3(a)(1), the additional value price per bushel for production grown under a malting barley price agreement is $0.80 ($2.72 malting barley price agreement price minus $1.92 projected price); and

(5) The total production from the 200 acres of malting barley is 7,250 bushels, all of which fails to meet the quality standards specified in section 14(a) and in the malting barley price agreement:

(i) 4,750 bushels are sold for $2.31 per bushel; and

(ii) After conditioning at a cost of $0.05 per bushel, an additional 2,500 bushels are sold for $2.20 per bushel;

(b) The amount of insurance protection is determined as follows:

(1) 4,290 bushels eligible for coverage using the additional value price from the malting barley price agreement [the lesser of 4,290 bushels (5,720 bushels grown under a malting barley price agreement × .75 coverage level) or 7,800 bushels (200 acres planted to approved malting barley varieties × 39.0 bushel per acre (52 bushels per acre malting barley approved yield × .75 coverage level) malting barley production guarantee)] × $0.80 additional value price = $3,432.00 amount of insurance protection for the bushels grown under the malting barley price agreement;

(2) 3,510 bushels eligible for coverage using the additional value price from the actuarial documents (7,800 bushel total malting barley production guarantee − 4,290 bushels covered using the additional value price from the

malting barley price agreement) × $0.40 additional value price = $1,404.00 amount of insurance protection for the bushels not grown under a malting barley price agreement; and

(3) $3,432.00 + $1,404.00 = $4,836.00 total amount of insurance protection for the unit;

(c) In accordance with section 14, the total amount of production to count is determined as follows:

(1) Damaged production that is not reconditioned:

(i) $2.31 price per bushel − $1.92 projected price for feed barley = $0.39;

(ii) $0.39 ÷ $0.62 weighted average additional value price ($4,836.00 total insurance protection ÷ 7,800 bushel production guarantee = $0.62 weighted average additional value price) = 0.63; and

(iii) 0.63 × 4,750 bushels of damaged production sold at $2.31 = 2,993 bushels of production to count;

(2) Damaged production that is reconditioned:

(i) $2.20 price per bushel − $1.92 projected price for feed barley = $0.28;

(ii) $0.28 − $0.05 reconditioning cost = $0.23;

(iii) $0.23 ÷ $0.62 weighted average additional value price = 0.37; and

(iv) 0.37 × 2,500 bushels of damaged production sold at $2.20 = 925 bushels of production to count; and

(3) Total production to count is 3,918 bushels (2,993 + 925);

(d) The value of production to count is $3,134.00 (3,918 bushels × $0.80 additional value price (all production to count is valued at the higher additional value price since the amount of production to count did not exceed the number of bushels covered at the higher additional value price)); and

(e) The indemnity amount is $1,702.00 ($4,836.00 total amount of insurance protection for the unit − $3,134.00 value of production to count).

OPTION B (FOR PRODUCTION GROWN UNDER MALTING BARLEY CONTRACTS ONLY)

1. To be eligible for coverage under this option:

(a) On or before the sales closing date, for at least one of the three crop years you planted malting barley immediately preceding the previous crop year:

(1) You must have had a malting barley contract and produced and sold at least 75 percent of the contracted amount for the crop year such contract was applicable, or such other amount specified in the Special Provisions (*e.g.*, if you wish to insure 2011 crop year malting barley and you had a malting barley contract to produce 10,000 bushels in 2009, you must have produced and sold at least 7,500 bushels of 2009 crop year malting barley production); and

(2) You must provide us a copy of your prior malting barley contract and acceptable records of sales of malting barley required to establish compliance with section 1(a)(1) of Option B;

(b) The maximum amount of production that may be insured under Option B will be limited to the lesser of the amount of malting barley contained in the current crop year's malting barley contract or 200 percent of the amount contracted for the crop year used to demonstrate compliance with section 1(a)(1) of Option B; and

(c) On or before the acreage reporting date, you must provide us with a copy of your malting barley contract for the current crop year:

(1) All terms and conditions of the contract, including the contract price or method to determine the price, must be specified in the contract and be effective on or before the acreage reporting date;

(2) 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 Option B, or deny liability; and

(3) Only contracted production or acreage is covered by Option B.

2. Your malting barley production guarantee (per acre) will be the lesser of:

(a) The production guarantee (per acre) for feed barley for acreage planted to approved malting barley varieties calculated in accordance with the Basic Provisions; or

(b) A yield per acre calculated 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 of section 2(b)(1) by the coverage level percentage you elected under the Small Grains Crop Provisions.

3. The additional value price per bushel will be the following amount, as applicable:

(a) The sale price per bushel established in the malting barley contract (without regard to discounts or incentives that may apply) minus the projected price for feed barley;

(b) The amount per bushel for malting barley (not including discounts or incentives that may apply) above a feed barley price that is determined at a later date, provided the method of determining the price is specified in the malting barley contract; or

(c) If your malting barley contract has a variable premium price option, you must select a price or a method of determining a price that will be treated as the sale price and your additional value price per bushel will be calculated under section 3(a) or (b), as applicable; and

(d) Under no circumstances will the additional value price per bushel exceed $2.00 per bushel.

4. Loss Example.

In accordance with section 13, your loss will be calculated as follows:

(a) Assume the following:

(1) A producer has:

(i) 400 acres of barley insured under the Small Grains Crop Provisions, of which 200 acres are planted to feed barley and 200 acres are planted to an approved malting barley variety;

(ii) 100 percent share;

(iii) A feed barley approved yield of 55 bushels per acre;

(iv) A malting barley approved yield, based on contracted production and the number of acres planted to approved malting barley varieties of 52 bushels per acre;

(v) Selected the 75 percent coverage level; and

(vi) A malting barley contract for the sale of 10,000 bushels of malting barley at $2.60 per bushel;

(2) The projected price for feed barley is $1.92 per bushel;

(3) In accordance with section 3, the additional value price per bushel for production grown under the malting barley contract is $0.68 ($2.60 malting barley contract price minus $1.92 projected price); and

(4) The total production from the 200 acres of malting barley is 7,250 bushels, all of which fails to meet the quality standards specified in section 14(a) and in the malting barley contract:

(i) 4,750 bushels are sold for $2.31 per bushel; and

(ii) After conditioning at a cost of $0.05 per bushel, an additional 2,500 bushels are sold for $2.20 per bushel;

(b) In accordance with section 2, the amount of insurance protection is determined as follows:

(1) The lesser of 41.3 bushels per acre production guarantee (55 bushels × 75 percent coverage level) for feed barley or 37.5 bushels per acre (10,000 bushels contracted ÷ 200 acres = 50.0 bushels per acre and 50.0 × 75 percent coverage level = 37.5);

(2) 37.5 bushels per acre × 200 acres = 7,500 bushels total malting barley production guarantee; and

(3) 7,500 bushels × $0.68 additional value price = $5,100.00 total amount of insurance for the unit;

(c) In accordance with section 14, the total amount of production to count is determined as follows:

(1) Damaged production that is not reconditioned:

(i) $2.31 price per bushel − $1.92 projected price for feed barley = $0.39;

(ii) $0.39 ÷ $0.68 additional value price = 0.57; and

(iii) 0.57 × 4,750 bushels of damaged production sold at $2.31 = 2,708 bushels of production to count;

(2) Damaged production that is reconditioned:

(i) $2.20 price per bushel − $1.92 projected price for feed barley = $0.28;

(ii) $0.28 − $0.05 reconditioning cost = $0.23;

(iii) $0.23 ÷ $0.68 additional value price = 0.34; and

(iv) 0.34 × 2,500 bushels of damaged production sold at $2.20 = 850 bushels of production to count; and

(3) Total production to count is 3,558 bushels (2,708 + 850);

(d) The value of production to count is $2,419.00 (3,558 bushels × $0.68 additional value price); and

(e) The indemnity amount is $2,681.00 ($5,100.00 total amount of insurance protection for the unit − $2,419.00 value of production to count).

[75 FR 15883, Mar. 30, 2010]

§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 2015 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Arizona-California Citrus Crop Provisions

1. Definitions

Carton. The standard container for marketing the fresh packed citrus fruit commodity, as shown below, unless otherwise provided in the Special Provisions. 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, unless otherwise provided in the Special Provisions.

Container size	Citrus fruit commodity	Pounds
Container #58	Oranges	38
Container #58	Lemons	40
Container #59	Grapefruit	32
Container #63	Mandarins/Tangerines	25
Container #63	Tangelos	25

Citrus fruit commodity. Citrus fruit as follows:

(1) Oranges;

(2) Lemons;

(3) Grapefruit;

(4) Mandarins/Tangerines;

(5) Tangelos; and

(6) Any other citrus fruit commodity designated in the actuarial documents.

Citrus fruit group. A designation in the Special Provisions used to identify commodity types within a citrus fruit commodity that may be grouped together for the purposes of electing coverage levels and identifying the insured crop.

Commodity type. A specific subgroup of a citrus fruit commodity having a characteristic or set of characteristics distinguishable from other subgroups of the same citrus fruit commodity.

Crop year. The period beginning with the date insurance attaches to the insured 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 insured crop.

Graft. To unite a bud or scion with a rootstock or interstock in accordance with recommended practices to form a living union.

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 agricultural commodities are planted in any form of alternating or mixed pattern.

Interstock. The area of the tree that is grafted to the rootstock.

Rootstock. The root and stem portion of a tree to which a scion can be grafted.

Scaffold limb. A major limb attached directly to the trunk.

Scion. A detached living portion of a plant joined to a rootstock or interstock in grafting.

Set out. Transplanting a tree into the grove.

Topwork. Grafting a scion onto a pruned scaffold limb.

2. Unit Division

(a) Basic units will be established in accordance with section 1 of the Basic 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. Unless otherwise allowed by written agreement, optional units may only be established if each optional unit meets one or more of the following:

(1) The optional unit is located on non-contiguous land; and

(2) In addition to or instead of establishing optional units by non-contiguous land, optional units may be established by commodity type if allowed by 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 price election and coverage level for each citrus fruit group you elect to insure. The price election you choose for each citrus fruit group need not bear the same percentage relationship to the maximum price offered by us for each citrus fruit group. For example, if you choose one hundred percent (100%) of the maximum price election for the citrus fruit group for Valencia oranges, you may choose seventy-five percent (75%) of the maximum price election for the citrus fruit group for Navel oranges. However, if separate price elections are available by commodity type within each citrus fruit group, the price elections you choose for each commodity type must have the same percentage relationship to the maximum price offered by us for each commodity type within the citrus fruit group.

(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 2015 crop year production report, you will provide your 2013 crop year production.

(c) In addition, you must report, by the production reporting date designated in section 3 of the Basic Provisions (§ 457.8), by commodity 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 agricultural commodity and any time the planting pattern of such acreage is changed:

(i) The age of the interplanted agricultural commodity and commodity type, if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

(d) We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of any situation listed in section 3(c) that may occur. If you fail to notify us of any situation in section 3(c), we will reduce your production guarantee as necessary, at any time we become aware of the circumstance. If the situation in 3(c) occurred:

(1) Before the beginning of the insurance period, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the situation was due to an insured or uninsured cause of loss;

(2) After the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) After the beginning of the insurance period and you fail to notify us by the production reporting date, an amount equal to the reduction in the yield will be added to the production to count calculated in section 11(c) due to uninsured causes. We may reduce the yield used to establish your production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees.

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 November 20.

6. Insured Crop

In accordance with section 8 of the Basic Provisions, the insured crop will be all the acreage in the county of each citrus fruit group 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 grown on rootstock and trees 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, unless otherwise provided in the Special Provisions or if we inspect and approve a written agreement to insure such acreage, is grown on trees that have reached at least:

(1) The sixth growing season after being set out; or

(2) The fifth growing season after topwork or grafting, if topwork or grafting occurs after set out.

7. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance attaching to interplanted acreage, citrus interplanted with another perennial agricultural commodity 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 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 insured 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:

(A) Navel oranges; and

(B) Lemons in the Southern California counties of Imperial, Orange, Riverside, San Bernardino, San Diego, and Ventura;

(ii) November 20 for Valencia oranges; and

(iii) July 31 for lemons in all other counties and for all other citrus fruit commodities.

(b) In addition to the provisions of section 11 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 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;

(6) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period;

(7) Insects, but not damage due to insufficient or improper application of pest control measures; or

(8) Plant disease, but not damage due to insufficient or improper application of disease control measures.

(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 the inability to market the citrus 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

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples. In lieu of section 14(c)(3) of the Basic Provisions, we will determine which trees must remain unharvested as your representative sample so that we may inspect them in accordance with procedures.

(b)In addition to the requirements of section 14 of the Basic Provisions (§ 457.8), the following will apply:

(1) 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.

(2) 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 have an opportunity to inspect unharvested trees. You must not sell or dispose of the damaged insured 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 commodity type by its respective production guarantee;

(2) Multiplying the results of section 11(b)(1) by the respective price election for each commodity type;

(3) Totaling the results of section 11(b)(2);

(4) Multiplying the total production to be counted of each commodity type (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 insured 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 insured crop, in which case we will use the harvested production. If you do not continue to care for the insured 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 you elect the frost protection option and we determine that frost protection equipment, as specified in the Special Provisions, 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; 78 FR 46253, July 31, 2013]

§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:

(l) 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 crop insurance provisions.

The Popcorn Crop Insurance Provisions for the 1999 and succeeding crop years are as follows:

FCIC Policies

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Popcorn Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Base contract price. The price stipulated on the contract executed between you and the processor before any adjustments for quality.

Harvest. Removing the grain or ear from the stalk either by hand or by machine.

Merchantable popcorn. Popcorn that meets the provisions of the processor contract.

Planted acreage. In addition to the definition contained in the Basic Provisions, popcorn must initially be planted in rows far enough apart to permit mechanical cultivation, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Pound. Sixteen (16) ounces avoirdupois.

Practical to replant. In addition to the definition contained in the Basic Provisions, it will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the popcorn processor contract, or the processor agrees in writing that it will accept the production from the replanted acreage.

Processor. Any business enterprise regularly engaged in processing popcorn that possesses all licenses, permits or approved inspections for processing popcorn required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process the contracted popcorn within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow popcorn, and to deliver the popcorn production to the processor;

(b) The processor's commitment to purchase all the production stated in the processor contract;

(c) A date, if specified on the processor's contract, by which the crop must be harvested to be accepted; and

(d) A base contract price.

Multiple contracts with the same processor, each of which stipulates a specific amount of production to be delivered under the terms of the processor contact, will be considered as a single processor contract.

2. Unit Division

(a) For processor contracts that stipulate the amount of production to be delivered:

(1) In lieu of the definition contained in the Basic Provisions, a basic unit will consist of all the acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor;

(i) There will be no more than one basic unit for all production contracted with each processor contract;

(ii) In accordance with section 13 of these Crop Provisions, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(2) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable.

(b) For any processor contract that stipulates only the number of acres to be planted, the provisions contained in section 34 of the Basic Provisions will apply.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the popcorn in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each popcorn type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson counties Texas, and all Texas counties lying south thereof.	January 15.
All other Texas counties and all other states.	March 15.

6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the popcorn in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That is planted for harvest as popcorn;

(3) That is grown under, and in accordance with the requirements of, a processor contract executed on or before the acreage reporting date and is not excluded from the processor contract at any time during the crop year; and

(4) That is not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the popcorn is grown, you have a risk of loss, and the processor contract provides for delivery of popcorn under specified conditions and at a stipulated base contract price.

(c) A popcorn producer who is also a processor may be able to establish an insurable interest if the following requirements are met:

(1) The producer must comply with these Crop Provisions;

(2) The Board of Directors or officers of the processor must, prior to the sales closing date, execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a processor contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant.

9. Insurance Period

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases on each unit or part of a unit at the earliest of:

(a) The date the popcorn:

(1) Was destroyed;

(2) Should have been harvested but was not harvested;

(3) Was abandoned; or

(4) Was harvested;

(b) When the processor contract stipulates a specific amount of production to be delivered, the date the production accepted by the processor equals the contracted amount of production;

(c) Final adjustment of a loss; or

(d) December 10 immediately following planting.

10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if caused by a cause of loss specified in sections 10(a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we do not insure against any loss of production due to:

(1) Damage resulting from frost or freeze after the date designated in the Special Provisions; or

(2) Failure to follow the requirements contained in the processor contract.

11. Replanting Payment

(a) In accordance with section 13 of the Basic Provisions, a replanting payment is allowed if the crop is damaged by an insurable

cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 150 pounds, multiplied by your price election, multiplied by your insured share.

(c) When popcorn is replanted using a practice that is uninsurable as an original planting, our liability for the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

12. Duties in the Event of Damage or Loss

In accordance with the requirements of section 14 of the Basic Provisions, the representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

13. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee;

(2) Multiplying the result of section 13(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results of section 13(b)(2) if there is more than one type;

(4) Multiplying the total production to count (see section 13(c)), of each type if applicable, by its respective price election;

(5) Totaling the results of section 13(b)(4) if there is more than one type;

(6) Subtracting the result of section 13(b)(4) from the result in section 13(b)(2) if there is only one type or subtracting the result of section 13(b)(5) from the result of section 13(b)(3) if there is more than one type; and

(7) Multiplying the result of section 13(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of Type A popcorn in the unit, with a guarantee of 2,500 pounds per acre and a price election of $.12 per pound. You are only able to harvest 150,000 pounds. Your indemnity would be calculated as follows:

1 ..... 100 acres × 2,500 pounds = 250,000 pound guarantee;
2 ..... 250,00 pounds × $.12 price election = $30,000 value of guarantee;
4 ..... 150,000 pounds production to count × $.12 price election = $18,000 value of production to count;
6 ..... $30,000 − $18,000 = $12,000 loss; and
7 ..... $12,000 × 100 percent share = $12,000 indemnity payment.

You also have a 100 percent share in 150 acres of type B popcorn in the same unit, with a guarantee of 2,250 pounds per acre and a price election of $.10 per pound. You are only able to harvest 70,000 pounds. Your total indemnity for both popcorn types A and B would be calculated as follows:

1 ..... 100 acres × 2,500 pounds = 250,000 guarantee for type A and 150 acres × 2,250 pounds = 337,500 pound guarantee for type B;
2 ..... 250,000 pound guarantee × $.12 price election = $30,000 value of guarantee for type A and 337,500 pound guarantee × $.10 price election = $33,750 value guarantee for type B;
3 ..... $30,000 + $33,750 = $63,750 total value guarantee;
4 ..... 150,000 pounds × $.12 price election = $18,000 value of production to count for type A and
70,000 pounds × $.10 price election = $7,000 value of production to count for type B;
5 ..... $18,000 + $7,000 = $25,000 total value of production to count;
6 ..... $63,750 − $25,000 = $38,750 loss; and
7 ..... $38,750 × 100 percent = $38,750 indemnity payment.

(c) The total production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide production records;

(ii) Unharvested production (mature unharvested production may be adjusted for

quality deficiencies and excess moisture in accordance with section 13(d));

(iii) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested;

(2) All harvested production from the insurable acreage in the unit;

(3) All harvested and appraised production lost or damaged by uninsured causes; and

(4) For processor contracts that stipulate the amount of production to be delivered, all harvested popcorn production from any other insurable unit that has been used to fulfill your processor contract applicable to this unit.

(5) Any production from yellow or white dent corn will be counted as popcorn on a weight basis and any production harvested from plants growing in the insured crop may be counted as popcorn production on a weight basis.

(6) Any ear production for which we cannot determine a shelling factor will be considered to have an 80 percent shelling factor.

(d) Mature popcorn may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point for moisture in excess of 15 percent. We may obtain samples of the production to determine the moisture content.

(2) Popcorn production will be eligible for quality adjustment if, due to an insurable cause of loss that occurs within the insurance period, it is not merchantable popcorn and is rejected by the processor. The production will be adjusted by:

(i) Dividing the value per pound of the damaged popcorn by the base contract price per pound for undamaged popcorn; and

(ii) Multiplying the result by the number of pounds of such popcorn.

14. Late Planting

Late planting provisions in the Basic Provisions are applicable for popcorn if you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest.

15. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[63 FR 33838, June 22, 1998]

§ 457.127 [Reserved]

§ 457.128 Guaranteed production plan of fresh market tomato crop insurance provisions.

The Guaranteed Production Plan of Fresh Market Tomato Crop Insurance

FCIC Policies

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Guarantee Production Plan of Fresh Market Tomato Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Acre. Forty-three thousand five hundred sixty (43,560) square feet of land when row widths do not exceed six feet, or if row widths exceed six feet, the land area on which at least 7,260 linear feet of rows are planted.

Carton. A container that contains 25 pounds of fresh tomatoes unless otherwise provided in the Special Provisions.

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler,

retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

First fruit set. The date when 30 percent of the plants on the unit have produced fruit that has reached a minimum size of one inch in diameter.

Harvest. Picking of marketable tomatoes.

Mature green tomato. A tomato that:

(a) Has a heightened gloss due to a waxy skin that cannot be torn by scraping;

(b) Has a well-formed jelly-like substance in the locules;

(c) Has seeds that are sufficiently hard so they are pushed aside and not cut by a sharp knife in slicing; and

(d) Shows no red color.

Planting. Transplanting the tomato plants into the field.

Planting period. The time period designated in the Special Provisions during which the tomatoes must be planted to be insured as either spring-or fall-planted tomatoes.

Plant stand. The number of live plants per acre before any damage occurs.

Potential production. The number of cartons per acre of mature green or ripe tomatoes that the tomato plants would have produced by the end of the insurance period:

(a) With a classification size of 6×7 (2–8/32 inch minimum diameter) or larger for all types except cherry, roma, or plum; or

(b) Meeting the criteria specified in the Special Provisions for cherry, roma, or plum types.

Practical to replant. In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions (§457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, and marketing windows that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. In counties that do not have both spring and fall planting periods, it will not be considered practical to replant after the final planting date unless replanting is generally occurring in the area. In counties that have spring and fall planting periods, it will not be considered practical to replant after the final planting date for the planting period in which the crop was initially planted.

Ripe tomato. A tomato that meets the definition of a mature green tomato, except the tomato shows some red color and can still be packed for fresh market under the agreement or contract with the packer.

Row width. The distance in feet from the center of one row of plants to the center of an adjacent row.

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by planting period, if separate planting periods are provided for in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§457.8):

(a) You may select only one price election for all the tomatoes in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each tomato type designated in the Special Provisions. The price election you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) The production guarantees per acre are progressive by stages and increase at specified intervals to the final stage production guarantee. The stages and production guarantees are as follows:

(1) For California:

Stage	Percent of stage 3 (final stage) production guarantee	Length of time
1	50	From planting until first fruit set.
2	70	From first fruit set until harvested.
3	100	Harvested acreage.

(2) For all other states, except California:

Stage	Percent of stage 4 (final stage) production guarantee	Length of time
1	50	From planting until qualifying for stage 2.
2	75	From the earlier of stakes driven, one tie and pruning, or 30 days after planting until qualifying for stage 3.
3	90	From the earlier of the end of stage 2 or 60 days after planting until qualifying for stage 4.
4	100	From the earlier of 75 days after planting or the beginning of harvest.

(c) Any acreage of tomatoes damaged to the extent that producers in the area generally would not further care for the tomatoes will be deemed to have been destroyed even though you continue to care for the tomatoes. The production guarantee for such acreage will be the guarantee for the stage in which such damage occurs.

(d) Any production guarantees for cherry, roma, or plum type tomatoes will be specified in the Special Provisions.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is September 30 preceding the cancellation date for counties with a January 15 cancellation date and December 31 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are:

CANCELLATION AND TERMINATION

State	Dates
California, Florida, Georgia, and South Carolina.	January 15.
All other states	March 15.

6. Report of Acreage

(a) In addition to the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report the row width.

(b) If spring and fall planting periods are allowed in the Special Provisions you must report all the information required by section 6 (Report of Acreage) of the Basic Provisions (§ 457.8) and these Crop Provisions by the acreage reporting date for each planting period.

7. Annual Premium

In lieu of provisions contained in the Basic Provisions (§ 457.8), for determining premium amounts, the annual premium is determined by multiplying the final stage production guarantee by the price election, by the premium rate, by the insured acreage, by your share at the time coverage begins, and by any applicable premium adjustment factor contained in the Special Provisions.

8. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the tomatoes in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are transplanted tomatoes that have been planted for harvest as fresh market tomatoes;

(c) That are planted within the spring or fall planting periods, as applicable, specified in the Special Provisions;

(d) That, on or before the acreage reporting date, are subject to any agreement in writing (packing contract) executed between you and a packer, whereby the packer agrees to accept and pack the production specified in the agreement, unless you control a packing facility or an exception exists in the Special Provisions; and

(e) That are not (unless allowed by the Special Provisions):

(1) Grown for direct marketing;

(2) Interplanted with another crop;

(3) Planted into an established grass or legume; or

(4) Cherry, roma, or plum type tomatoes.

9. Insurable Acreage

(a) In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(1) Any acreage of the insured crop damaged before the final planting date, to the extent that the majority of growers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant. Unavailability of plants will not be considered a valid reason for failure to replant.

(2) We do not insure any acreage of tomatoes:

(i) Grown by any person if the person had not previously:

(A) Grown fresh market tomatoes for commercial sales; or

(B) Participated in the management of a fresh market tomato farming operation, in at least one of the three previous years.

(ii) That does not meet the rotation requirements contained in the Special Provisions;

(iii) On which tomatoes, peppers, eggplants, or tobacco have been grown within the previous two years unless the soil was fumigated or nematicide was applied before planting the tomatoes, except that this limitation does not apply to a first planting in Pennsylvania or if otherwise specified in the Special Provisions; or

(b) In lieu of the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance from attaching if a crop has not been planted and harvested in at least one of the three previous calendar years, we will insure newly cleared land or former pasture land planted to fresh market tomatoes.

10. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§457.8):

(a) Coverage begins on each unit or part of a unit on the later of the date you submit your application or when the tomatoes are planted.

(b) Coverage will end on any insured acreage at the earliest of:

(1) Total destruction of the tomatoes;

(2) Discontinuance of harvest;

(3) The date harvest should have started on any acreage that was not harvested;

(4) 120 days after the date of transplanting or replanting;

(5) Completion of harvest;

(6) Final adjustment of a loss; or

(7) October 15 of the crop year in Delaware, Maryland, New Jersey, North Carolina, and Virginia; October 31 of the crop year in California; November 10 of the crop year in Florida, Georgia, and South Carolina; and September 20 of the crop year in all other States.

11. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§457.8), we will not insure against damage or loss of production that occurs or becomes evident after the tomatoes have been harvested.

12. Replanting Payment

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§457.8), a replanting payment is allowed if the crop is damaged by an insurable cause of loss and the acreage to be replanted has sustained a loss in excess of 50 percent of the plant stand.

(b) The maximum amount of the replanting payment per acre will be:

(1) Seventy (70) cartons multiplied by your price election, multiplied by your insured share for all insured tomatoes except cherry, roma or plum types; and

(2) As specified in the Special Provisions for cherry, roma, or plum types.

(c) In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§457.8) that permit only one replanting payment each crop year, when both spring and fall planting periods are contained in the Special Provisions, you may be eligible for one replanting payment for acreage planted during each planting period within the crop year.

13. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate, acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee for the stage in which the damage occurred;

(2) Multiplying the results of section 13(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results of section 13(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 13(c)) by the respective price election;

(5) Totaling the results of section 13(b)(4);

(6) Subtracting this result of section 13(b)(5) from the results in section 13(b)(3); and

(7) Multiplying the result of section 13(b)(6) by your share.

(c) The total production to count (in cartons) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Potential production lost due to uninsured causes;

(iii) Unharvested production of mature green and ripe tomatoes remaining after harvest has ended:

(A) With a classification size of 6 × 7 ($2\frac{8}{32}$ 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 2011 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

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 National Institute of Food and Agriculture 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(b)(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; 75 FR 15887, Mar. 30, 2010; 76 FR 4804, Jan. 27, 2011]

§457.131 Macadamia nut crop insurance provisions.

The macadamia nut crop insurance provisions for the 2012 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

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(b)(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; 75 FR 15887, Mar. 30, 2010; 75 FR 59057, Sept. 27, 2010]

§ 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 2013 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

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.

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 grade 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.

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 type, in which case you may select one price election for each 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 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 type, 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 any such situation listed in section 3(b) that may occur. If you fail to notify us of any situation in section 3(b), we will reduce the yield used to establish your production guarantee at any time we become aware of the circumstance. If the situation in section 3(b) occurred:

(1) Before the beginning of the insurance period, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the situation was due to an insured or uninsured cause of loss;

(2) After the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) After the beginning of the insurance period and you fail to notify us by the production reporting date, an amount equal to the reduction in the yield will be added to the production to count calculated in section 11(c) due to uninsured causes when determining any indemnity. We may reduce the yield used to establish your production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees.

(d) 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 trees that:

(1) Are listed as insurable types in the Special Provisions;

(2) Are grown on rootstock that is adapted to the area;

(3) Are irrigated (except where otherwise provided in the Special Provisions);

(4) Are grown in an orchard that, if inspected, is considered acceptable by us; and

(5) 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) For the year of application, coverage begins on March 1. For each subsequent crop year 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.

(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) 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;

(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;

(7) Insects, but not damage due to insufficient or improper application of pest control measures; or

(8) Plant disease, but not damage due to insufficient or improper application of disease control measures.

(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 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

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples in accordance with our procedures.

(b) In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(1) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(2) 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.

(3) 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.

(4) 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 type, if applicable, by its respective production guarantee;

(2) Multiplying the result of 11(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results of section 11(b)(2);

(4) Multiplying the total production to count (see section 11(c)), of each type, if applicable, by its 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.

Example 1: You select 75 percent coverage level, 100 percent of the price election, and have a 100 percent share in 50.0 acres of type A prunes in the unit. The production guarantee is 2.5 tons per acre and your price election is $630.00 per ton. You harvest 10.0 tons. Your indemnity would be calculated as follows:

(1) 50.0 acres × 2.5 tons = 125.0-ton production guarantee;

(2) 125.0-ton guarantee × $630.00 price election = $78,750 value of production guarantee;

(4) 10.0 tons × $630.00 price election = $6,300 value of production to count;

(6) $78,750 − $6,300 = $72,450 loss; and

(7) $72,450 × 1.000 share = $72,450 indemnity payment.

Example 2: In addition to the information in the first example, you have an additional 50.0 acres of type B prunes with 100 percent share in the same unit. The production guarantee is 2.0 tons per acre and the price election is $550.00 per ton. You harvest 5.0 tons. Your total indemnity for both types A and B would be calculated as follows:

(1) 50.0 acres × 2.5 tons = 125.0-ton production guarantee for type A and 50.0 acres × 2.0 tons = 100.0-ton production guarantee for type B;

(2) 125.0-ton guarantee × $630.00 price election = $78,750 value of production guarantee for type A and 100.0-ton guarantee × $550.00

price election = $55,000 value production guarantee for type B;

(3) $78,750 + $55,000 = $133,750 total value of production guarantee;

(4) 10.0 tons × $630.00 price election = $6,300 value of production to count for type A and 5.0 tons × $550.00 price election = $2,750 value of production to count for type B;

(5) $6,300 + $2,750 = $9,050 total value of production to count;

(6) $133,750 − $9,050 = $124,700 loss; and

(7) $124,700 loss × 1.000 share = $124,700 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) 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 that meets the definition of standard prunes; 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 that:

(i) Meets the definition of standard prunes;

(ii) Is intended for use as fresh fruit;

(iii) Is sold as standard prunes; or

(iv) Is damaged due to uninsured causes.

(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.

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; 77 FR 59048, Sept. 26, 2012]

§ 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 2013 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

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. Onions planted by 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. Onions 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 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, including sets, must be direct seeded in rows or transplanted in rows.

Processor. Any business enterprise regularly engaged in buying and processing onions, that possesses all licenses and permits for processing onions 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 onions 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 onions of the types designated in the Special Provisions and to deliver the onion production to the processor;

(b) The processor's commitment to purchase all the production from a specified number of acres or the specified quantity of onion production stated in the processor contract; and

(c) The price that will be paid for the production.

Production guarantee (per acre).

(a) First stage production guarantee—Forty-five percent (45%) of the final stage production guarantee for direct seeded and 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 (60%) 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.

Sets. Onion bulbs that are planted by hand or by machine.

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 more pungent, have a lower sugar content, and can 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 broken.

Transplanted. Onions planted by placing of the onion plant or sets, by machine or by hand at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

2. Unit Division.

In addition to the requirements of section 34 of the Basic Provisions, optional units may be established by type, if separate types are 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 (§ 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. At least 75 percent (75%) of the plants on such acreage must be at the same stage to qualify for the first and second stages. 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 until eligible for the final stage; and

(ii) For transplanted storage and non-storage onions, from the 31st day after transplanting of onion plants or sets until eligible for the final stage.

(3) Final stage extends from the completion of topping and lifting or digging on the acreage until the end of the insurance period.

(c) Any acreage of onions damaged in the first or second stage, to the extent that the majority of producers in the area would not normally further care for the onions, will have a production guarantee for indemnity purposes, based on the stage in which the damage occurred, even if you continue to care for the damaged onions.

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 an August 31, September 30, or November 30 cancellation date;

(b) November 30 preceding the cancellation date for counties with a February 1 cancellation date; or

(c) As designated in the Special Provisions.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are as follows, unless otherwise designated in the Special Provisions:

State & County	Cancellation date	Termination date
Arizona; Georgia; Kinney, Uvalde, Medina, Bexar, Wilson, Karnes, Bee, and San Patricio 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 California Counties, except Lassen, Modoc, Shasta and Siskiyou.	September 30	September 30.
Hawaii	September 30	November 30.
All other states and counties	February 1	February 1.

6. Report of Acreage.

In addition to the provisions of section 6 of the Basic Provisions, if the Special Provisions require a processor contract to insure your onions, you must provide a copy of all your processor contracts to us on or before the acreage reporting date.

7. Annual Premium

In lieu of the provisions of section 7(c) 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.

8. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all the storage and non-storage onions (excluding green (bunch) or seed onions, chives, garlic, leeks, shallots, 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.

9. Insurable Acreage

In addition to the provisions of section 9 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 designated 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.

10. Insurance Period

(a) In accordance with the provisions of section 11 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 16 of the Basic Provisions.

(b) In accordance with the provisions of section 11 of the Basic Provisions, unless

otherwise designated in the Special Provisions, the insurance period ends at the earliest of:

(1) The calendar date for the end of the insurance period as follows:

(i) May 20 for 1015 Super Sweets, and any other non-storage onions in Cameron, Hidalgo, Starr, and Willacy Counties, Texas;

(ii) June 1 for Vidalia, and any other non-storage onions planted in the state of Georgia;

(iii) June 30 for all storage and non-storage onions in Arizona;

(iv) July 15 for 1015 Super Sweets, and any other non-storage onions for all Texas counties except Cameron, Hidalgo, Starr, and Willacy;

(v) July 31 for fall planted non-storage onions in Oregon and Washington;

(vi) August 31 for all non-storage onions not otherwise specified; and

(vii) October 15 for all storage onions not otherwise specified; or

(2) In addition to the requirements of section 11(b) of the Basic Provisions, fourteen days after lifting or digging.

11. 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 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 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.

12. Replanting Payment

(a) In accordance with section 13 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.

13. Duties in the Event of Damage or Loss

(a) In accordance with the requirements of section 14 of the Basic Provisions, any representative samples of the 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 topped, lifted, dug, 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.

14. 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 14(b)(1) by the respective price election;

(3) Totaling the results in section 14(b)(2);

(4) Multiplying the total production to be counted (see section 14(c)) by the respective price elections you chose;

(5) Totaling the results of section 14(b)(4);

(6) Subtracting the result in section 14(b)(5) from the result in 14(b)(3); and

(7) Multiplying the result in section 14(b)(6) by your share.

For Example:

You have a 100 percent share in 100 acres of a unit of transplanted storage onions with a production guarantee of 200 hundredweight per acre, and you select 100 percent of the price election of $8.00 per hundredweight. Your crop suffers a covered cause of loss on 25 acres during the second stage which has a second stage production guarantee of 60 percent of the final stage production guarantee which equals 120 hundredweight per acre. The appraised production on the 25 acres was 2,500 hundredweight of onion production. Your harvested onion production on the remaining 75 acres is 16,000 hundredweight of harvested production to count. Your indemnity will be calculated as follows:

(1) 25 acres × 120 hundredweight (200 × .60) second stage production guarantee = 3,000 hundredweight, and 75 acres × 200 hundredweight final stage production guarantee = 15,000 hundredweight;

(2) 3,000 hundredweight second stage production guarantee × $8.00 price election = $24,000 value of second stage production guarantee, and 15,000 hundredweight final stage production guarantee × $8.00 price election = $120,000 value of final stage production guarantee;

(3) $24,000 value of second stage production guarantee + $120,000 value of final stage production guarantee = $144,000 total value of production guarantee;

(4) 500 hundredweight second stage production to count (from step 4 of the section 14(c)(1)(iv) example) × $8.00 price election = $4,000 value of second stage production to count, and 16,000 hundredweight final stage production to count × 8.00 price election = $128,000 value of final stage production to count;

(5) $4,000 value of second stage production to count + $128,000 value of final stage production to count = $132,000 total value of production to count;

(6) $144,000 total value of production guarantee −$132,000 total value of production to count = $12,000 value of loss; and

(7) $12,000 × 100 percent share = $12,000 indemnity payment.

(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 13;

(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 14(d));

(iv) For acreage that does not qualify for the final stage production guarantee, and is not subject to section 14 (c)(1)(i) and (ii), the appraised production is reduced by the difference between the first or second stage (as applicable) and the final stage production guarantee; and

For Example:

You have 100 acres of a unit of transplanted storage onions with a production guarantee of 200 hundredweight per acre. Your crop suffers a covered cause of loss on 25 acres during the second stage which has a second stage production guarantee of 60 percent of the final stage production guarantee. The appraised production on the 25 acres was 2,500 hundredweight of onion production. Your second stage production to count on the 25 acres will be calculated as follows:

(1) 25 acres × 200 hundredweight final stage production guarantee = 5,000 hundredweight final stage production guarantee,

(2) 5,000 hundredweight final stage production guarantee × 60 percent second stage production guarantee = 3,000 hundredweight second stage production guarantee,

(3) 5,000 hundredweight final stage production guarantee −3,000 hundredweight second stage production guarantee = 2,000 hundredweight difference between second stage and final stage production guarantee, and

(4) 2,500 hundredweight appraised −2,000 hundredweight difference = 500 hundredweight second stage production to count (for step 4 of the section 14(b) example).

(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.

15. Prevented Planting

Your prevented planting coverage will be 35 percent (35%) of your final stage 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; 75 FR 15887, Mar. 30, 2010; 77 FR 13965, Mar. 8, 2012]

§ 457.136 Tobacco crop insurance provisions.

The Tobacco 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:

Tobacco Crop Insurance Provisions

1. Definitions.

Average value. For appraised production, the value of such production divided by the appraised pounds for the tobacco types. For harvested production, the value of such production divided by the harvested pounds for the tobacco type.

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 indentified by a single FSA farm serial number at the time insurance first attaches under these provisions for the crop year.

Harvest. Cutting or priming and removing all insured tobacco from the unit.

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.

Planted acreage. In addition to the definition contained in the Basic provisions, 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 one or more leaves are removed from the stalk as they mature.

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.

Tobacco types. Insurable tobacco as shown on the Special Provisions of Insurance.

2. Unit Division.

A basic unit will be determined in accordance with the definition of basic unit contained in section 1 of these Crop Provisions. Optional and enterprise units may be allowed by the Special Provisions of Insurance.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions, you must select only one price election percentage and coverage level for each tobacco type designated in the Special Provisions of Insurance that you elect to insure.

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 provide a copy of any written lease agreement, if applicable, between you and any landlord or tenant. The written lease agreement must:

(1) Identify all other persons sharing in the crop; and

(2) Be submitted to us on or before the acreage reporting date.

7. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the insured crop will be each tobacco type you elect to insure and for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That meets all rotation requirements on the Special Provisions of Insurance.

(b) You will be considered to have a share in the insured crop if you retain control of the acreage on which the tobacco is grown and you are at risk of loss.

8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage that is:

(a) 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 of Insurance or by written agreement; or

(b) Damaged before the final planting date to the extent that the majority of producers in the area would normally not further care for the tobacco crop, unless such crop is replanted or we agree that replanting is not practical.

9. Insurance Period.

In lieu of the provisions of section 11 of the Basic Provisions, coverage ends at the earlier of:

(a) Total destruction of the tobacco on the unit;

(b) Removal of the tobacco from the unit where grown, except for curing, grading, and packing;

(c) Abandonment of the crop on the unit;

(d) Final adjustment of the loss on the unit; or

(e) The calendar date for the end of the insurance period, which is the date immediately following planting and designated by tobacco types and states (or as otherwise stated on the Special Provisions of Insurance) as follows:

(i) Flue cured—November 30 in North Carolina and Virginia;

(ii) Flue cured—October 31 in Alabama, Florida, Georgia, and South Carolina;

(iii) Burley—February 28 in all states;

(iv) Dark air cured—March 15 in Kentucky, Tennessee, and Virginia;

(v) Fire cured—April 15 in Kentucky, Tennessee, and Virginia;

(vi) Cigar Binder, Cigar Filler, and Cigar Wrapper—April 30 in Connecticut, Massachusetts, Pennsylvania, and Wisconsin; and

(vii) Maryland type—May 15 in Maryland and Pennsylvania.

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 due to a cause of loss specified in sections 10(a) through (g) that also occurs during the insurance period.

11. Duties In The Event of Damage or Loss.

(a) In accordance with section 14 of the Basic Provisions, you must maintain representative samples of each unharvested tobacco crop (type) for our inspection. The representative samples 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 you have filed a notice of damage, you must leave all tobacco stalks and stubble in the unit 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 number of insured acres by your applicable production guarantee (per acre);

(2) Multiplying the result of section 12(b)(1) by your price election;

(3) Multiplying the total production to count determined in section 12(c) by your price election;

(4) Subtracting the result of section 12(b)(3) from the result of section 12(b)(2); and

(5) Multiplying the result of section 12(b)(4) by your share.

For example:

You have 100 percent share in a unit to produce 3,000 pounds of Burley tobacco, a production guarantee of 1,950 pounds (APH yield of 3,000 pounds × .65 coverage level), you plant 1.0 acre, your price election is $1.50 per pound, and your production to count is 500 pounds. Your indemnity would be calculated as follows:

(1) 1.0 acre × 1,950 pounds production guarantee = 1,950 pounds;

(2) 1,950 pounds × $1.50 price election = $2,925.00 value of the production guarantee;

(3) 500 pounds production to count × $1.50 price election = $750.00 value of the production to count;

(4) $2,925.00 value of the production guarantee—$750.00 value of the production to count = $2,175.00; and

(5) $2,175.00 × 1.000 share = $2,175.00 indemnity.

(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;

(D) For which you fail to provide records of production, that are acceptable to us; or

(E) For any type of tobacco when the stalks and stubble have been destroyed without our consent under section 11(b);

(ii) Production lost due to uninsured causes.

(iii) Potential production on insured acreage 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 insurable acreage.

(d) Once we agree the current year's tobacco has no average value due to an insured cause of loss, 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 applicable price election.

(e) In lieu of section 15(b) of the Basic Provisions, if we have conducted an appraisal of your insured crop and we determine that the harvested production you report is inconsistent with the appraised production and you cannot prove that an insurable cause of loss occurred between the appraisal and the end of the insurance period that can account for the reduction in production, your claim will be settled based on the appraised production on insured acreage, even if you have harvested the acreage. If we settle your claim based on your appraised production, section 12(f) regarding quality adjustment is not applicable.

(f) Mature tobacco may be adjusted for quality deficiencies when production has been damaged by insurable causes.

(1) You must contact us before any tobacco is disposed of so we can inspect the tobacco to determine the extent of the damage.

(2) Our inspection will be used to determine whether the average value is reasonable. Based on amount of damage determined during the inspection, if the average value is:

(i) Reasonable, such average value will be used to determine the quality adjustment in section 12(f)(5);

(ii) Unreasonable, we may adjust the average value used to calculate the quality adjustment in section 12(f)(5).

(3) If you dispose of any production without giving us the opportunity to have the tobacco inspected, you will not receive a quality adjustment for such tobacco, regardless of the average value of the production.

(4) Production to count will only be reduced if the average value for damaged tobacco is less than 75 percent of your tobacco price election. You must provide us with records that are acceptable to us which clearly shows the number of pounds, price per pound, and the quality of such tobacco.

(5) Any reduction in the production to count will be determined by:

(i) Dividing the average value per pound as determined by us in accordance with section 12(f)(2) of these Crop Provisions by your applicable price election; and

(ii) Multiplying this result by the number of pounds of damaged production.

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 acreage planted during the late planting period will be reduced by:

(1) One percent per day for the 1st through the 10th day; and

(2) Two percent per day 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

Your prevented planting coverage will be 35 percent of your production guarantee for timely planted acreage. Additional prevented planting coverage levels are not available for tobacco.

[74 FR 13059, Mar. 26, 2009]

§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 National Institute of Food and Agriculture 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; 76 FR 4804, Jan. 27, 2011]

§457.138 Grape crop insurance provisions.

The grape crop insurance provisions for the 2010 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:

Grape Crop Provisions

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. Removing the mature 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 grape plants in the vineyard.

Ton. Two thousand (2,000) pounds avoirdupois.

Type. A category of grapes (one or more varieties) identified as a type in the Special Provisions.

Variety. A kind of grape that is distinguished from any other by unique characteristics such as, but not limited to, size, color, skin thickness, acidity, flavors and aromas. In Arizona and California each variety is identified as a separate type in the Special Provisions except for type 095 (other varieties). Type 095 is used to designate varieties not listed as a separate type.

2. Unit Division

(a) In Arizona and California only:

(1) 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; and

(2) 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. Unless otherwise allowed by written agreement, optional units may only be established if each optional unit is located on non-contiguous land or grown and insured under an organic farming practice.

(b) In all states except Arizona and 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 and for acreage grown and insured under an organic farming practice 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 type when separate types are 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) In Arizona and California, you may select only one coverage level and price election for each grape variety you elect to insure in the county.

(b) In all states except Arizona and California, you may select only one coverage level and price election for each grape type in the county as specified in the Special Provisions. The coverage level you choose for each grape type is not required to have the same percentage relationship. The price election you choose for each type is not required to have the same percentage relationship to the maximum price election offered by us for each type. For example, if you choose 75 percent coverage level and 100 percent of the maximum price election for one type, you may choose 65 percent coverage level and 75 percent of the maximum price election for another type. If you elect the Catastrophic Risk Protection (CAT) level of insurance for any grape type, the CAT level of coverage will be applicable to all insured grape acreage in the county.

(c) In all states except Arizona and California, if you acquire a share in any grape acreage after you submit your application, such acreage is insurable under the terms of the policy and you did not include the grape type on your application, we will assign the following:

(1) A coverage level equal to the lowest coverage level you selected for any other grape type: and

(2) A price election percentage equal to the type with the lowest coverage level you selected, if you elected additional coverage; or 55 percent of the maximum price election, if you elected CAT.

(d) In addition to the definition of ''price election'' contained in section 1 of the Basic Provisions, a price election based on the price contained in your grape contract is allowed if provided by the Special Provisions. In the event any contract requires the use of a cultural practice that will reduce the amount of production from any insured acreage, your approved yield will be adjusted in accordance with section 3(f) and (g) to reflect the reduced production potential.

(e) In Arizona and 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 grape variety in the years for which production records are provided.

(f) You must report by the production reporting date designated in section 3 of the Basic Provisions, by type or 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 the grape type or variety, if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

(g) We will reduce the yield used to establish your production guarantee, based on our estimate of the effect on yield potential of any of the items listed in section 3(f)(1) through (4). 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.

(h) Your request to increase the coverage level or price election percentage will not be accepted if a cause of loss that could or would reduce the yield of the insured crop is evident when your request is made.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 preceding the cancellation date for Arizona and 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 in Arizona and California, and November 20 for all other states.

6. Report of Acreage

In addition to the requirements of section 6 of the Basic Provisions, you must report your acreage:

(a) In Arizona and California, by each grape variety you insure; or

(b) In all other states, by each grape type.

7. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be any insurable variety that you elect to insure in Arizona and California, or in all other states all insurable types, 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 (if such grapes are put to another use (*i.e.* table grapes), the production to count will be in accordance with section 12(c)(2(ii));

(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 at least two tons of grapes per acre (or as otherwise provided in the Special Provisions) in at least one of the three crop years immediately preceding the insured crop year, unless we inspect and allow insurance on acreage that has not produced this amount.

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, 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 of the Basic Provisions:

(1) For the year of application, coverage begins on February 1 in Arizona and California, and November 21 in all other states. Notwithstanding the previous sentence, if your application is received by us after January 12 but prior to February 1 in Arizona or 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 vineyard.

(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 to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) If in accordance with the terms of the policy, your grape policy is cancelled or terminated for any crop year 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.

(4) The calendar date for the end of the insurance period for each crop year is as follows, unless otherwise specified in the Special Provisions:

(i) October 10 in Mississippi and Texas;

(ii) November 10 in Arizona, California, Idaho, Oregon and Washington; and

(iii) November 20 in all other states.

(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 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 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 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 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 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 type or variety;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production to count of each type or variety, 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:

(i) 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.

(ii) Grapes grown for wine, juice, raisins or canning and put to another use, will be counted as production to count on a tonnage basis. No quality adjustment other than that specifically provided for in your policy is available.

(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 value per ton for undamaged grapes (the value of undamaged grapes will be the lesser of the average market price or the maximum price election for such grapes); 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; 74 FR 32055, July 7, 2009]

§457.139 Fresh market tomato (dollar plan) crop insurance provisions.

The fresh market tomato (dollar plan) crop insurance provisions for the 2013 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

1. Definitions

Acre. 43,560 square feet of planted acreage when row widths do not exceed six feet. If row widths exceed six feet, the land area on which at least 7,260 linear feet of rows are planted.

Allowable cost. The dollar amount per carton for harvesting, packing, and handling as stated in the Special Provisions.

Amount of insurance per acre. The dollar amount of insurance per acre obtained by multiplying the reference maximum dollar amount shown in the actuarial documents by the coverage level percentage you elect.

Carton. Twenty-five (25) pounds of the insured crop.

Crop year. In lieu of the definition contained in 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. The sale of the insured crop directly to consumers without the intervention of an intermediary such as a registered handler, 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.

Fresh market tomatoes. Field grown mature green or ripe fresh market tomatoes that meet the Agricultural Marketing Service United States Standards for Grades of Fresh Tomatoes; and the applicable Federal Marketing Order and Florida Tomato Committee Regulations, or their successors.

Harvest. The picking of fresh market tomatoes from the plants, excluding tomatoes salvaged by penhookers.

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.

Minimum value. The dollar amount per carton shown in the Special Provisions we will use to value appraised and unsold harvested production to count.

Penhookers. Individuals who purchase the right to salvage tomatoes remaining in the field after commercial harvests are completed.

Plant stand. The number of live plants per acre prior to the occurrence of an insured cause of loss.

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 field grown mature green or ripe fresh market 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.

Price received. The gross dollar amount per carton received by the producer before deductions of allowable costs.

Registered handler. A person or entity officially certified by the Florida Tomato Committee, or successor entity, to inspect and enforce all the handling regulations for fresh market tomatoes, and report the required packout data to the Florida Tomato Committee.

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 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 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 of the Basic Provisions 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 the amount of insurance per acre that you selected	Length of time if transplanted
1	50	From planting through the 29th day after planting.
2	75	From the 30th day after planting until the beginning of stage 3.
3	90	From the 60th day after planting until the beginning of the final stage.
Final	100	Begins the earlier of 75 days after planting, or the beginning of harvest.

(e) Any acreage of fresh market 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 the crop, the indemnity payable for such acreage will be based on the stage the plants had achieved when the insured damage occurred, even if the producer continues to care for the damaged tomatoes.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is April 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 July 31.

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:

(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 of the Basic Provisions, the annual premium amount for each cultural practice (e.g., fall transplanted 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 field grown mature green or ripe fresh market tomato types in the county as specified in the Special Provisions for which a premium rate is provided in 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) Direct seeded fresh market tomatoes, unless insured by written agreement.

9. Insurable Acreage

(a) In lieu of the provisions of section 9 of the Basic Provisions, 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 of the Basic Provisions:

(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.

(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 met, 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, strawberries or tobacco have been grown and the soil was not fumigated or otherwise properly treated before planting the insured tomatoes.

10. Insurance Period

In lieu 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 tomatoes are planted in each planting period. Coverage ends on each unit 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 on the unit; or

(f) The calendar date for the end of the insurance period that is 125 days after the date of transplanting or replanting with transplants.

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) 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 of the Basic Provisions, 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 harvest in a timely manner or failure to sell the tomatoes, unless such failure is due to actual physical damage caused by an insured cause of loss that occurs during the insurance period. For example, we will not pay an indemnity if you are

unable to sell the insured crop 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 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 of the Basic Provisions, 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 of the Basic Provisions, 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 count determined in accordance with section 14(c) by the percentage contained in the Special Provisions.

(5) Multiplying the result of section 14(b)(4) by your share.

For Example: You have a 100 percent share in 10.0 acres of fresh market tomatoes. You select a 70% coverage level of the reference maximum dollar amount of $7,500 per acre. The average price received is $10.00 per carton of tomatoes. Allowable costs are $4.25 per carton. Minimum value is $5.00 per carton. Your total sold production is 5,000 cartons (5,000 ÷ 10.0 = 500 cartons per acre) and you have an additional 1,000 cartons of unsold harvested production (1,000 ÷ 10.0 = 100 cartons per acre). Your loss occurred in the final stage of production. Your total indemnity is calculated as follows:

	$7,500 × 70% = dollar amount of insurance per acre	$5,250
14(c)(3)	500 cartons × $5.75 = value of sold production ($10 selling price minus $4.25 allowable cost).	2,875
14(c)(4)	100 cartons of unsold harvested production × $5 minimum value per carton.	+500
	Total value of production to count	3,375
14(b)(5)	Indemnity per acre = ($5,250 − $3,375) × 100% share	1,875
	$1,875 × 10.0 acres = $18,750 total indemnity payment	18,750

(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 fresh market tomato acreage that has not been harvested the required number of times as specified in the Special Provisions.

(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 sold 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 fresh market tomatoes in the load (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 fresh market tomatoes harvested.

(4) The total value of all unsold harvested production will be 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 an insured cause of loss and is not sold will not be counted as production to count.

(5) Any penhooker salvage value paid to you will be added to the total dollar value of production to count.

15. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

16. Minimum Value Option.

(a) The provisions of this option are continuous and will be attached to and made a part of your insurance policy, if:

(1) You elect the Minimum Value Option on your application, or on a form approved by us, on or before the sales closing date for the initial crop year in which you wish to insure fresh market 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) and 14(c)(4) of these Crop Provisions, the total value of harvested production will be determined as follows:

(1) For sold harvested production, the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each carton of fresh market tomatoes in the load (this result may not be less than the minimum value option price contained in the Special Provisions for any carton of tomatoes sold), and multiplying this result by the number of cartons of fresh market tomatoes sold; and

(2) For unsold harvested production, the dollar amount obtained by multiplying the number of cartons of such fresh market 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 an insured cause of loss and is not sold will not be counted as production to count.

(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.

Example with Minimum Value Option: You have a 100 percent share in 10.0 acres of fresh market tomatoes. You select a 70% coverage level of the reference maximum dollar amount of $7,500 per acre. The average price received is $6.00 per carton of tomatoes. Allowable costs are $4.25 per carton. Minimum value is $5.00 per carton. The Minimum Value Option price is $2.00 per carton. Your total sold production is 5,000 cartons (5,000 ÷ 10.0 = 500 cartons per acre) and you have an additional 1,000 cartons of unsold harvested production (1,000 ÷ 10.0 = 100 cartons per acre). Your loss occurred in the final stage of production. Your total indemnity is calculated as follows:

	$7,500 × 70% = dollar amount of insurance per acre	$5,250
16(b)(1)	500 cartons × $2 = value of sold production ($6 price received minus $4.25 allowable costs = $1.75. $2.00 minimum value option price is greater than $1.75).	1,000
16(b)(2)	100 cartons of unsold harvested production × $5 minimum value per carton.	500
	Total value of production to count	1,500

16(b)	Indemnity per acre = $5,250 − $1,500 = $3,750 × 100% share.	3,750
	$3,750 × 10.0 acres = $37,500 total indemnity payment	37,500

[62 FR 14777, Mar. 28, 1997; 62 FR 63634, Dec. 2, 1997, as amended at 62 FR 65174, Dec. 10, 1997; 77 FR 22469, Apr. 16, 2012]

§ 457.140 Dry pea crop insurance provisions.

The dry pea crop insurance provisions for the 2011 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) 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; 75 FR 15888, Mar. 30, 2010]

§457.141 Rice crop insurance provisions.

The rice crop insurance provisions for the 2011 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

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 acreage. In addition to the definition in section 1 of the Basic Provisions, land on which there is uniform placement of an adequate amount of rice seed into a prepared seedbed by one of the following methods (Acreage seeded in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement):

(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.

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 of the Basic Provisions, you must elect to insure your rice with either revenue protection or yield protection by the 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.

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 date
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas; and all Texas counties south thereof.	January 31.
Florida	February 15.
All other Texas counties and all other states.	February 28.

6. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all the rice in the county for which a premium rate is provided by the actuarial documents or by written agreement:

(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 of the Basic Provisions:

(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 of the Basic Provisions, 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 of the Basic Provisions, 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;

(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; or

(9) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.

(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 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 10(a)(1), you must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions;

(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

(4) The replanted crop 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) Unless otherwise specified in the Special Provisions, the amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 400 pounds, multiplied by your projected price, multiplied by your share.

(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.

11. Duties in the Event of Damage or Loss

Representative samples are required in accordance with section 14 of the Basic Provisions.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production 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 number of insured acres by your respective:

(i) Yield protection guarantee (per acre) if you elected yield protection; or

(ii) Revenue protection guarantee (per acre) if you elected revenue protection;

(2) Totaling the results of section 12(b)(1)(i) or 12(b)(1)(ii), whichever is applicable;

(3) Multiplying the production to count by your:

(i) Projected price if you elected yield protection; or

(ii) Harvest price if you elected revenue protection;

(4) Totaling the results of section 12(b)(3)(i) or 12(b)(3)(ii), whichever is applicable;

(5) Subtracting the result of section 12(b)(4) from the result of section 12(b)(2); and

(6) Multiplying the result of section 12(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of rice in the unit with a production guarantee (per acre) of 3,750 pounds, your projected price is $.0750, your harvest price is $.0700, and your production to count is 150,000 pounds.

If you elected yield protection:

(1) 50 acres × (3,750 pound production guarantee × $.0750 projected price) = $14,062.50 value of the production guarantee

(3) 150,000 pound production to count × $.0750 projected price = $11,250.00 value of the production to count

(5) $14,062.50 − $11,250.00 = $2,812.50

(6) $2,812.50 × 1.000 share = $2,813.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (3,750 pound production guarantee × $.0750 projected price) = $14,062.50 revenue protection guarantee

(3) 150,000 pound production to count × $.0700 harvest price = $10,500.00 value of the production to count

(5) $14,062.50 − $10,500.00 = $3,562.50

(6) $3,562.50 × 1.000 share = $3,563.00 indemnity.

(c) The total production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) For yield protection, not less than the production guarantee and for revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (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) 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 additional coverage 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; 75 FR 15888, 15889, Mar. 30, 2010]

§ 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 ($a \times b \times c \times d \times e \times f = y$).

6. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all the potatoes in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) Planted with certified seed (unless otherwise permitted by the Special Provisions);

(c) Planted for harvest as certified seed stock, or for human consumption, (unless specified otherwise in the Special Provisions);

(d) That are not (unless allowed by the Special Provision or by written agreement):

(1) Interplanted with another crop; or

(2) Planted into an established grass or legume.

7. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage that:

(a) Does not meet the rotation requirements contained in the Special Provisions for the crop; or

(b) Is damaged before the final planting date to the extent that similarly situated producers in the area would normally not further care for the crop, unless it is replanted or we agree that it is not practical to replant.

8. Insurance Period

In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is

the date immediately following planting as follows (exceptions, if any, for specific counties, varieties or types are contained in the Special Provisions):

(a) October 1, in Alaska;

(b) October 10 in Nebraska and Wyoming;

(c) October 15 in Colorado; Indiana; Iowa; Michigan; Minnesota; Montana; Nevada; North Dakota; South Dakota; Utah; and Wisconsin;

(d) October 20 in Maine;

(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 2010 and succeeding crop years are as follows:

For:

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

1. Definitions

Adapted. Varieties that are recognized by the National Institute of Food and Agriculture 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.

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. Removing the mature 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.

Lug.

(1) Twenty (20) pounds of table grapes in the Coachella Valley, California district, and all other States.

(2) Twenty-one (21) pounds in all other California districts.

(3) Or as otherwise specified in the Special Provisions.

Set out. Physically planting the grape plants 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.

Type. A category of grapes (one or more varieties) identified as a type in the Special Provisions.

USDA grade standard. (1) United States standard used to determine the minimum quality grade will be:

(i) The United States Standards for Grades of Table Grapes (European or Vinifera Type);

(ii) The United States Standards for Grades of American (Eastern Type Bunch Grapes); and

(iii) The United States Standards for Grades of Muscadine (*Vitis rotundifolia*) Grapes.

(2) The quantity and number of samples required will be determined in accordance with procedure issued by FCIC or as provided on the Special Provisions of Insurance.

Variety. A kind of grape that is distinguished from any other by unique characteristics such as, but not limited to, size, color, skin thickness, acidity, flavors and aromas. In Arizona and California each variety is identified as a separate type in the Special Provisions except for type 095 (other varieties). Type 095 is used to designate varieties not listed as a separate type.

2. Unit Division

(a) In Arizona and California only:

(1) A basic unit as defined in section 1 of the Basic Provisions will be divided into additional basic units by each table grape variety that you insure; and

(2) 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. Unless otherwise allowed by written agreement, optional units may only be established if each optional unit is located on non-contiguous land or grown and insured under an organic farming practice.

(b) In all states except Arizona and 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 and for acreage grown and insured under an organic farming practice 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 type when separate types are 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) In Arizona and California, you may select only one coverage level and price election for each table grape variety you elect to insure in the county.

(b) In all states except Arizona and California, you may select only one coverage level and price election for each table grape type in the county as specified in the Special Provisions. The coverage level you choose for each table grape type is not required to have same percentage relationship. The price election you choose for each type is not required to have the same percentage relationship to the maximum price election offered by us for each type. For example, if you choose 75 percent coverage level and 100 percent of the maximum price election for one type, you may choose 65 percent coverage level and 75 percent of the maximum price election for another type. If you elect the Catastrophic Risk Protection (CAT) level of insurance for any grape type, the CAT level of coverage will be applicable to all insured grape acreage in the county.

(c) In all states except Arizona and California, if you acquire a share in any grape acreage after you submit your application, such acreage is insurable under the terms of the policy and you did not include the grape type on your application, we will assign the following:

(1) A coverage level equal to the lowest coverage level you selected for any other grape type: and

(2) A price election percentage equal to the type with the lowest coverage level you selected, if you elected additional coverage; or 55 percent of the maximum price election, if you elected CAT.

(d) You must report by the production reporting date designated in section 3 of the Basic Provisions, by type or 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 the table grape type or variety, if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

(e) We will reduce the yield used to establish your production guarantee, based on our estimate of the effect on yield potential of any of the items listed in section 3(d)(1) through (4). 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) Your request to increase the coverage level or price election percentage will not be accepted if a cause of loss that could or would reduce the yield of the insured crop is evident when your request is made.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 preceding the cancellation date for Arizona and 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 in Arizona and California, and November 20 for all other states.

6. Report of Acreage

In addition to the requirements of section 6 of the Basic Provisions, you must report your acreage:

(a) In Arizona and California, by each table grape variety you insure; or

(b) In all other states, by each table grape type.

7. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be any insurable variety of table grapes that you elect to insure in Arizona and California, or in all other states all insurable types, 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 table grapes;

(c) That are adapted to the area;

(d) That are grown in a vineyard that, if inspected, is considered acceptable by us;

(e) That, after being set out or grafted, have reached the number of growing seasons designated by the Special Provisions; or

(f) That have produced an average of at least 150 lugs of table grapes per acre (or as otherwise provided in the Special Provisions) in at least one of the three crop years immediately preceding the insured crop year, unless we inspect and allow insurance on acreage that has not produced this amount.

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, 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 of the Basic Provisions

(1) For the year of application, coverage begins on February 1 in Arizona and California, and November 21 in all other states. Notwithstanding the previous sentence, if your application is received by us after January 12 but prior to February 1 in Arizona or 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 vineyard.

(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 to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) If in accordance with the terms of the policy, your table grape policy is cancelled or terminated for any crop year 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.

(4) The calendar date for the end of insurance period for each crop year is the date specified 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 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 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.

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, 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 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) Phylloxera, regardless of cause; or

(2) Inability to market the table grapes for any reason other than the 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 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 and you previously gave notice in accordance with section 14 of the

Basic Provisions, 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 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 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 each result in section 12(b)(1) by the respective price election you selected for each type or variety;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production to count of each type or variety, if applicable, (see section 12(c)) by the respective price election you selected;

(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 state quality standards, if specified in the Special Provisions, or the appropriate USDA grade standard (if no state standard is specified); 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; 74 FR 32057, July 7, 2009; 74 FR 35113, July 20, 2009; 76 FR 4804, Jan. 27, 2011]

§ 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 National Institute of Food and Agriculture 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; 76 FR 4804, Jan. 27, 2011]

§ 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 2013 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

1. Definitions

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.

Fresh peach production. Peach production from insurable acreage that:

(1) Is sold, or could be sold, for human consumption without undergoing any change in the basic form, such as peeling, juicing, crushing, etc.

(2) Grades at least U.S. Extra No. 1 or better, and consisting of a 2¼ inch minimum diameter, unless otherwise specified in the Special Provisions.

(3) Is from acreage that is designated as fresh peaches on the acreage report;

(4) Follows the recommended cultural practices generally in use for fresh peach acreage in the area in a manner generally recognized by agricultural experts;

(5) Is from acreage that you certify, and if requested by us, provide verifiable records to support, that at least 50 percent of the total production from acreage reported as fresh peach acreage was sold as fresh peaches in one or more of the four most recent crop years; and

(6) Is sold or could have been sold for a price that is not less than the applicable fresh peach price election for the applicable crop year in the actuarial documents. If the fresh peach production is sold or could have been sold for a price less than the applicable

fresh peach price election for the applicable crop year in the actuarial documents, you must provide verifiable records to show that the price received was at least the amount paid by buyers for fresh peaches in the area in which you sell your peaches.

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.

Post production cost. The costs, as specified in the Special Provisions, associated with activities that occur during harvesting, packing, transportation, and marketing, as determined by FCIC using regional peach price data of peach production budgets from regional respective universities extension, other USDA agencies, and other third party resources.

Processing peach production. Peach production from insurable acreage that is:

(i) Sold, or could be sold, for the purpose of undergoing a change to its basic structure such as peeling, juicing, crushing, etc.; or

(ii) From acreage designated as processing peaches on the acreage report.

Set out. Transplanting the tree into the orchard.

2. Unit Division.

In addition to the requirements contained in section 34 of the Basic Provisions, optional units may be established if each optional unit is:

(a) Located on non-contiguous land; or

(b) By fresh and processing as 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 (§ 457.8):

(a) You may select a separate coverage level for all fresh peach acreage and for all processing peach acreage. For example, if you choose the 55 percent coverage level for all fresh peach acreage, you may choose the 75 percent coverage level for all processing peach acreage.

(1) Notwithstanding paragraph (a) of this section, if you elect the Catastrophic Risk Protection (CAT) level of coverage for fresh peach acreage or processing peach acreage, the CAT level of coverage will be applicable to all insured peach acreage in the county of both fresh and processing peaches.

(2) If you only have fresh peach acreage designated on your acreage report and processing peach acreage is added after the sales closing date, we will assign a coverage level equal to the coverage level you selected for your fresh peach acreage.

(3) If you only have processing peach acreage designated on your acreage report and fresh peach acreage is added after the sales closing date, we will assign a coverage level equal to the coverage level you selected for your processing peach acreage.

(b) 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 fresh and processing peaches. If the Special Provisions allow different price elections, you may select a separate price election for all your fresh peaches and for all your processing peaches. If the Special Provisions do not allow for different price elections, the price elections you choose for fresh peaches and processing peaches must have the same percentage relationship to the maximum price offered by us for fresh and processing peaches. For example, if you choose 100 percent of the maximum price election for fresh peaches, you must choose 100 percent of the maximum price election for processing peaches.

(c) You must report, not later than the production reporting date designated in section 3 of the Basic Provisions, separately by fresh and processing peach acreage, as applicable:

(1) Any event or action that could impact the yield potential of the insured crop including, interplanting of a perennial crop, removal of trees, any tree damage, change in practices, or any other circumstance that may reduce the expected 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 trees, variety, 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;

(iii) The planting pattern; and

(iv) Any other reasonable and pertinent information that we request in order to establish your approved yield.

(d) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any situation listed in sections 3(c)(1) through (4). If the situation occurred:

(1) Before the beginning of the insurance period, we will reduce the yield used to establish your production guarantee for the current crop year as necessary. 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;

(2) Or may occur after the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee is due to an uninsured cause of loss;

(3) Or may occur after the beginning of the insurance period and you fail to notify us by the production reporting date, production lost due to uninsured causes equal to the amount of the reduction in yield used to establish your production guarantee will be applied in determining any indemnity (see section 12(c)(1)(ii). We will reduce the yield used to establish your production guarantee for the subsequent crop year.

(e) 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 (§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 November 20.

6. Report of Acreage.

In addition to the requirements contained in section 6 of the Basic Provisions, you must report and designate all acreage of peaches as fresh or processing peaches by the acreage reporting date. Any acreage not meeting all the requirements to qualify for fresh peach production must be designated on the acreage report as processing peach production.

7. Insured Crop

In accordance with section 8 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 varieties of peaches that are grown for the production of Fresh or Processing Peaches.

(d) That are grown in an orchard that, if inspected, is considered acceptable by us;

(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; and

(f) That are grown for:

(1) Fresh peach production; or

(2) Processing peach production.

8. 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, 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.

9. Insurance Period

(a) In accordance with the provisions of section 11 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 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 section 9(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.

10. 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 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 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.

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 in accordance with our procedures.

(b) In addition to the requirements of section 14 of the Basic Provisions (§ 457.8), and unless the insurance period has ended prior to each of the following events, the following will apply:

(1) 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.

(2) 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.

(3) 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.

(4) 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 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 fresh and processing peaches, as applicable, by the respective production guarantee;

(2) Multiplying each result in section 12(b)(1) by the respective price election;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production of fresh and processing peaches to be counted, as applicable (see subsection 12(c)) by the respective price election;

(5) Totaling the results in section 12(b)(4);

(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.

Example: You have a 100 percent share in one basic unit with 10 acres of fresh peaches and 5 acres of processing peaches designated on your acreage report, with a 300 bushel per acre production guarantee for both fresh and processing peaches, and you select 100 percent of the price election of $15.50 per bushel for fresh peaches and $6.50 per bushel for processing peaches. You harvest 2,500 bushels of fresh peaches and 500 bushels of processing peaches. Your indemnity will be calculated as follows:

(A) 10 acres × 300 bushels = 3,000-bushel production guarantee of fresh peaches;

5 acres × 300 bushels = 1,500-bushel production guarantee of processing peaches;

(B) 3,000-bushel production guarantee × $15.50 price election = $46,500 value of the production guarantee for fresh peaches; 1,500-bushel production guarantee × $6.50 price election = $9,750 value of the production guarantee for processing peaches;

(C) $46,500 value of the production guarantee for fresh peaches + $9,750 value of the production guarantee for processing peaches = $56,250 total value of the production guarantee;

(D) 2,500 bushels of fresh peach production to count × $15.50 price election = $38,750 value of the fresh peach production to count; 500 bushels of processing peach production to count × $6.50 price election = $3,250 value of the processing peach production to count;

(E) $38,750 value of the fresh peach production to count + $3,250 value of the processing peach production to count = $42,000 total value of the production to count;

(F) $56,250 total value of the production guarantee—$42,000 total value of the production to count = $14,250 value of loss; and

(G) $14,250 value of loss × 100 percent share = $14,250 indemnity payment.

[End of Example]

(c) The total production to count (in 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) From which production 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 peach production that would be marketable if harvested;

(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 marketable peach 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) For fresh peaches by:

(A) Dividing the value of the damaged peaches minus the post production cost specified in the Special Provisions, by the fresh peach price election; and

(B) Multiplying the result of section 12(c)(3)(i)(A) (not to exceed 1.00) by the number of bushels of the damaged fresh peaches.

(ii) For processing peaches by:

(A) Dividing the value of the damaged peaches minus the post production cost specified in the Special Provisions, by the processing peach price election; and

(B) Multiplying the result of section 12(c)(3)(ii)(A) (not to exceed 1.00) by the number of bushels of the damaged processing peaches.

(4) Peaches that cannot be marketed due to insurable causes will not be considered production to count.

13. 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; 77 FR 52592, Aug. 31, 2012]

§457.154 Processing sweet corn crop insurance provisions.

The Processing Sweet Corn Crop Insurance Provisions for the 2014 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 National Institute of Food and Agriculture 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.

Price election. In lieu of the definition of price election in the Basic Provisions, the price election will be the base contract price stated in your processor contract.

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 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, unless the contracts are for different types. Your base contract price will be the weighted average of all applicable base contract prices.

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 percentage for all the processing sweet corn in the county insured under this policy. 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 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, as amended at 76 FR 4804, Jan. 27, 2011; 78 FR 55173, Sept. 10, 2013]

§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 National Institute of Food and Agriculture 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; 76 FR 4805, Jan. 27, 2011]

§§ 457.156–457.157 [Reserved]

§ 457.158 Apple crop insurance provisions.

The apple crop insurance provisions for the 2011 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

1. Definitions

Apple production. All fresh apple production and processing apple production from 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 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 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 apple production. (1) Apples:

(i) That are sold, or could be sold, for human consumption without undergoing any change in the basic form, such as peeling, juicing, crushing, etc.;

(ii) From acreage that is designated as fresh apples on the acreage report;

(iii) That follow the recommended cultural practices generally in use for fresh apple acreage in the area in a manner generally recognized by agricultural experts; and

(iv) From acreage that you certify, and, if requested by us provide verifiable records to support, that at least 50 percent of the production from acreage reported as fresh apple acreage from each unit, was sold as fresh apples in one or more of the four most recent crop years.

(2) Acreage with production not meeting all the requirements above must be designated on the acreage report as processing apple production.

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.

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 apple production. Apples from insurable acreage failing to meet the insurability requirements for fresh apple production that are:

(1) Sold, or could be sold for the purpose of undergoing a change to the basic structure such as peeling, juicing, crushing, etc.; or

(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. A category of apples as designated 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 type as 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 coverage level for all fresh apple acreage and only one coverage level for all processing apple acreage. For example, if you choose the 55 percent coverage level for all your fresh apple acreage (*i.e.*, fresh, varietal group types), you may choose the 75 percent coverage level for all your processing apple acreage. However, if you elect the Catastrophic Risk Protection (CAT) level of insurance for fresh apple acreage or processing apple acreage, the CAT level of coverage will be applicable to all insured apple acreage in the county. If you only have fresh apple acreage designated on your acreage report and processing apple acreage is added after the sales closing date, we will assign a coverage level equal to the coverage level you selected for your fresh apple acreage. If you only have processing apple acreage designated on your acreage report and fresh apple acreage is added after the sales closing date, we will assign a coverage level equal to the coverage level you selected for your processing apple acreage.

(b) 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.

(c) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type, if applicable:

(1) Any event or action that could impact the yield potential of the insured crop including interplanted perennial crop, removal of trees, any damage, change in practices, or any other circumstance that may reduce the expected 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.

(d) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any situation listed in sections 3(c)(1) through (c)(4). If the situation occurred:

(1) Before the beginning of the insurance period, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the situation was due to an insured or uninsured cause of loss. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce the yield used to establish your production guarantee at any time we become aware of the circumstance;

(2) Or may occur after the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) Or may occur after the beginning of the insurance period and you fail to notify us by the production reporting date, production lost due to uninsured causes equal to the amount of the reduction in the yield used to establish your production guarantee will be applied in determining any indemnity (*see* section 12(c)(1)(ii)). We will reduce the yield used to establish your production guarantee for the subsequent crop year.

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, in accordance with the terms of the policy, your apple policy is canceled or terminated by us for any crop year after insurance attached for that crop year, but on or before the cancellation and termination dates, whichever is later, insurance will be considered not to have 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. Any acreage not qualifying for fresh apple production is not eligible for the Optional Coverage for Fresh Fruit Quality Adjustment option contained in section 14 of these Crop Provisions. If you designate fresh apple acreage on the acreage report, you are certifying at least 50 percent of the production from acreage reported as fresh apple acreage, by unit, was sold as fresh apples in one or more of the four most recent crop years in accordance with the definition of ''fresh apple production'' and that you have the records to support such production.

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;

(2) 150 bushels of apples per acre in Area B; or

(3) 200 bushels of apples per acre in Area C;

(c) That are grown in an orchard that, if inspected, is considered acceptable by us; and

(d) That are grown for:

(1) Fresh apple production; or

(2) Processing apple production.

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, coverage begins on February 1 of the calendar year the insured crop normally blooms in California and November 21 of the calendar year prior to the calendar year the insured crop normally blooms in all other States. Notwithstanding the previous sentence, 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

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples in accordance with our procedures.

(b) In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(1) You must notify us at least 3 days prior to the date harvest should have started if the crop will not be harvested.

(2) 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.

(3) 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 and by the percent of 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 and by the percent of 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.

Basic Coverage Example:

You have a 100 percent share in one basic unit with 10 acres of fresh apples and 5 acres of processing apples designated on your acreage report, with a 600 bushel per acre production guarantee for both fresh and processing apples, and you select 100 percent of the price election on a price election of $9.10 per bushel for fresh apples and $2.50 per bushel for processing apples. You harvest 5,000 bushels of fresh apples and 1,000 bushels of processing apples, all grading U.S. No. 1 Processing or better. Your indemnity will be calculated as follows:

A. 10 acres × 600 bushels = 6,000-bushel production guarantee of fresh apples;

5 acres × 600 bushels = 3,000-bushel production guarantee of processing apples;

B. 6,000-bushel production guarantee × $9.10 price election × 100 percent of price election = $54,600 value of production guarantee for fresh apples;

3,000-bushel production guarantee × $2.50 price election × 100 percent of price election = $7,500 value of production guarantee for processing apples;

C. $54,600 value of production guarantee for fresh apples + $7,500 value of production

guarantee for processing apples = $62,100.00 total value of the production guarantee;

D. 5,000 bushels of fresh apple production to count × $9.10 price election × 100 percent of price election = $45,500 value of fresh apple production to count;

1,000 bushels of processing apple production to count × $2.50 price election × 100 percent of price election = $2,500 value of processing apple production to count;

E. $45,500 value of fresh apple production to count + $2,500 value of processing apple production to count = $48,000 total value of production to count;

F. $62,100 total value of the production guarantee − $48,000 total value of production to count = $14,100.00 value of loss; and

G. $14,100 value of loss × 100 percent share = $14,100 indemnity payment.

[End of Example]

(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.

(d) Any apple production not graded or appraised prior to the earlier of the time apples are placed in storage or the date the apples are delivered to a packer, processor, or other handler will not be considered damaged apple production and will be considered production to count.

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. Insureds who select this option cannot receive less than the indemnity due under section 12.

(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 apple production 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 apple production is not eligible for coverage under this option.

(4) In lieu of sections 12(c)(1)(iii), (iv) and (2), the production to count will include all appraised and harvested production from all of the fresh apple acreage in the unit, adjusted in accordance with this option.

(5) If appraised or harvested fresh apple production for the block or unit, as applicable, is damaged to the extent that more than 20 percent of the apple production does not grade U.S. Fancy or better the following adjustments to the production to count 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 one 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 one 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 one 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 or better, all such sold production will be included as production to count under this option.

(c) Any apple production not graded or appraised prior to the earlier of the time apples are placed in storage or the date the apples are delivered to a packer, processor, or other handler will not be considered damaged apple production and will be considered production to count under this option.

(d) Any adjustments that reduce your production to count under this option will not be applicable when determining production to count for APH purposes.

Optional Coverage for Fresh Fruit Quality Adjustment Example:

You have a 100 percent share in 10 acres of fresh apples designated on your acreage report, with a 600 bushel per acre guarantee, and you select 100 percent of the price election on a price election of $9.10 per bushel. You harvest 5,000 bushels of apples from your designated fresh apple acreage, but only 2,650 of those bushels grade U.S. Fancy or better. Assuming you do not sell any of your fresh apple production as U.S. Fancy or better, your indemnity would be calculated as follows:

A. 10 acres × 600 bushels per acre = 6,000-bushel production guarantee of fresh apples;

B. 6,000-bushel production guarantee of fresh apples × $9.10 price election × 100 percent of price election = $54,600 value of production guarantee for fresh apple acreage;

C. The value of the fresh apple production to count is determined as follows:

i. 5,000 bushels harvested − 2,650 bushels that graded U.S. Fancy or better = 2,350 bushels of fresh apple production not grading U.S. Fancy or better;

ii. 2,350/5,000 = 47 percent of fresh apple production not grading U.S. Fancy or better;

iii. In accordance with section 14(b)(5)(ii): 47 percent − 40 percent = 7 percent in excess of 40 percent;

iv. 7 percent × 3 = 21 percent;

v. 40 percent + 21 percent = 61 percent;

vi. 5,000 bushels harvested × .61 (61 percent) = 3,050 bushels of fresh apple production not grading U.S. Fancy or better;

vii. 5,000 bushels harvested − 3,050 bushels of fresh apple production not grading U.S. Fancy or better = 1,950 bushels of adjusted fresh apple production to count;

viii. 1,950 bushels of adjusted fresh apples production to count × $9.10 price election × 100 percent of price election = $17,745 value of fresh apple production to count;

D. $54,600 value of production guarantee for fresh apples − $17,745 value of fresh apple production to count = $36,855 value of loss;

E. $36,855 value of loss × 100 percent share = $36,855 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; 75 FR 52231, Aug. 25, 2010]

§457.159 Stonefruit crop insurance provisions.

The Stonefruit Crop Insurance Provisions for the 2011 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

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.

Grade standards. The United States Standards for Grades of Peaches, the United States Standards for Grades of Nectarines, the United States Standards for Grades of Apricots, and the United States Standards for Grades of Fresh Plums and Prunes, or other such standards specified in the Special Provisions.

Graft. To unite a shoot or bud with a rootstock in accordance with recommended practices to form a living union.

Harvest. The physical removal of mature stonefruit from the tree 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, or as specified in the Special Provisions:

Crop	Pounds per lug
Fresh Apricots	24
Fresh Nectarines	25

Crop	Pounds per lug
Fresh Freestone Peaches	25
Fresh Plums	28

Weight for Processing Apricots, Processing Cling Peaches, and Processing Freestone Peaches is specified in tons.

Marketable. Stonefruit production that meets or exceeds the quality standards for U.S. No. 1 in accordance with the applicable grade standards or other standards as specified in the Special Provisions, or if stonefruit production fails to meet the applicable grade standards, stonefruit production that is accepted by a packer, processor or other handler.

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) Fresh Plums;

(e) Processing Apricots;

(f) Processing Cling Peaches;

(g) Processing Freestone Peaches; and

(h) Other crops listed in the Special Provisions.

Ton. Two thousand (2,000) pounds avoirdupois.

Type. A category of a stonefruit crop with similar characteristics that are grouped for insurance purposes, as listed in the Special Provisions.

2. Unit Division

In lieu of 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: Optional units may be established by type 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 of a crop, 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 of cling peach, 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, 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 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 any situation listed in sections 3(b)(1) through (b)(4). If the situation occurred:

(1) Before the beginning of the insurance period, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the situation was due to an insured or uninsured cause of loss. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce the yield used to establish your production guarantee at any time we become aware of the circumstance;

(2) Or may occur after the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) Or may occur after the beginning of the insurance period and you fail to notify us by the production reporting date, production lost due to uninsured causes equal to the amount of the reduction in yield used to establish your production guarantee will be applied in determining any indemnity (see section 11(c)(1)(ii)). We will reduce the yield used to establish your production guarantee for the subsequent crop year.

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, or as specified in the Special Provisions.

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, or as specified in the Special Provisions.

6. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all acreage 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 or have subsequently become commercially available;

(2) Are adapted to the area;

(3) Are grown on root stock that is adapted to the area;

(4) Are in compliance with the applicable State's Tree Fruit Agreement or related crop advisory board for the state (for each insured crop and type), when such regulations exist;

(5) 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 one of the four most recent actual production history crop years, unless we inspect such acreage and give our approval in writing;

(6) Have, after being set out or grafted, reached at least the fifth growing season. However, we may give our approval in writing to insure acreage that has not reached this age if it meets the requirements of 6(b)(5); and

(7) Are grown in an orchard that, if inspected, is considered acceptable by us.

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;

(iii) In all states except California, September 30 for all fresh plums;

(iv) In California only, October 20 for all fresh plums; or

(v) 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) 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 by its respective production guarantee;

(2) Multiplying each result of section 11(b)(1) by the respective price election for the type and by the percent of the price election;

(3) Totaling the results of section 11(b)(2) (if there is only one type, 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, by the respective price election and by the percent of the 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) (if there is only one type, 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.

Scenario 1:

You select 75 percent coverage level and 100 percent of the price election on 50.0 acres of Type A stonefruit with 100 percent share in the unit. The production guarantee is 500.0 lugs per acre and the price election is $6.00 per lug. You harvest 5,000 lugs. Your indemnity would be calculated as follows:

(1) 50.0 acres × 500.0 lugs = 25,000-lug production guarantee;

(2) 25,000 lugs × $6.00 price election × 100 percent of the price election = $150,000 value of production guarantee;

(4) 5,000 harvested lugs × $6.00 price election × 100 percent of the price election = $30,000 value of production to count;

(6) $150,000–$30,000 = $120,000 loss; and

(7) 120,000 × 1.000 share = $120,000 indemnity payment.

Scenario 2:

In addition to the above information in Scenario 1, you have an additional 50.0 acres of Type B stonefruit with 100 percent share in the unit. The production guarantee is 300.0 lugs per acre and the price election is $3.00

per lug. You harvest 3,000 lugs. Your indemnity would be calculated as follows:

(1) 50.0 acres × 500.0 lugs Type A = 25,000-lug guarantee; and 50.0 acres × 300.0 lugs Type B = 15,000-lug guarantee;

(2) 25,000 lugs × $6.00 price election × 100 percent of the price election = $150,000 value of guarantee for Type A; and 15,000 lugs × $3.00 price election × 100 percent of the price election = $45,000 value of guarantee for Type B;

(3) $150,000 + $45,000 = $195,000 total value of production guarantee;

(4) 5,000 harvested lugs Type A × $6.00 price election × 100 percent of the price election = $30,000 value of production to count; and 3,000 harvested lugs Type B × $3.00 price election × 100 percent of the price election = $9,000 value of production to count;

(5) $30,000 + $9,000 = $39,000 total value of production to count;

(6) $195,000–$39,000 = $156,000 total loss; and

(7) $156,000 loss × 1.000 share = $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 grade standards, or fails to meet the applicable grade standards but is or could be sold for any use other than fresh packed stonefruit.

(4) Harvested fresh or processing stonefruit production 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 value per lug or ton of marketable production by the highest price election for the same type and multiplying the result (not to exceed 1.00) by the quantity of such production; or

(ii) For all other fresh stonefruit, by multiplying the number of tons that could be marketed by the value per ton and dividing that result by the highest price election available for the same 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; 75 FR 44717, July 29, 2010]

§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 2011 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

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:

(a) You must elect to insure your canola and rapeseed with either revenue protection or yield protection by the sales closing date; and

(b) In counties with both fall and spring sales closing dates for the insured crop:

(1) If you do not have any insured fall planted acreage of the insured crop, you may change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, until the spring sales closing date; or

(2) If you have any insured fall planted acreage of the insured crop, you may not change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, 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

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 Alabama and Georgia	Sept. 30.

State and county	Cancellation and Termination dates
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) We will not insure any acreage that does not meet the rotation requirements contained in the Special Provisions;

(b) Whenever the Special Provisions designate only a fall final planting date, any acreage of canola or rapeseed 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 fall type of the insured crop unless we agree that replanting is not practical;

(c) Whenever the Special Provisions designate both fall and spring final planting dates:

(1) Any fall canola or rapeseed 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 type of the insured crop to maintain insurance based on the fall type unless we agree that replanting is not practical. If it is not practical to replant to the fall type of canola or rapeseed but is practical to replant to a spring type, you must replant to a spring type to keep your insurance based on the fall type in force; and

(2) Any fall canola or rapeseed acreage that is replanted to a spring type of the same crop when it was practical to replant the fall type will be insured as the spring type and the production guarantee, premium, projected price, and harvest price applicable to the spring type will be used. In this case, the acreage will be considered to be initially planted to the spring type; and

(d) Whenever the Special Provisions designate a spring final planting date, any acreage of spring canola or rapeseed 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; or

(e) Whenever the Special Provisions designate only a spring final planting date, any acreage of fall planted canola or rapeseed is not insured unless you request such coverage on or before the spring sales closing date, and we determine in writing that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. However, if we fail to inspect the acreage by the spring final planting date, insurance will attach as specified in section 7(e)(3):

(1) Your request for coverage must include the location and number of acres of fall planted canola or rapeseed;

(2) The fall planted canola or rapeseed will be insured as a spring type for the purpose of the production guarantee, premium, projected price, and harvest price, if applicable;

(3) 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;

(4) Any acreage of such fall planted canola or rapeseed 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; and

(5) If fall planted acreage is not to be insured it must be recorded on the acreage report as uninsured fall planted acreage.

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 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;

(h) Failure of the irrigation water supply due to a cause of loss specified in sections 9(a) through (g) that also occurs during the insurance period; or

(i) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.

10. Replanting Payment

(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 10(a)(1), you must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions;

(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

(4) The replanted crop must be seeded at a rate sufficient to achieve a total (undamaged and new seeding) plant population that is considered appropriate by agricultural experts for the insured crop, type and practice.

(b) Unless otherwise specified in the Special Provisions, the amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 175 pounds, multiplied by your projected price, multiplied by your share.

(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) If the acreage is replanted to an insured crop type that is different than the insured crop type originally planted on the acreage:

(1) The production guarantee, premium, and projected price and harvest price, as applicable, will be adjusted based on the replanted type;

(2) Replanting payments will be calculated using your projected price and production guarantee for the crop type that is replanted and insured; and

(3) A revised acreage report will be required to reflect the replanted type, as applicable.

11. Duties in the Event of Damage or Loss

Representative samples are required in accordance with section 14 of the Basic Provisions.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production 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 number of insured acres of each type, as applicable, by your respective:

(i) Yield protection guarantee (per acre) if you elected yield protection; or

(ii) Revenue protection guarantee (per acre) if you elected revenue protection;

(2) Totaling the results of section 12(b)(1)(i) or 12(b)(1)(ii), whichever is applicable;

(3) Multiplying the production to count of each type, as applicable, by your respective:

(i) Projected price if you elected yield protection; or

(ii) Harvest price if you elected revenue protection;

(4) Totaling the results of section 12(b)(3)(i) or 12(b)(3)(ii), whichever is applicable;

(5) Subtracting the result of section 12(b)(4) from the result of section 12(b)(2); and

(6) Multiplying the result of section 12(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of canola in the unit with a production guarantee (per acre) of 650 pounds, your projected price is $.1220, your harvest price is $.1110, and your production to count is 31,000 pounds.

If you elected yield protection:

(1) 50 acres × (650 pound production guarantee × $.1220 projected price) = $3,965.00 value of the production guarantee

(3) 31,000 pound production to count × $.1220 projected price = $3,782.00 value of the production to count

(5) $3,965.00 − $3,782.00 = $183.00

(6) $183.00 × 1.000 share = $183.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (650 pound production guarantee × $.1220 projected price) = $3,965.00 revenue protection guarantee

(3) 31,000 pound production to count × $.1110 harvest price = $3,441.00 value of the production to count

(5) $3,965.00 − $3,441.00 = $524.00

(6) $524.00 × 1.000 share = $524.00 indemnity.

(c) The total production to count (pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) For yield protection, not less than the production guarantee and for revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection 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 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 in accordance with the quality adjustment factors 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 an unadjusted weight basis.

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

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have additional coverage and pay an additional premium, you may increase your prevented

planting coverage to a level specified in the actuarial documents.

[62 FR 65997, Dec. 17, 1997, as amended at 67 FR 43526, June 28, 2002; 75 FR 15889, Mar. 30, 2010]

§ 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 FR 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 2014 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.

Approved average revenue per acre. The total of your average gross sales per acre based on the most recent consecutive four years of sales records building to six 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 six 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 the two most recent consecutive years of your gross sales per acre and two years of the T-revenue; or

(2) If you do not provide any gross sales records, the T-revenue.

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 crop year your gross sales were $100,000 and your net acres of pecans were 100, then your average gross sales per acre for the crop year would be $1,000.

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 a 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.

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 is:

(1) The average of the AMS prices for the nearest location for similar quality, quantity, and variety of in-shell 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, unless otherwise provided in the Special Provisions. For example, if you harvest production on November 14 but do not sell the production, 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; or

(2) If AMS prices are not published for the week, 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).

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.

Top work. To graft scions of one pecan variety onto the tree or branch of another pecan variety.

Transitional revenue (T-revenue). A value determined by FCIC and published in the actuarial documents.

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.

Except as provided in these Crop Provisions, for both years of the two-year coverage module a unit will be:

(a) In addition to the requirements of section 34(a)(4) of the Basic Provisions, an enterprise unit if the insured crop is located on at least two parcels of non-contiguous land and at least two of the parcels must contain at least the lesser of 20 acres or 20 percent of the insured crop acreage in the enterprise unit;

(b) A basic unit as defined in section 1 of the Basic Provisions; or

(c) In lieu of the requirements contained in sections 34(b) and (c) of the Basic Provisions, basic units may be divided into optional units if, for each optional unit, the following criteria are met:

(1) Each optional unit you select must be located on non-contiguous land;

(2) Separate records of production are provided for at least the most recent consecutive two crop years. The records will be used to verify that trees from each unit meet the minimum production requirement contained in section 8(d) and to establish the approved average revenue per acre for the optional units selected; and

(3) Optional units are selected and identified on the acreage report by the acreage reporting date of the first year of the two-year coverage module. 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. 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) You fail to provide acceptable records necessary to determine a loss for optional units. This will result in optional units being adjusted or combined to reflect the actual unit structure at the time of discovery. Your amount of insurance per acre will be recalculated for the current crop year and the subsequent crop year of the two-year coverage module (provided another year remains in the two-year coverage module).

(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 T-revenue 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.

(4) Your gross sales amount is assigned in accordance with section 3(f).

(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 and you will not be eligible for optional units for both years of the two-year coverage module. The gross sales amount assigned by us will be not greater than the T-revenue 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 RMA's Web site 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. If available from us, you may elect to receive these documents and changes electronically. 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 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.

(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 produced at least 600 pounds of pecans in-shell per acre (or an amount provided in the Special Provisions) in at least one of the previous four crop years, unless we inspect and allow insurance by written agreement. This amount of production must be achieved subsequent to any top work that occurs within a unit;

(e) That are grown on varieties or a grouping of varieties within a unit that are not designated as uninsurable in the Special Provisions;

(f) That are in an orchard that consists of a minimum of one (1) contiguous acre, unless allowed by written agreement; and

(g) 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. In the event you are unable to provide separate acceptable records for any:

(1) Optional unit, we will combine all optional units for which such records were not provided and this will be the unit structure the current crop year and the subsequent crop year of the two-year coverage module (provided another year remains in the two-year coverage module); or

(2) Basic unit, we will allocate commingled production or revenue to each basic unit in proportion to our liability on the harvested acreage for each unit.

(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 price received for each day the pecans were sold. (If the price received is not verifiable by sales receipts or if the pecan production was direct marketed, the market price will be used. Unless otherwise provided in the Special Provisions, and excluding pecans sold under contract, the price received will be not less than 95 percent of the lowest AMS price for the nearest location for similar quality, quantity, and variety of in-shell pecans published during the week you sell your pecans. If AMS prices are not published for the week the pecans were sold, the price received will be not less than 95 percent of the lowest price per pound for in-shell pecans of the same variety or varieties insured offered by buyers in the area you normally market the pecans or the area nearest to you if prices are not available in your immediate area on the day you sell your pecans.);

(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
4	100	750	$1,050
3	100	625	$625
2	100	1250	$750
1	100	200	$250

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 pecan trees in the unit experienced damage to blooms due to a late freeze causing low production. You produced, harvested, and sold 300 pounds per acre of pecans from 70 acres and received an actual price of $0.75 per pound. On the other 30 acres, the pecans suffered damage due to drought. You elected not to harvest the other 30 acres of pecans. The 30 acres were appraised at 100 pounds per acre and on the day of the appraisal the average AMS price was $0.65. The total dollar value of production to count is (300 pounds of pecans × 70 net acres × $0.75) + (100 pounds × 30 net acres × $0.65) = $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; 78 FR 13459, Feb. 28, 2013; 78 FR 33691, June 5, 2013]

§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]

§ 457.171 Cabbage crop insurance provisions.

The Cabbage Crop Insurance Provisions for the 2011 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

(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(b)(1) 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(c) 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

(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; 75 FR 15891, Mar. 30, 2010]

§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]

§ 457.173 Florida Avocado crop insurance provisions.

The Florida Avocado Crop Insurance Provisions for the 2011 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 Avocado Crop Insurance Provisions.

1. Definitions.

Bushel. A unit of measure equal to 55 pounds of avocados, unless otherwise specified in the Special Provisions.

Buckhorn. To prune any limb at a diameter of at least four inches.

Crop year. A period beginning with the date insurance attaches to the avocado crop and extending through the normal harvest time. The crop year is designated by the calendar year after insurance attaches.

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 fields for the purpose of picking all or a portion of the crop.

Harvest. Picking of the avocados from the trees or ground by hand or machine.

Pound. A unit of weight equal to sixteen ounces avoirdupois.

Set out. Transplanting a tree into the grove.

Type. Either early varieties or late varieties of avocados, as specified in the Special Provisions.

2. Unit Division.

Provisions in 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 are not applicable. Optional units may be established by type when provided for in the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one coverage level for all the avocados in the county insured under this policy unless the Special Provisions provide that you may select a different coverage level for each avocado type designated in the Special Provisions. However, if you elect the Catastrophic Risk Protection (CAT) level of coverage, the CAT level of coverage will be applicable to all types of avocados you produce in the county.

(b) You may select only one price election for all the avocados 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 avocado 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 choose 100 percent of the maximum price

election for the other type. However, if you elect the CAT level of coverage, the price election percentage will be equal to 55 percent of the applicable price election for each type of avocado you produce in the county.

(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, trees that have been buckhorned, change in grove practices, or any other circumstance that may reduce the expected yield per acre to less than the yield upon which the production guarantee per acre is based, and the number of affected acres;

(2) The number of trees on insurable and uninsurable acreage;

(3) The age of the trees;

(4) Any acreage that is excluded under section 6 of these Crop Provisions; and

(5) For acreage interplanted with another crop:

(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 production guarantee per acre.

(d) We will reduce the yield used to establish your production guarantee as necessary, based on the effect of interplanting a perennial crop; removal of trees; trees that have been buckhorned; damage; or a change in practices on the yield potential of the insured crop. If you fail to notify us of any circumstance as set out in paragraph (c) of this section, 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 August 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 the first November 30th after insurance attaches.

6. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the commercially grown avocado types for which a premium rate is provided by the actuarial documents for the county:

(1) In which you have a share;

(2) That are grown for harvest as avocados; and

(3) That are grown on trees that, if inspected, are considered acceptable to us.

(b) In addition to the avocados not insurable in section 8 of the Basic Provisions, we do not insure any avocados produced on trees that have not:

(1) Reached the fourth growing season after set out; and

(2) Produced the minimum production per acre as specified in the Special Provisions in at least one of the previous three crop years.

7. Insurable Acreage.

In lieu of the provisions in section 9 of the Basic Provisions that prohibits insurance attaching to a crop planted with another crop, avocados interplanted with another perennial crop are insurable unless we inspect the acreage and determine it does not meet the requirements of insurability contained in these Crop Provisions.

8. Insurance Period.

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) For the year of application:

(i) If you apply for coverage on or before November 21st, coverage begins for the crop year on December 1 of the calendar year; or

(ii) If you apply for coverage after November 21 but prior to December 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 the requirements for insurability contained in your policy.

(iii) You must provide any information we require so we may determine the condition of the grove to be insured.

(2) For continuous policies, coverage begins for the crop year on December 1 of the calendar 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, unless otherwise specified in the Special Provisions, is:

(i) The first November 30th after insurance attaches for early varieties of avocados.

(ii) The second March 31st after insurance attaches for late varieties of avocados.

(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 avocados 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 acreage of avocados on or before the acreage reporting date of any crop year, insurance will not be considered to have attached to, no premium will be due and no indemnity paid for, such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity or a similar form approved by us is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss.

(a) In accordance with the provisions of section 12 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, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the grove;

(3) Wildlife, unless control measures have not been taken;

(4) Earthquake;

(5) Volcanic eruption;

(6) Failure of the irrigation water supply caused by an insured peril specified in section 9(a)(1) through (5) that occurs during the insurance period.

(7) Insects, but not damage due to insufficient or improper application of pest control measures; and

(8) Plant disease, but not due to insufficient or improper application of disease control measures.

(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) Theft; or

(2) Inability to market the avocados 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, etc.

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 at least 15 days before any production from any unit will be sold by direct marketing.

(1) We will conduct a preharvest appraisal that will be used to determine your production. If damage occurs after the preharvest appraisal, and you can provide acceptable records to us that account for all production removed from the unit after our appraisal, we will conduct an additional appraisal that will be used to determine your production.

(2) Failure to give timely notice that production will be sold by direct marketing will result in an appraised production to count of not less than the production guarantee per acre if such failure results in an inability to make an accurate appraisal.

(b) If you intend to claim an indemnity on any unit, you must notify us 15 days prior to the beginning of harvest or immediately if damage is discovered during harvest so that we may inspect the damaged production.

(1) You must not destroy the damaged crop until after we have given you written consent to do so.

(2) If you fail to meet the requirements of this subsection, 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 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 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 (see section 11(c)) by type, if applicable, 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.

For example:

You have a 100 percent share in 50 acres of early variety A in the unit, with a guarantee of 140 bushels per acre and a price election of $16.00 per bushel. You are only able to harvest 6,000 bushels due to an insured cause of loss. Your indemnity would be calculated as follows:

(1) 50 acres × 140 bushels = 7,000 bushel guarantee;

(2) 7,000 bushels × $16.00 price election = $112,000.00 value of guarantee;

(4) 6,000 bushels × $16.00 price election = $96,000.00 value of production to count;

(6) $112,000.00 − $96,000.00 = $16,000 loss; and

(7) $16,000 × 100 percent = $16,000 indemnity.

(c) The total production 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 sold by direct marketing if you fail to meet the requirements contained in section 10 of these Crop Provisions;

(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

(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.

[75 FR 15607, Mar. 30, 2010]

§457.174 Forage Seed crop insurance provisions.

The forage seed crop provisions for the 2015 and succeeding crop years are as follows:

FCIC policies: United States Department of Agriculture, Federal Crop Insurance Corporation

Forage Seed Crop Provisions

1. Definitions.

Actual value. The dollar value received, or that could be received, for the forage seed if the forage seed production is properly handled in accordance with the requirements in the forage seed contract or the applicable certifying agency's requirements.

Adequate stand. A population of live plants that equals or exceeds the minimum required number of plants per square foot as shown in the actuarial documents.

Amount of insurance. The amount obtained by multiplying the production guarantee per acre for each type and practice in the unit by the insured acreage of that type and practice, by the applicable base price, and by the percentage of base price you elected. The total of these results will be the amount of insurance for the unit.

Base price. For seed under a forage seed contract, the price per pound (excluding any discounts or incentives that may apply) stated in the forage seed contract. For certified forage seed not under a forage seed contract, and for forage seed producers who are also forage seed companies, the price contained in the actuarial documents.

Certification application. The form used to request certification of forage seed by the certifying agency.

Certification standards. The standards and procedures of the certification agency to assure genetic purity and identity of the seed certified.

Certified forage seed. Forage seed that meets the certification standards administered by a certifying agency at the time of harvest and that has been grown under a certification application accepted by the certifying agency on or before the acreage reporting date or as otherwise specified in the Special Provisions.

Certifying agency. An agency authorized under the laws of a State, Territory, or possession, to officially certify seed, which has standards and procedures to assure the genetic purity and identity of the seed certified, and approves certification applications for the certified forage seed that meets the certification standards at time of harvest.

Established stand. An adequate stand of live plants for crop years after the seed-to-seed year.

Fall planted. Forage seed crop planted after May 31 of the previous crop year.

Forage seed company. A business enterprise that possesses all licenses for marketing forage seed required by the state in which it is domiciled or operates, and which possesses facilities with enough storage and capacity to accept and process the insured crop timely.

Forage seed contract. A written contract executed between the forage seed crop producer and a forage seed company containing, at a minimum:

(a) The producer's commitment to plant, grow, and deliver the forage seed produced from such plants to the seed company;

(b) The seed company's commitment to purchase all the production from a specified number of acres or the specified quantity of production stated in the contract; and

(c) Either a fixed price per unit of the forage seed or a formula to determine the price per unit value of such seed. Any formula for establishing value must be specified in the written contract. If the formula uses a future price that is settled after the applicable acreage reporting date, then the base price contained in the actuarial documents will apply.

Forage seed crop. Small-seeded legume plants grown for seed (e.g., alfalfa, clovers,

etc.), including those grown for the production of hybrid seed, as shown in the actuarial documents.

Harvest. Removal of seed from the windrow or field.

Pound. Sixteen (16) ounces avoirdupois.

Price election. In lieu of the definition in section 1 of the Basic Provisions, the price election will be the base price and will be used for the purposes of determining premium and indemnity under the policy.

Qualified seed testing laboratory. Laboratory qualified by the State to test the forage seed to determine whether it qualifies as certified forage seed.

Seed-to-seed year. The calendar year in which planting occurs for spring planted forage seed and the subsequent calendar year for fall planted forage seed.

Spring planted. Forage seed crop planted before June 1 of the current crop year.

2. Unit Division.

In lieu of the optional unit provisions in section 34 of the Basic Provisions, you may select optional units by forage seed contract or variety if permitted 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 elect only one percentage of base price and one coverage level for each forage seed crop you elect to insure, grown in the county, and designated in the actuarial documents. If separate base prices are available by forage seed crop type, the percentage election of base price and coverage level you choose for each forage seed crop type must be the same. For example, if you choose 100 percent of the base price and 65 percent coverage level for a specific forage seed crop type, you must choose 100 percent of the base price and 65 percent coverage level for all the forage seed crop types.

(b) For each unit, separate guarantees will be determined by forage seed crop type and practice.

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 and termination dates are:

California, Nevada and Utah. October 31;

All Other States. September 30.

6. Report of Acreage.

(a) In addition to the requirements of section 6 of the Basic Provisions, you must submit to us, on or before the acreage reporting date or as otherwise specified in the Special Provisions:

(1) A copy of your forage seed contract for your contracted forage seed acreage; or

(2) A copy of the accepted certification application for your certified seed acreage.

(b) Failure to provide a copy of the forage seed contract or the certification application accepted by the certifying agency by the acreage reporting date or the date otherwise specified in the Special Provisions will result in denial of liability and no indemnity due.

7. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all types and practices of each forage seed crop you elect to insure, that is grown in the county and for which a premium rate is provided by the actuarial documents:

(1) In which you have a share; and

(2) That is grown for harvest as:

(i) Certified forage seed; or

(ii) Seed grown under a forage seed contract executed on or before the acreage reporting date or the date otherwise specified in the Special Provisions.

(b) For contracted acreage of forage seed crops only, you will not be considered to have a share in the insured crop unless, under the terms of the forage seed contract, you are at risk of a financial loss at least equal to the amount of insurance on such acreage.

(c) In addition to the crop and acreage listed as not insured in sections 8 and 9 of the Basic Provisions, we will not insure any forage seed crop that:

(1) Is interplanted with another crop, unless otherwise specified in the Special Provisions;

(2) Is planted into an established grass or legume;

(3) Does not have an adequate stand at the beginning of the insurance period unless otherwise specified in the Special Provisions;

(4) Exceeds the age limitations for the forage seed crop or type contained in the Special Provisions; or

(5) Is utilized for any purpose during the crop year other than for seed production, unless otherwise specified in the Special Provisions.

(d) A forage seed producer who is also a forage seed company may establish an insurable interest if the following requirements are met:

(1) The producer must comply with these Crop Provisions; and

(2) All the forage seed grown by the forage seed company is enrolled with the appropriate certifying agency.

8. Insurance Period.

(a) Insurance attaches on acreage with an adequate stand on the later of the date we accept your application or the applicable date as follows, unless provided otherwise in the Special Provisions:

(1) For fall planted seed-to-seed year and established stands of forage seed crops, coverage begins for each crop year on:

(i) November 1 for counties in California, Utah and Nevada; and

(ii) October 1 for counties in Idaho, Montana, Oregon, Washington, Wyoming and all other states.

(2) For spring planted seed-to-seed year stands of forage seed crops, coverage begins:

(i) May 1 for counties in California and Washington; and

(ii) May 15 for counties in Idaho, Montana, Nevada, Oregon, Utah, Wyoming and all other states.

(b) The calendar dates for the end of the insurance period for counties in the following states are as follows unless otherwise provided in the Special Provisions:

(1) California, Nevada and Utah. October 31.

(2) Idaho, Oregon, Montana, Washington, Wyoming and all other states. September 30.

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 and plant 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 a peril specified 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 damage or loss of production due to:

(1) The crop not being timely harvested, unless such delay in harvesting is solely and directly caused by a cause of loss specified in sections 9(a)(1) through (6);

(2) Insufficient supply of pollinators, as determined by us, unless lack of pollinators or pollination is solely and directly caused by a cause of loss specified in sections 9(a)(1) through (7);

(3) Failure of the certification standard or forage seed company contract acceptance caused by failure to follow proper isolation requirements or inadequate weed control, as determined by us, unless such failure is solely and directly due to a cause of loss specified in sections 9(a)(1) through (6); or

(4) Failure of the certification standard or forage seed contract acceptance due to failure to follow all other certification or contract requirements, as determined by us, unless such failure is solely and directly caused by a cause of loss specified in sections 9(a)(1) through (6).

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 to your forage seed crop covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each type and practice by the production guarantee;

(2) Multiplying each result in section 10(b)(1) by the price election;

(3) Totaling the results in section 10(b)(2);

(4) Multiplying the total production to count for each type and practice by the price election;

(5) Totaling the results of each crop type in section 10(b)(4);

(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.

(c) The total forage seed 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; 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 and if:

(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 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 appraisals made prior to giving consent to put the acreage to another use will be used to determine the amount of production to count);

(B) You elect to continue to care for the crop, 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 in accordance with section 10 (e).

(d) In addition to the provisions of section 15 of the Basic Provisions, we may determine the amount of production of any unharvested forage seed on the basis of our field appraisals conducted after the normal time of harvest for the area. If the acreage is later harvested, production records must be provided and if the harvested production exceeds the appraised production, the claim will be adjusted.

(e) Production not meeting the minimum quality requirements contained in the forage seed contract or certifying agency's standards based on tests conducted by a qualified seed testing laboratory due to insurable causes will be reduced as follows:

(1) Divide the actual value by the base price for the insured type; and

(2) Multiply the result (not to exceed 1.0) by the number of pounds of such production.

Example: You have a 100 percent share and 100 acres of forage seed in the unit, with a guarantee of 600 pounds per acre on 75 acres of an established stand of forage seed and a guarantee of 300 pounds per acre on 25 acres of a spring planted seed-to-seed year stand. All acreage is contracted with a base price of $1.20 per pound and you have selected 100 percent of the base price. Losses due to insured causes of loss have reduced production and quality and you only harvested 37,000 pounds of seed. A portion of the total production was of poor quality; 10,000 pounds of seed failed to achieve the contract minimum germination requirement; and the salvaged production was valued at $0.80 per pound. Your indemnity would be calculated as follows:

(1) 75 acres × 600 pounds = 45,000-pound guarantee

25 acres × 300 pounds = 7,500-pound guarantee;

(2) 45,000 pounds × $1.20 per pound price election = $54,000 value guarantee

7,500 pounds × $1.20 per pound price election = $9,000 value guarantee;

(3) $54,000 + $9,000 = $63,000 total value of the guarantee;

(4) 27,000 pounds met the contract quality requirements = 27,000 pounds production to count

27,000 pounds × $1.20 per pound = $32,400

10,000 pounds × ($0.80 per pound/$1.20 per pound) = 6,667 pounds production to count

6,667 pounds × $1.20 per pound = $8,000;

(5) $32,400 + $8,000 = $40,400 total value of production to count;

(6) $63,000 − $40,400 = $22,600 loss; and

(7) $22,600 × 100% share = $22,600 indemnity payment.

11. Late and Prevented Planting.

The late and prevented planting provisions of the Basic Provisions are not applicable for forage seed.

[79 FR 30705, May 29, 2014; 79 FR 35681, June 24, 2014]

PARTS 458–499 [RESERVED]