DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB03

Common Crop Insurance Regulations; Basic Provisions; and Various Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations to delete the late and prevented planting provisions currently contained in many Crop Provisions, incorporate revised late and prevented planting provisions into the Common Crop Insurance Policy Basic Provisions, and add definitions and provisions that are common to most crops. The intended effect of this action is to provide policy changes that meet the needs of the insured, are easier to administer, and to delete repetitive provisions contained in various Crop Provisions.

EFFECTIVE DATE: This rule is effective December 4, 1997.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be significant, and therefore, this rule has been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the Kansas City address listed above. In summary, the analysis finds that the rule makes several major changes in the implementation of prevented planting provisions. Specifically, the rule: (1) Eliminates substitute crop benefits, largely to reduce the likelihood of fraud; (2) increases prevented planting for cover crop or black dirt situations, providing better protection to producers who are truly unable to plant a crop for harvest; and (3) simplifies the payment method by making payments on an acre-by-acre basis in all cover crop and black dirt situations. These provisions are designed to improve the protection provided to producers in adverse prevented planting situations, and simplify program operation.

Since this rule is expected to be implemented in an actuarially sound manner, there are no associated excess losses that will be incurred by the Federal government in the aggregate. Two provisions—the increase in coverage in black dirt and cover crop situations provision and the ''separate payment'' provision—are expected to result in an increase in indemnities and an increase in rates. The elimination of substitute crop provisions will result in reduced indemnities, and a rate decrease in the aggregate. The net effect of these changes is likely to be small in terms of the rate impact, and will vary according to crop and geographical location. As a result of the small expected average rate impact, any changes in reimbursements to private companies for delivery or any underwriting gains are expected to be minimal. The amendments made to these regulations will simplify program operations, benefit producers, FCIC, and reinsured companies, and conform with the Federal Crop Insurance Act.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of insurance companies will not increase because the information to determine eligibility is already maintained in their office and the other required information is already being collected under the present policy. No additional actions are required as a result of this rule on the part of the producer or the insurance companies. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance Under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Tuesday, August 12, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 43236 to

amend the Common Crop Insurance Regulations, Basic Provisions (Basic Provisions) (7 CFR part 457) and the Crop Provisions (7 CFR §§ 457.101–457.157) effective for the: (1) 1998 and succeeding crop years for wheat, barley and oats in counties with a December 31 contract change date; flax, cotton, ELS cotton, sunflowers, and sugar beets in counties with a November 30 contract change date; and corn, grain sorghum, soybeans, raisins, fresh market tomatoes (guaranteed production plan), rice and dry beans; (2) 1999 and succeeding crop years for wheat, barley and oats in counties with a June 30 contract change date; rye, Texas citrus tree, Florida citrus fruit, sugar beets in counties with an April 30 contract change date; and figs, pears, nursery, sugarcane, forage production, walnuts, almonds, safflowers, fresh market sweet corn, macadamia trees, cranberry, onion, grapes, fresh market tomatoes (dollar plan), fresh market peppers, forage seeding, peaches and plums; and (3) 2000 and succeeding crop years for Texas citrus fruit, Arizona-California citrus, and macadamia nuts. This rule deletes the late and prevented planting provisions, certain definitions and other provisions that are applicable to most crops and are currently contained in the Crop Provisions and incorporates these definitions and provisions into the Basic Provisions to better meet the needs of the insured.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. Comments were received from an insurance service organization, reinsured companies, farm organizations, a crop insurance agent, national commodity groups, state commodity groups, a regional commodity group, a congressional office, and legal counsel for reinsured companies. The comments and FCIC's responses are as follows:

Comment: Legal counsel for a reinsured company and an insurance service organization stated that thirty days was not sufficient time to review and comment on the proposed rule. One comment urged FCIC to leave the comment period open for another 90 days to allow additional time for analysis, testing, further comment, and the promulgation of needed procedures.

However, a reinsured company urged implementation of these provisions for the 1998 crop year. The commenter stated that the revised language for prevented planting coverage is a major step in the right direction. Many hours have been spent in developing these provisions and the commenter strongly supports approval of the changes. The changes bring simplicity to what has been a very complicated coverage.

Farm organizations supported efforts to expedite these changes by using a 30-day comment period. There should be adequate time for agent training and producer education prior to policy sign-up for spring planted crops. One of the problems with prevented planting coverage in the past has been the lack of understanding by producers of their coverage.

Response: Based on the number of comments received, FCIC believes that for most crops 30 days provided an adequate comment period. However, due to the number of comments received regarding the prevented planting percent for cotton and ELS cotton, this rule will be made effective for these two crops for the 1998 crop year only. FCIC will solicit additional comments regarding prevented planting coverage levels for these crops for the 1999 and succeeding crop years in a future rule. The proposed changes are necessary for the simplification of the program and any extension of the comment period would result in a delay in the implementation of this rule until the 1999 crop year. To best meet the needs of producers the revised coverage should be implemented for spring planted crops in 1998.

Comment: An insurance service organization felt that the amount of time stated in the preamble under the Paperwork Reduction Act for the completion of an acreage report is underestimated since all farm data, including APH and unit arrangement, must be incorporated into the process.

Response: FCIC had to estimate the amount of time needed to complete each form. The average time needed to complete each form represents an average of producers with only one crop and one unit, larger operations with several crops and units, and producers who insure a crop but do not plant (which would generate a zero acreage report and only a yield descriptor on the APH form, etc.). The average time stated for all forms is as accurate as is possible.

Comment: Reinsured companies and an insurance service organization questioned the provisions in 7 CFR 457.2. They stated that sections 7 CFR 457.2(b) and (c) specify that FCIC may offer the catastrophic level of coverage directly to the insured through the local Farm Service Agency (FSA) offices. They suggested removing this language because, effective for the 1998 crop year, FSA offices will no longer deliver crop insurance.

Response: Although the catastrophic risk protection program is no longer delivered through local FSA offices, the authority for such delivery still exists. However, FCIC has modified the language to reflect the decision of the Secretary to only offer coverage through reinsured companies unless the Secretary determines that the availability of local agents is not adequate.

Comment: A reinsured company stated that it supported FCIC's decision to incorporate certain regulations into the Basic Provisions but cautioned that providing too much detail in the policy could make it difficult for the producer to understand and may drive producers away from the crop insurance program. The commenter stated that it is apparent that FCIC is attempting to provide producers with underwriting rules and procedures. The commenter believes that the insurance policy should simply state definitions for clarity and coverages for loss payments. They stated that insureds do not need to know how to underwrite a risk, they are the risk. They need to be aware of what the coverages are, when the premium is due, what constitutes a loss, when it will be paid, and what must be done in the event of questions. The commenter stated that section 457.2(b) is unnecessary because it is a statement of underwriting rules. A producer who has received the crop insurance policy has already chosen an insurance carrier and has made a decision regardless of whether FSA can still issue CAT coverage. The insurance agent should have discussed multiple contract procedures with the producer prior to completing a crop insurance application. The commenter further stated that section 457.2(d) determines eligibility for coverage and is also unnecessary. If the producer received the policy information, the producer's eligibility has already been determined. Otherwise the producer would not receive the policy.

Response: The policy must contain the information necessary for the producer to make informed decisions. Removing as much repetitious information as possible from each individual crop provision and placing it in the Basic Provisions will make each individual crop policy shorter and easier to understand. It will also eliminate any inadvertent discrepancies that may have existed between such information that was previously in each individual crop policy but is now stated only once in the Basic Provisions. The provisions are regulatory and eligibility and other requirements for participants must be published where compliance is mandatory. No change has been made.

Comment: Reinsured companies commented on and questioned the

language in 7 CFR 457.2(d), which states that if more than one contract exists, all contracts are void unless proven to be inadvertent. If found to be inadvertent, the contract with the earliest signature date will be valid and no indemnity or premium will attach to the canceled contract. The commenters posed these questions. What happens to crop acres reported on the canceled contract, and what impact do these crop acres have on the contract determined to be in force. Whether the crop acres on the canceled contract will be uninsured or will such acres be added to the contract found to be in force. If the latter, have all policy conditions regarding filing actual production history and an acreage report been met. If the contract in force has higher levels of coverage than the canceled contract, whether the insured owes the additional premium based on the contract in force. It has been permissible for a producer of hybrid seed corn who contracts with different seed corn companies to have more than one insurance contract for hybrid seed corn. Whether this will be permissible.

Response: The contract in effect will not be impacted by the canceled contract. When multiple contracts exist and are inadvertent and without the fault of the insured, all timely reporting done by the producer (e.g., actual production history reports and acreage reports) will be considered reported under the active contract. If the active contract has higher levels of coverage than the canceled contract, the insured will owe the additional premium based on the active contract. FCIC has revised the Basic Provisions to allow producers of hybrid seed corn with more than one contract with different seed companies to insure the acreage under each contract with a different reinsured company.

Comment: A reinsured company and an insurance service organization commented on the language in section 457.8(b). The reinsured company stated that the provision is not consistent with the Standard Reinsurance Agreement (SRA) because the SRA does not allow rejection of applications for insurance by a reinsured company. The commenter also stated that the phrase ''authorized to sell'' should be defined. The insurance service organization stated that the first sentence of these provisions has eliminated the company's prerogative to make determinations on excessive risk situations by eliminating the words ''or the reinsured company's'' determination that the insurance risk is excessive. This commenter questioned the effect of the proposed language since ''direct written'' federal policies are no longer applicable. The commenter also stated that the reinsured company must retain some prerogatives in the case of excessive risk. The FCIC should review possible options such as removing the cap on the Assigned Risk Fund or other ''escape hatch'' in the event of significant change in the risk of a large area.

Response: FCIC believes that the authority to sell the policies is clearly specified in other regulations and agreements, and those provisions should not be duplicated in this rule. Under sections 508(b)(8) and 508(c)(9) of the Act, only FCIC has the authority to limit insurance on any farm, county or area as a result of excessive risk. Information available in the **Federal Register** informs the public that applications may not be accepted if FCIC determines that excessive risk exists. If such a situation were found to exist, no insurance coverage will be provided. If the reinsured company believes that the risk is excessive under a policy, it can seek a determination from FCIC. Provisions regarding referral to agents selling FCIC policies are no longer applicable and they have been removed.

Comment: An insurance service organization suggested that a definition be added to include both ''production guarantee'' for APH crops and ''amount of insurance'' for dollar plan crops. This would shorten several long sentences that currently refer to these terms.

Response: Adding a term which combines both of the definitions of ''production guarantee'' and ''amount of insurance'' would make the provisions less clear because three terms would be in use rather than two. No change has been made.

Comment: An insurance service organization suggested that ''actuarial documents'' be defined instead of ''actuarial table'' because not all information is provided in table format. The commenter stated that the reference to ''forms'' in the definition suggests that the application and options are included. The commenter also questioned why ''prices for computing indemnities'' are specified since prices are used for premium calculation as well.

Response: FCIC has determined that ''prices for computing indemnities'' should not be included in this definition since those prices are now contained in the Special Provisions. Accordingly, the term ''Actuarial Table'' has been revised to ''actuarial documents'' and the definition of ''actuarial documents'' has been clarified.

Comment: An insurance service organization suggested that the definition of ''application'' be modified. The commenter stated that since suspension, debarment and violation of the controlled substance provisions would result in placement on the ineligibility list, it does not seem necessary to list these specific causes. The definition as written suggests that a break in coverage is always the result of some adverse action.

Response: FCIC has revised the definition to refer to both cancellation and termination to mitigate any connotation of adverse action.

Comment: An insurance service organization suggested deleting the phrase ''made on our form'' from the definition of ''assignment of indemnity.'' The commenter stated that companies may accept and include a lienholder without completion of a form entitled assignment of indemnity. The lienholder's name can be entered on the application, acreage report, or loss form as ''Loss payable to me and _____.''

Response: Since the Standard Reinsurance Agreement requires that all forms used by the reinsured company be approved by FCIC, the phrase ''our form'' refers to any form that has been approved by FCIC. The reinsured company can effectuate an assignment of indemnity through any form approved for such purpose. Use of an unapproved form by the reinsured company is prohibited. No change has been made.

Comment: A reinsured company and an insurance service organization commented on the definition of ''basic unit'' which states'' * * * No further unit division may be made after the acreage reporting date for any reason.'' The commenter stated that basic units may be corrected effective for the current crop year, which could result in more units than were reported. An insurance service organization suggested that a brief ''unit'' definition be provided in conjunction with a more detailed basic and optional unit section for easier reference, especially since the basic unit definition varies for some crops. The commenter stated that the phrase ''Units will be determined when the acreage is reported * * *'' leads to questions and difficulties about the actual deadline for determining optional units. Qualification for optional units for APH crops depends on filing production reports to match those units by the production reporting date, which is now earlier than the acreage reporting date for many crops. The commenter suggested rewriting the sentence to read ''Units will be determined when the acreage is reported (subject to other

requirements).'' The commenter also questioned if the last two sentences of the definition should be included in the definition or in the ''optional unit'' section.

Response: Adding the phrase ''subject to other requirements'' or a simplified definition of ''unit'' and a detailed section on basic and optional units would not make these provisions more clear. FCIC has moved the last two sentences of the definition to the ''Unit Division'' section.

Comment: A reinsured company suggested adding ''for all units of the insured crop'' at the end of the definition ''claim for indemnity.'' Often a unit with damage may be harvested earlier than other units of the crop. It is customary to finalize all loss units at the same time, so the beginning of the 60-day period should commence after harvest is completed on all units.

Response: Because individual units may have different end of insurance period dates (e.g., differing harvest dates, different calendar dates for the end of the insurance period, prevented planting acreage, etc.), FCIC does not believe it is in the best interest of the insured to delay finalization of claims until all units are harvested. No change has been made.

Comment: An insurance service organization commented on the definition of ''contract'' which is (See ''policy''). The commenter stated that the definition of ''contract'' is integral in the language of the SRA where it is defined. The [current draft] SRA, however, does not define ''policy.'' The proposed Basic Provisions defines ''policy'' but not ''contract.'' The commenter stated that the terms should be consistent between both documents.

Response: The definition of ''policy'' and ''contract'' are the same and are not inconsistent with the provisions in the SRA. The definition in the SRA is intended to accommodate differences among reinsured companies in the manner by which a policyholder's interests are identified. Some reinsured companies issue separate contract numbers for each county and crop; others include multiple crops and counties under the same contract number. Since the purpose of the definitions is not identical, the definitions cannot be identical. No change has been made.

Comment: An insurance service organization recommended changing the definition of ''county'' by replacing the word ''the'' at the beginning of the sentence with the word ''any.'' This would recognize the possibility of multi-county applications. Multi-county applications, with adoption of appropriate management procedures, would permit a policyholder to insure a farm in another county, if it was acquired after the sales closing date.

Response: The provision has been clarified to recognize that more than one county may be shown on the application. However, an insured may not add acreage in another county after the sales closing date unless such addition results from the transfer of insurance from a previous insured.

Comment: An insurance service organization questioned why the word ''deductible'' is defined since it is not used in the Basic Provisions.

Response: The word ''deductible'' is used in some Crop Provisions. It is defined in the Basic Provisions so it will only have to be defined once. No change has been made.

Comment: Reinsured companies commented on the definition of ''final planting date.'' The commenters stated that the final planting dates are too late for some crops and counties, especially with the 25 day late planting period. The commenters voiced their concern regarding the impact the late planting provisions will have in extending coverage beyond a time period that will allow for the normal maturity of the late planted crop. The commenters also questioned if an effort is being made to assure that all final planting dates are as accurate as possible, and if reinsured companies will be involved in that process.

Response: The Basic Provisions contain provisions that are generally applicable to most crops. If individual crops or areas require a late planting period shorter than 25 days, it will be specified in the Crop Provisions or the Special Provisions, which control the Basic Provisions. FCIC will continue to study and change final planting dates as necessary and always welcomes comments and recommendations from all interested parties, including reinsured companies and producers.

Comment: A reinsured company and an insurance service organization stated that the definitions of ''FSA'' and ''FSA farm serial number'' should be deleted because there is no need for reliance on FSA information in the crop insurance program.

Response: The FSA farm serial number is used to qualify for optional unit division in certain crop policies. Further, FSA information may be used in the crop insurance program. No change has been made.

Comment: A reinsured company, an insurance service organization, and legal counsel for a reinsured company made comments regarding the definition of ''good farming practices.'' The definition does not recognize how fact sensitive and cost sensitive good farming practices are. If the practices ''generally'' used in the county and recognized by the Extension Service are the ''ideal'' practices or are the practices geared to the higher yield farms, beginning producers, highly leveraged producers, or producers of poorer soil will be discriminated against and, perhaps, ineligible for an indemnity. For example, three applications of a herbicide may be ideal and may be applied by producers with a high yield history. Two applications, however, may be all that a producer with a low yield history or insufficient funds may be able to afford. For that producer, two applications are a good farming practice. Whether a producer is a ''good'' producer or a ''bad'' producer may depend on what he or she can afford. The rule must be amended to accommodate the circumstances of the particular farm and producer. The reference to ''Cooperative State Research, Education, and Extension Service,'' should be deleted from the definition of ''good farming practices'' or the definition must acknowledge that there may exist acceptable cultural practices that are not necessarily recognized by the CSREE. A producer using practices that differ from the norm for the county probably would not be eligible to insure. The practices used should be compared to those of the area in which the farm is located, not the county. Perhaps a producer is located in a microclimate within the county where practices legitimately differ from the county norm.

Response: FCIC recognizes that certain circumstances for particular farms and producers may differ (e.g. types, varieties, farming practices, soil types, etc.), and should be considered when determining if good farming practices were followed. However, the producer's inability to afford necessary inputs to produce the crop should not be a consideration in the determination of good farming practices. FCIC believes that the Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing a crop. If a producer is following practices not currently recognized as acceptable by the CSREES, there is no reason why such recognition cannot be sought by interested parties.

Comment: A reinsured company stated that the definition of ''interplanted'' is too restrictive for interplanted perennials such as almonds and walnuts which are maintained separately and harvested separately,

unless such will be acknowledged in the appropriate Crop Provisions.

Response: The definition of ''interplanted'' contained in the Basic Provisions does not adequately suit perennial crops. Perennial crop provisions will contain an appropriate definition. No change has been made.

Comment: A reinsured company suggested adding the word ''initially'' between the words ''acreage'' and ''planted'' in the definition of ''late planted.''

Response: FCIC agrees with the suggestion and has amended the definition accordingly.

Comment: A reinsured company, farm organization, a state commodity group, and an insurance service organization commented on the 25 day period in the definition of ''late planting period.'' The commenters state that producers will have more incentive to plant the insured crop during the late planting period. The 25 day period is consistent with producer comments expressed during USDA public hearings held last summer. The commenters support a reduction of 1 percent per acre per day for the full 25 day late planting period, or a maximum reduction of 25 percent. The phrase ''unless otherwise specified in the Special Provisions'' should be deleted because it could lead to program complexity and checkerboard application.

Response: Although FCIC recognizes the need to mitigate program complexity, removal of the exception for Special Provisions would remove the flexibility needed to recognize those individual crops or areas that require a shorter late planting period. No change has been made.

Comment: A reinsured company questioned if the definition of ''non-contiguous'' is intended to permit two acreages of the same crop that are separated by a different crop to qualify for separate optional units. If so, this may generate a large number of additional optional units for crops for which ''non-contiguous'' is a criterion for optional unit division.

Response: The definition of ''non-contiguous'' is not intended to allow two tracts of the same crop that are only separated by a different crop to be considered two separate optional units. Units must be separated by land that the insured person does not own or have an interest in.

Comment: Legal counsel for a reinsured company stated that the definition of ''planted acreage'' sets forth requirements that are inherent in the concept of ''good farming practice.'' This definition is redundant.

Response: FCIC agrees that some of the information is redundant but believes that the term should be defined since it is used in the provisions. No change has been made.

Comment: Reinsured companies, an insurance service organization, and legal counsel for a reinsured company expressed concern with the definition of ''practical to replant.'' The commenters asked whether marketing windows should be a factor in determining whether a crop should be replanted. They state that the intent of the policy is to insure yield, not that the crop can be marketed during an optimum marketing window. They also state this change in the insurance policy represents a change in long standing public policy. They state that the Administrative Procedure Act requires FCIC to disclose in detail the thinking that animated this proposal. FCIC has not done this, therefore, this definition should be re-proposed for public comment. The commmenters also expressed concern that marketing windows are unrelated to losses from natural disaster and FCIC has long opposed insuring such windows simply because of the opportunity for fraud. The introduction of lost marketing windows as an insured cause of loss makes FCIC's policy a ''business interruption'' policy that will dramatically increase loss ratios and premiums. The commenters were also concerned moisture availability, marketing window, condition of the field, and time to crop maturity are all subjective determinations that add unnecessary complexity to the program. The policy should deem that it is practical to replant through the late planting period. Further, the commenters were concerned with the provision that states, ''unavailability of seed or plants will not be considered a valid reason for failure to replant'' will substantially add to producers' costs. Often it is possible to replant the insured crop only if a different, faster growing seed is used. There are often shortages of such seeds when there is a widespread disaster and those farmers who can least afford new seed, *e.g.*, beginning producers, will wait until they are certain the original seed cannot germinate before investing again in seed. By that time, seed is sometimes unavailable. Clearly, if it is impossible to replant, it should not be practical to replant by law. They state that FCIC's rule will require all producers in general, and beginning producers in particular, to invest in seed that they may not need. While this may be a boom to seed companies, they are not the intended beneficiaries of the Act. In addition, the commenters state that a crop cannot be appraised and released for another use until it is no longer practical to replant. Making the determination that it is no longer practical to replant has been problematic since it may be practical to replant in some regions yet not in others within the late planting period. They state that policy language has been weak in this regard and there is no attempt in this rule to strengthen it. They requested that consideration be given to counting the ''salvage value'' against the insured crop if an insured chooses to plant an alternate or replacement crop when it is practical to replant the original. Two possible concerns are that the alternate crop is not an insured crop and, therefore, the value is difficult to determine, and the alternate crop is insured with a different company, causing administrative difficulties. Nevertheless, the approach could put the industry in the cooperative position of ''staying with the insured'' regardless of the insured's replanting choice, while limiting exposure to the guarantee that was originally established.

Response: The Federal Agriculture Improvement and Reform Act of 1996 mandated FCIC to consider marketing windows in determining whether it is feasible to require planting during a crop year. Therefore, the change implements statute and does not require detailed justification. Many factors other than the end of the late planting period enter into the decision of whether it is practical to replant. The definition of ''practical to replant'' is only applicable to planting acreage to the originally planted crop. If it is considered practical to replant, the Crop Provisions may authorize a replanting payment. If the crop is damaged by an insurable cause of loss, an appraisal will be completed to see if the crop qualifies for a replanting payment. However, this appraisal is used solely as a qualifier.

Planting a different crop following the failure of an originally planted crop is not replanting. If an alternative crop is planted when it is still practical to replant to the originally planted crop, the originally planted crop is not insured. No change has been made.

Comment: Several comments were received regarding the definition of ''prevented planting.'' Farm organizations stated strong support for the new definition, which includes acreage prevented from planting by the final planting date or by the end of the late planting period due to any insured cause of loss. Reinsured companies questioned the phrase ''majority of producers in the surrounding area.''

There will be instances where land characteristics of a few producers or a single producer prevent planting of the insured crop. Possibly the phrase ''with similar land characteristics'' should be inserted after ''majority of producers'' to address this situation. The commenters also suggested that the sentence ''You must have failed to plant * * *'' be changed to ''You must have been prevented from planting. * * *'' Legal counsel for a reinsured company recommended clarifying the definition of ''prevented planting'' The definition should make clear that if a majority of producers did replant but had losses that exceeded what would have been their claims for prevented planting, then, indeed, a majority were prevented from planting. The comment also indicated that the term ''surrounding area'' is confusing. The commenter believes the term describes the entire area in which the insured cause occurs, even if it occurs across state lines. Also, the term ''majority'' was troublesome to the commenter. A reinsured company has no way of knowing whether a majority of uninsured producers or another reinsured company's policyholders were prevented from planting. Suppose an insured lives on a line, north of which all farmers, numbering 100, were not prevented from planting and south of which all farmers, numbering 101, were prevented from planting. The commenter asked whether the definition is satisfied.

Response: The phrase, ''majority of producers'' has been removed. The definition of ''prevented planting'' has been amended to include the phrase ''You must have been prevented from planting'' as suggested. FCIC has also clarified that a crop will be considered to have been prevented from being planted if most producers are also prevented from planting on acreage with similar characteristics in the surrounding area.

Comment: A reinsured company questioned the definition of ''prevented planting, notice of.'' The commenter stated that notice can be given by telephone but must be confirmed in writing within 15 days. The commenter asked if it was the intent that multiple notices be given if the county had multiple final planting dates.

Response: Based on this and other comments, the definition has been deleted.

Comment: An insurance service organization suggested that the phrase ''in the actuarial documents'' replace the phrase ''in the Special Provisions or an addendum thereto'' in the definition of ''price election.'' The commenter stated that the term creates confusion because it refers variously to the established (or preliminary) price, a market price, or to the value resulting from multiplying a percentage chosen by the insured by either of the first values cited. It would be helpful either to create a new term or to assure that this term is used consistently in policy and procedure. Dollar plan crops may have an amount of insurance instead of a ''price percentage,'' but does ''price election'' apply any better?

Response: Since the price election is an integral part of the contract, the insured must receive notification of the price election each year. Insureds receive the Special Provisions each year. They do not receive the actuarial documents. No change has been made.

Comment: An insurance service organization stated that the words ''replace'' and ''replacing'' in the definition of ''replanting'' can be read to mean another crop is being substituted for the originally planted crop.

Response: The definition makes it clear that the land must be prepared to replace the damaged or destroyed crop. However, FCIC has clarified that the land must be prepared to replace the insured crop.

Comment: A reinsured company questioned what the phrase ''in certain instances'' means in the definition of ''representative sample.''

Response: The phrase is intended to provide the reinsured company with the discretion to allow the producer to harvest the crop and only leave samples of the residue. Certain circumstances may be when an area has widespread comparable losses. No change has been made.

Comment: A reinsured company suggested that the definition of ''state'' be modified to read, ''The state where the crop is grown, as shown on your accepted application.''

Response: There may be instances in which a crop insured by written agreement may be under the actuarial documents of a county in a state other than where it is grown. In this case, the state listed on the accepted application would be the state from which the actuarial documents originate. No change has been made.

Comment: A reinsured company suggested including language in the definition of ''summary of coverage'' that acknowledges that other names also apply to this document.

Response: The definition of ''summary of coverage'' defines the term as used in the policy. A form with a different name would be considered a summary of coverage so long as it meets the criteria contained in the definition. No change has been made.

Comment: Several comments were received with regard to section 2(b). A reinsured company and an insurance service organization questioned whether an incomplete application must be rejected, or whether reinsured companies can allow a short amount of time to obtain the missing information. The commenters asked about alternatives for the applicant and the reinsured company if the sales closing date has passed before the omission is discovered. An insurance service organization questioned whether companies have the authority to alter the named insured by deleting any part that is incomplete, as implied in the second sentence. The commenter asked whether this provision could be in procedure rather than the policy. Legal counsel for a reinsured company asked if the next to the last sentence in section 2(b) should indicate that coverage will be reduced *by* ''that person's share'' rather than *to* ''that person's share?'' Also, in the last sentence of the same section, the commenter asked whether the ''person'' refusing to supply a tax identification number is the same person or a different person than the ''entity'' to whom insurance will not be available.

Response: The intent of the section 2(b) is to advise the applicant that all required information must be provided and that the social security number or the employer identification number, as appropriate, for all persons having a substantial beneficial interest in the insured crop always must be included on the application. The application must be rejected if all necessary information is not provided by the sales closing date. It is the insured's and agent's responsibility to ensure that no information is omitted. Reinsured companies will delete those persons from the application who refuse to provide the necessary information. The next to last sentence in section 2(b) should indicate that coverage will be reduced by that person's share. The sentence has been amended accordingly. The last sentence has been revised to clarify that if a person refuses to provide identification information, insurance will not be available for that person and any entity in which that person has a substantial beneficial interest.

Comment: Several comments were received with regard to section 2(e). An insurance service organization stated that the second sentence is unclear as to its effect. The commenter stated that, as written, a person could not be eligible until all payments are made in accordance with an agreement to pay, a fact that would not be known until the

last payment is made. If eligibility is intended to be restored once a payment schedule is established, the phrase should be clarified. Legal counsel for reinsured companies stated that section 2(e) is illegal, unenforceable and in conflict with FCIC's own regulations and procedures. The commenter also stated that unpaid debts alone do not create ineligibility because the policyholder's name must be placed on an ineligible list after certain procedural requirements are satisfied and that list must be given to insurers before the action is effective. The commenter suggested that FCIC should conform this paragraph to section 23, 62 Fed. Reg. at 43248, which states that your insurance policy will be canceled if you are determined, by the appropriate Agency, to be ineligible by reason of debt. The commenter also expressed concern that the proposed language is unclear as to which termination date triggers delinquency, the one contained in the current year crop policy or the one applicable to next year's crop. The commenter also stated that the provision fails to state who determines ineligibility and the exact date ineligibility begins. The policy language should state whether ineligibility begins on the date the producer fails to pay the premium by the termination date, the date the reinsured company notifies the producer of the debt and a meaningful opportunity to contest the same, after the producer fails to respond to the written notice by the reinsured company, the date the FCIC verifies that the person has met the criteria for ineligibility, the date the FCIC mails notice to the producer's last known address, or the date that the producer receives notice from the FCIC of ineligibility. The commenter also stated that the proposed regulation should set forth the standards, if any, for reinstatement of producer eligibility and for removal of the producer's name from the ineligible tracking system. The provisions should clarify whether ineligibility as a result of failure to timely pay premiums will result in the FCIC voiding all the producer's policies or only the policy for which the producer is delinquent in paying premiums. The provisions should clearly state that the insured is solely responsible for any indemnities or payments made by the reinsured company on a policy voided by FCIC. The provisions should state that FCIC expressly pre-empts all claims arising by placement of the producer's name on the ineligible tracking system.

Response: This provision was intended to allow a producer to become eligible for insurance once the producer repays the debt, enters into an agreement for repayment and the payments are timely made, or files a petition in bankruptcy to discharge the debt. Therefore, the producer who executes an agreement for repayment is eligible while making payments. However, if the producer fails to timely make a payment, the producer is again ineligible and will not become eligible until the debt is paid in full or the producer files a petition to have the debt discharged in bankruptcy. The bankruptcy provisions have also been clarified. Unpaid debts do result in ineligibility in accordance with 7 CFR § 400.459. Section 2(e) relates to eligibility as described in § 400.459 and also describes when crop insurance policies are terminated when unpaid debts are overdue. Therefore, the provision is not illegal, unenforceable or in conflict with the regulations and procedures. Delinquency of any amount due arises on the termination date that the amount was due. This is the date that triggers ineligibility. An example has been added for clarification. Determinations of ineligibility are made in accordance with 7 CFR part 400, subpart U. Policies can only be reinstated if it is determined that the termination was in error. If the producer fails to repay any amount owed by the termination date, the policy is terminated, and the producer later becomes eligible, the producer must submit a new application for insurance. FCIC believes that the provisions clearly indicate that all policies will be terminated in the event a debt is delinquent for any crop. Each application requires the applicant to provide information on prior and existing insurance. The reinsured company has the capacity to verify eligibility, which would result from these questions. It is possible that under some circumstances a replant payment or early loss could be paid before the person is made ineligible and any existing policies voided. For example: The producer is indebted to company A but currently insured with company B. Company A is late certifying the producer as ineligible (after the termination date by 6 months). In the meantime, insurance attaches with company B and a loss is paid. The policy will be voided and the insured will be required to repay any amounts paid under the voided contract.

Comment: A reinsured company and an insurance service organization questioned if section 2(g) should be deleted. The commenter stated that it should be the company's discretion to terminate a policy if no premium is earned for 3 consecutive years. This provision is counter to the concept of enrolling all crops that the producer may grow, at least at the catastrophic risk protection level.

Response: FCIC has modified the language to state that reinsured companies may terminate policies that have not earned premium for 3 consecutive years.

Comment: Comments were received with regard to section 3(c). A reinsured company suggested that these provisions be modified to facilitate future streamlining of the APH process that has been discussed, specifically referencing the concept of optional yield updating. The commenter suggested that the sentences ''If you do not provide the required production report, we will assign a yield for the previous crop year'' and ''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'' be removed from these provisions and put in the Special Provisions. The commenter also suggested that the first sentence be modified to read, ''Your production report must be provided to us by the earlier of the acreage reporting date or 45 days after the cancellation date.'' The sentence ''Production and acreage for the prior crop year must be reported for each proposed optional unit by the production reporting date'' should be modified to allow for added land and use of another person's records until the acreage reporting date, which is allowable under the Crop Insurance Handbook. An insurance service organization suggested clarifying the provisions to specify that production reports are required for some crops but not for all crops. Also, consider if the fifth sentence should read ''* * * unless otherwise specified in the policy'' instead of ''* * * by FCIC.''

Response: There is nothing in these provisions that preclude streamlining the APH process and since the APH regulations are separate from this policy, reference to optional yield updating will be more appropriately located in the APH regulations. Further, since the consequences of not providing a production report is universal to all crops requiring production reports and do not vary by county, these provisions are more appropriately located in the Basic Provisions. Requirement in the first sentence that the producer provide the previous year's production should not be removed because if removed, it could cause confusion. However, FCIC has amended the first sentence by adding the phrase ''unless otherwise stated in the Special Provisions'' to

allow for any future changes. FCIC never intended to allow use of another producer's records in determining optional units and it is only permitted by the APH regulations and the Crop Insurance Handbook when such records are from another person who shares in the same acreage. Since the producer must also share in the acreage, nothing in the existing provisions preclude this practice. The Crop Provisions will specify when production reports are not required. Further, in the fifth sentence, since the requirement that the amount of production used to determine a claim for indemnity constitutes the production report is contained in the APH regulations, the requirement can only be modified by FCIC.

Comment: Commenters questioned if the fifteen days specified in section 3(e) allowed enough time between announcement of an additional price election or amount of insurance and the sales closing date. A reinsured company suggested a minimum of not less than 25 days. An insurance service organization stated that the proposed rule refers to ''maximum'' and ''additional'' price elections for what are referenced elsewhere as ''preliminary'' (or ''established'') and ''projected market'' price elections. It could cause confusion to be able to have a price higher than the ''maximum'' price election. The commenter suggested either replacing these terms, or adding them to the definitions (perhaps as sub-entries under the ''price election'' definition).

Response: Although reinsured companies and producers may not have much advance notice, an expected market price will be published by the contract change date. Since contract change dates are usually months before the sales closing date, this provision simply allows FCIC additional time to determine the most accurate expected market price to be used as the price election. Generally, the additional price election or amount of insurance will be on file long before the 15 day deadline. Therefore, the 15 day requirement has not been changed to 25 days as suggested. FCIC has clarified the provision to eliminate confusion between the maximum and additional price elections.

Comment: Several comments were received with respect to section 4. A reinsured company and an insurance service organization stated that section 4 indicates that policyholders will receive written notification of all changes, including the ''additional price elections,'' at least 30 days before the cancellation date, although according to section 3(e) those prices may not be available for another 15 days. A reinsured company stated that it is impossible for the company to comply with the sentence which reads, ''You will be notified, in writing, of these changes not later than 30 days prior to the cancellation date for the insured crop'' because it includes all changes in policy provisions, price elections, amounts of insurance, premium rates, and program dates. The Special Provisions are provided to the insured but the actuarial documents are not. It is impossible to notify the insured of a rate change that will affect that person because this rate depends on the insured's APH, and the production reporting date occurs after the date of this notice. The commenter suggested that the section be modified to indicate that price elections (including price addendum bulletins), amounts of insurance, and premium rates are available at the agent's office. An insurance service organization stated that it would simplify the program if companies and agents could include all changes in one piece of correspondence rather than several. Legal counsel for a reinsured company recommended that section 4 of the policy should state that all contract changes are made pursuant to the FCIC's rulemaking authority and are subject to public comment.

Response: The section has been clarified to specify that insureds may review or receive copies of all the documents containing the rate, price elections, amounts of insurance, etc. The section has also been clarified to state that the insured will be notified in writing of any changes in the Basic Provisions, Crop Provisions, or the Special Provisions. Introductory language in the Basic Provisions clearly indicates that provisions of the policy are published in the **Federal Register**. However, not all contract changes are made by rulemaking. Changes in terms such as rates and price elections are not subject to public comment.

Comment: Legal counsel for a reinsured company stated that his client is compelled to include provisions in its policies regarding the liberalization provisions contained in section 5. The commenter stated that the liberalizations allowed by these provisions have increased the reinsured company's work and costs, and that inclusion of the clause does not constitute, imply, and should not be inferred by FCIC as a waiver or other relinquishment of the reinsured company's right under the Administrative Procedures Act or common law.

Response: Inclusion of section 5 in policies sold by a reinsured company does not waive any rights of the company it has not already otherwise waived. No change has been made.

Comment: Legal counsel for a reinsured company suggested that program dates be reviewed since the proposed language in section 6(a)(2) causes the acreage reporting dates for some crops to be very close to the premium billing date. For example, in some cases, the acreage reporting date for forage production policies will be June 15 and the current billing date is July 1.

Response: FCIC will review the program dates as necessary to determine whether adjustments are needed.

Comment: An insurance service organization commented on section 6(a)(3)(ii) and recommended deleting the phrase ''the acreage reporting date contained in the Special Provisions since this is included in the date determined according to 6(a)(1) and (2). They questioned whether this refers to both of these sections, or if there are no fall crops with a late planting period. This would then be easier to follow as, ''* * * the acreage reporting date will be the later of the date determined in accordance with sections 6(a)[(1)&] (2) or 5 days after the end of the late planting period for the insured crop.''

Response: The date contained in the Special Provisions for section 6(a)(3) may be different than the date referred to in sections 6(a)(1) and (2). FCIC has clarified that the date may be determined in accordance with both sections 6(a)(1) and (2).

Comment: Comments were received with regard to section 6(f). An insurance service organization recommended consolidating the last two sentences as follows: ''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.'' This avoids need to reference ''the yield for actual production history'' (which does not apply to all crops) and ''7 CFR'' (which is not provided with the policy provisions). Legal counsel for a reinsured company stated that section 6(f) should specifically set forth that the reinsured company's decision to determine the insurable crop, acreage, share, type, and practice, or to deny liability, is conclusive upon the producer and FCIC. Alternatively, the regulation and policy language should set forth the standards upon which acreage, share, type, and practice are to be determined by the reinsured company.

Response: FCIC has consolidated the two sentences as recommended. Provisions in section 20 indicate that disagreement on factual determinations will be resolved in accordance with the rules of the American Arbitration Association. Making the company's determinations conclusive would conflict with those provisions. Standards applicable to determination of insurance in these situations where the insured fails to file an acreage report for one or more units are currently contained in FCIC's approved procedure.

Comment: A reinsured company, legal counsel for reinsured companies, and an insurance service organization commented on the provisions in section 6(g). They asked whether the premium remains the same if the production guarantee or amount of insurance on the unit is reduced to an amount consistent with the correct information. The commenters expressed concern that the provisions do not address the current year, only subsequent years. More importantly, there must be sanctions in the current year. The commenters also asked how and when do the insurers adjust current year's coverage. They state that there should be a cross-reference to section 27 that requires the policyholder to reimburse the indemnity or be subject to voidance of the contract. The commenters also stated that language should be added to emphasize that it is essential for the producer to provide accurate acreage information and that the insurer is relying upon the producer's certification to [these] material facts to establish premium and liability. The commenters were also concerned that section 6(g)(2) does not relate what action the insurer may take upon discovering the incorrect information, which is particularly important if it is discovered while preparing a claim. For example, they ask what *bona fides*, if any, must an acreage measurement service possess, how can a company test such a service's credibility and impartiality, and what authority does the client company have to reject a service's measurements. The commenters also asked what acreage measurement service will be considered acceptable, whether reinsured companies be allowed to charge insureds for performing this service, what documentation is needed, and who makes the determination. The commenters also asked whether there is any tolerance for error and what ''support your report'' means. The commenters state that procedure is needed to ensure that if business is transferred and the receiving company discovers that the insured misreported acreage in any prior year, that the insured is required to provide the documentation specified in section 6(g)(2). In this regard, section 6(g)(2) may prompt transfers. The commenters ask what is the reinsured company's obligation and liability without pertinent procedures and state that section 6(g)(2) should state that the producer will be solely liable for any overstated liability resulting from the incorrect information or from fraud, misrepresentation, or concealment. The regulation should also make clear that the reinsured company is not liable to the FCIC for any overpayment of indemnity or other payments on a policy resulting from incorrect producer certified information or producer fraud, misrepresentation, or concealment. Any liability of a reinsured company for such acts should be governed by the criteria set forth in a previous Manager's Bulletin, which should be expanded to include the aforementioned situations. The proposed regulation states that reinsured companies must verify information pertaining to crop, share, entity, and acreage. The regulation should clearly set forth the sources that the reinsured companies may utilize to verify this information, especially in the absence of information at local FSA offices.

Response: If the correct information results in a lower premium, the lower premium will be charged to the producer and liability reduced commensurately. Sanctions are available if the insured misreports information. If the insured has intentionally misrepresented or concealed any material fact, the policy may be voided under section 27 and the insured may be disqualified under section 508(n) of the Act. If the error or omission is inadvertent, no sanctions are available. The insured simply receives only the coverage to which he is entitled. No cross reference is necessary since sections 27 and 6 are under the same policy. Further, there is sufficient language in the policy to put the producer on notice that information must be accurately reported. The crop insurance industry recommends that the burden of certifying acreage report information should be placed on the insured. FCIC assumes that a typical insured will provide accurate information. Therefore, documentation to support the report of acreage that includes, but is not limited to, an acreage measurement service at the producer's own expense, has been required only if the insured materially misreported acreage in a prior year. It is the reinsured company's responsibility to verify that the information used to settle a claim is correct. The insured selects the acreage measurement service. The reinsured company should use its business judgment to determine whether the acreage measurement service was reputable, competent, etc. Since it is the insured's responsibility to procure the acreage measuring service, they bear the cost. Documentation should include the report from the acreage measurement service stating the measured acres. FCIC has revised the provision to refer to ''substantiate'' the reported acres. The intent of this provision is to protect the integrity of the program by increasing the reliability of the information reported. The reinsured company can reject any information reported by the insured that is not accurate, including any information provided by the insured from an acreage reporting service. FCIC has revised the provisions to allow the reinsured company to require the insured to substantiate acreage if the insured misreports information in any crop year. Since the Federal crop insurance program is operated with public funds, FCIC cannot make payments that are not authorized by law. Therefore, if there is an overpayment of an indemnity for any reason, the reinsured company must reimburse FCIC for its share of the overpayment. If the reinsured company fails to follow approved procedures with respect to the verification of information, FCIC may take other actions in accordance with the SRA. FCIC, in cooperation with reinsured companies, will identify sources that may be used to verify acreage and other information. However, since these are procedural matters and the sources may change, the sources should not be included in the policy.

Comment: A reinsured company questioned if the provisions in section 7(a) were consistent with the notification requirements in the ineligibility (for debt) procedures, particularly when there is a short time between billing for one crop year and sales closing for the next. The commenter stated that some companies plan to send a billing earlier than the date specified in the Special Provisions to assure that insureds are aware of the amount due in time to meet the notification requirements associated with the ineligible for debt procedures.

Response: Section 7(a) is consistent with the provisions in section 2, which state that premium is considered delinquent when not paid by the termination date. This is the date that triggers ineligibility, not the billing date.

Reinsured companies will still be required to send the premium bills to the insured no earlier than the date stated in the Special Provisions. This is to ensure that all insureds are treated fairly and equitably. FCIC will review the premium billing dates and make any necessary adjustments. The provision has also been revised to clarify that the premium due will be considered delinquent if the premium is not paid by the termination date.

Comment: Comments were received regarding section 7(b). An insurance service organization suggested modifying the provisions to allow companies to make replanting payments to insureds who may need that money to cover the immediate costs of replanting the insured crop. Reinsured companies and an insurance service organization questioned the provision that reads ''Any delinquent amount may be deducted from any amount owed to you by any United States Government agency or by us.''

Response: The Department of Treasury has opined that part of the amount the producer owes a reinsured company for any crop insured under the authority of the Act that has been paid by the United States may be deducted from any amount owed to the producer by any United States Government agency. However, this provision has been deleted since it is redundant with sections 24(a) and 24(e). Since the replant payment is intended to provide funds to the insured to replant the crop, it will not be used to offset other amounts that are owed.

Comment: An insurance service organization questioned whether companies have the authority to ''assign'' a price election or an amount of insurance as specified in section 7(d). If not, the last phrase is not necessary, and the rest of this could be incorporated into 7(c).

Response: The reinsured company does not have the authority to ''assign'' a price election or amount of insurance when such information is omitted from the application. The producer must elect a price election or amount of insurance or the application will be rejected. However, if in future years the price election or amount of insurance changes and the producer does not elect another price election or amount of insurance, the reinsured company will assign the producer a new price election or amount of insurance as stated in section 7(d). No change has been made.

Comment: Comments were received regarding section 8(b). A reinsured company questioned whether the intent of section 8(b)(1) was to deny insurance on all units of a crop if a producer did not perform acceptable farming practices on one unit of the crop instead of charging an uninsured cause of loss on such unit as was done in the past. An insurance service organization stated that sections 8(b)(4) and (5) provide the possibility of insuring what is normally uninsurable if permitted by the Crop Provisions, Special Provisions, or written agreement. The commenter was concerned because sections 8(b)(1), (2), (3), and (6) make no mention of possible exceptions, yet written agreements are allowed to insure practices or types not listed in the actuarial documents. The commenter suggested that some reference is needed for subsections (1) and (2) as well, or these terms could be moved to the opening phrase (though requests would be denied for volunteer crops and crops left for wildlife). An insurance service organization questioned section 8(b)(6), which states that a crop ''used for wildlife protection or management'' is not insured. They stated that questions have been raised in the past about whether all acreage in a wildlife preserve is uninsurable or only the portion of the acreage that will not be harvested. The commenter asked, if the latter, whether the insured acreage should have a different coverage or rate since there is a higher risk of wildlife damage.

Response: Section 8(b) has been revised to clarify that any unit will be uninsurable if the conditions in paragraphs (1) through (6) exist, but that such uninsurability will not affect other acreage of the crop. FCIC agrees that a written agreement should be allowed for the circumstances contained in section 8(b)(1) and has amended that section accordingly. A farming practice may be acceptable, but a premium rate previously was not established due to lack of demand. The written agreement will alleviate this situation. If the crop is not adapted to the area, it should not be insurable and there will be no exceptions. Section 8(b)(6) is revised to clarify that a crop used solely for wildlife protection or management will not be insured. Some crop land leases require the lessee to leave a specified number of acres or a percent of the crop for wildlife. For leases that state a specific amount of acreage to be left unharvested, the stated acreage is not insurable. For leases that specify that a percentage of the crop must be left unharvested, the insured person's share will be reduced by that percentage.

Comment: An insurance service organization stated that section 9(a)(1) refers to ''crop provisions'' as an exception, section 9(a)(2) refers to ''written agreement'' as an exception, section 9(a)(4) refers to ''crop provisions'' as an exception, section 9(a)(5) refers to ''crop provisions or Special Provisions'' as an exception and section 9(a)(6) refers to ''the policy provisions'' or a ''written agreement'' as exceptions. The commenter stated that the exceptions in section 9(a) (and elsewhere in the policy) might be preferable as ''policy provisions'' rather than switching between ''Crop Provisions,'' ''Special Provisions,'' and ''written agreement.''

Response: The exceptions are only stated in the specifically referenced documents. There is no reason to require the insured to search all documents for exceptions that were previously identified. No change has been made.

Comment: Reinsured companies, a state commodity group, an insurance service organization, and a member of the Congress opposed the language in section 9(a)(1) that specifies that acreage will not be insurable if it has not been planted and harvested within one of the three previous calendar years. The commenters are concerned that this precludes acreage from being insurable when adverse weather conditions prevent planting or harvesting. They also stated that to bar coverage when a producer was unable to plant and harvest a crop or in instances when the producer lost the crop after planting defeats the purpose of having prevented planting coverage. They stated that this provision would be impossible to administer and that requiring that the crop be both planted and harvested within one calendar year excludes any crop planted in the fall and harvested the following year. This provision also excludes any perennial crop because such crops are not planted every year. Although the intent of this provision was to prevent the coverage of acres that are outside the definition of productive cropland, this provision will also prevent coverage for many acres that still carry the capacity to grow viable crops. The commenter suggested that a reference should be made to section 9(a)(1) in the prevented planting section to define acreage eligible for prevented planting.

Response: FCIC has revised section 9(a)(1) to specify that acreage not planted in the three prior crop years because they were prevented from planting or where a perennial crop was previously grown should be considered insurable acreage. Additionally, insurable acreage that had been planted in any of the three prior crop years and was not harvested due to an insured cause of loss should be considered insurable. Section 9(a)(1) has also been amended to delete the word ''calendar''

to recognize crop acreage planted in the fall and harvested the next calendar year. Referencing section 9(a)(1) in section 17 of this rule is not necessary because, if the acreage is not insurable, no payment can be made on such acreage, including a prevented planting payment.

Comment: A reinsured company and an insurance service organization questioned the provisions in section 9(a)(2). The reinsured company stated that the section would be impossible to administer, although they did not disagree with the concept. The commenter questioned how the reinsured company would determine if crops produced for food or fiber had been harvested from the acreage for at least five consecutive crop years after acreage had been strip mined. An insurance service organization stated that food or fiber must be defined beyond the exclusion of cover and forage crops. Tobacco is not a food or a fiber, but the commenters question whether it would qualify the acreage. The commenters also state that if food refers to production for human consumption, then corn for silage does not qualify acreage. If the term includes feed for animals, the commenters ask why forage is excluded. The commenter also asks about tree crops. The commenter also recommended deleting the word ''consecutive.''

Response: Section 9(a)(2) has been revised to refer to agricultural commodities other than a cover, hay, or forage crop (except for corn silage) that have been harvested from the acreage for at least five crop years after the strip mined land was reclaimed. A definition of agricultural commodity has also been added.

Comment: A reinsured company suggested adding the sentence ''In the event that it is common practice to plant a crop relying on water to be delivered by a third party at a later date, only those acres for which adequate water may reasonably be expected may be reported as irrigated,'' to section 9(b).

Response: Section 9(b) has been revised to clarify that if the insured has a reasonable expectation of having adequate water, the acreage will qualify for an irrigated practice. However, if the insured knew or had reason to know that the insured's water could be reduced, no reasonable expectation exists.

Comment: A reinsured company stated that the phrase ''you may either report and insure the irrigated acreage as non-irrigated, or report the irrigated acreage as not insured'' should be deleted from section 9(c). They stated that allowing the irrigated acreage to not be insured in cases where there is not an irrigated practice sets up a situation for no coverage to be in place if a disaster occurs, and raises questions about noninsured crop disaster assistance program (NAP) coverage. Irrigated acreage in areas without an irrigated practice should be required to be insured; the insured will benefit from a higher APH yield.

Response: It is not appropriate to require a producer to obtain coverage for a non-irrigated practice, with its higher premiums, when the acreage has an irrigated practice. However, since insurance on such acreage was available, the insured will not be eligible for NAP benefits on the irrigated acreage. No change has been made.

Comment: Comments were made regarding section 10(b). A reinsured company suggested that this provision be deleted because it creates problems with tracking and confusion over tax numbers, tax liabilities, etc. If this provision is retained, the commenter states that procedure must be established. An insurance service organization stated that the second sentence of section 10(b) suggests the company may not know that a landlord (or tenant) is insuring the other's share until the acreage report is submitted. The commenter stated that if this information affects the insured entity or who needs to be on the substantial beneficial interest (SBI) list, the reinsured company must determine whether this information is needed by the sales closing date. The commenter was concerned because no procedure has ever been developed for this possibility and it is difficult to determine what should be specified in the policy provisions until procedure is developed and distributed.

Response: FCIC understands that some reinsured companies are currently using these provisions with satisfactory results. FCIC has amended the provisions to clarify that insurance of another person's share must be indicated on the application before it is reported on the acreage report.

Comment: An insurance service organization questioned whether it will be necessary to store the date that the insurer accepts the producer's application since section 11(a)(1) has been changed from ''the date you submit your application'' to the ''date we accept,'' a term that needs clarification. The commenter questioned what would happen if a loss is submitted before a timely signed and submitted application is ''accepted'' and processed by the company.

Response: The date the application is accepted must be stored by the reinsured company the same as the date of application was previously stored. The provision has been revised to clarify that the application is considered accepted on the date that the insured submits a properly executed application containing all the information required in section 2. This change was made to clarify when insurance begins when an incomplete application is received.

Comment: A reinsured company suggested adding the phrase ''or facilities controlled by you,'' at the end of section 12(d) to clarify that failure or breakdown of facilities or equipment controlled by a third party, could be considered a covered loss.

Response: The intent of this provision is to cover failure of the irrigation water supply, not failure of equipment or facilities, regardless of who controls them. No change has been made.

Comment: A reinsured company questioned why the phrase ''as determined on the final planting date'' was included in section 13(a) because it is not uncommon for acreage planted during the late planting period to be damaged to the extent that replanting is necessary or practical.

Response: FCIC has revised this provision to allow this determination to be made within the late planting period.

Comment: Legal counsel for a reinsured company had questions regarding provisions in section 14(a)(2), which require a producer to notify the reinsured company within 72 hours of the initial discovery of damage (but not later than 15 days after the end of the insurance period). The commenter asked what the reinsured company's obligation is to the insured if the insured gives notice 80 hours after the initial discovery of damage. The commenter asked whether the reinsured company would reject the claim in this case or is it liable for liquidated damages to FCIC if it does not. The commenter also stated that supposing extenuating circumstances exist, e.g., a death in the insured's family, whether the reinsured company has discretion in light of the proposed SRA. The commenter recommended that the policy give the reinsured company some discretion to accept or reject a notice of loss based on the facts of each case and the ability of the company to appraise the loss in the context of those facts. That is the test a court would apply and the FCIC should not have a different standard. Also, the policy should specifically permit reinsured companies to delay an indemnity payment to any insured who is under investigation by the Inspector General or the Department of Justice involving wrongful claims for indemnities.

Response: These notice provisions are intended to protect the integrity of the program by ensuring that the reinsured company received notice in sufficient time to accurately adjust the loss. The provision is revised to provide the reinsured companies with the authority to accept a delayed notice of loss as long as their ability to adjust the loss has not been adversely affected. FCIC approved procedure allows acceptance of delayed notices provided the delay does not prevent the insurer from properly adjusting the claim. Therefore, the reinsured company does have the discretion to accept or reject a notice as requested in the comment and no policy change is necessary. There is no authority to delay the payment of a claim simply because the insured is under investigation.

Comment: A reinsured company stated that the word ''settlement'' in section 14(a)(4) should be defined.

Response: The word ''settlement'' is self-explanatory. No change has been made.

Comment: An insurance service organization commented on section 14(b)(4) that the last sentence should apply to sections 14(b)(1) through (4), as in the current Basic Provisions.

Response: The sentence applies to sections 14(b)(1)–(4) and FCIC has revised the sentence accordingly.

Comment: Comments were received regarding section 14(c). One reinsured company suggested adding the phrase ''for all units of the insured crop'' after ''insurance period.'' Another reinsured company questioned if the intent was to require that the proof of loss be completed within 60 days after the end of the insurance period.

Response: Since insurance is provided on a unit basis, claim settlement should be administered on that same basis. Addition of the suggested language could result in delayed payments for units with early season losses. FCIC considers the claim for indemnity to be synonymous with the proof of loss and requires that it be submitted within 60 days after the end of the insurance period. No change has been made.

Comment: An insurance service organization commented on section 14(f) and stated that since the only other reference to notice within 72 hours is in section 14(a)(2), FCIC should consider combining the provisions by adding the phrase ''notice may be made by telephone or in person to your crop insurance agent, but must be confirmed in writing within 15 days'' at the end of section 14(a)(2). If (f) remains separate, the commenter questioned whether it should refer to ''this paragraph'' or ''this section.''

Response: Since the provisions in section 14(f) are applicable to the notices required in sections 14(a)(2) and 14(b), it has not been combined with section 14(a)(2). FCIC has revised section 14(f) to refer to the ''section'' rather than the ''paragraph.''

Comment: An insurance service organization questioned if section 14(d) of ''Our Duties'' should be modified since future procedures may be based on FCIC's standards rather than ''established or approved'' by FCIC.

Response: Under the 1998 SRA, reinsured companies must use FCIC's loss adjustment procedures. In the future, FCIC will always require that all procedures be approved by FCIC before used. No change has been made.

Comment: Some reinsured companies and an insurance service organization suggested deleting the reference to Form FCI–78 in section 15(c). A company also suggested deleting the reference to ''a form approved by the Federal Crop Insurance Corporation'' and adding a provision that states how appraisals will be made if hail and fire are excluded as insured causes of loss.

Response: FCIC determined the procedures to be used to conduct such appraisals and included them in Form FCI–78. If FCIC wants to make changes in the procedures, it can revise the form. No change has been made.

Comment: A reinsured company and an insurance service organization commented regarding the provisions in section 16(b). The reinsured company questioned if acreage is insurable when planted after the late planting period for any reason, except for an insurable cause of prevented planting. The insurance service organization stated that the last sentence which states, ''Such acreage must have been prevented from being planted by an insurable cause occurring within the insurance period for prevented planting coverage'' is confusing since the acreage was planted, but too late for timely or late-planted coverage. Perhaps this should say, ''* * * prevented from being planted timely or during the late planting period * * *''

Response: Acreage planted after the final planting date or the late planting period, if applicable, is not insurable unless the acreage was prevented from being planted or it was practical to replant. FCIC has amended section 16(b) to clarify that planting on such acreage must have been prevented by the final planting date or during the late planting period by an insurable cause occurring within the insurance period for prevented planting coverage.

Comment: Comments were received regarding section 17(a)(2). An insurance agent opposed the 72 hour mandatory notice of loss requirement after the final planting date if the producer is prevented from planting by such date. The commenter stated that if the substitute crop option is eliminated, this provision is not necessary and it is a cumbersome rule that will necessitate a tremendous amount of effort on the part of the agent to make certain that a producer does not miss this deadline. The commenter also stated that in a year such as 1995 when adverse weather prevented many producers over a large area from planting, an agent must communicate with the producers, explaining the provisions to them, and encouraging them to continue planting, rather than assuring that all of the insureds give notice within 72 hours. The commenter claims that notice would only be beneficial in an area with few prevented planting claims because in an area with a large amount of prevented planting, inspections probably would not even be made. The commenter was also concerned because any time there is a specific date, it forces the agent and companies to have a tracking system to protect clients, which adds to the already burdensome amount of processing that is required. The commenter was concerned that having a prevented planting reporting date during a time span that may be feasible for planting sends a strong psychological signal to producers that they have reached a point that it is time to stop planting, regardless of what the conditions are in the field. The commenter also stated that reinsured companies would be over-loaded with loss notices that may or may not be necessary, possibly becoming expensive and burdensome for a company; and that this would be a new regulation for 1998 that is not necessary. Legal counsel for a reinsured company and the agent questioned what the ramifications would be if an insured notified the reinsured company more than 72 hours after the final planting date. A state commodity group stated that the 72 hour proposal will cause hardships on producers. Many producers plant 10 to 15 different crops, with varying final planting dates. During the planting season, producers who plant a variety of crops are simply too busy to contact their reinsured company. The commenter suggested changing the 72 hours to two weeks. A reinsured company stated that it trusted that such notice would not be considered the same as a ''notice of loss,'' requiring a visit by an adjuster, especially if the

land was located in an area where known prevented planting conditions exist and, if the acreage report did not include prevented planting, the earlier notice would be void. Another reinsured company stated that the issue of the number of required notices should be addressed. An insurance service organization recommended changing the loss notice requirement to 72 hours after the latest final planting date on the policy.

Response: The 72 hour notice requirement could become burdensome and cause hardships on producers. Therefore, the provision has been deleted.

Comment: Comments were received regarding section 17(b). A reinsured company and an insurance service organization stated that, if circumstances were favorable, increased coverage on unplanted acreage could allow a profit because the only expenses may be the fixed cost of ownership or rent. Input expenses other than those would not be necessary. Therefore, with 65 or 70 percent prevented planting coverage, it may become more economical for the producer to leave land idle rather than incur the expense of attempting to plant. A reinsured company, national commodity group, and farm organizations supported the 10 percentage point increase in the level of prevented planting coverage. The commenters supported the concept that prevented planting levels should be crop specific and should closely reflect a percentage of the pre-plant production inputs to total costs for each crop. One of the farm organizations stated that differentiation by crop is important but that the program's overall complexity should also be considered. An insurance agent, national commodity group, reinsured company, farm organizations, and a state commodity group commended FCIC for making higher levels of coverage available for prevented planting if producers choose to elect them. The commenters stated that optional coverage levels allow producers to tailor their risk management programs to individual financial realities. The national commodity group stated that coverage at the 60 percent level with an option to increase the coverage to 65–70 percent should be adequate, provided prevented planting losses are indemnified for each acre that is not planted (once the threshold of 20 acres or 20 percent of the insurable crop acreage in the unit is met). The current adjustment procedure tended to penalize producers who planted a portion of a unit to the intended crop. A state commodity group urged an increase in the maximum available prevented planting coverage level to 75 percent, particularly if the substitute crop provision is eliminated. An insurance agent, national commodity group, state commodity group, and regional commodity group were apposed to the lower prevented planting coverage available for cotton. An insurance agent and national commodity group expressed a concern that, in certain market conditions, the producer may shift prevented planting from cotton to corn or soybeans due to the possibility of a higher payment for prevented planting and significantly lower premium for corn and soybeans. A national commodity group stated that the percent of variable cost borne by cotton producers in planting a crop is not unlike the percent of variable cost borne by corn producers to plant a crop in the same states especially when seed company technology fees and Boll Weevil Eradication Assessments are taken into account. The commenter further stated that FCIC relied only on USDA regional cost data, not county data. The commenter also stated that any justification for this discriminatory treatment that is based upon a ''cost of production'' rationale is out of place under this program because crop insurance coverage is based on actual production history and price election, not cost of production. On several occasions, the commenters have challenged FCIC's claim that cotton's cost of production is highest for post-planting activities. A national commodity group and state commodity group stated that cotton producers deserve equitable prevented planting coverage without any rate increase since the ratio of cotton's insurance indemnities to its fixed and variable costs are far below those of other crops. The commenters stated that this disparity is even more glaring when indemnities' net of premium as a percent of variable cost or as a percent of a fixed cost are considered. A state commodity group stated that a rolling average of a producer's normal crop rotation should be used to determine losses. The previous year's total crop indemnity divided by prevented planting acres at this year's prices could be used to determine an average. An insurance service organization stated that although offering different prevented planting coverage levels may be more actuarially sound, this will make processing more complex. The commenter was concerned that it could also result in questions from policyholders when the level of coverage they actually have may differ from what they thought they had.

Response: Numerous issues are raised by these comments. In light of the comments regarding the disparity of prevented planting coverage between cotton and most other crops, FCIC is making this rule effective for the Cotton Crop Provisions and the Extra Long Staple Cotton Crop Provisions for the 1998 crop year only. FCIC will solicit additional comments regarding the prevented planting coverage level percentage for these crops for the 1999 and succeeding crop years in a future rule.

Some commenters allege that the differences in coverage will encourage shifts among crops, notably from cotton since the coverage is lower. Based on the national average liability, the average payment rate for cotton at 45 percent of the guarantee is $125 per acre ($0.68 average price election) while the payment for corn is $103 per acre ($2.25 price election). Even if the price election for corn were increased to $2.50 per bushel the payment still would be less than cotton ($115 per acre). Some commenters state that the prevented planting returns net of crop insurance premiums should be considered. However, based on additional (buy-up) business for 1996, the difference in producer-paid premium between the two crops is about $9 per acre. Therefore, even on this basis, there is no marked disparity in bottom line dollars to the producer and there should be no impact upon cropping decisions.

Some commenters challenged the concept of basing the prevented planting indemnity upon costs of production, stating that the insurance plan is based on yield and market price. The intent of the prevented planting provisions is to permit producers to recoup some of their costs when it is impossible for the producer to generate income from the insured crop. These provisions were never intended to allow producers to make a profit. To permit profit is to introduce unmanageable and undesirable risks of fraud.

Some of the commenters dispute the use of regional data to establish costs of production, arguing instead that the costs should be developed county by county. Such an approach is impractical and unwieldy due to lack of credible data and is contrary to the law, which directs FCIC to seek administrative efficiencies in its programs to minimize burdens upon producers and reinsured companies.

Comment: Comments were received regarding the proposed removal of prevented planting coverage when a substitute crop is planted. A national commodity group recommended that, after the final planting date for a

prevented planting crop has passed, producers be allowed to collect a prevented planting payment and then plant any crop but that such crop not be insurable. This would allow maximum returns from the land without providing any windfall benefits from the insurance program. The commenter stated that most producers are required to have a crop of some type on the land for conservation purposes and, since it will not carry any insurance coverage, production should be allowed. Another national commodity group and a state commodity group stated that they recognize the inherent problems with the substitute crop provisions and that they approve the elimination of the 25 percent coverage when a substitute crop is planted, provided there is adequate coverage when acreage is left unplanted. Farm organizations stated that it is difficult to argue against elimination of the substitute crop provisions; however, long term crop rotations, marketing decisions, delivery commitments, preplant application of inputs, and estimated economic returns from competing crops do enter into planting decisions. The farm organization and a reinsured company stated that weather induced planting changes often represent added costs to producers and, therefore, it may be appropriate to allow some level of coverage if the original crop cannot be seeded. These commenters stated that to reduce the potential for abuse, the provisions should specify a significant reduction in prevented planting benefits (40–60 percent) if an alternative crop is ultimately planted. Another farm organization and a reinsured company recommended that some level of coverage be allowed when a substitute crop is planted because weather induced planting changes may represent a real cost to the producer. Often times the producer has prepared the land for one crop, including the application of fertilizer and herbicides that will not be used by the new crop, and this expense cannot be recouped. A regional commodity group recommended that the provisions be amended so that a producer is able, at the very least, to forego crop insurance protection and plant a follow up crop for harvest after acreage is prevented from planting. The commenters stated that producers who miss the opportunity to plant their crop of first choice still need to retain the ability to create income from their land to cover any fixed costs they incur such as taxes, land payments, equipment payments and living expenses. They feel it is imperative that producers retain the right to keep their land productive.

Response: This ''substitute crop'' coverage has been provided for producers with coverage greater than catastrophic risk protection since the 1995 crop year. During the three crop years this provision has been effective, FCIC has received numerous complaints from agents, reinsured companies, commodity groups, and producers, including allegations of abuse, difficulty in establishing ''intent'' as required under those provisions, and other problems.

If a producer is prevented from planting the ''intended'' crop, it is the producer's choice to leave the acreage idle, plant a cover crop, or plant another crop for harvest. Prevented planting coverage should be provided only if the acreage is idle or planted to a cover crop not for harvest. Based on the numerous complaints received, the administrative problems and hazards associated with the substitute crop coverage, and the fact that only one crop is normally produced per acre, per crop year, prevented planting coverage should not be provided when the producer chooses to plant another crop on the acreage for harvest. No change has been made.

Comment: Comments were received regarding section 17(d). A national commodity group and a regional commodity group commended FCIC for including drought as an insurable risk for prevented planting. The national commodity group further recommended that such a determination be made on a field-by-field basis rather than on an area wide basis. This is consistent with the per acre unit change proposed for the prevented planting determination. Legal counsel for a reinsured company stated that proposed section 17(d)(1)'s requirement of inclusion of the Palmer Drought Severity Index (Index) as a condition precedent to the receipt of a prevented planting payment on non-irrigated acreage is arbitrary, impractical and exposes reinsured companies to potential litigation or arbitration. Though the Index surely measures a drought's severity, even those droughts that are not classified as severe or extreme may be sufficiently devastating to prevent planting. The commenter stated that when facing a drought, a producer's decision to invest the financial resources necessary to produce a viable crop is based on economics, not whether the Index classifies the drought as severe or extreme. In addition, a drought may, over time, become severe or extreme. The commenter asked what if, at the acreage reporting date a drought is not, according to the Index, severe or extreme, but is later classified as such by the Index. The commenter was concerned because the reinsured company already has denied the producer a prevented planting payment, and the drought's subsequent appearance on the Index is of little benefit to the producer. Forced reliance on the Index causes another problem if the Index is not available when the acreage is reported. The commenter questioned whether the reinsured company must delay its determinations until after it obtains the Index and what liability befalls the reinsured company if it is delayed.

Response: Current as well as the proposed prevented planting provisions specify that all prevented planting causes of loss must be general in the area. It is important to provide a reliable source such as the Index to provide consistency when verifying drought as an insured cause of loss in an area. FCIC does not believe that prevented planting payments should be allowed unless other producers in the area were also prevented from planting.

Most drought severe enough to prevent planting will be classified by the Index as severe or extreme by the final planting date. The Index is readily available to interested parties and is updated frequently. Therefore, the Index should be available to all reinsured companies prior to the acreage reporting date. FCIC expects few cases in which a drought that develops into a severe or extreme drought after normal planting times will actually prevent planting. To allow for exceptions would increase the complexity and subjectivity of these determinations, the administrative burdens on reinsured companies, and the litigative risks resulting from these subjective decisions.

Comment: A reinsured company stated that in section 17(e) the word ''base'' should be eliminated in all cases.

Response: The use of the word ''base'' in section 17 can be confused with the term ''base acreage'' used by FSA in the past. Therefore, FCIC deleted the word ''base'' as suggested.

Comment: Comments were received regarding section 17(e)(1). A crop insurance agent disagreed with the provisions in the proposed rule that exclude from eligibility any acreage prevented from being planted that was planted to a substitute crop. The producer should not be penalized a second time for not being able to plant a specific crop. A reinsured company questioned if the determination of eligible acres in the chart is done on a county basis. The commenter also questioned how a company is to obtain previous year's records of prevented planting acres when policies are gained by transfer. A reinsured company stated

that written agreements will only be allowed if the insured has not produced any crop for which insurance was available in any of the four most recent crop years. The commenters indicated that a written agreement may be the only way to provide coverage in many cases. An insurance service organization questioned whether section 17(e)(4), which notes that eligible acreage may be increased to account for added land, is considered a ''written agreement.'' The commenters also stated that the provisions in the table would be clearer if reorganized. Since 17(e)(1)(i) is the only one of the three subsections in which (B) and (C) differ, this table may not be necessary. Combine 17(e)(2) with 17(e)(1)(i)(C) since this is the only situation allowing written agreements and combine 17(e)(4) and (5) with 17(e)(1)(i)(B) to avoid the impression that eligible acreage does not include added land. Add 17(e)(3) to the opening sentence in 17(e)(1). The commenter also stated that 17(e)(1)(i)(B) must be clarified because the heading makes (B) apply to producers who have produced ''any'' insurable crop in any of the last four years, but then limits eligible acres to the maximum acres certified or reported in those years for ''the crop.'' The commenter stated that a producer may have produced corn in at least one of the last four crop years, but who planned to plant grain sorghum this year for the first time, would not have any eligible acres for grain sorghum and a written agreement could not be obtained. The commenter recommended changing the heading above section 17(e)(1)(i)(B) to read, ''if you have produced the crop in any of the four most recent crop years'' instead of ''* * * any crop for which insurance was available * * *'' The commenter also suggested that the heading above section 17(e)(1)(i)(C) be changed to reference ''the crop'' instead of ''any crop for which insurance was available'' to accommodate producers who decide to start producing a crop for the first time.

Response: Section 17(e)(1)(i)(B) of the proposed rule excludes acreage reported as prevented planting in a prior year but that was planted to a substitute crop so that the same acres do not qualify two crops in the same crop year. This provision is consistent with the removal of the prevented planting substitute crop coverage.

Eligible acres defined in section 17(e)(1) are determined on a county crop basis. When policies are gained by transfer, reinsured companies can obtain previous years' records of prevented planting acres from the insured, the ceding company, or the FCIC policyholder tracking system.

FCIC agrees that the table contained in section 17(e)(1) should be rearranged, duplicate provisions removed and combined with sections 17(e)(2) and (4), and has revised the table accordingly. FCIC has also revised section 17(e)(1) to incorporate section 17(e)(3) for clarity.

Proposed section 17(e)(1)(i)(C) (redesignated 17(e)(1)(i)(B)) has been amended to indicate that an intended acreage report must be submitted to the insurance provider to provide prevented planting eligible acreage only for a person who has not in any of the four most recent crop years produced any crop for which insurance was available. Intended acreage reports are not necessary for other producers. Any new insured who has produced any crop in any of the 4 most recent crop years for which insurance was available will qualify for prevented planting coverage for those crops and acres for which past acreage and production records are provided in accordance with APH procedures. A provision to increase acreage for new producers has been added that is consistent with the requirements for other insureds.

In most instances, the proposed provisions allow prevented planting coverage based on planting history. If a producer has planted only one crop in the past four crop years, for instance corn, and intended to plant and insure grain sorghum in the current crop year, the producer would be eligible for prevented planting coverage based on a corn production guarantee only. Once the producer plants grain sorghum, the producer will be eligible for prevented planting coverage based on a grain sorghum production guarantee.

Comment: A reinsured company questioned the impact and acceptability of intended acreage reports concerning eligible prevented planting acres. The commenter questioned the guidelines for approval of written agreements, and who has the authority to approve or disapprove such agreements.

Response: The provisions have been amended so that the use of a written agreement is no longer required to establish eligible acreage. Instead, intended acreage reports will be used. However, the reinsured company will be required to verify that the acreage reported does not exceed the number of acres of cropland in the producer's farming operation at the time the intended acreage report is submitted. The reinsured company will have the authority to accept or reject any intended report.

Comment: Comments were received regarding section 17(e)(2). An insurance service organization asked whether ''requests for written agreement under this section must be submitted to us on or before the sales closing date'' is intended to supersede section 18(e), which allows written agreements requested after the sales closing date only if an inspection determines no loss has occurred. The commenter asked if this provision prohibits consideration of a request made shortly after the sales closing date. Legal counsel for a reinsured company asked if section 17(e)(2) pertains to all crops or only to those with increased acreage. A crop insurance agent stated that any new producer who has a viable policy for a crop and who has the ability to produce that crop should be eligible for prevented planting on all cropland acres. The commenter also stated that the sales closing date is a completely unreasonable deadline for a new producer who is trying to start a farming operation. The insurance program should be as liberal as is prudent with new producers and allow them to add to their operation until acreage reporting time without penalty.

Response: As indicated in the response above, written agreements are no longer required. Since the producer is making all other insurance decisions by the sales closing date, it is not unreasonable to require the producer to specify the number of acres that the producer intends to plant by the sales closing date. New producers may be eligible for prevented planting acreage on all crop acreage if the requirements in section 17(e)(1)(i)(B) have been met.

Comment: An insurance service organization suggested that the provision contained in proposed section 17(e)(3) that states, ''the total number of acres requested for all crops cannot exceed the number of acres of cropland in your farming operation for the crop year'' be revised to allow for double-cropping, as in section 17(f)(5).

Response: This provision, now located in section 17(e)(1) is revised to account for double cropped acreage.

Comment: Comments were received regarding section 17(e)(4). A reinsured company asked if all land added by the insured after the sales closing date was ineligible for prevented planting coverage. An insurance agent disagreed with requiring the producer to provide documentation on or before the sales closing date for newly added land because a March 15 deadline is not realistic and land changes hands into the planting season for many legitimate reasons including retirement, health, another career, financial considerations, etc. The commenter stated that the new producer should not be denied coverage

just because the farming operation changed hands after March 15. The commenter was also concerned that it is difficult to obtain form 423 from FSA to determine eligible acres and whenever a farming operation is changed and the farm is reconstituted by FSA, there can be weeks of delay before the form is completed. The commenter stated that this rule again imposes an unnecessary burden on agents. It will force them to spend a great deal of time putting a process in place that attempts to make certain that none of their insureds miss an imposed deadline. The commenter was concerned that this is the time of year that agents need every available minute to be working with their clients concerning their coverage. Producers should be focused on sound decisions concerning their risk management, not focusing on what new deadline they have to meet. The commenter also stated that with the substitute crop provision eliminated, there is no need to have any other deadline in place other than acreage reporting. There is no date that is acceptable and crop insurance should not be in the business of trying to dictate to producers a date by which all changes in a farming operation must take place. The commenter stated that this rule directly conflicts with the farm program objectives of farming for the market. If the market dictates that a producer needs larger acreage to be effective, that should be allowed by our rules. The converse is also true. If a producer decides to reduce the size of the farm, it still is eligible for acres over and above the size of the farm, under the proposed rule. The commenter stated that eligible acres should be determined at planting time by the total cropland acres. The limitation to the number of acres previously planted to a crop is prudent; however, newly added land should be eligible for prevented planting up to the newly established cropland acres on any crop that the producer has insured. This is a common sense approach that would eliminate burdensome paperwork and eliminate a deadline that will cause problems. Legal counsel for a reinsured company stated that land rented or bought after the sales closing date might be ineligible for prevented planting coverage under the proposed provisions in section 17(e)(2) and (4). While the acreage reporting date may improperly permit insureds to state with the benefit of hindsight, what their intent was, the use of written agreements in the fashion proposed is not an adequate solution. The commenter suggested that the actual production history deadline date could be used.

Response: These provisions, now included in section 17(e)(1)(i), have been revised to allow an increase in eligible prevented planting acres provided the producer submits proof that additional acreage was purchased, leased, or released from any USDA program in time to plant it for the insured crop year. No cause of loss that will or could prevent planting may be evident at the time the acreage is purchased, leased, or released from the USDA program.

Comment: Comments were received regarding section 17(f)(1). A reinsured company suggested that the section be modified to read ''* * * 20 contiguous acres...'' The commenter suggested changing the phrase ''whichever is less'' to read ''whichever is larger'' and also suggested that the term ''insurable crop acreage in the unit'' be defined. Another reinsured company questioned if 20 acres or 20 percent was the correct acreage limitation for the unit. The commenter recommended a minimum figure be established for the entire farming operation based on cropland acres. Legal counsel for a reinsured company recommended that section 17 be amended to exclude prevented planting payments when the producer is prevented from planting a small number of acres. For example, if a producer is prevented from planting five acres on a 100 acre farm, the producer should not be entitled to a prevented planting payment for the five acres. The commenter stated that failure to incorporate such a change will increase indemnity payments and overall administrative costs of the program. Another legal counsel for a reinsured company indicated that the phrase ''within a field'' contained in section 17(f)(1) is not defined or used elsewhere in the section.

Response: Provisions are necessary to avoid prevented planting claims when only a small number of acres are prevented from being planted. FCIC has amended section 17(f)(1) to require that at least one contiguous block of land equal to 20 contiguous acres or a contiguous area constituting 20 percent of the insurable crop acreage in the unit, whichever is less, be prevented from being planted in order to qualify for a prevented planting payment. This change will reduce prevented planting payments for pot-holes and other small portions of fields that are wet in most years although planting occasionally may be possible. The phrase ''whichever is less'' is appropriate. There is no reason to define the phrase ''insurable crop acreage in the unit'' since units, insured crop, and insured acreage are defined elsewhere in the policy.

Once the minimum acreage threshold has been met, all acres should be indemnified. A minimum figure should not be established for the entire farming operation based on cropland acres because in very large farming operations, that could result in a substantial number of acres ineligible for prevented planting coverage.

FCIC has defined the term ''field'' for clarity. FCIC has also amended section 17(f)(1) to specify that all acreage in a field will be presumed to have been intended to be planted to the same crop that is planted on the field unless the prevented planting acreage constitutes at least 20 acres or 20 percent of the insurable acreage in the field and the producer can prove that both crops were previously planted in the same field in the same crop year.

Comment: A reinsured company questioned if the phrase ''in which the insured crop was grown on the acreage'' in section 17(f)(4) allows rotation of double-cropping so that the acreage need not be double-cropped each of the last four years to be eligible for prevented planting.

Response: The double-cropped acreage would qualify for prevented planting as long as the insured crop was double-cropped in each of the last four years that it was grown.

Comment: Legal counsel for a reinsured company stated that the terms of FCIC's proposed coverage for prevented planting are inherently inconsistent. On the one hand, FCIC is eliminating its substitute crop provisions, while on the other hand the FCIC would require written agreements to be submitted by sales closing dates on base eligible acres on which the insured has not produced any crop for which insurance was available in any of the four most recent crop years. This requirement effectively forecloses producers, particularly those in the northern plains states, from responding to market signals. Similarly, section 17(e)(3), which indicates the number of acres requested cannot exceed the amount of cropland, conflicts with section 17(f)(4), which appears to permit double cropping.

Response: The comment misinterprets the proposed provisions. Section 17(e)(1) requires only those producers who have not produced *any crop in any of the four most recent years for which insurance was available* to establish eligible acres in writing. In all other instances, either the number of contracted acres (for contracted crops) or the greatest number of acres of the insured crop planted or insured in any

of the four most recent years serves as the basis to determine eligible prevented planting acres. No provision contained in this rule restricts a producer from responding to market signals and planting, or attempting to plant, any amount of any crop he or she desires. However, in most instances, prevented planting compensation will be based on the number of acres of an insured crop that was planted in the past. As stated above, FCIC has revised the provisions of section 17(e)(3) (now in section 17(e)(1)) to account for double-cropped acreage.

Comment: Comments were received regarding section 17(f)(5). A reinsured company questioned how a company would know if any crop from which a benefit is derived under any program administered by the USDA is planted and fails. The commenter also suggested modifying the sentence from may be hayed or grazed ''* * * after the final planting date for the insured crop * * *'' to ''* * * 60 days after the final planting date for the insured crop * * *'' An insurance service organization stated that this section refers to ''other than a cover crop which may be hayed or grazed after the final planting date for the insured crop.'' The commenter questioned whether acreage that has a cover crop that is ready to be hayed or grazed would ever qualify for prevented planting.

Response: Reinsured companies must question insureds to determine if any crop was planted for the crop year on the acreage being claimed for prevented planting. Producers should not be denied grazing or haying benefits for 60 days after being prevented from planting. In many instances, cover crops are grown until preparation for planting occurs in the spring. If the producer was unable to remove the cover crop and plant a crop, such a cover crop could be hayed or grazed soon after the final planting date and a prevented planting payment would still be owed.

Comment: A reinsured company questioned how the insurer will know if a cash lease payment is also received for use of the same acreage in the same crop year as specified in section 17(f)(6), particularly if it occurs after the prevented planting payment has already been received.

Response: Reinsured companies must question insureds to determine if a cash lease payment is, or will be, received for the acreage being claimed for prevented planting. Any insured who claims prevented planting on acreage they have cash leased would be misrepresenting a material fact and could be subject to civil and false claim penalties.

Comment: A reinsured company stated that they did not disagree with the concept of section 17(f)(7) but that it is inconsistent with freedom to farm and is unenforceable.

Response: The requirement that prevented planting coverage will not be provided for any acreage for which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes is necessary to protect the integrity of the program. FCIC is charged with establishing an actuarially sound insurance program, and relying upon ''intentions,'' without evidence to support such intentions, is not an appropriate manner of achieving actuarial soundness. For example, if half the acreage in a farm has remained fallow every other year for the past ten years to maintain a summerfallow rotation, this is evidence that this is a normal practice. If such patterns exist, this provision is easier to administer than if the reinsured companies were forced to determine whether the producer actually intended to plant a crop. Since coverage for prevented planting now begins on the previous crop year's sales closing date for carry-over policies, producers could decide to claim an intent to plant acreage where the cause occurred months earlier in order to profit from the insurance program when they never planned to plant a crop. While the denial of prevented planting coverage may adversely affect some producers who genuinely intended to plant a crop, given the inability to prove intent to plant and in order to protect the integrity of the program, FCIC must retain the provision. No change has been made.

Comment: Comments were received regarding proposed section 17(f)(9) (redesignated 17(f)(10)). A reinsured company stated that they did not disagree with the concept of section 17(f)(9) but that it is an unenforceable provision. The commenter asked if capital on hand was considered proof that inputs were available. An insurance service organization stated that the burden of proof is placed on the producer to demonstrate ''he or she had the inputs available to plant and produce a crop.'' The commenter asked what guidelines have been developed to determine that an insured has ''inputs available to plant and produce a crop'' and what evidence will be considered acceptable for the ''proof.'' The commenter believes that instead of reducing the costs associated with prevented planting, FCIC has put forth an indefensible proposal that will only add to the administrative expense of the program.

Response: Since the prevented planting period could begin on the sales closing date for the previous crop year for many producers, many producers could know that they were prevented from planting prior to the sales closing date and planting period. These producers would be in a position to claim the intent to plant higher valued crops than they normally plant. FCIC has revised the provision to clarify that proof of inputs is only necessary where there is a deviation from normal planting practices. For example, the producer has rotated crops between corn and soybeans in alternate years and this was the year the rotational pattern showed that corn would normally be planted, if the producer seeks a prevented planting payment for corn, the reinsured company does not have to determine whether the insured had sufficient inputs. However, if the producer seeks a prevented planting payment for soybeans, the reinsured company would be required to determine whether the producer has sufficient inputs. Capital on hand would not be considered proof of inputs. If the producer could not produce receipts for seed, fertilizer, herbicides, etc., the lease of equipment or labor, or specific land preparation, it will be presumed that the crop usually planted by the producer was the crop that the producer intended to plant. While this provision may preclude a producer from receiving benefits for a crop that he genuinely intended to plant, the producer would still be eligible for a benefit on the crop usually planted and the need to protect program integrity outweighs its disadvantages. Since this situation should be rare, it should not impose an undue burden on the reinsured company.

Comment: A reinsured company stated that proposed section 17(f)(11) (redesignated 17(f)(12)) is contrary to the freedom to farm concept. The commenter also questioned how the insurer would know if the crop was planted in one of the last four years.

Response: Prevented planting coverage will not be provided for any acreage based on a price election, amount of insurance or production guarantee for a crop type the insured person did not plant in one of the four most recent years. As stated above, FCIC has a responsibility to protect the integrity of the program. Allowing producers to claim prevented planting payments for crops for which there is no evidence that they intended to plant would adversely affect program integrity. While this may result in some

producers not receiving benefits, it would be impossible to maintain actuarial soundness when such exposure to unnecessary risk exists. Since most crops have a production guarantee based on actual production history, records are an integral requirement. Use of such records would seem the proper way to verify previous crops produced. However, FCIC has created an exception for new producers that qualify for coverage under section 17(e)(1)(i)(B).

Comment: Comments were received regarding section 17(g). A reinsured company stated that this section may generate a moral as well as a morale hazard, since producers may claim prevented planting for marginal land never intended for planting. This is contrary to the intent of this policy, which is to provide disaster based insurance coverage, not acre by acre coverage. Legal counsel for a reinsured company stated that proposed provisions allowing a prevented planting payment on a per acre basis add incalculable costs to the loss adjustment process. The commenter stated that loss adjusters must find the acres that are prevented from being planted, measure them, verify inputs and calculate the loss. Also, under the proposal, insureds can ''buy-up'' their coverage which permits producers to be indemnified as much for prevented planting as for failed planting. Neither the Cost-Benefit Analysis or the narrative in the **Federal Register** provide the level of detail needed to permit meaningful comment on FCIC's conclusion that higher rates will not be needed. The commenter further stated that paying prevented planting claims on a per acre basis will result in software problems equal in magnitude to the so-called ''year 2000'' problem. Loss records are kept by unit and to pay claims by acre will require a complete revision of the reinsured company's and FCIC's loss adjustment programs. In this regard, those programs will need to deduct from final claims paid on a unit basis the amount paid for prevented planting on an acre basis. Accordingly, the commenter stated that FCIC has no basis in fact to conclude, as it did in its 1997 Cost-Benefit Analysis, that its proposal will simplify program operation. A national, two state and a regional commodity group stated that they commend FCIC's decision to pay prevented planting acres on a ''per acre'' basis. Another national commodity group stated that they strongly support the change from computing the prevented planting indemnification on a unit basis to a per acre basis after the deductible of the lesser of 20 acres or 20 percent of the eligible acreage in a unit is met. This change provides the producer the opportunity to more closely recover his actual losses associated with prevented planting on a limited number of acres within a unit without indirectly penalizing him for efforts to plant the balance of a unit in a timely, profit maximizing fashion. An insurance service organization stated that they received one comment recommending prevented planting coverage be provided on a unit basis rather than on an acre-by-acre basis. The commenter stated that prevented planting coverage on a unit basis will encourage the insured to plant the acres if at all possible. The commenter asked why separate units for planted and prevented planting acres should be established when units by planting dates are not otherwise allowed.

Response: The other requirements of section 17 must also be met before a prevented planting payment is made. If the producer cannot prove that inputs were available to plant any acreage, then no prevented planting payment will be made. If the producer has previously planted marginal acreage, any prevented planting payment will be based on the lower yield for such acreage. No change has been made.

As noted in both the Cost-Benefit Analysis and **Federal Register** narrative, recent prevented planting data indicate that the net costs are expected to be small because the cost and liability associated with substitute crops, which will be reduced when that provision is eliminated, offset the additional cost and liability associated with adding a per-acre basis for payment. Experience data for 1996 demonstrate that 77 percent of declared prevented planted acres occurred in circumstances in which no acreage of that same crop was planted within the unit. Similar results appear in 1995. The implication is that most producers who are prevented from planting have not been able to plant any acreage in the unit and, therefore, already have received the equivalent of acre-by-acre payments. Added outlays would be associated with prevented planted acres where some acreage in the unit is planted, but realized production exceeds the guarantee. In 1996, about 178,000 acres fell in this category, accounting for about $5.6 million in indemnities. Data for 1996 also indicate that some acreage that did not receive an indemnity under the prior regulation would receive a payment under this rule. The increased indemnity is estimated to be about $7–8 million. These data clearly indicate that the effect is small.

Even with the ''buy-up'' provisions, prevented planting compensation under this rule cannot equal compensation given in the event of a failed crop as stated in the comment from the legal counsel. The maximum coverage offered is 70 percent of the *guarantee* for timely planted acres. Therefore, the maximum compensation the producer could receive is 70 percent of the indemnity paid if all acreage of the crop had failed.

Maintaining loss records for prevented planting payments will be no more complex than maintaining records for any unit. It will not be necessary to deduct the amount of a prevented planting payment from the amount of a final claim. This calculation is not required by this rule. No change has been made.

Comment: An insurance agent recommended that the CAT level of coverage for prevented planting be limited to a payment based upon basic units, and that the buy up coverage should be eligible for acre by acre payments. Too much coverage at the CAT level encourages the producer to ''take a chance'' rather than make an informed decision based upon sound risk management principles. There is more incentive for the producer with many acres to elect CAT coverage, particularly if the payment is made on each acre, the major risk is prevented planting, and there is no premium impact. The producer who elects additional coverage should receive additional benefits to compensate for the fact that the producer no longer has substitute crop provisions.

Response: The argument presupposes that the chance of prevented planting is the dominate consideration regarding choice of coverage level. If this is the case, and producers can continue in business over the long term with the catastrophic level of coverage, the interests of a majority of producers in the county may be best served by this choice. No change has been made.

Comment: A reinsured company recommended that, in the prevented planting provisions, FCIC remove the crop specific nature of the proposal and consider only those acres that cannot be planted to any crop as eligible for a prevented planting payment. The commenter also suggested that FCIC establish a non-disappearing deductible as a percentage of cropland acreage that must be exceeded to qualify for a prevented planting payment. Additionally, the commenter suggested that FCIC determine a per-acre payment amount based on average production costs in the county.

Response: The recommended changes, which result in a totally

different concept for prevented planting coverage than in the proposed rule, could not be accomplished without the benefit of public comment. FCIC has reviewed the recommended coverage and determined this concept requires more study to determine if it is acceptable to all interested parties. No change has been made.

Comment: An insurance service organization commented that crop insurance industry representatives had developed a total cropland prevented planting proposal based on acres not planted after the planting windows for all crops had expired. Industry representatives believed this proposal was consistent with the intent of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) in that the coverage did not induce crop specific behavior. The proposal advanced by FCIC differs materially. Due to the short comment period and the complexity of the subject, there was inadequate time to develop a full response, including actuarial analysis and total cost of administration, to FCIC's proposal. FCIC must provide companies with the necessary support to defend against challenges to the enforcement of the ''intent'' and ''proof of intent'' clauses, from the additional loss adjusting expenses incurred by companies in implementing this program, and from compliance issues that arise out of confusion generated by this rule. Further, FCIC has consistently under-estimated the costs associated with its prevented planting provisions. FCIC has not addressed the matter of increased costs incurred by private companies or the potential for private companies to suffer excessive underwriting losses associated with this rule. Instead, it has only expressed in its analysis that because of the small expected average rate impact, any changes in reimbursements to private companies for delivery or any underwriting gains are also expected to be small. At a time when the administrative subsidy to private companies for delivery of the federal program has been reduced by FCIC, there is no room for and FCIC should not anticipate that private companies will bear the cost of this proposal.

Response: FCIC reviewed the insurance service organization's prevented planting proposal prior to publication of this rule, as well as other proposals. This rule incorporates many elements or concepts of those proposals. The total cropland concept is inherent to this rule in that eligible acres are defined by the producer's history. The provisions contained in this rule simplify program administration and will reduce administrative costs compared to current prevented planting provisions (e.g., removal of the substitute crop coverage, simplification of determining eligible acreage, reduction in the number of agreements in writing to determine eligible acreage, etc.). Therefore, reinsured companies should not need additional resources, nor should they incur additional costs to implement the overall prevented planting changes contained in this rule.

Comment: An insurance service organization stated that the proposed rule for prevented planting is built, in part, around the ''intent'' of the farmer to plant. Industry calls into question the defensibility of determining ''intent'' from a legal and managerial standpoint. The commenter provided data published by the National Agricultural Statistics Services (NASS) showing that the differences between intended and planted acreage (total cropland) at the state-level are relatively stable. However, the data demonstrate that crop-specific differences between intended and planted acres are magnified within a state. The commenter stated that the differences will be even greater at the farm level. This indicates the difficulty associated with monitoring the prevented planting proposal. It will require additional dollars to deliver this type of program in order to maintain the integrity of the program.

Response: Without examining the intent of a producer to plant a crop, producers could collect indemnities even when they did not intend to plant a crop or claim an intent to plant a higher valued crop in order to maximize their payments. Therefore, intent must be examined to protect the integrity of the program. The provisions have been revised to only require an examination of intent when the producer deviates from previous planting practices. Therefore, the additional costs associated with the program should be minimal. No change has been made.

Comment: An insurance service organization stated that the crop specific nature of the prevented planting provisions contained in this rule are inconsistent with Freedom to Farm.

Response: The comments presupposes that producers select the crop to plant based on available insurance coverage. This supposition is contrary to the intent of the 1996 Act, which is to allow producers to maximize their profits through the use of available markets and prices. It is possible that producers may be denied prevented planting coverage when they genuinely intended to plant the crop. However, to protect the integrity of the program, such provisions are necessary and reduce the administrative burdens on the reinsured companies, which would otherwise have to ascertain the intent of the producers. The rule authorizes payments for prevented planting in a sound insurance manner. No change has been made.

Comment: An insurance service organization stated that problems will be encountered with this rule because of the degree of the over-lap of the planting windows for the various crops by state. Absent from this rule is any discussion or analysis of the impact of final planting dates in relation to the prevented planting coverage. Final planting dates are crucial in determining eligibility for prevented planting benefits. If final planting dates are too early, then a producer may be able to claim prevented planting benefits even though the producer is still able to plant within standard practice for the crop and location. This will lead to higher than expected delivery expense compared to the industry proposal because more claims will be processed.

Response: FCIC will review final planting dates and revise them as necessary. However, to maximize coverage and a potential for revenue, most producers will elect to plant some other crop if land becomes plantable after the final planting date for one crop, and thereby establish 100 percent of a crop insurance guarantee. No change has been made.

Comment: An insurance service organization stated that, in certain situations, previous land use and pre-plant input decisions will narrow the set of crop choices and substitution among crops. Industry will be required to manage additional information and data in order to implement the proposed rule and maintain program integrity. Within the context of the Paperwork Reduction Act and program simplification, requiring companies to obtain, verify and retain additional paperwork and information from producers does not make sense.

Response: FCIC has revised the provisions to narrow the cases in which reinsured companies must examine evidence of inputs. Since the examination of inputs was required in previous prevented planting provisions, this change will reduce the burden on reinsured companies. No change has been made.

Comment: Reinsured companies and an insurance service organization commented on the provisions of section 18. They state that there are legitimate reasons for written agreements to be valid for more than one year, especially

if no substantive changes occur from one year to the next. Limiting written agreements to one year only increases administrative cost, complexity and opportunity for misunderstanding and error, and flies in the face of efforts to simplify the program and reduce its administrative expense. The commenter also stated that written agreements should be effective for more than one year because there is already an exception since written agreements to establish units are continuous (unless the farming operation changes significantly). The commenters also question how often written agreements are incorporated into the actuarial documents within one year. Often, policyholders and reinsured companies must duplicate their efforts to request reissuance of written agreements because this does not happen. The commenters state that FCIC's legal counsel objects to the concept of written agreements, which purportedly allows exceptions for those ''in the know,'' while others may not be aware the possibility exists. The commenters asked whether these provisions can be revised to simplify renewals. The commenters suggested that the policy should require the insured to pay the cost of inspections necessary to obtain a written agreement because there are many instances where there is no economic reason or incentive for a company to pursue such agreements. The commenters also suggested that sections (a) and (e) be combined since both deal with deadlines for written agreement requests. They stated that the response to this comment in prior final rules has been that the sales closing date is intended to be the deadline with only limited exceptions. However, 7 of the 13 written agreement types listed in the 1998 Crop Insurance Handbook allow requests at acreage reporting time and one allows the request after acreage reporting. Of the 6 types with a sales closing date deadline, 4 are specific cases of a practice or type not listed in the actuarial materials, which is curious since the general type of unrated practice, type or variety can be requested at acreage reporting time. So, the exceptions seem to outnumber the rule. Many of the situations calling for written agreements do not become apparent until the acreage report is received. Therefore, the commenter again suggests this provision might be less misleading if the acreage reporting date exception noted in (e) were incorporated into (a). The commenters stated that the provisions in section 18 that specify timing and content of the FCI–2 written agreement should not be part of the insurance policy. New insureds would not have this information until it is too late to request a written agreement. They state that this should have been reviewed by the insurance agent prior to acceptance of the application or issuance of the crop insurance policy. The commenters also stated that some of the written agreement provisions need to be carefully considered and compared to current procedures and comments to the Written Agreement proposed rule before the deadlines and annual status of written agreements are mandated in the Basic Provisions.

Response: Written agreements are intended to change policy terms or permit insurance in unusual situations. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to keep non-uniform exceptions to a minimum and to insure that the insured is well aware of the specific terms of the policy. There are no exceptions to the timing or duration of written agreements except as provided in section 18. The provisions have been amended to indicate that written agreements may be submitted after the sales closing date only if the producer demonstrates that he or she was physically unable to apply prior to the sales closing date or in accordance with any regulation which may be promulgated under 7 CFR part 400. FCIC will be more vigilant in incorporating changes to the policy made by written agreement into the actuarial documents.

FCIC does not believe that a producer should bear the cost associated with any inspection done for the purposes of a written agreement. Such costs are a part of servicing the policy and therefore, are already compensated by the expense reimbursement under the Standard Reinsurance Agreement.

Section 18 was added to the Basic Provisions so that this duplication of information could be eliminated from all Crop Provisions. This information is necessary to provide authority for policies to be altered where the policy specifically allows the use of a written agreement.

Comment: Legal counsel for a reinsured company stated that FCIC's authorization of reinsured companies to use written agreements to alter the terms of published regulations is illegal and unwise. The commenter stated that Congress conferred on the FCIC, not on dozens of insurance companies, the rule-making power to define the terms and conditions for insurance. Congress did not confer upon the FCIC the authority to delegate its exclusive rulemaking authority to private contractors. The commenter also stated that neither the FCIC nor its contractors may amend rules and regulations in the **Federal Register** by private written agreement. The comment also indicated belief that the provisions of this section are prohibited by the Office of Management and Budget ''Policy Letter on Inherently Governmental Functions,'' 57 FR 45096, 45100, ¶ 5 (September 30, 1992). The commenter stated that this section will result in written agreements being used as marketing gambits for agents and policyholders by inviting them to compete with lenient agreements that will permit the sale of insurance by a variety of devices after the sales closing date. Finally, the commenter stated that section 18 is a trap for reinsured companies. On one hand, the salutary purposes of the freedom to farm legislation must be accommodated by allowing insureds to react to market signals. On the other hand, the timing of those signals may invite moral hazards. Faced with two mutually exclusive and equally unhappy alternatives, FCIC has decided to abdicate responsibility. The commenter states that section 18 gives each insurer the choice of rejecting a written agreement and declining coverage (thereby causing potential for uninsured losses of the policyholder) or accepting a written agreement and exposing itself to the hindsight of FCIC's Compliance Division.

Response: FCIC has not delegated its rulemaking authority to the reinsured companies. In many cases, reinsured companies must still get FCIC approval before providing insurance by written agreement such as in cases involving unrated land. Further, even if the reinsured company has the authority to approve written agreements, criteria published by FCIC still must be met. Therefore, reinsured companies do not have the authority to revise or modify the terms of the policy except as provided by FCIC. All reinsured companies are doing is applying such criteria to their insureds' situation. The use of written agreements should not provide any competitive advantage since they must specifically be authorized in the policy and are available to all producers of the crop. No change has been made.

Comment: Reinsured companies, an insurance service organization, and legal counsel for a reinsured company commented on section 20. The commenters questioned whether using the rules of the American Arbitration Association (AAA) for resolution of disagreements has been satisfactory and

whether utilization of the intermediate ''two appraisers, umpire, etc.'' has been considered. The commenters also stated that the language ''for FCIC policies'' can be deleted because, effective with the 1998 crop year, FSA offices are no longer delivering crop insurance policies. Section 20(a) states that disagreements on any factual determination between the insured and the company will be resolved in accordance with the rules of the AAA. The commenters state that this must be clarified so that this only means the association's rules will be followed, not that its personnel will be involved in the arbitration since they are expensive and are not familiar with crop insurance. Section 20(b) reads ''No award determined by arbitration can exceed the amount of liability established or which should have been established under the policy.'' The commenters stated that this should read ''arbitration or appeal'' since both are mentioned in 20(a). The commenters stated that section 20 and section 25 are at odds with each other. Under these two sections, arbitrators have jurisdiction over questions of fact and the courts have jurisdiction over questions of law. Moreover, under the policy, both can grant monetary relief. Bifurcated proceedings are costly and unnecessary. The commenters stated that the policy should provide for mandatory, binding arbitration. Such alternative dispute resolution is consistent with public policy. At most, legal action should be an alternative route, with insureds able to select one, but not both actions.

Response: In most instances, arbitration by the rules of the AAA has been a satisfactory and desirable solution to policy disputes. FCIC has not received any recommendations providing alternatives. The provisions are clear that only the rules of AAA will be used. Since the authority for FCIC to deliver policies directly to insureds still exists, provisions referencing FCIC policies will be retained in case they are needed in the future. FCIC has revised section 20(b) to reference ''arbitration or appeal.'' The provisions clearly state that disagreement on any factual determination will be resolved by arbitration. However, if arbitration does not result in agreement, FCIC believes the insured producer should be able to seek resolution through legal action as authorized in section 25.

Comment: An insurance service organization questioned whether section 21(b)(3) should specify that ''optional units'' may be combined rather than just ''units.''

Response: Section 21(b)(3) should refer to optional units and has been amended accordingly.

Comment: An insurance service organization stated that, under section 23, the amount the reinsured company is allowed to retain should be increased from 20 percent to 40 percent due to the increased costs and paperwork.

Response: 7 CFR § 400.47 limits the amount to 20 percent of the premium. No change has been made.

Comment: A reinsured company and an insurance service organization had comments regarding section 24. They stated that the phrase ''For FCIC Policies'' should be deleted since all MPCI policies will be with reinsured companies beginning in 1998. They also stated that the phrase, ''or any part thereof'' after ''per calendar month'' in the first sentence of section 24(a) under ''For Reinsured Policies,'' that presently is in the regulations should be retained. The commenters were concerned that the second sentence states ''interest will start on the first day of the month following the premium billing date'' but does not address subsequent months. The commenters also suggested that the following provisions should be incorporated ''For Reinsured Policies:'' ''Any amount illegally or erroneously paid to you or that is owed to us but is delinquent will 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. No insurance will be available until the debt is paid or a collection plan is implemented.''

Response: The 1996 Act still authorizes FCIC to offer insurance directly to insureds under certain conditions. Therefore, these provisions must remain. FCIC agrees that reinsured companies should be able to collect interest for a portion of a month and has revised the provision. The phrase ''interest will start on the first day of the month following the premium billing date'' refers to the date interest begins to accrue. The provision has been clarified. In certain circumstances, part of a debt owed by an insured under a reinsured policy may be collected by offset from payments made by other United States government agencies. However, such recovery is limited to the amount of the debt that was paid by FCIC.

Comment: An insurance service organization stated that section 25(c) is entirely too vague and may not be given any effect by a court. It must be rewritten to read ''You may not recover compensatory or punitive damages or attorney's fees under this contract. Your right to recover damages of any kind or attorneys' fees is limited or excluded by Federal regulations.''

Response: Section 25(c) is only intended to notify the insured that Federal Regulations and other sections of the policy, such as section 26(a), may provide for limitations or exclusions on the recovery of damages, interest, fees or costs. The provision is clearly stated and has not been changed.

Comment: An insurance service organization stated that section 26(a) conflicts with section 25(c) unless rewritten as suggested above.

Response: These provisions are complementary, not in conflict.

Comment: Comments were received regarding section 27(a). A reinsured company questioned whether it is the intent of this provision that voidance would occur only after the legal system determined fraud. An insurance service organization stated that this provision should be rewritten to read ''This policy and all other policies reinsured by the USDA shall be void in the event you have concealed the fact that you are ineligible to receive benefits under the Act, or if you are in fact ineligible (or action is pending which would make you ineligible), even if you are not aware of it at the time this policy is written. This policy may also be voidable, in our sole discretion, if you or anyone assisting you has intentionally concealed or misrepresented any material fact relating to this or any other policy reinsured by USDA.'' The commenters state that the Standard Reinsurance Agreement voids any policy with ineligible persons from the time of ineligibility. Concealment makes no difference. It is unfair to hold the companies to liability under a policy when FCIC controls eligibility determinations and will not stand behind the companies. The commenters also state that the last sentence should read ''voidable'' and not ''void,'' since, in most cases, a company cannot be placed at risk in determining whether someone should be banned from what remains an entitlement program. Furthermore, in many instances, it is better to let the company simply reduce the amount of the indemnity. Lastly, the commenter suggested that a sanction short of voiding the policy would be better than declaring someone ineligible. One example might be to require repayment of any overpayment to the reinsured company by the policy termination date with interest and, if not repaid, to allow the company to cancel the policy. Legal counsel for a reinsured company stated that FCIC

must understand that no reinsured company may void a policy for fraud or misrepresentation as provided in section 27 since no reinsured company can provide the due process that is a requisite for such a finding. Further, no reinsured company is imbued with the constitutional or statutory authority to bar a participant from an entitlement program. The commenter also states that a reinsured company cannot be held responsible for collection of indemnities that should not have been paid in a prior year for policies that are retroactively voided, particularly if the current reinsured company was not the insurer in the year for which the policy was voided. The commenter stated that the proposed language creates no duty to the FCIC to engage in such an effort and, vis-a-vis the insured, does not supplant the government's role and responsibility.

Response: Reinsured companies cannot bar a participant from the crop insurance program. The section will be revised to specify that fraud or misrepresentation may subject the insured to sanctions authorized in 7 CFR part 400, subpart R. However, when violations such as concealment, misrepresentation or fraud are found after the appropriate due process, it is the reinsured company that must deny insurance or void a policy for an ineligible person because FCIC lacks privity with the insured. The reinsured company that insured the policy for the year an indemnity should not have been paid will be responsible for collecting the overpayment. Since whenever the insured receives an overpayment it must be repaid, to only require this in the cases of fraud would not protect the program from such conduct in the future. Further, cancellation of the policy would only have a prospective effect and allow insureds to benefit from their misconduct. FCIC must protect the integrity of the program.

Comment: An insurance service organization recommended that the provisions of section 27(b) be amended to allow the reinsured company to retain 40 percent of the premium. The commenter stated that reinsured companies should not have to incur costs if the insured commits fraud or misrepresents a material fact.

Response: Since the majority of the costs associated with determinations of ineligibility will be borne by FCIC, the percentage in this section should remain 20 percent. No change has been made.

Comment: An insurance service organization questioned whether the sentence ''We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred'' in section 28 is necessary, since it is stated in procedure. The commenter also questioned the process that will be used to determine that the transferee is eligible, as is required by the sentence that reads ''The transferee must be eligible for crop insurance.''

Response: These provisions must be included in the insurance contract since this is a limitation imposed on the insureds and the procedures are not provided to insureds. The same process used to determine eligibility of the person originally insured will be used to determine eligibility of any transferee. No change has been made.

Comment: An insurance service organization questioned the language in section 29 regarding an assignee's ability to file a claim 15 days after the 60 day period for filing a claim has expired and no action will lie against the reinsured company if it does not honor the terms of the assignment. They questioned whether the assignees will understand their right to file a claim, but even if it is filed within the 15 days specified, the company is not required to accept that claim. The commenter suggested that this language be included on the assignment form rather than in the policy provisions. The commenter suggested that the insured should file a claim within 15 days instead of 60. If 60 days are allowed, reinsured companies will be paying for losses that should have been discovered long before, instead of when they are updating the producer's APH for the next year.

Response: A form cannot change the terms of the policy. This provision is intended to protect an assignee in cases where insureds may not have timely notified them that a loss has occurred. This provision is clear that the assignee has the right to file a claim. The provision will be revised to clarify that reinsured companies cannot reject the claim unless it is impossible to accurately determine the amount of the claim. Since claims often are not completed within 15 days after the end of the insurance period (*e.g.,* 15 days after harvest, which ends the insurance period), it is not practical to require an insured to submit a claim within 15 days of that time.

Comment: Comments were received regarding section 34. A reinsured company stated that all references to FSA or FSA farm serial numbers should be removed. The commenter suggested using a minimum distance to provide for unit separation. The commenter stated that there is no reason to rely on FSA information because it is difficult and expensive to obtain, often is not current, and has an uncertain future. The commenter recommended that a crop enterprise unit be offered as an option to the insured (all acreage of a crop insured as one unit). This would be likely to improve the program's underwriting results and reduce the number and frequency of losses and, therefore, could be offered to producers at an attractive premium price. An insurance service organization stated that section 34(a) must include reference to the possibility of unit division by written agreement, such as is in the Coarse Grains Crop Provisions (''if, for each optional unit, you meet all the conditions of this section or if a written agreement to such division exists.'').

Response: FSA farm serial numbers continue to be used as a basis of unit division in certain instances. Therefore, reference to FSA or FSA farm serial numbers should not be removed. Designated distances may be considered as a method of unit division in the future, but appropriate research must be done and procedures developed. Some programs of insurance currently offer enterprise units. As experience with such programs becomes available, FCIC may consider expansion of use of the enterprise unit structure. The reference to written agreements is included in section 34(b). It is not included in section 34(a) since a written agreement should not over-ride those provisions.

Comment: A reinsured company stated that the phrase ''independently verified'' in section 34(a)(3) should be defined or deleted.

Response: FCIC has clarified this provision by indicating that the records must be acceptable to the reinsured company.

Comment: Comments were received regarding § 457.9. An insurance service organization questioned why this section was removed from the policy. Legal counsel for a reinsured company recommended that this section be made a part of the policy.

Response: No changes to § 457.9 were proposed in this rule as it is not specifically a part of the policy. FCIC does not believe that it is necessary to include this contingency in the policy. In the event that Congress does not appropriate funds, producers will be notified of cancellation in accordance with the provisions of section 2 of the Basic Provisions.

Comment: A reinsured company questioned if production from acreage planted after the final planting date (winter wheat counties only), or after the late planting period in other counties, will be counted against the production guarantee if prevented planting is applicable.

Response: Acreage planted under these circumstances will be considered late planted under these provisions, and the production guarantee for it will be combined with the guarantees for acreage that is timely planted and planted within the late planting period. All production from the planted acres will then count against the combined guarantees.

Comment: A reinsured company questioned the definition of ''planted acreage'' in the Small Grains Crop Provisions and asked if the production from acreage on which seed was broadcasted but not incorporated will be counted against the production guarantee, especially if prevented planting eligibility exists and the seed is broadcasted after the late planting period.

Response: A provision has been incorporated into section 16(b) of the Basic Provisions to address this concern.

Comment: A reinsured company recommended providing optional units for durum wheat in counties with only a spring final planting date.

Response: The suggested change would be substantive and not subject to this rulemaking. FCIC will consider such a change in the future.

Comment: A reinsured company suggested adding the phrase ''A replant payment may be made in accordance with section 9'' to section 7(a)(1)(ii) of the Small Grains Crop Provisions.

Response: Section 7 of the Small Grains Crop Provisions contains provisions relative to insurability of acreage. This section is not intended to authorize a replant payment. Since section 9 of the Small Grains Crop Provisions specifies the conditions under which replanting payments are available, it is not necessary to duplicate the provisions of section 9 in section 7. No change has been made.

Comment: An insurance service organization recommended that the Small Grains Crop Provisions be amended to allow the tenant to receive 100 percent of the replanting costs as the Coarse Grains Crop Provisions do.

Response: FCIC has reevaluated this provision due to comments received on other regulations and determined that the provision is not equitable to all insureds. Specifically, if a landlord and tenant are insured with different companies, the provisions do not apply. Crop Provisions containing these terms will be amended to eliminate them. No change has been made.

Comment: A reinsured company questioned if cotton and ELS cotton coverage should continue to be extended while modules are left in the field. They suggested that this coverage could possibly be offered as an option for additional premium.

Response: Loss adjusters, in most situations, cannot distinguish damage that occurred in the field from that occurring in the module. In addition, the weight of lint cotton, its grade, and quality adjustment are not determined until the cotton is ginned. Producers might be encouraged to delay harvest to maintain coverage if cotton in modules is not covered. Cotton in a module is less susceptible to weather damage than cotton in the field. No change has been made.

Comment: A regional and a national commodity group stated that there are serious inequities in insurance coverage among crops, such as the lack of replanting coverage for cotton and the 25 percent deductible for cotton quality losses. Replanting provisions should be a basic component of every cotton crop insurance policy. The commenter stated that, from an agronomic perspective, cotton producers have replanting experiences that are comparable to those of other crops. Cottonseed now has better vigor, is pre-treated two or three ways, and is adapted for different growing regions and climatic conditions.

The national commodity group stated that they have been unable to find any documentation of the rationale and date of imposition of the 25 percent deductible. The inequity between a corn or wheat producer and a cotton producer exists for no apparent economic or policy reason.

Response: FCIC is reviewing replanting coverage for cotton and the quality provisions. Any proposed changes will be published in the **Federal Register** as changes to the Cotton Crop Provisions and will be made available for public comment. No change will be made at this time.

Comment: Comments were received regarding the premium rates for cotton. A national commodity group stated that the structure for cotton needs to be revised to account for adoption of new production technology such as Bt cotton seed, Boll Weevil Eradification, irrigation, and other advances. The commenter stated that the risks associated with growing cotton have decreased and so should premiums if new cotton customers are expected. A regional commodity group stated that they are aware that funding shortfalls do exist and they suggested that all possible alternatives be exhausted before a decision to increase premium levels is made. They state that increasing premiums would help alleviate the funding problem short-term. However, such an action would move FCIC away from what should be its ultimate goal of increasing the relative value of FCIC products and increasing producer participation in the program. For many cotton producers, crop insurance simply costs too much in relation to the level of insurance protection it provides.

Response: Premium rates on all crops are based in part on the loss history of the crop. Crop improvements and practices that result in reduced losses are also considered. All rates are reviewed prior to the actuarial filing dates and are changed as deemed appropriate.

Comment: A reinsured company questioned whether the wording in section 2 of the Sugar Beet Crop Provisions requires optional units to be established by processor contract. If so, the commenter is strongly opposed. The commenter stated that this issue has been addressed at an earlier date with regard to the Processing Tomato Crop Provisions, and the supporting reasons are similar for sugar beets.

Response: Section 2 of the Sugar Beet Crop Provisions does not require optional units by processor contract. Section 2 simply states that a producer is not eligible for optional units unless the producer has a processor contract that contracts for production from a specified number of acres. Once eligible, optional units for sugar beets may be established only by section, section equivalent or FSA farm serial number; or by irrigated and non-irrigated acreage.

Comment: An insurance service organization recommended changing the Sugar Beet Crop Provisions to read ''a contract must be on file.'' The commenter also recommended a change to state that the acres stated in the contract do not limit the acres the producer can insure. It is a common practice to overplant acres and the sugar processors do accept all acres planted. The commenter suggested that the following sentence be added ''We will not cover any loss from the inability of the sugar factory to accept production from overage acres.'' In this situation, contract acres would be used. The commenter also suggested eliminating contracts altogether.

Response: Provisions that would be impacted by the comment were not published in the proposed rule and made available for public comment. No changes can be made at this time. FCIC will consider this proposal when the crop provision is reviewed.

Comment: A reinsured company suggested adding the phrase ''A replant payment may be made in accordance

with section 9'' to section 6 of the Coarse Grains Crop Provisions.

Response: Section 6 of the Coarse Grains Crop Provisions proposed rule contains provisions relative to insurability of acreage. This section is not intended to authorize a replant payment. Since section 9 of the Coarse Grains Crop Provisions specifies that replanting payments are available, it is not necessary to duplicate that provision in section 6. No change has been made.

Comment: A reinsured company questioned whether the language in section 9(a) of the Coarse Grains Crop Provisions provides a replanting payment to both a landlord and tenant having different coverage levels. If the replanting is required for one, both should be entitled to a replanting payment, providing they both incur replanting expense.

Response: There is nothing in section 9(a) of the Coarse Grains Crop Provisions that precludes a landlord and tenant having different coverage levels from being eligible for a replanting payment. The tenant and landlord may each be eligible as long as they both incur replanting expense; 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 respective production guarantees for the acreage; and it is practical to replant. If a tenant or landlord elects higher coverage, greater benefits are paid. However, it is possible under these provisions for one person sharing in the crop to be eligible for a replanting payment while the other person may be ineligible for such a payment. For example, assume the acreage had an APH yield of 80 bushels per acre. If the landlord had a 75 percent coverage level with a production guarantee of 60 bushels per acre (80 × .75), the landlord would be eligible for a replanting payment if the remaining stand was appraised at less than 54 bushels per acre (60 × .90). If the tenant had a 50 percent coverage level with a production guarantee of 40 bushels per acre (80 × .50), the tenant would be entitled to a replanting payment if the remaining stand was appraised at less than 36 bushels per acre (40 × .90). In this example, if the remaining stand appraised at 40 bushels per acre, the landlord would be eligible for a replant payment but not the tenant.

Comment: Some reinsured companies questioned the elimination of optional units from the Forage Production Crop Provisions and whether the year of implementation is 1999 or 1998.

Response: Optional units are currently not available for forage production. Since the optional unit provisions are being added to the Basic Provisions, those provisions must be made ineffective to maintain the current forage production unit structure. These provisions are not effective until the 1999 crop year since the contract change date for 1998 has passed.

Comment: A reinsured company questioned whether further changes would be made to the Raisin Crop Provisions for the 1998 crop year.

Response: FCIC does not plan further changes to the Raisin Crop Provisions for the 1998 crop year.

Comment: An insurance service organization suggested allowing units for storage and non-storage onions only, and not allow additional units by type. Additional units by type will expose insurers to unnecessary liability and increase premiums.

Response: Under the previous Onion Endorsement, units were allowed by type, *i.e.*, red, yellow, or white onions, in lieu of the traditional units by section or farm serial number. This unit division structure has worked well for onions and is consistent with onion production practices. No change has been made.

Comment: A reinsured company stated that both irrigated and non-irrigated grape vineyards exist in California, and that optional units by these practices should be available. This situation also exists for walnuts and possibly other perennial crops.

Response: Irrigated and non-irrigated practices do exist for several perennial crops in California. However, since both practices rarely exist on the same farm, little or no benefit would be derived by allowing separate optional units for these practices. No changes have been made.

Comment: A reinsured company suggested adding the phrase ''an adequate rate of seed for the acreage to produce an acceptable stand'' to the definition of planted acreage in the Forage Seeding Crop Provisions. Another reinsured company questioned if the implementation year should be 1998 instead of 1999.

Response: FCIC has revised the provisions to clarify that an adequate amount of seed must be planted. The provisions will not be made effective until the 1999 crop year.

Comment: A reinsured company questioned whether changes were necessary for the proposed rules for hybrid seed corn, green peas and sweet corn provisions that have not been finalized.

Response: Those Crop Provisions, such as table grapes, prunes, etc., that were finalized after publication of the proposed rule will be incorporated into this final rule. Since there were no substantive changes since the publication of those Crop Provisions, additional comments are not necessary.

In addition to the changes described above and minor editorial changes, FCIC has made the following changes to the Basic Provisions and the Crop Provisions.

1. Section 1—Amended the definition of ''abandon'' for clarification. Added a definition for ''approved yield'' so this definition can be deleted from the Crop Provisions. Clarified the definition of ''application'' to indicate that insurance will not be available to a producer who is ineligible under any Federal regulation. Amended the definition of ''replanting'' to indicate that seed must be replaced with the expectation of producing at least the yield used to determine the production guarantee. Also, added a definition for the term ''substantial beneficial interest'' for clarification.

2. Section 3(d)(2)—Clarified the provision to indicate that the production guarantee may be revised if the producer fails to accurately report acreage or other material information.

3. Sections 6(a)(1) and (2)—Deleted the references to ''fall'' and ''spring.'' These terms are not necessary since actual dates are specified.

4. Section 6(g)(1)—Amended the provisions to specify that if the information reported by the insured results in a lower liability than the actual liability the insurance provider determines, the production guarantee or the amount of insurance on the unit will be reduced to an amount that is consistent with the reported information.

5. Section 6(g)(2)—Amended the provisions to specify that if the information reported by the insured results in a higher liability than the actual liability the insurance provider determines, the information contained in the acreage report will be revised to be consistent with the correct information.

6. Section 8(a)—Amended the provisions to specify that the insured crop may also be specified in the Special Provisions.

7. Section 9(c)—Clarified that these provisions are applicable regardless of the provisions in section 8(b)(1), which specify that no insurance will be provided unless a premium rate is provided for the specific practice.

8. Sections 10(c) and (d)—Reorganized and clarified the provisions so that share arrangements and cash arrangements are contained in separate sections.

9. Section 13(b)(2)—Clarified that a replanting payment will not be made for acreage planted prior to the earliest planting date established by the Special Provisions.

10. Section 14(a) (Our Duties)—Amended the provisions to indicate that the reinsured company will pay a loss within 30 days after completion of arbitration or appeal proceedings.

11. Section 17(a) was amended by replacing ''crop provisions'' with ''policy provisions.'' This change allows both the crop provisions and the Special Provisions to limit prevented planting coverage.

12. Clarified section 17(b) to indicate that additional levels of prevented planting coverage are not available for Catastrophic Risk Protection coverage. Also revised this section to indicate that elected or assigned prevented planting coverage levels may not be increased if a cause of loss that will or could prevent planting is evident prior to the time the producer wishes to change the prevented planting coverage level.

13. Changed the title of section 21 to indicate that provisions regarding access to records are included in the section.

14. Amended the introductory text for the Cotton Crop Provisions and the Extra Long Staple Cotton Crop Provisions to make the provisions effective for the 1998 crop year only.

15. Added the definition of ''sales closing date'' in the Small Grains Crop Provisions and the Forage Seeding Crop Provisions for clarification.

16. Amended the definition of ''planted acreage'' in the Fresh Market Sweet Corn, Fresh Market Tomato (dollar plan), and the Fresh Market Pepper Crop Provisions to include a reference to separate planting periods.

17. Changed the effective dates of the Safflower Crop Provisions and the Onion Crop Provisions to the 1998 and succeeding crop years for counties with a December 31 contract change date.

18. Incorporated sections 457.133 (Prune Crop Insurance Provisions); § 457.137 (Green Pea Crop Insurance Provisions); § 457.149 (Table Grape Crop Insurance Provisions); § 457.155 (Processing Bean Crop Insurance Provisions); and § 457.160 (Processing Tomato Crop Insurance Provisions) since these Crop Provisions were finalized after this rule was proposed as follows:

(a) Deleted definitions that are added to the Basic Provisions by this rule. This allows FCIC to remove duplication of provisions from the Crop Provisions.

(b) Modified section 2 because the requirements for optional units have now been incorporated into section 34 of the Basic Provisions.

(c) Deleted, modified, or added late and prevented planting provisions since these provisions are now included in sections 16 and 17 of the Basic Provisions.

(d) Deleted the written agreement provisions because they are now incorporated into section 18 of the Basic Provisions.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. This rule provides prevented planting coverage when applicable, for all crops under the Basic Provisions. This rule must be effective prior to the contract change dates of the crops for which these revised prevented planting provisions are effective. Therefore, public interest requires the agency to act immediately to make these provisions available for as many crops as possible for the 1998 crop year.

List of Subjects in 7 CFR Part 457

Almond; Arizona-California citrus; Coarse grains; Cotton; Cranberry; Dry bean; Extra long staple cotton; Fig; Florida citrus fruit; Forage production; Forage seeding; Fresh market pepper; Fresh market sweet corn; Fresh market tomato (Dollar plan); Fresh market tomato (Guaranteed production plan); Grape; Green pea; Macadamia Nut; Macadamia Tree; Nursery; Onion; Peach; Pear; Plum; Processing bean; Processing tomato; Prune; Raisin; Rice; Safflower; Small grains; Sugar beet; Sugarcane; Sunflower seed; Table grape; Texas citrus tree; Texas citrus fruit; and Walnut.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1998 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 457 continues to read as follows:

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

2. Section 457.2 is amended by removing paragraph (e), redesignating paragraphs (f), (g), and (h) as paragraphs (e), (f), and (g) respectively and revising paragraphs (b), (c), and (d) to read as follows:

§ 457.2 Availability of federal crop insurance.

* * * * *

(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 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 inadvertent and without the fault of the person. If the multiple contracts of insurance are shown to be inadvertent and without the fault of the person, the contract with the earliest signature date on the application will be valid and all other contracts on that crop in the county for that crop year will be canceled. No liability for indemnity or premium will attach to the contracts so canceled.

* * * * *

3. Revise § 457.4 to read as follows:

§ 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.

4. Section 457.8 paragraph (b) is revised to read as follows:

§ 457.8 The application and policy.

(a) * * *

(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.

* * * * *

5. Section 457.8 is amended by revising the policy to read as follows:

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 are published in the **Federal Register** and in chapter IV of title 7 of the Code of Federal Regulations (CFR) under the Federal Register Act (44 U.S.C. 1501 *et seq.*), and may not be waived or varied in any way by the crop insurance agent or any other agent or employee of FCIC.

Throughout this policy, ''you'' and ''your'' refer to the named insured shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to the Federal Crop Insurance Corporation. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

Reinsured Policies

This insurance policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) (Act). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act. The provisions of the policy are published in the **Federal Register** and codified in chapter IV of title 7 of the Code of Federal Regulations (CFR) under the Federal Register Act (44 U.S.C. 1501 *et seq.*), and may not be waived or varied in any way by the crop insurance agent or any other agent or employee of FCIC or the company. In the event we cannot pay your loss, your claim will be settled in accordance with the provisions of this policy and paid by FCIC. 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 a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Crop Provisions; and (4) these Basic Provisions (§ 457.8), 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 paragraph 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.*).

Actuarial documents. The material for the crop year which is available for public inspection in your agent's office, and which shows the amounts of insurance or production guarantees, coverage levels, premium rates, practices, insurable acreage, and other related information regarding crop insurance in the county.

Agricultural commodity. All insurable crops and other fruit, vegetable or nut crops produced for human or animal consumption.

Another use, notice of. The written notice required when you wish to put acreage to another use (see section 14).

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 yield determined in accordance with 7 CFR part 400, subpart (G).

Assignment of indemnity. A transfer of policy rights, made on our form, and effective when approved by us. It is the arrangement whereby you assign your right to an indemnity payment to any party of your choice for the crop year.

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.

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.

Claim for indemnity. A claim made on our form by you for damage or loss to an insured crop and submitted to us not later than 60 days after the end of the insurance period (see section 14).

Consent. Approval in writing by us allowing you to take a specific action.

Contract. (See ''policy'').

Contract change date. The calendar date by which we make any policy changes available for inspection in the agent's office (see section 4).

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).

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 insured crop is normally harvested.

Damage. Injury, deterioration, or loss of production of the insured crop due to insured or uninsured causes.

Damage, notice of. A written notice required to be filed in your agent's office whenever you initially discover the insured crop has been damaged to the extent that a loss is probable (see section 14).

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 account. Any account you have with us in which premiums and interest on those premiums is not paid by the termination date specified in the Crop Provisions, or any other amounts due us, such as indemnities found not to have been earned, which are not paid within 30 days of our mailing or other delivery of notification to you of the amount due.

Earliest planting date. The earliest date established for planting the insured crop (see Special Provisions and section 13).

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).

Field. All acreage of tillable land within a natural or artificial boundary (*e.g.*, roads, waterways, fences, etc.).

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.

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.

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 or amount of insurance, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

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 for which coverage is available under these Basic Provisions and the applicable Crop Provisions as shown on the application accepted by us.

Interplanted. Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee or amount of insurance on the irrigated acreage planted to the insured crop.

Late planted. Acreage initially planted to the insured crop after the final planting date.

Late planting period. The period that begins the day after the final planting date for the insured crop and ends 25 days after the final planting date, unless otherwise specified in the Crop Provisions or Special Provisions.

Loss, notice of. The notice required to be given by you not later than 72 hours after certain occurrences or 15 days after the end of the insurance period, whichever is earlier (see section 14).

Negligence. The failure to use such care as a reasonably prudent and careful person would use under similar circumstances.

Non-contiguous. Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Palmer Drought Severity Index. A meteorological index calculated by the National Weather Service to indicate prolonged and abnormal moisture deficiency or excess.

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 consisting of the accepted application, these Basic Provisions, the Crop Provisions, the Special Provisions, other applicable endorsements or options, the actuarial documents for the insured crop, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV.

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 not be considered practical to replant after the end of the late planting period, or the final planting date if no late planting period is applicable, unless replanting is generally occurring in the area. Unavailability of seed or plants will not be considered a valid reason for failure to replant.

Premium billing date. The earliest date upon which you will be billed for insurance coverage based on your acreage report. The premium billing date is contained in the Special Provisions.

Prevented planting. Failure to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or by the end of the late planting period. You must have been prevented from planting the insured crop due to an insured cause of loss that also prevented most producers from planting on acreage with similar characteristics in the surrounding area.

Price election. The amounts contained in the Special Provisions or an addendum thereto, to be used for computing the value per pound, bushel, ton, carton, or other applicable unit of measure for the purposes of determining premium and indemnity under the policy.

Production guarantee (per acre). The number of pounds, bushels, tons, cartons, or other applicable units of measure determined by multiplying the approved yield per acre by the coverage level percentage you elect.

Production report. A written record showing your annual production and used by us to determine your yield for insurance purposes (see section 3). The report contains yield information for previous years, including planted acreage and harvested production. This report must be supported by written verifiable records from a warehouseman or buyer of the insured crop or by measurement of farm-stored production, or by other records of production approved by us on an individual case basis.

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 insured acreage with the expectation of producing at least the yield used to determine the production guarantee.

Representative sample. Portions of the insured crop that must remain in the field for examination and review by our loss adjuster when making a crop appraisal, as specified in the Crop Provisions. In certain instances we may allow you to harvest the crop and require only that samples of the crop residue be left in the field.

Sales closing date. A date contained in the Special Provisions by which an application must be filed. The last date by which you may change your crop insurance coverage for a crop year.

Section. (for the purposes of unit structure) A unit of measure under a rectangular survey system describing a tract of land usually one mile square and usually containing approximately 640 acres.

Share. Your percentage of interest in the insured crop as an owner, operator, or tenant at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the earlier of the time of loss or the beginning of harvest.

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

State. The state shown on your accepted application.

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

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.

Tenant. A person who rents land from another person for a share of the crop or a share of the proceeds of the crop (see the definition of ''share'' above).

Termination date. The calendar date contained in the Crop Provisions upon which your insurance ceases to be in effect because of nonpayment of any amount due us under the policy, including premium.

Timely planted. Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

USDA. United States Department of Agriculture.

Void. When the policy is considered not to have existed for a crop year as a result of concealment, fraud or misrepresentation (see section 27).

Written agreement. A document that alters designated terms of a policy as authorized under these Basic Provisions, the Crop Provisions, or the Special Provisions for the insured crop (see section 18).

2. Life of Policy, Cancellation, and Termination

(a) This is a continuous policy and will remain in effect for each crop year following the acceptance of the original application until canceled by you in accordance with the terms of the policy or terminated by operation of the terms of the policy or by us.

(b) Your application for insurance must contain all the information required by us to insure the crop. Applications that do not contain all social security numbers and employer identification numbers, as applicable, (except as stated herein) coverage

level, price election, crop, type, variety, or class, plan of insurance, and any other material information required to insure the crop, are not acceptable. If a person with a substantial beneficial interest in the insured crop refuses to provide a social security number or employer identification number and that person is:

(1) Not on the non-standard classification system list, the amount of coverage available under the policy will be reduced proportionately by that person's share of the crop; or

(2) On the non-standard classification system list, the insurance will not be available to that person and any entity in which the person has a substantial beneficial interest.

(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) If any amount due, including premium, is not paid on or before the termination date for the crop on which an amount is due:

(1) For a policy with the unpaid premium, the policy will terminate effective on the termination date immediately subsequent to the billing date for the crop year;

(2) For a policy with other amounts due, the policy will terminate effective on the termination date immediately after the account becomes delinquent;

(3) Ineligibility will be effective as of the date that the policy was terminated for the crop for which you failed to pay an amount owed and for all other insured crops with coincidental termination dates;

(4) All other policies that are issued by us under the authority of the Act will also terminate as of the next termination date contained in the applicable policy;

(5) If you are ineligible, you may not obtain any crop insurance under the Act until payment is made, you execute an agreement to repay the debt and make the payments in accordance with the agreement, or you file a petition to have your debts discharged in bankruptcy;

(6) If you execute an agreement to repay the debt and fail to timely make any scheduled payment, you will be ineligible for crop insurance effective on the date the payment was due until the debt is paid in full or you file a petition to discharge the debt in bankruptcy and subsequently obtain discharge of the amounts due. Dismissal of the bankruptcy petition before discharge will void all policies in effect retroactive to the date you were originally determined ineligible to participate;

(7) Once the policy is terminated, the policy cannot be reinstated for the current crop year unless the termination was in error;

(8) After you again become eligible for crop insurance, if you want to obtain coverage for your crops, you must reapply 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); and

(9) If we deduct the amount due us from an indemnity, the date of payment for the purpose of this section will be the date you sign the properly executed claim for indemnity.

(10) For example, if crop A, with a termination date of October 31, 1997, and crop B, with a termination date of March 15, 1998, 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, 1997, and crop A's policy is terminated on that date. Crop B's policy is terminated as of March 15, 1998. If you enter an agreement to repay the debt on April 25, 1998, you can apply for insurance for crop A by the October 31, 1998, sales closing date and crop B by the March 15, 1999, sales closing date. If you fail to make a scheduled payment on November 1, 1998, you will be ineligible for crop insurance effective on November 1, 1998, and you will not be eligible unless the debt is paid in full or you file a petition to have the debt discharged in bankruptcy and subsequently receive discharge.

(f) If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the policy will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after coverage begins for any crop year, the policy will continue in force through the crop year and terminate at the end of the insurance period and any indemnity will be paid to the person or persons determined to be beneficially entitled to the indemnity. The premium will be deducted from the indemnity or collected from the estate. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

(g) We may terminate your policy if no premium is earned for 3 consecutive years.

(h) The cancellation and termination dates are contained in the Crop Provisions.

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

(a) For each crop year, the production guarantee or amount of insurance, coverage level, and price at which an indemnity will be determined for each unit will be those used to calculate your summary of coverage. The information necessary to determine those factors will be contained in the Special Provisions or in the actuarial documents.

(b) You may select only one coverage level from among those offered by us for each insured crop. You may change the coverage level, price election, or amount of insurance for the following crop year by giving written notice to us not later than the sales closing date for the insured crop. Since the price election or amount of insurance may change each year, if you do not select a new price election or amount of insurance on or before the sales closing date, we will assign a price election or amount of insurance which bears the same relationship to the price election schedule as the price election or amount of insurance that was in effect for the preceding year. (For example: If you selected 100 percent of the market price for the previous crop year and you do not select a new price election for the current crop year, we will assign 100 percent of the market price for the current crop year.)

(c) You must report production to us for the previous crop year by the earlier of the acreage reporting date or 45 days after the cancellation date unless otherwise stated in the Special Provisions:

(1) If you do not provide the required production report, we will assign a yield for the previous crop year. The yield assigned by us will not be more than 75 percent of the yield used by us to determine your coverage for the previous crop year. The production report or assigned yield will be used to compute your approved yield for the purpose of determining your coverage for the current crop year.

(2) If you have filed a claim for any crop year, the documents signed by you which state the amount of production used to complete the claim for indemnity will be the production report for that year unless otherwise specified by FCIC.

(3) Production and acreage for the prior crop year must be reported for each proposed optional unit by the production reporting date. If you do not provide the information stated above, the optional units will be combined into the basic unit.

(d) We may revise your production guarantee for any unit, and revise any indemnity paid based on that production guarantee, if we find that your production report under paragraph (c) of this section:

(1) Is not supported by written verifiable records in accordance with the definition of production report; or

(2) Fails to accurately report actual production, acreage, or other material information.

(e) In addition to the price election or amount of insurance available on the contract change date, we may provide an additional price election or amount of insurance no later than 15 days prior to the sales closing date. You must select the additional price election or amount of insurance on or before the sales closing date for the insured crop. These additional price elections or amounts of insurance will not be less than those available on the contract change date. If you elect the additional price election or amount of insurance any claim settlement and amount of premium will be based on this amount.

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, price elections, amounts of insurance, premium rates, and program dates will be provided by us to your crop insurance agent not later than the contract change date contained in the Crop Provisions, except that price elections may be offered after the contract change date in accordance with section 3. You may view the documents or request copies from your crop insurance agent.

(c) You will be notified, in writing, of changes to the Basic Provisions, Crop

Provisions, and Special Provisions not later than 30 days prior to the cancellation date for the insured crop. Acceptance of changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

5. Liberalization

If we adopt any revision that broadens the coverage under this policy subsequent to the contract change date without additional premium, the broadened coverage will apply.

6. Report of Acreage

(a) An annual acreage report must be submitted to us on our form for each insured crop in the county on or before the acreage reporting date contained in the Special Provisions, except as follows:

(1) If you insure multiple crops 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 that have final planting dates on or after December 31 but before August 15, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops.

(3) Notwithstanding the provisions in sections 6(a) (1) and (2):

(i) If the Special Provisions designate separate planting periods for a crop, you must submit an acreage report for each planting period on or before the acreage reporting date contained in the Special Provisions for the planting period; and

(ii) If planting of the insured crop continues after the final planting date or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(A) The acreage reporting date contained in the Special Provisions;

(B) The date determined in accordance with sections (a)(1) or (2); or

(C) Five (5) days after the end of the late planting period for the insured crop, if applicable.

(b) If you do not have a share in an insured crop in the county for the crop year, you must submit an acreage report, on or before the acreage reporting date, so indicating.

(c) Your acreage report must include the following information, if applicable:

(1) All acreage of the crop in the county (insurable and not insurable) in which you have a share;

(2) Your share at the time coverage begins;

(3) The practice;

(4) The type; and

(5) The date the insured crop was planted.

(d) Because incorrect reporting on the acreage report may have the effect of changing your premium and any indemnity that may be due, you may not revise this report after the acreage reporting date without our consent.

(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.

(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.

(g) If the information reported by you on the acreage report for share, acreage, practice, type or other material information is inconsistent with the information that is determined to actually exist for a unit and results in:

(1) A lower liability than the actual liability determined, the production guarantee or amount of insurance on the unit will be reduced to an amount that is consistent with the reported information. In the event that 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; and

(2) 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. If we discover that 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 that substantiates your report of acreage for those crop years, including, but not limited to, an acreage measurement service at your own expense.

(h) 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

(a) The annual premium is earned and payable at the time coverage begins. You will be billed for premium due not earlier than the premium billing date specified in the Special Provisions. The premium due, plus any accrued interest, will be considered delinquent if it is not paid on or before the termination date specified in the Crop Provisions.

(b) Any amount you owe us related to any crop insured with us under the authority of the Act will be deducted from any prevented planting payment or indemnity due you for any crop insured with us under the authority of the Act.

(c) The annual premium amount is determined, as applicable, by either:

(1) Multiplying the production guarantee per acre times the price election, times the premium rate, times the insured acreage, times your share at the time coverage begins, and times any premium adjustment percentages that may apply; or

(2) Multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time coverage begins, and times any premium adjustment percentages that may apply.

(d) The premium will be computed using the price election or amount of insurance you elect or that we assign in accordance with section 3(b).

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) If the farming practices carried out are not in accordance with the farming practices for which the premium rates, production guarantees or amounts of insurance have been established, unless insurance is allowed by a written agreement;

(2) Of a type, class or variety established as not adapted to the area or excluded by the policy provisions;

(3) That is a volunteer crop;

(4) That is a second crop following the same crop (insured or not insured) harvested in the same crop year unless specifically permitted by the Crop Provisions or the Special Provisions;

(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.

9. Insurable Acreage

(a) Acreage planted to the insured crop in which you have a share is insurable except acreage:

(1) That has not been planted and harvested within one of the 3 previous crop years, unless:

(i) Such acreage was not planted:

(A) To comply with any other USDA program;

(B) Because of crop rotation, (*e.g.*, corn, soybean, alfalfa; and the alfalfa remained for 4 years before the acreage was planted to corn again);

(C) Due to an insurable cause of loss that prevented planting; or

(D) Because a perennial crop was grown on the acreage;

(ii) Such acreage was planted but was not harvested due to an insurable cause of loss; or

(iii) The Crop Provisions specifically allow insurance for such acreage;

(2) That has been strip-mined, unless otherwise approved by written agreement, or unless an agricultural commodity other than a cover, hay, or forage crop (except corn silage), has been harvested from the acreage for at least five crop years after the strip-mined land was reclaimed;

(3) On which the insured crop is damaged and it is practical to replant the insured crop, but the insured crop is not replanted;

(4) That is interplanted, unless allowed by the Crop Provisions;

(5) That is otherwise restricted by the Crop Provisions or Special Provisions; or

(6) That is planted in any manner other than as specified in the policy provisions for the crop unless a written agreement to such planting exists.

(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)(1), if acreage is irrigated and we do not provide a premium rate for an irrigated practice, you may either report and insure the irrigated acreage as ''non-irrigated,'' or report the irrigated acreage as not insured.

(d) We may restrict the amount of acreage that we will insure to the amount allowed under any acreage limitation program established by the United States Department of Agriculture if we notify you of that restriction prior to the sales closing date.

10. Share Insured.

(a) Insurance will attach only to the share of the person completing the application and will not extend to any other person having a share in the crop unless the application clearly states that:

(1) The insurance is requested for an entity such as a partnership or a joint venture; or

(2) You as landlord will insure your tenant's share, or you as tenant will insure your landlord's share. In this event, you must provide evidence of the other party's approval (lease, power of attorney, etc.). Such evidence will be retained by us. You also must clearly set forth the percentage shares of each person on the acreage report.

(b) We may consider any acreage or interest reported by or for your spouse, child or any member of your household to be included in your share.

(c) Acreage rented for a percentage of the crop, or a lease containing provisions for **both** a minimum payment (such as a specified amount of cash, bushels, pounds, *etc.*,) **and** a crop share will be considered a crop share lease.

(d) Acreage rented for cash, or a lease containing provisions for **either** a minimum payment **or** a crop share (such as a 50/50 share or $100.00 per acre, whichever is greater) will be considered a cash lease.

11. Insurance Period.

(a) Except for prevented planting coverage (see section 17), coverage begins on each unit or part of a unit at the later of:

(1) The date we accept your application (For the purposes of this paragraph, the date of acceptance is the date that you submit a properly executed application in accordance with section 2);

(2) The date the insured crop is planted; or

(3) The calendar date contained in the Crop Provisions for the beginning of the insurance period.

(b) Coverage ends at the earliest of:

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

(2) Harvest of the unit;

(3) Final adjustment of a loss on a unit;

(4) The calendar date contained in the Crop Provisions for the end of the insurance period;

(5) Abandonment of the crop on the unit; or

(6) As otherwise specified in the Crop Provisions.

12. Causes of Loss.

The insurance provided is against only unavoidable loss of production directly caused by specific causes of loss contained in the Crop Provisions. All other causes of loss, including but not limited to the following, are NOT covered:

(a) Negligence, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, or employees;

(b) Failure to follow recognized good farming practices for the insured crop;

(c) Water contained by any governmental, public, or private dam or reservoir project;

(d) Failure or breakdown of irrigation equipment or facilities; or

(e) Failure to carry out a good irrigation practice for the insured crop, if applicable.

13. Replanting Payment.

(a) If allowed by the Crop Provisions, a replanting payment may be made on an insured crop replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured planted acreage for the unit (as determined on the final planting date or within the late planting period if a late planting period is applicable).

(b) No replanting payment will be made on acreage:

(1) On which our appraisal establishes that production will exceed the level set by the Crop Provisions;

(2) Initially planted prior to the earliest planting date established by the Special Provisions; or

(3) On which one replanting payment has already been allowed for the crop year.

(c) The replanting payment per acre will be your actual cost for replanting, but will not exceed the amount determined in accordance with the Crop Provisions.

(d) No replanting payment will be paid if we determine it is not practical to replant.

14. Duties in the Event of Damage or Loss.

Your Duties—

(a) In case of damage to any insured crop you must:

(1) Protect the crop from further damage by providing sufficient care;

(2) Give us notice within 72 hours of your initial discovery of damage (but not later than 15 days after the end of the insurance period), by unit, for each insured crop (we may accept a notice of loss provided later than 72 hours after your initial discovery if we still have the ability to accurately adjust the loss);

(3) Leave representative samples intact for each field of the damaged unit as may be required by the Crop Provisions; and

(4) Cooperate with us in the investigation or settlement of the claim, and, as often as we reasonably require:

(i) Show us the damaged crop;

(ii) Allow us to remove samples of the insured crop; and

(iii) Provide us with records and documents we request and permit us to make copies.

(b) You must obtain consent from us before, and notify us after you:

(1) Destroy any of the insured crop that is not harvested;

(2) Put the insured crop to an alternative use;

(3) Put the acreage to another use; or

(4) Abandon any portion of the insured crop. We will not give consent for any of the actions in sections 14(b) (1) through (4) if it is practical to replant the crop or until we have made an appraisal of the potential production of the crop.

(c) In addition to complying with all other notice requirements, you must submit a claim for indemnity declaring the amount of your loss not later than 60 days after the end of the insurance period. This claim must include all the information we require to settle the claim.

(d) Upon our request, you must:

(1) Provide a complete harvesting and marketing record of each insured crop by unit including separate records showing the same information for production from any acreage not insured; and

(2) Submit to examination under oath.

(e) You must establish the total production or value received for the insured crop on the unit, that any loss of production or value occurred during the insurance period, and that the loss of production or value was directly caused by one or more of the insured causes specified in the Crop Provisions.

(f) 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.

Our Duties—

(a) If you have complied with all the policy provisions, we will pay your loss within 30 days after:

(1) We reach agreement with you;

(2) Completion of arbitration or appeal proceedings; or

(3) The entry of a final judgment by a court of competent jurisdiction.

(b) In the event we are unable to pay your loss within 30 days, we will give you notice of our intentions within the 30-day period.

(c) We may defer the adjustment of a loss until the amount of loss can be accurately determined. We will not pay for additional damage resulting from your failure to provide sufficient care for the crop during the deferral period.

(d) We recognize and apply the loss adjustment procedures established or approved by the Federal Crop Insurance Corporation.

15. Production Included in Determining Indemnities.

(a) The total production to be counted for a unit will include all production determined in accordance with the policy.

(b) The amount of production of any unharvested insured crop may be determined on the basis of our field appraisals conducted after the end of the insurance period.

(c) If you elect to exclude hail and fire as insured causes of loss and the insured crop

is damaged by hail or fire, appraisals will be made as described in the applicable Form FCI–78 ''Request To Exclude Hail and Fire'' or a form containing the same terms approved by the Federal Crop Insurance Corporation.

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;

(3) The production guarantee for any acreage on which an insured cause of loss prevents 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 determined as indicated in this section; and

(4) All production from 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 section 16 (a) or (b) 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).

17. Prevented Planting

(a) Unless limited by the policy provisions, a prevented planting payment may be made to you for eligible acreage if:

(1) You were prevented from planting the insured crop by an insured cause that occurs:

(i) On or after the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on or after the sales closing date for the previous crop year for the insured crop in the county, provided insurance has been in force continuously since that date. Cancellation for the purpose of transferring the policy to a different insurance provider for the subsequent crop year will not be considered a break in continuity for the purpose of the preceding sentence; and

(2) You include any acreage of the insured crop that was prevented from being planted on your acreage report.

(b) The actuarial documents may contain additional levels of prevented planting coverage that you may purchase for the insured crop:

(1) Such purchase must be made on or before the sales closing date.

(2) If you do not purchase one of those additional levels by the sales closing date, you will receive the prevented planting coverage specified in the Crop Provisions.

(3) If you have a Catastrophic Risk Protection Endorsement for any crop, the additional levels of prevented planting coverage will not be available for that crop.

(4) You may not increase your elected or assigned prevented planting coverage level for any crop year if a cause of loss that will or could prevent planting is evident prior to the time you wish to change your prevented planting coverage level.

(c) The premium amount for acreage that is prevented from being planted will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for acreage that is prevented from being planted exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage).

(d) Drought or failure of the irrigation water supply will not be considered to be an insurable cause of loss for the purposes of prevented planting unless, on the final planting date:

(1) For non-irrigated acreage, the area that is prevented from being planted is classified by the Palmer Drought Severity Index as being in a severe or extreme drought; or

(2) For irrigated acreage, there is not a reasonable probability of having adequate water to carry out an irrigated practice.

(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) or (5). The eligible acres for each insured crop will be determined in accordance with the following table.

Type of crop	Eligible acres if, in any of the 4 most recent crop years, you have produced any crop for which insurance was available	Eligible acres if, in any of the 4 most recent crop years, you have not produced any crop for which insurance was available
(i) The crop is not required to be contracted with a processor to be insured.	(A) The maximum number of acres certified for APH purposes or reported for insurance for the crop in any one of the 4 most recent crop years (not including reported prevented planting acreage that was planted to a substitute crop other than an approved cover crop). The number of acres determined above for a crop may be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the total cropland acres that you farmed in the previous year, provided that you submit proof to us that for the current crop year you have purchased or leased additional land or that acreage will be released from any USDA program which prohibits harvest of a crop. Such acreage must have been purchased, leased, or released from the USDA program, in time to plant it for the current crop year using good farming practices. No cause of loss that will or could prevent planting may be evident at the time the acreage is purchased, leased, or released from the USDA program.	(B) The number of acres specified on your intended acreage report which is submitted to us by the sales closing date for all crops you insure for the crop year and that is accepted by us. The total number of acres listed may not exceed the number of acres of cropland in your farming operation at the time you submit the intended acreage report. The number of acres determined above for a crop may only be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the number of acres listed on your intended acreage report, if you meet the conditions stated in section 17(e)(1)(i)(A).

Type of crop	Eligible acres if, in any of the 4 most recent crop years, you have produced any crop for which insurance was available	Eligible acres if, in any of the 4 most recent crop years, you have not produced any crop for which insurance was available
(ii)The crop must be contracted with a processor to be insured.	(A) The number of acres of the crop specified in the processor contract, if the contract specifies a number of acres contracted for the crop year; or the result of dividing the quantity of production stated in the processor contract by your approved yield, if the processor contract specifies a quantity of production that will be accepted. (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.).	(B) The number of acres of the crop as determined in section 17(e)(1)(ii)(A).

(2) Any eligible acreage determined in accordance with the table contained in section 17(e)(1) will be reduced by subtracting the number of acres of the crop (insured and uninsured) that are timely and late planted, including acreage specified in section 16(b).

(f) Regardless of the number of eligible acres determined in section 17(e), prevented planting coverage will not be provided for any acreage:

(1) If at least one contiguous block of prevented planting acreage does not constitute at least 20 acres or 20 percent of the insurable crop acreage in the unit, whichever is less. We will assume that any prevented planting acreage within a field that contains planted acreage would have been planted to the same crop that is planted in the field, unless the prevented planting acreage constitutes at least 20 acres or 20 percent of the insurable acreage in the field and you can prove that you have previously produced both crops in the same field in the same crop year;

(2) For which the actuarial documents do not designate a premium rate unless a written agreement designates such premium rate;

(3) Used for conservation purposes or intended to be left unplanted under any program administered by the USDA;

(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 you have coverage greater than the Catastrophic Risk Protection Plan of Insurance and have records of acreage and production that are used to determine your approved yield that show the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage;

(5) On which the insured crop is prevented from being planted, if any crop from which any benefit is derived under any program administered by the USDA is planted and fails, or if any crop is harvested, hayed or grazed on the same acreage in the same crop year (other than a cover crop which may be hayed or grazed after the final planting date for the insured crop), unless you have coverage greater than that applicable to the Catastrophic Risk Protection Plan of Insurance and have records of acreage and production that are used to determine your approved yield that show the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage;

(6) Of a crop that is prevented from being planted if a cash lease payment is also received for use of the same acreage in the same crop year (not applicable if acreage is leased for haying or grazing only) (If you state that you will not be cash renting the acreage and claim a prevented planting payment on the acreage, you could be subject to civil and criminal sanctions if you cash rent the acreage and do not return the prevented planting payment for it);

(7) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes;

(8) That exceeds the number of acres eligible for a prevented planting payment;

(9) That exceeds the number of eligible acres physically available for planting;

(10) For which you cannot provide proof that you had the inputs available to plant and produce a crop with the expectation of at least producing the yield used to determine the production guarantee or amount of insurance (Evidence that you have previously planted the crop on the unit will be considered adequate proof unless your planting practices or rotational requirements show that the acreage would have remained fallow or been planted to another crop);

(11) 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; or

(12) Of a crop type that you did not plant in at least one of the four most recent years. Types for which separate price elections, amounts of insurance, or production guarantees are available must be included in your APH database in at least one of the most recent four years, or crops that do not require yield certification (crops for which the insurance guarantee is not based on APH) must be reported on your acreage report in at least one of the four most recent crop years except as allowed in section 17(e)(1)(i)(B).

(g) The prevented planting payment for any eligible acreage within a unit will be determined by:

(1) Multiplying the liability per acre for timely planted acreage of the insured crop (the amount of insurance per acre or the production guarantee per acre multiplied by the price election for the crop, or type if applicable) by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Multiplying the result of section 17(g)(1) by the number of eligible prevented planting acres in the unit; and

(3) Multiplying the result of section 17(g)(2) by your share.

18. Written Agreements

Terms of this policy which are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 18(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one crop year (If a written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if you demonstrate your physical inability to apply prior to the sales closing date, or it is submitted in accordance with any regulation which may be promulgated under 7 CFR part 400, and after inspection of the acreage by us, if required, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

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. Appeals

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those

determinations in accordance with appeal provisions published at 7 CFR part 11.

For reinsured policies

20. Arbitration

(a) If you and we fail to agree on any factual determination, the disagreement will be resolved in accordance with the rules of the American Arbitration Association. Failure to agree with any factual determination made by FCIC must be resolved through the FCIC appeal provisions published at 7 CFR part 11.

(b) No award determined by arbitration or appeal can exceed the amount of liability established or which should have been established under the policy.

21. Access to Insured Crop and Records, and Record Retention

(a) We reserve the right to examine the insured crop as often as we reasonably require.

(b) For three years after the end of the crop year, you must retain, and provide upon our request, complete records of the harvesting, storage, shipment, sale, or other disposition of all the insured crop produced on each unit. This requirement also applies to the records used to establish the basis for the production report for each unit. You must also provide upon our request, separate records showing the same information for production from any acreage not insured. We may extend the record retention period beyond three years by notifying you of such extension in writing. Your failure to keep and maintain such records will, at our option, result in:

(1) Cancellation of the policy;

(2) Assignment of production to the units by us;

(3) Combination of the optional units; or

(4) A determination that no indemnity is due.

(c) Any person designated by us will, at any time during the record retention period, have access:

(1) To any records relating to this insurance at any location where such records may be found or maintained; and

(2) To the farm.

(d) By applying for insurance under the authority of the Act or by continuing insurance for which you previously applied, you authorize us, or any person acting for us, to obtain records relating to the insured crop from any person who may have custody of those records including, but not limited to, FSA offices, banks, warehouses, gins, cooperatives, marketing associations, and accountants. You must assist us in obtaining all records which we request from third parties.

22. Other Insurance

(a) *Other Like Insurance.* You must not obtain any other crop insurance issued under the authority of the Act on your share of the insured crop. If we determine that more than one policy on your share is intentional, you may be subject to the sanctions authorized under this policy, the Act, or any other applicable statute. If we determine that the violation was not intentional, the policy with the earliest date of application will be in force and all other policies will be void. Nothing in this paragraph prevents you from obtaining other insurance not issued under the Act.

(b) *Other Insurance Against Fire.* If you have other insurance, whether valid or not, against damage to the insured crop by fire during the insurance period, and you have not excluded coverage for fire from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this policy without regard to such other insurance; or

(2) The amount by which the loss from fire is determined to exceed the indemnity paid or payable under such other insurance.

(c) For the purpose of subsection (b) of this section the amount of loss from fire will be the difference between the fair market value of the production of the insured crop on the unit involved before the fire and after the fire, as determined from appraisals made by us.

23. Conformity to Food Security Act

Although your violation of a number of federal statutes, including the Act, may cause cancellation, termination, or voidance of your insurance contract, you should be specifically aware that your policy will be canceled if you are determined to be ineligible to receive benefits under the Act due to violation of the controlled substance provisions (title XVII) of the Food Security Act of 1985 (Pub. L. 99–198) and the regulations promulgated under the Act by USDA. Your insurance policy will be canceled if you are determined, by the appropriate Agency, to be in violation of these provisions. We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid or to be paid by you.

For FCIC policies

24. Amounts Due Us

(a) Any amount illegally or erroneously paid to you or that is owed to us but is delinquent may be recovered by us through offset by deducting it from any loan or payment due you under any Act of Congress or program administered by any United States Government Agency, or by other collection action.

(b) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any part thereof, on any unpaid premium amount due us. With respect to any premiums 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.

(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.

For reinsured policies

24. Amounts Due Us

(a) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any portion thereof, on any unpaid amount due us. For the purpose of premium amounts due us, the interest will start to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

(b) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned, interest will start 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) A portion of the amount paid to you to which you were not entitled may be collected through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37.

25. Legal Action Against Us

(a) You may not bring legal action against us unless you have complied with all of the policy provisions.

(b) If you do take legal action against us, you must do so within 12 months of the date

of denial of the claim. Suit must be brought in accordance with the provisions of 7 U.S.C. 1508(j).

(c) Your right to recover damages (compensatory, punitive, or other), attorney's fees, or other charges is limited or excluded by this contract or by Federal Regulations.

26. Payment and Interest Limitations

(a) Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim.

(b) We will pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment of a court of competent jurisdiction, from and including the 61st day after the date you sign, date, and submit to us the properly completed claim on our form. Interest will be paid only if the reason for our failure to timely pay is NOT due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) and published in the **Federal Register** semiannually on or about January 1 and July 1 of each year, and may vary with each publication.

27. Concealment, Misrepresentation or Fraud

(a) If you have falsely or fraudulently concealed the fact that you are ineligible to receive benefits under the Act or if you or anyone assisting you has intentionally concealed or misrepresented any material fact relating to this policy:

(1) This policy will be voided; and

(2) You may be subject to remedial sanctions in accordance with 7 CFR part 400, subpart R.

(b) Even though the policy is void, you may still be required to pay 20 percent of the premium due under the policy to offset costs incurred by us in the service of this policy. If previously paid, the balance of the premium will be returned.

(c) Voidance of this policy will result in you having to reimburse all indemnities paid for the crop year in which the voidance was effective.

(d) Voidance will be effective on the first day of the insurance period for the crop year in which the act occurred and will not affect the policy for subsequent crop years unless a violation of this section also occurred in such crop years.

28. Transfer of Coverage and Right to Indemnity

If you transfer any part of your share during the crop year, you may transfer your coverage rights, if the transferee is eligible for crop insurance. We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred. The transfer of coverage rights must be on our form and will not be effective until approved by us in writing. Both you and the transferee are jointly and severally liable for the payment of the premium. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

29. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us. The assignee will have the right to submit all loss notices and forms as required by the policy. If you have suffered a loss from an insurable cause and fail to file a claim for indemnity within 60 days after the end of the insurance period, the assignee may submit the claim for indemnity not later than 15 days after the 60-day period has expired. We will honor the terms of the assignment only if we can accurately determine the amount of the claim. However, no action will lie against us for failure to do so.

30. Subrogation (Recovery of Loss From A Third Party)

Since you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve this right. If we pay you for your loss, your right to recovery will, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

31. Applicability of State and Local Statutes

If the provisions of this policy conflict with statutes of the State or locality in which this policy is issued, the policy provisions will prevail. State and local laws and regulations in conflict with federal statutes, this policy, and the applicable regulations do not apply to this policy.

32. Descriptive Headings

The descriptive headings of the various policy provisions are formulated for convenience only and are not intended to affect the construction or meaning of any of the policy provisions.

33. Notices

(a) All notices required to be given by you must be in writing and received by your crop insurance agent within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice. If the date by which you are required to submit a report or notice falls on Saturday, Sunday, or a Federal holiday, or if your agent's office is, for any reason, not open for business on the date you are required to submit such notice or report, such notice or report must be submitted on the next business day.

(b) All notices and communications required to be sent by us to you will be mailed to the address contained in your records located with your crop insurance agent. Notice sent to such address will be conclusively presumed to have been received by you. You should advise us immediately of any change of address.

34. Unit Division

(a) 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, of planted acreage and the production from each optional unit for at least the last crop year used to determine your production guarantee;

(4) You have records of marketed or stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each optional unit is kept separate until loss adjustment is completed by us; and

(b) Each optional unit must meet one or more of the following, unless otherwise specified in the Crop Provisions or allowed by written agreement:

(1) Optional units may be established if each optional unit is located in a separate section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure such as Spanish grants, as the equivalents of sections for unit purposes. In areas which have not been surveyed using sections, section equivalents or in areas where boundaries are not readily discernible, each optional unit must be located in a separate FSA farm serial number; and

(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.

(c) Optional units are not available for crops insured under a Catastrophic Risk Protection Endorsement.

(d) 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.

6. Amend § 457.101 as follows:

(a) Revise the introductory text to read as follows:

§ 457.101 Small grains crop insurance provisions.

The small grains crop insurance provisions for the 1998 and succeeding crop years in counties with a contract change date of December 31, and for the 1999 and succeeding crop years in counties with a contract change date of June 30, are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the alphabetic paragraph designations in section 1 and the definitions of ''days,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' ''practical to replant,'' ''production guarantee,'' ''replanting,'' and ''timely planted;'' revise the definitions of ''planted acreage'' and ''prevented planting,'' and add the definition of ''sales closing date'' to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, except for flax, land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will be considered planted. Flax seed must initially be planted in rows to be considered planted, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Prevented planting—In lieu of the definition contained in the Basic Provisions, failure to plant the insured crop with proper equipment by the latest final planting date designated in the Special Provisions for the insured crop in the county or by the end of the late planting period. You must have been prevented from planting the insured crop due to an insured cause of loss that also prevented most producers from planting on acreage with similar characteristics in the surrounding area.

Sales closing date—In lieu of the definition contained in the Basic Provisions, a date contained in the Special Provisions by which an application must be filed and by which you may change your crop insurance coverage for a crop year. If the Special Provisions provide a sales closing date for both winter and spring types of the insured crop and you plant any insurable acreage of the winter type, you may not change your crop insurance coverage after the sales closing date for the winter type.

* * * * *

(d) Remove the words ''Common Crop Insurance Policy'' and add in their place, the words ''Basic Provisions'' in the following places:

i. Section 3;

ii. Section 4;

iii. Sections 6 (b)(1) and (b)(2);

iv. Section 7, introductory text;

v. Section 8, introductory text;

vi. Sections 9(a)(1) and (c); and

vii. Section 10.

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 6 paragraphs (a) and (b)(2).

(f) Remove the word ''provides'' and add in its place, the word ''provide'' in section 6 paragraph (b)(2), the first sentence.

(g) Revise section 2 to read as follows:

* * * * *

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 or only initially planted spring wheat. Optional units may be established in this manner only in counties having both winter and spring type final planting dates as designated in the Special Provisions.

* * * * *

(h) Revise section 6(b)(1) to read as follows:

* * * * *

6. Insured Crop

(a) * * *

(b) * * *

(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

* * * * *

(i) Revise sections 7 (a)(1)(i), (a)(1)(ii), and (a)(2)(i) to read as follows:

* * * * *

7. Insurance Period

* * * * *

(a) * * *

(1) * * *

(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) * * *

(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.

* * * * *

(j) Revise section 12 to read as follows:

* * * * *

12. Late Planting

A late planting period is not applicable to fall-planted wheat. Any winter wheat that is planted after the fall final planting date in counties for which the Special Provisions also contain a final planting date for spring wheat will not be insured. Any winter wheat that is planted after the fall final planting date in counties for which the Special Provisions contain only a fall final planting date will not be insured unless you were prevented from planting the winter wheat by the fall final planting date. Such acreage will be insurable, and the production guarantee and premium for the acreage will be determined in accordance with sections 16 (b) and (c) of the Basic Provisions.

(k) Add a section 13 to read as follows:

* * * * *

13. Prevented Planting

(a) In addition to the provisions contained in section 17 of the Basic Provisions, in counties for which the Special Provisions designate a spring final planting date, your prevented planting production guarantee will be based on your approved yield for spring-planted acreage of the insured crop.

(b) Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

7. Amend § 457.104 as follows:

(a) Revise the introductory text to read as follows:

§ 457.104 Cotton crop insurance provisions.

The cotton crop insurance provisions for the 1998 crop year are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the alphabetic paragraph designations in section 1 and the definitions of ''days,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' ''practical to replant,'' ''prevented planting,'' ''replanting,'' ''timely planted,'' and ''written agreement'' and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

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.

* * * * *

(d) Remove the words ''Common Crop Insurance Policy'' and add in their place, the words ''Basic Provisions'' in the following places:

i. Section 3;

ii. Section 4;

iii. Section 5, introductory text;

iv. Section 6, introductory text;

v. Section 7, introductory text;

vi. Sections 8 (a) and (b);

vii. Section 9, introductory text; and

viii. Section 10(a).

* * * * *

(e) Remove section 2.

(f) Remove section 13 and redesignate sections 3 through 12 as sections 2 through 11 respectively.

(g) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in redesignated section 5.

(h) Revise redesigned section 6(b) to read as follows:

* * * * *

6. Insurable Acreage

* * * * *

(a) * * *

(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.

* * * * *

(i) Revise redesignated section 7(a) to read as follows:

* * * * *

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.

* * * * *

(j) Amend redesignated section 10(c)(1)(i)(E) to change the section reference therein from ''10'' to ''9''.

* * * * *

(k) Amend redesignated section 10(c)(1)(iii) to change the section reference therein from ''11.(d)'' to ''10(d)''.

* * * * *

(l) Revise redesignated section 11 to read as follows:

* * * * *

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 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.

* * * * *

8. Amend § 457.105 as follows:

(a) Revise the introductory text to read as follows:

§ 457.105 Extra long staple cotton crop insurance provisions.

The extra long staple cotton crop insurance provisions for the 1998 crop year are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove alphabetic paragraph designations in section 1 and the definitions of ''days,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''practical to replant,'' ''prevented planting,'' ''timely planted,'' and ''written agreement'' and revise the definition of ''planted acreage'' to read as follows:

1. Definitions

* * * * *

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.

* * * * *

(d) Remove the words ''Common Crop Insurance Policy'' and add in their place, the words ''Basic Provisions'' in the following places:

i. Section 3;

ii. Section 4;

iii. Section 5;

iv. Section 6, introductory text;

v. Section 7, introductory text;

vi. Sections 8 (a) and (b);

vii. Section 9, introductory text; and

viii. Section 10(a).

(e) Remove section 2.

(f) Redesignate sections 3 through 13 as sections 2 through 12 respectively.

(g) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in redesignated section 5.

(h) Revise redesignated section 6(b) to read as follows:

* * * * *

6. Insurable Acreage

* * * * *

(a) * * *

(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.

* * * * *

(i) Revise redesignated section 7(a) to read as follows:

* * * * *

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.

* * * * *

(j) Amend redesignated section 10(c)(1)(i)(E) to change the section reference therein from ''10'' to ''9''.

(k) Amend redesignated section 10(c)(1)(iii)(A) to change the section reference therein from ''11.(d) and (e)'' to ''10(d) and (e)''.

(l) Amend redesignated section 10(c)(1)(iii)(B) to change the section reference therein from ''11.(f)'' to ''10(f)''.

(m) Amend redesignated section 10(e) to change the section reference therein from ''11.(d)'' to ''10(d)''.

(n) Revise redesignated section 11 to read as follows:

* * * * *

11. Late Planting

A late planting period is not applicable to ELS cotton. Any ELS cotton that is planted after the final planting date will not be

insured unless you were prevented from planting it by the final planting date. Such acreage will be insurable, and the production guarantee and premium for the acreage will be determined in accordance with section 16 of the Basic Provisions.

* * * * *

(o) Revise redesignated section 12 to read as follows:

* * * * *

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 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.

9. Amend § 457.106 as follows:

(a) Revise the introductory text to read as follows:

§ 457.106 Texas citrus tree crop insurance provisions.

The Texas citrus tree crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

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.

* * * * *

(c) Remove the definitions of ''days,'' ''deductible,'' ''FSA,'' ''non-contiguous land,'' and ''written agreement'' in section 1.

(d) In sections 3(b) (1) and (2) remove the words ''actuarial 1 table'' and add in their place the words ''actuarial documents'' and remove the words ''actuarial table'' and add in their place, the words ''actuarial documents and'' in section 7(a).

(e) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each citrus crop designated in the Special Provisions.

(b) Sections 34(a) (1), (3), and (4) of the Basic Provisions are not applicable.

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

(d) Instead of establishing optional units by section, section equivalent, or FSA farm serial number optional units may be established if each optional unit is located on non-contiguous land.

* * * * *

(f) Revise section 13 to read as follows:

* * * * *

13. Late and prevented planting

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

10. Amend § 457.107 as follows:

(a) Revise the introductory text to read as follows:

§ 457.107 Florida citrus fruit crop insurance provisions.

The Florida citrus fruit crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''non-contiguous land,'' and ''written agreement'' in section 1.

(d) Remove the words ''Actuarial Table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 1, definition of ''amount of insurance;'' and

ii. Section 6(a).

(e) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each citrus crop designated in the Special Provisions.

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

(c) Instead of establishing optional units by section, section equivalent, or FSA farm serial number, optional units may be established if each optional unit is located on non-contiguous land.

* * * * *

(f) Revise section 6(d) to change the section reference therein from ''6(f)'' to ''6.''

(g) Revise section 11 to read as follows:

* * * * *

11. Late and prevented planting

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

11. Amend § 457.108 as follows:

(a) Revise the introductory text to read as follows:

§ 457.108 Sunflower seed crop insurance provisions.

The sunflower seed crop insurance provisions for the 1998 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove alphabetic paragraph designations and the definitions of ''days,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' ''practical to replant,'' ''prevented planting,'' ''production guarantee,'' ''replanting,'' ''timely planted,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, sunflower seed 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.

* * * * *

(d) Remove section 2.

(e) Redesignate sections 3 through 13 as sections 2 through 12 respectively.

(f) Amend redesignated section 4 to change the section reference therein from ''2.(f)'' to ''2''.

(g) Remove the word ''subsection'' and add in its place the word ''section'' in redesignated section 4.

(h) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in redesignated section 5, introductory text.

(i) Revise section 6(b) to read as follows:

* * * * *

6. Insurable Acreage

* * * * *

(a) * * *

(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.

(j) Revise section 9(a) to read as follows:

* * * * *

9. Replanting Payments

(a) In accordance with section 13 of the Basic Provisions, a replanting payment for sunflower seed is allowed if the sunflowers are damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

* * * * *

(k) Amend redesignated section 9(b) to change the section reference therein from ''10.(c)'' to ''9(c).''

(l) Remove the word ''subsection'' and add in its place the word ''section'' in redesignated section 9(b).

(m) Amend redesignated section 11(c)(1)(iii) to change the section reference therein from ''12.(d)'' to ''11(d)''.

(n) Amend redesignated section 11(d)(4) to change the section reference therein from ''12.(d)(2) and (3)'' to ''11(d) (2) and (3)''.

(o) Revise redesignated section 12 to read as follows:

* * * * *

12. Prevented Planting.

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

12. Amend § 457.109 as follows:

(a) Revise the introductory text to read as follows:

§ 457.109 Sugar beet crop insurance provisions.

The sugar beet crop insurance provisions for the 1998 and succeeding crop years in counties with a contract change date of November 30, and for the 1999 and succeeding crop years in counties with a contract change date of April 30, are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' ''prevented planting,'' ''replanting,'' ''timely planted,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

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.

* * * * *

(d) Revise section 2 to read as follows:

* * * * *

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 fulfill a sugar beet processor 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.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in redesignated section 7(a).

* * * * *

(f) Revise section 14 to read as follows:

* * * * *

14. Late 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.

* * * * *

(g) Revise section 15 to read as follows:

* * * * *

15. Prevented Planting

(a) The prevented planting provisions contained in section 17 of the Basic Provisions are not applicable in California 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.

13. Amend § 457.110 as follows:

(a) Revise the introductory text to read as follows:

§ 457.110 Fig crop insurance provisions.

The fig crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove alphabetic paragraph designations and the definitions of ''good farming practices,'' ''irrigated practice,'' ''non-contiguous land,'' and ''production guarantee'' in section 1.

(d) Remove the words ''Common Crop Insurance Policy'' and add in their place, the words ''Basic Provisions'' in the following places:

i. Section 3;

ii. Section 4 ;

iii. Section 8, introductory text; and

iv. Sections 9 (a) and (b).

(e) Revise section 2 to read as follows:

* * * * *

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.

(f) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 7, introductory text.

(g) Add a section 11 to read as follows:

* * * * *

11. Late and Prevented Planting

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

14. Amend § 457.111 as follows:

(a) Revise the introductory text to read as follows:

§ 457.111 Pear crop insurance provisions.

The pear crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous,'' ''production guarantee (per acre),'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

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

(b) 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.

(c) In addition to, or instead of, establishing optional units by section, section equivalent, FSA farm serial number, or on non-contiguous land, optional units may be established by varietal group when provided for in the Special Provisions. The requirements of section 34(a)(1) of the Basic Provisions are not applicable for this method of unit division.

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 6, introductory text; and

ii. Sections 13(a)(1) and (3).

(f) Remove the word ''designates'' and add in its place, the word ''designate'' in section 13(a)(1).

(g) Revise section 12 to read as follows:

12. Late and Prevented Planting

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

* * * * *

15. Amend § 457.113 as follows:

(a) Revise the introductory text to read as follows:

§ 457.113 Coarse grains crop insurance provisions.

The coarse grains crop insurance provisions for the 1998 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove alphabetic paragraph designations and the definitions of ''days,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' ''practical to replant,'' ''prevented planting,'' ''replanting,'' ''timely planted,'' and ''written agreement'' in section 1 and revise the definitions of ''planted acreage'' and ''production guarantee'' to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, coarse grains must initially be planted in rows (corn must be planted in rows far enough apart to permit mechanical cultivation), unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Production guarantee (per acre)—In lieu of the definition contained in the Basic Provisions, the number of bushels (tons for corn insured as silage) determined by multiplying the approved actual production history (APH) yield per acre, calculated in accordance with 7 CFR part 400, subpart G, by the coverage level percentage you elect.

* * * * *

(d) Remove the words ''Common Crop Insurance Policy'' and add in their place, the words ''Basic Provisions'' in the following places:

i. Section 3(a);

ii. Section 4;

iii. Section 5;

iv. Section 6(a);

v. Section 7;

vi. Section 8, introductory text;

vii. Section 9, introductory text;

viii. Section 10(a); and

ix. Sections 11(a), (b)(1) and (2).

* * * * *

(e) Remove section 2.

(f) Redesignate sections 3 through 13 as sections 2 through 12 respectively.

(g) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in redesignated sections 5(a) and (c).

(h) Remove the word ''provides'' and add in its place, the word ''provide'' in redesignated section 5(c).

(i) Amend redesignated section 4 to change the section reference therein from 2(f) to 2.

(j) Remove the word ''subsection'' and add in its place the word ''section'' in redesignated section 4.

(k) Amend redesignated section 5(a)(3)(i) to change the section reference therein from ''6(b)(1)'' to ''5(b)(1)''.

(l) Amend redesignated section 5(b) to change the section reference therein from ''6(a)'' to ''5(a)''.

(m) Amend redesignated section 5(b)(1) to change the section reference therein from ''6(c)'' to ''5(c)''.

(n) Amend redesignated sections 5(d) and (e) to change the section references therein from ''6(a)'' to ''5(a)''.

(o) Revise redesignated section 6 to read as follows:

* * * * *

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.

(p) Revise redesignated section 9(a) to read as follows:

* * * * *

9. Replanting Payments

(a) In accordance with section 13 of the Basic Provisions, replanting payments for coarse grains are allowed if the coarse grains are damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

* * * * *

(q) Amend redesignated section 9(b) to change the section references therein from ''10(c)'' to ''9(c)''.

(r) Amend redesignated sections 11(b)(2)(iv) and (11)(c) to change the section references therein from ''12(d)'' to ''11(d)''.

(s) Amend redesignated section 11(b)(2)(iv) to change the section reference therein from ''section 3'' to ''section 2''.

(t) Amend redesignated section 11(c)(1)(iii) to change the section reference therein from ''12(e)'' to ''11(e)''.

(u) Amend redesignated section 11(d)(2) to change the section reference therein from ''12(c)(1)'' to ''11(c)(1)''.

(v) Amend redesignated section 11(e) to change the section reference therein from ''12(f)'' to ''11(f)''.

(w) Amend redesignated section 11(e)(4) to change the section reference therein from ''12(e)(2) and (3)'' to ''11(e)(2) and (3)''.

(x) Revise redesignated section 12 to read as follows:

* * * * *

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

16. Amend § 457.114 as follows:

(a) Amend the introductory text to read as follows:

§ 457.114 Nursery crop insurance provisions.

The nursery crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove alphabetic paragraph designations and the definition of ''written agreement'' in section 1 and revise the definition of ''irrigated practice'' to read as follows:

1. Definitions

* * * * *

Irrigated practice—In lieu of the definition contained in the Basic Provisions, a method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to maintain the amount of insurance on the nursery plant inventory.

* * * * *

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

In lieu of the definition of ''basic unit'' and section 34 of the Basic Provisions, a unit consists of all growing locations in the county within a five mile radius of the named insured locations designated on your nursery plant inventory summary. Any growing location more than five miles from any other growing location, but within the county, may be designated as a separate basic unit or be included in the closest unit listed on your nursery plant inventory summary.

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 8, introductory text.

(f) Add section 13 to read as follows:

* * * * *

13. Late and Prevented Planting

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

17. Amend § 457.116 as follows:

(a) Revise the introductory text to read as follows:

§ 457.116 Sugarcane crop insurance provisions.

The sugarcane crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove alphabetic paragraph designations and the definitions of ''CFSA,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''production guarantee,'' and ''written agreement'' in section 1.

(d) Remove section 2.

(e) Redesignate sections 3 through 11 as sections 2 through 10 respectively.

(f) Amend redesignated section 4 to change the section reference therein from ''2.(f)'' to ''2''.

(g) Remove the word ''subsection'' and add in its place, the word ''section'' in redesignated section 4.

(h) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in redesignated section 5, introductory text.

(i) Amend redesignated section 7(a)(2) to change the section reference therein from ''8(a)(3)'' to ''7(a)(3)''.

(j) Amend redesignated section 10(c)(1)(v) to change the section reference therein from ''10(a)(2)'' to ''9(a)(2)''.

(k) Add a section 11 to read as follows:

* * * * *

11. Late and Prevented Planting

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

18. Amend § 457.117 as follows:

(a) Revise the introductory text to read as follows:

§ 457.117 Forage production crop insurance provisions.

The forage production crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''good farming practices,'' ''irrigated practice,'' ''production guarantee (per acre),'' and ''written agreement'' in section 1.

(d) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 1, definition of ''forage;'' and

ii. Section 7(a).

(e) Revise section 2 to read as follows:

* * * * *

2. Unit Division

The optional unit provisions in section 34 of the Basic Provisions are not applicable. Optional units are not allowed.

* * * * *

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

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

19. Amend § 457.119 as follows:

(a) Revise the introductory text to read as follows:

§ 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:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous land'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each citrus crop designated in the Special Provisions.

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

(c) Instead of establishing optional units by section, section equivalent, or FSA farm serial number, optional units may be established if each optional unit is located on non-contiguous land.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 7, introductory text; and

ii. Section 12(e).

(f) Remove the word ''provides'' and add in its place, the word ''provide'' in section 12(e).

(g) Revise section 13 to read as follows:

* * * * *

13. Late and Prevented Planting

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

20. Amend § 457.121 as follows:

(a) Revise the introductory text to read as follows:

§ 457.121 Arizona-California citrus crop insurance provisions.

The Arizona-California citrus crop insurance provisions for the 2000 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous land,'' ''production guarantee (per acre),'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by each citrus crop designated in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 6, introductory text.

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

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

21. Amend § 457.122 as follows:

(a) Revise the introductory text to read as follows:

§ 457.122 Walnut crop insurance provisions.

The walnut crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous land,'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

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.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 6, introductory text.

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

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

22. Amend § 457.123 as follows:

(a) Revise the introductory text to read as follows:

§ 457.123 Almond crop insurance provisions.

The almond crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous land,'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

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.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 6, introductory text.

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

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

23. Amend § 457.124 as follows:

(a) Revise the introductory text to read as follows:

§ 457.124 Raisin crop insurance provisions.

The raisin crop insurance provisions for the 1998 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''non-contiguous land,'' and ''written agreement'' in section 1.

(d) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 1, definitions of ''raisins'' and ''reference maximum dollar amount;'' and

ii. Section 8(a).

(e) Revise section 2 to read as follows:

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.

* * * * *

(f) Revise section 14 to read as follows:

14. Late and Prevented Planting

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

24. Amend § 457.125 as follows:

(a) Revise the introductory text to read as follows:

§ 457.125 Safflower crop insurance provisions.

The safflower crop insurance provisions for the 1998 and succeeding crop years in counties with a contract change date of December 31, and for the 1999 and succeeding crop years in counties with a contract change date of August 31 are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''practical to replant,'' ''production guarantee (per acre),'' ''replanting,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

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.

* * * * *

(d) Remove section 2.

(e) Redesignate sections 3 through 13 (erroneously published as 3) as sections 2 through 12 respectively.

(f) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in Section 5, introductory text.

(g) Amend redesignated section 11(b)(2) to change the section reference therein from ''12(b)(1)'' to ''11(b)(1)''.

(h) Amend redesignated section 11(b)(3) to change the section reference therein from ''12(b)(2)'' to ''11(b)(2)''.

(i) Amend redesignated section 11(b)(4) to change the section reference therein from ''12(c)'' to ''11(c)''.

(j) Amend redesignated section 11(b)(5) to change the section reference therein from ''12(b)(4)'' to ''11(b)(4)''.

(k) Amend redesignated section 11(b)(6) to change the section references therein from ''12(b)(5)'' to ''11(b)(5)'' and ''12(b)(3)'' to ''11(b)(3)''.

(l) Amend redesignated section 11(b)(7) to change the section reference therein from ''12(b)(6)'' to ''11(b)(6)''.

(m) Amend redesignated section 11(c)(1)(iii) to change the section reference therein from ''section 12(d)'' to ''section 11(d)''.

(n) Amend redesignated section 11(d)(4) to change the section reference therein from ''12(d)(2) and (3)'' to ''11(d)(2) and (3)''.

(o) Revise redesignated section 12 to read as follows:

* * * * *

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

* * * * *

25. Amend § 457.128 as follows:

(a) Revise the paragraph preceding section 1 to read as follows:

§ 457.128 Guaranteed production plan of fresh market tomato 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.

* * * * *

(b) Remove the definitions of ''days,'' ''FSA,'' ''good farming practices,'' ''irrigated practice,'' ''production guarantee (per acre),'' ''replanting,'' and ''written agreement'' in section 1.

(c) Revise section 2 to read as follows:

* * * * *

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.

* * * * *

(d) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 8, introductory text.

(e) Revise section 14 to read as follows:

* * * * *

14. Late and Prevented Planting

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

* * * * *

26. Amend § 457.129 as follows:

(a) Revise the introductory text to read as follows:

§ 457.129 Fresh market sweet corn crop insurance provisions.

The fresh market sweet corn crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''replanting,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

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.

* * * * *

(d) Remove the words ''Actuarial Table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 1, definition of ''planting period;''

ii. Section 3(a);

iii. Section 7;

iv. Section 8, introductory text and paragraph (b)(2); and

v. Section 16(a)(1).

(e) Revise section 2 to read as follows:

* * * * *

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.

* * * * *

(f) Revise section 15 to read as follows:

* * * * *

15. Late and Prevented Planting

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

27. Amend § 457.130 as follows:

(a) Revise the introductory text to read as follows:

§ 457.130 Macadamia tree crop insurance provisions.

The macadamia tree crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''non-contiguous,'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) Sections 34(a) (1), (3) and (4) of the Basic Provisions are not applicable.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Unless otherwise allowed by written agreement, optional units may be established only if each optional unit:

(1) Contains at least 80 acres of insurable age macadamia trees; or

(2) Is located on non-contiguous land.

(c) You must have provided records, which can be independently verified, of acreage and age of trees for each unit for at least the last crop year.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents and'' in the following places:

i. Section 3(a)(1); and

ii. Section 6, introductory text.

(f) Revise section 12 to read as follows:

12. Late and Prevented Planting

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

28. Amend § 457.131 as follows:

(a) Revise the introductory text to read as follows:

§ 457.131 Macadamia nut crop insurance provisions.

The macadamia nut crop insurance provisions for the 2000 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous,'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) Section 34(a)(1) of the Basic Provisions is not applicable.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Unless otherwise allowed by written agreement, optional units may be established only if each optional unit:

(1) Contains at least 80 acres of bearing macadamia trees; or

(2) Is located on non-contiguous land.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 6, introductory text.

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

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

* * * * *

29. Amend § 457.132 as follows:

(a) Revise the introductory text to read as follows:

§ 457.132 Cranberry crop insurance provisions.

The cranberry crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous land,'' ''production guarantee (per acre),'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

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.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 6, introductory text and paragraph (d).

(f) Revise section 11 to read as follows:

* * * * *

11. Late and Prevented Planting

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

30. Amend § 457.133 as follows:

(a) Revise the introductory text to read as follows:

§ 457.133 Prune crop insurance provisions.

The prune crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous land,'' ''production guarantee (per acre),'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

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.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words

''actuarial documents'' in section 6, introductory text.

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

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

31. Amend § 457.135 as follows:

(a) Revise the introductory text to read as follows:

§ 457.135 Onion crop insurance provisions.

The onion crop insurance provisions for the 1998 and succeeding crop years in counties with a contract change date of December 31, and for the 1999 and succeeding crop years in counties with a contract change date of June 30 are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''crop year,'' ''days,'' ''FSA,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' ''practical to replant,'' ''prevented planting,'' ''replanting,'' ''timely planted,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, onions must be planted in rows.

* * * * *

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number are not applicable.

(b) In addition to, or instead of, establishing optional units by irrigated acreage or non-irrigated acreage, optional units may be established by type, if the specific type is designated in the Special Provisions.

* * * * *′

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 6; and

ii. Section 7, introductory text.

(f) Revise section 14 to read as follows:

* * * * *

14. Prevented Planting

Your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

(g) Remove section 15.

* * * * *

32. Amend § 457.137 as follows:

* * * * *

(a) Revise the paragraph preceding section 1 to read as follows:

§ 457.137 Green pea 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.

* * * * *

(b) Remove the definitions of ''approved yield,'' ''days,'' ''FSA,'' ''final planting date,'' ''interplanted,'' ''irrigated practice,'' ''replanting,'' ''timely planted,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

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.

* * * * *

(c) Revise section 2 to read as follows:

* * * * *

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.

* * * * *

(d) Revise section 13 to read as follows:

* * * * *

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.

* * * * *

(e) Revise section 14 to read as follows:

* * * * *

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.

* * * * *

33. Amend § 457.138 as follows:

(a) Revise the introductory text to read as follows:

§ 457.138 Grape crop insurance provisions.

The grape crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous,''

''production guarantee (per acre)'' ''USDA,'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) In California only, a basic unit, as defined in section 1 of the Basic Provisions will be divided into additional basic units by each variety that you insure.

(b) In California only, provisions in the Basic Provisions that provide for optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

(c) In all states except California, in addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions a separate optional unit may be established if each optional unit:

(1) Is located on non-contiguous land; or

(2) Consists of a separate varietal group when separate varietal groups are specified in the Special Provisions.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 7, introductory text.

(f) Revise section 13 to read as follows:

13. Late and Prevented Planting

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

34. Amend § 457.139 as follows:

(a) Revise the introductory text to read as follows:

§ 457.139 Fresh market tomato (dollar plan) crop insurance provisions.

The fresh market tomato (dollar plan) crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''replanting,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, for each planting period, tomato seed or transplants must initially be planted in rows, unless otherwise provided by Special Provisions, actuarial documents, or by written agreement.

* * * * *

(d) Remove the words ''Actuarial Table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 1, definition of ''planting period;''

ii. Section 3(a);

iii. Section 7, introductory text;

iv. Section 8, introductory text and paragraph (b)(2); and

v. Section 16(a)(1).

(e) Revise section 2 to read as follows:

* * * * *

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.

* * * * *

(f) Revise section 15 to read as follows:

* * * * *

15. Late and Prevented Planting

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

35. Amend § 457.141 as follows:

§ 457.141 Rice crop insurance provisions.

(a) Revise the paragraph preceding section 1 to read as follows:

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.

* * * * *

(b) Remove the definitions of ''days,'' ''FSA,'' ''final planting date,'' ''good farming practices,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' ''practical to replant,'' ''prevented planting,'' ''production guarantee (per acre),'' ''replanting,'' ''timely planted,'' and ''written agreement'' in section 1.

* * * * *

(c) Revise section 2 to read as follows:

* * * * *

2. Unit Division

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

* * * * *

(d) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 6, introductory text.

(e) Revise section 13 to read as follows:

* * * * *

13. Prevented Planting

Your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

(f) Remove section 14.

36. Amend § 457.148 as follows:

(a) Revise the introductory text to read as follows:

§ 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:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''replanting,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

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.

(d) Remove the words ''Actuarial Table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 1, definition of ''planting period;''

ii. Section 3(a);

iii. Section 7;

iv. Section 8, introductory text and paragraph (b)(2); and

v. Section 16(a)(1).

(e) Revise section 2 to read as follows:

* * * * *

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.

* * * * *

(f) Revise section 15 to read as follows:

15. Late and Prevented Planting

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

37. Amend § 457.149 as follows:

(a) Revise the introductory text to read as follows:

§ 457.149 Table grape crop insurance provisions.

The table grape crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous,'' ''production guarantee (per acre),'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each table grape variety designated in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 7(a).

(f) Revise section 13 to read as follows:

* * * * *

13. Late and Prevented Planting

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

38. Amend § 457.150 as follows:

(a) Revise the introductory text to read as follows:

§ 457.150 Dry bean crop insurance provisions.

The dry bean crop insurance provisions for the 1998 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' ''prevented planting,'' ''production guarantee (per acre),'' ''replanting,'' and ''timely planted,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

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.

* * * * *

(d) Revise section 2 to read as follows:

* * * * *

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.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 7(a).

(f) Revise section 7(c)(3) to read as follows:

* * * * *

7. Insured Crop

* * * * *

(c) * * *

(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.

* * * * *

(g) Revise section 14 to read as follows:

* * * * *

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.

(h) Remove section 15.

39. Amend § 457.151 as follows:

(a) Revise the introductory text to read as follows:

§ 457.151 Forage seeding crop insurance provisions.

The forage seeding crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''final planting date,'' ''interplanted,'' ''irrigated practice,'' ''practical to replant,'' and ''written agreement'' in section 1 and revise the definitions of ''planted acreage'' and ''sales closing date'' to read as follows:

* * * * *

1. Definitions

* * * * *

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.

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.

* * * * *

(d) Revise section 2 to read as follows:

* * * * *

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.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 1, definition of ''forage;''

ii. Section 3(a); and

iii. Section 6, introductory text.

(f) Revise section 13 to read as follows:

* * * * *

13. Late and Prevented Planting

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

40. Amend § 457.153 as follows:

(a) Revise the introductory text to read as follows:

§ 457.153 Peach crop insurance provisions.

The peach crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''good farming practices,'' ''irrigated practice,'' ''production guarantee (per acre),'' and ''written agreement'' in section 1.

(d) Remove section 2.

(e) Designate sections 3 through 12 as sections 2 through 11 respectively.

(f) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in redesignated section 5, introductory text.

(g) Amend section 10(b)(2) to change the section reference therein from ''11(b)(1)'' to ''10(b)(1)''.

(h) Amend section 10(b)(3) to change the section reference therein from ''11(b)(2)'' to ''10(b)(2)''.

(i) Amend section 10(b)(4) to change the section reference therein from ''11(c)'' to ''10(c)''.

(j) Amend section 10(b)(5) to change the section reference therein from ''11(b)(4)'' to ''10(b)(4)''.

(k) Amend section 10(b)(6) to change the section references therein from ''11(b)(5)'' to ''10(b)(5)'' and ''11(b)(3)'' to ''10(b)(3)''.

(l) Amend section 10(b)(7) to change the section reference therein from ''11(b)(6)'' to ''10(b)(6)''.

(m) Amend section 10(c)(1)(i)(B) to change the section reference therein from ''section 10'' to ''section 9''.

(n) Amend section 10(c)(3)(i)(B) to change the section reference therein from ''11(c)(3)(i)(A)'' to ''10(c)(3)(i)(A)''.

(o) Amend section 10(c)(3)(ii)(B) to change the section reference therein from ''11(c)(3)(ii)(A)'' to ''10(c)(3)(ii)(A)''.

(p) Revise section 11 to read as follows:

* * * * *

11. Late and Prevented Planting

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

* * * * *

41. Amend § 457.155 as follows:

* * * * *

(a) Revise the paragraph preceding section 1 to read as follows:

§ 457.155 Processing bean 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.

* * * * *

(b) Remove the definitions of ''approved yield,'' ''days,'' ''FSA,'' ''final planting date,'' ''interplanted,'' ''irrigated practice,'' ''production guarantee (per acre),'' ''replanting,'' ''timely planted,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

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.

* * * * *

(c) Revise section 2 to read as follows:

* * * * *

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.

* * * * *

(d) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 7(a).

(e) Revise section 13 to read as follows:

* * * * *

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.

* * * * *

(f) Revise section 14 to read as follows:

* * * * *

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.

42. Amend § 457.157 as follows:

(a) Revise the introductory text to read as follows:

§ 457.157 Plum crop insurance provisions.

The plum crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

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.

* * * * *

(c) Remove the definitions of ''days,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous,'' ''production guarantee (per acre)'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units must meet one or more of the following, as applicable, unless otherwise provided by the Special Provisions, actuarial documents, or written agreement:

(a) Optional units may be established if each optional unit is located on non-contiguous land.

(b) In addition to, or instead of, establishing optional units for non-contiguous land, optional units may be established by varietal group when provided for in the Special Provisions. The requirements of section 34(a)(1) of the Basic Provisions are not applicable for this method of unit division.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 6, introductory text.

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

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

* * * * *

43. Amend § 457.160 as follows:

§ 457.160 Processing tomato crop insurance provisions.

(a) Revise the paragraph preceding section 1 to read as follows:

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.

* * * * *

(b) Remove the definitions of ''approved yield,'' ''days,'' ''FSA,'' ''final planting date,'' ''interplanted,'' ''irrigated practice,'' ''production guarantee (per acre),'' ''replanting,'' ''timely planted,'' ''USDA,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

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.

* * * * *

(c) Revise section 2 to read as follows:

* * * * *

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.

* * * * *

(d) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in sections 7 and 8(a).

(e) Remove section 16.

Signed in Washington, D.C., on December 1, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

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