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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

RIN 0563–AA84

General Crop Insurance Regulations, Tobacco (Guaranteed Plan) Endorsement; and Common Crop Insurance Regulations, Guaranteed Tobacco Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of guaranteed tobacco. The provisions will be used in conjunction with the Common Crop Insurance Policy, Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current tobacco (guaranteed plan) endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current tobacco (guaranteed plan) endorsement to the 1998 and prior crop years.

EFFECTIVE DATE: July 27, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, 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

This rule has been determined to be exempt for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through October 31, 2000.

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. The effect of this regulation on small entities will be no greater than on large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity.

The amount of work required of insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. The rule does not have any greater or lesser impact on the producer. 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 a 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 any action for judicial review of any determination made by FCIC 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 Monday, June 16, 1997, FCIC published a notice of proposed rulemaking in the **Federal Register** at 62 FR 32544 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.136, Guaranteed Tobacco Crop Insurance Provisions. The new provisions will be effective for the 1999 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring guaranteed tobacco found at 7 CFR 401.129 (Tobacco (Guaranteed Plan) Endorsement). FCIC also amends 7 CFR part 401 to limit its effect to the 1998 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 88 comments were received from reinsured companies and an insurance service organization. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization recommended that FCIC either revise or delete the definition of ''approved yield.'' The commenter mentioned that since guaranteed tobacco currently is not an actual production history (APH) crop, the definition will be questioned by insureds who do not receive a copy of the Code of Federal Regulations with their crop insurance policies.

Response: ''Approved yield'' is referenced in section 3 of the Crop Provisions, so it must be defined. Section 3 clearly indicates that an approved yield is not necessary unless required by the Special Provisions. As written, if the FSA guaranteed tobacco support price program is discontinued and guaranteed tobacco becomes an APH crop in the future, the Special Provisions could be amended easily to require an approved yield. Therefore, no changes have been made.

Comment: A reinsured company and an insurance service organization expressed concern with the definition of ''good farming practices,'' which makes reference to ''cultural practices generally in use in the county * * * recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.'' The commenters questioned whether cultural practices exist that are not recognized (or possibly not known) by the Cooperative State Research, Education, and Extension Service. The commenters also indicated that the term ''county'' in the definition of ''good farming practices'' should be changed to ''area.''

Response: FCIC believes that the Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing guaranteed tobacco. If a producer is following practices currently not recognized as acceptable by the CSREES, there is no reason why such recognition cannot be sought by interested parties. The term ''area'' is less definitive than the term ''county'' and would cause insurance providers to make determinations more subjective in nature. Therefore, no change has been made except that the definition of ''good farming practices'' has been moved to the Basic Provisions.

Comment: A reinsured company and an insurance service organization recommended revising the definition of ''harvest'' to include the requirement that at least 20 percent of the production guarantee must be cut on each acre to qualify as harvested. Commenters also recommended that a minimum appraisal of 35 percent of the production guarantee be established to encourage producers to harvest damaged tobacco. In some cases, it will be difficult to verify unharvested production due to deterioration of the leaves before an adjuster works the final claim. The commenters believe that removal of these requirements from the current crop provisions will result in a significant increase in premium rates. Commenters expressed concern that FCIC may have overreacted if the changes were made because of one lawsuit.

Response: FCIC has determined that at least 20 percent of the production guarantee be cut on each acre to qualify as harvested and the 35 percent minimum appraisal for unharvested acreage is too severe. Producers should not be forced to incur the costs associated with harvesting tobacco acres that may not be marketable. In addition, FCIC cannot ignore a court ruling that such provisions are unenforceable. Therefore, no change has been made.

Comment: An insurance service organization asked if the phrase ''if not available'' means the season average price is not available at all or is not available when a claim for an indemnity is processed. The commenter stated that the market price is never available when the tobacco is harvested, only when it is marketed.

Response: The term ''if not available'' means that the market price is not available because no marketings of the applicable insured type of tobacco grown in the area have occurred. The provision has been clarified accordingly.

Comment: An insurance service organization recommended deleting ''marketing window'' from the definition of ''practical to replant.'' The commenter stated that guaranteed tobacco is unlike other crops, such as processor and fresh market crops, where the producer only has a certain amount of time to market the crop.

Response: FCIC agrees that the concept of a ''marketing window'' is most applicable to processor and fresh market crops and recognizes that guaranteed tobacco is unlike these crops. However, the Federal Agriculture Improvement and Reform Act of 1996 mandated that FCIC consider marketing windows in determining whether it is feasible to require planting during a crop year. Therefore no change has been made except that the definition of ''practical to replant'' has been moved to the Basic Provisions.

Comment: A reinsured company and an insurance service organization expressed concern about the terms ''replace'' and ''replacing'' in the definition of ''replanting.'' Commenters stated that the terms, as used, seem awkward and cumbersome.

Response: FCIC believes that the definition of ''replanting'' clearly describes the steps required to replant the crop. However, FCIC has replaced the phrase ''growing a successful tobacco crop'' with ''producing at least the guarantee,'' for clarity.

Comment: An insurance service organization and a reinsured company recommended the unit division guidelines in the proposed rule remain the same in the final rule.

Response: FCIC has not changed the unit division guidelines.

Comment: A reinsured company and an insurance service organization recommended removing any references to ''annual production reports'' for the APH plan. The commenters contend that if the FSA guaranteed tobacco support price program is changed or eliminated, it will be necessary to revise several provisions of the policy.

Response: Section 3(b) of these provisions requires annual production reports only when required by the Special Provisions. The current method for establishing yields will continue for the 1998 crop year. If the guaranteed tobacco support price program is discontinued or modified in future years, these provisions provide an alternative method for establishing the production guarantee. Therefore, no change has been made. However, FCIC has amended the definition of ''support price'' to include the possibility that the tobacco support program may be changed. If there is not a tobacco support program, FCIC will announce the average price per pound for the type of tobacco.

Comment: A reinsured company and an insurance service organization recommended deleting the word ''carryover'' in section 6. Commenters stated that the basic premise of Multiple Peril Crop Insurance coverage is to insure actual planted acreage of the crop. Subtracting the carryover poundage would take coverage away from a planted crop which is legally insurable (i.e., the carryover poundage has value and is exposed to perils). This could have additional unwanted consequences by making the insurance providers responsible for tracking and placing value on carryover poundage.

Response: Although producers normally reduce the number of acres grown in the current crop year to account for carryover production from the prior year, they may instead elect to reduce inputs (fertilizer, etc.), thereby producing fewer pounds per acre. Further, to reduce the opportunity to falsely report the amount of carryover tobacco at time of loss adjustment, the amount of any carryover production must be reported on the acreage report. Therefore, no change has been made.

Comment: A reinsured company and an insurance service organization asked if the provisions in section 8(c) are intended to allow written agreement requests for a type not rated in the actuarial documents.

Response: Section 8(c) only references a method of planting. Therefore, section 8(c) does not authorize written agreements for types not rated.

Comment: A reinsured company and an insurance service organization question why section 9(a) is not as precise as section 11(a) of the Basic Provisions, which specifies ''total destruction * * * on the unit.''

Response: FCIC has revised section 9(a) to refer to the total destruction of the tobacco on the unit.

Comment: A reinsured company and an insurance service organization asked if the current requirement that notice be given without delay if any tobacco is damaged and will not be sold through an auction warehouse was removed intentionally from section 11.

Response: Section 14(a)(2) of the Basic Provisions states that ''* * * you must * * * give us notice within 72 hours of your initial discovery of damage * * *'' FCIC believes this requirement is substantially the same as requiring a notice ''without delay,'' so the latter requirement of section 11 was removed in the proposed rule.

Comment: Two reinsured companies and an insurance service organization recommended adding the phrase ''containing at least two rows'' after the phrase ''at least 5 feet wide'' in section 11(a). Commenters stated that a representative sample of 5 feet could have only one row in a sample where tobacco is planted in greater than 30 inch rows.

Response: FCIC has amended the provision accordingly.

Comment: Two reinsured companies and an insurance organization recommended that the word ''resulting'' be added in section 12(b)(2) and the reference ''section 12(b)(2)'' be deleted from section 12(b)(3) because reference to the previous item by number is unnecessary.

Response: The recommendations do not add any additional clarification to the provision. Therefore, no change has been made.

Comment: Two reinsured companies and an insurance service organization recommend removing the words ''acceptable production records'' from section 12(c)(1)(D), if these words relate to other APH references in these provisions.

Response: As stated in earlier responses, section 12(c)(1)(D) will only apply if annual production reports are required by the Special Provisions and the provision has been so clarified.

Comment: Two reinsured companies and an insurance service organization expressed concern that section 12(c)(1)(iii) of these provisions allows the insured to defer settlement and wait for a later, generally lower appraisal.

Response: Section 12(c)(1)(iii) allows deferment of a claim only if the insurance provider agrees that representative samples can be left or if the insured elects to continue to care for the entire crop. In either case, if the insured does not provide sufficient care for the remaining crop, the original appraisal will be used. Therefore, no change has been made.

Comment: Two reinsured companies and an insurance service organization are opposed to any reference to the word ''carryover'' in section 12(g).

Response: Section 12(g) eliminates the adjustment of next year's production when the insurance provider agrees that any carryover or current years' tobacco has no market value due to an insured cause of loss. It also eliminates the opportunity to falsely report that the carryover and current years' tobacco have no value and thus increase the indemnity payment. This provision is consistent with the Farm Service Agency's requirement that tobacco having no value be destroyed. Therefore, no change has been made.

Comment: Two reinsured companies and an insurance service organization suggested that the requirement to renew a written agreement each year should be removed in section 13(d). Terms of the agreement should be stated in the agreement to fit the particular situation for the policy, or if no substantive changes occur from one year to the next, allow the written agreement to be continuous.

Response: Written agreements are temporary and intended to address unusual situations. If the condition creating a need for written agreement remains from year to year, it should be incorporated into the policy, the Special Provisions, or the actuarial documents. Therefore, no change has been made except that the provisions for written agreements have been moved to the Basic Provisions.

Comment: Two reinsured companies and an insurance service organization asked: (1) Why the Late Planting Agreement Option is no longer available; and (2) Why the late and prevented planting language provisions are not included in the proposed rule as they have been in other crops.

Response: A new section 13 has been added to provide for late planting coverage. Under section 14, prevented planting coverage will not be provided for guaranteed tobacco as set out in the Basic Provisions because the high cash value per acre and the hand labor required to transplant tobacco on relatively small acreage enables producers to plant sufficient acreage to maintain their production levels even under extremely adverse weather conditions that would prevent planting of most other crops.

In addition to the changes indicated above, FCIC has made the following changes:

1. Section 1—Removed definitions of ''days,'' ''FSA,'' ''final planting date,'' and ''USDA,'' because these definitions were moved to the Basic Provisions. Changed the definition of ''unit'' to ''basic unit.''

2. Section 12(b)—Revised for clarification. Also, added an example of an indemnity calculation for illustration purposes.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Guaranteed tobacco, Tobacco (guaranteed plan) endorsement.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401 and 457 as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 401 continues to read as follows:

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

2. Section 401.129 introductory paragraph is revised to read as follows:

§ 401.129 Tobacco (guaranteed plan) endorsement

The provisions of the Tobacco (Guaranteed Plan) Crop Insurance

Endorsement for the 1990 through the 1998 crop years are as follows:

* * * * *

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

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

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

4. Section 457.136 is added to read as follows:

§ 457.136 Guaranteed tobacco crop insurance provisions

The Guaranteed Tobacco Crop Insurance Provisions for the 1999 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

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Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Guaranteed Tobacco Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions.

Adequate stand. A population of live plants per unit of acreage that can be expected to produce at least your production guarantee.

Approved yield. The yield calculated in accordance with 7 CFR part 400, subpart G, if required by section 3(b) of these provisions.

Average value. For appraised production, the estimated value of all such production divided by the appraised pounds. For harvested production, the total value of such production divided by the harvested pounds.

Basic unit. In lieu of the definition in the Basic Provisions, a basic unit is all insurable acreage of an insurable type of tobacco in the county in which you have a share on the date of planting for the crop year and that is identified by a single FSA farm serial number at the time insurance first attaches under these provisions for the crop year.

Carryover tobacco. Any tobacco produced on the FSA farm serial number in previous years that remained unsold at the end of the most recent marketing year.

Discount variety. Tobacco defined as such under the provisions of the United States Department of Agriculture tobacco price support program.

Fair market value. The current year's tobacco season average market price for the applicable type of tobacco obtained from the average sale of tobacco through a market other than an auction warehouse.

Harvest. Cutting or priming and removing all insured tobacco from the field in which it was grown.

Hydroponic plants. Seedlings grown in liquid nutrient solutions.

Late planting period. In lieu of the definition in section 1 of the Basic Provisions, the period that begins the day after the final planting date for the insured crop and ends 15 days after the final planting date, unless otherwise specified in the Special Provisions.

Market price.

(a) For types 11, 12, 13, 14, 21, 22, 23, 31, 35, 36, 37, 42, 44, 54, and 55:

(1) The support price per pound for the insured type of tobacco as announced by the USDA for its tobacco price support program; or

(2) The current year's season average market price, when available; if not available because the insured type of tobacco has not been marketed in the area, the previous year's season average market price for the applicable insured type tobacco grown in the area for any crop year a tobacco price support program is not in effect.

(b) For types 32, 41, 51, 52, and 61, the current year's season average market price, when available; if not available because the insured type of tobacco has not been marketed in the area, the previous year's season average market price for the applicable insured type of tobacco grown in the area.

Planted acreage. Land in which tobacco seedlings, including hydroponic plants, have been transplanted by hand or machine from the tobacco bed to the field.

Pound. Sixteen ounces avoirdupois.

Priming. A method of harvesting tobacco by which each leaf is severed from the stalk as it matures.

Production guarantee (per acre). Either the number of pounds of tobacco for the tobacco type and classification shown on the county actuarial table, or the approved yield as provided in the Special Provisions, multiplied by the coverage level percentage you elect.

Replanting. In lieu of the definition in section 1 of the Basic Provisions, performing the cultural practices necessary to replace the tobacco plant, and then replacing the tobacco plant in the insured acreage with the expectation of producing at least the guarantee.

Season average market price. The simple average price paid by buyers for a tobacco type for all days sales occur at public markets during the tobacco sales season in the area in which the farm is located.

Support price. The average price per pound for the type of tobacco as announced by the USDA under its tobacco price support program, or, if there is no such program, as announced by FCIC.

Tobacco bed. An area protected from adverse weather in which tobacco seeds are sown and seedlings are grown until transplanted into the tobacco field by hand or machine.

2. Unit Division.

A unit will be determined in accordance with the definition of basic unit contained in section 1 of these Crop Provisions. The provision in the Basic Provisions regarding optional units are not applicable, unless specified by the Special Provisions.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) You must select only one price election and coverage level for each guaranteed tobacco type designated in the Special Provisions that you elect to insure.

(b) A production report, if required by the Special Provisions, must be filed in accordance with section 3(c) of the Basic Provisions.

4. Contract Changes.

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

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage.

In addition to the requirements of section 6 of the Basic Provisions, you must report any carryover tobacco from previous years on the acreage report.

7. Insured Crop.

In accordance with section 8 of the Basic Provisions, the insured crop will be any of the tobacco types designated in the Special Provisions, in which you have a share, that you elect to insure, and for which a premium rate is provided by the actuarial documents.

8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage under these crop provisions that is:

(a) Planted to a discount variety;

(b) Planted to a tobacco type for which no premium rate is provided by the actuarial documents;

(c) Planted in any manner other than as provided in the definition of ''planted acreage'' in section 1 of these Crop Provisions, unless otherwise provided by the Special Provisions or by written agreement; or

(d) Damaged before the final planting date to the extent that most producers of tobacco acreage with similar characteristics in the area would normally not further care for the crop, unless such crop is replanted or we agree that replanting is not practical.

9. Insurance Period.

In accordance with the provisions of section 11 of the Basic Provisions, insurance ceases at the earliest of:

(a) Total destruction of the tobacco on the unit;

(b) Weighing-in at the tobacco warehouse;

(c) Removal of the tobacco from the field where grown except for curing, grading, packing, or immediate delivery to the tobacco warehouse; or

(d) The calendar date for the end of the insurance period, which is:

(i) Types 11 and 12—November 30;

(ii) Type 13—October 31;

(iii) Type 14—October 15;

(iv) Types 31 and 36—February 28;

(v) Types 21, 35 and 37—March 15;

(vi) Types 22 and 23—April 15;

(vii) Type 32—May 15;
(viii) All other types—April 30.
10. Causes of Loss.
In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:
(a) Adverse weather conditions;
(b) Fire;
(c) Insects, but not damage due to insufficient or improper application of pest control measures;
(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;
(e) Wildlife;
(f) Earthquake;
(g) Volcanic eruption; or
(h) Failure of the irrigation water supply, if caused by a peril specified in section 10(a) through (g) that occurs during the insurance period.
11. Duties In The Event of Damage or Loss.
(a) In accordance with the requirements of section 14 of the Basic Provisions, any representative samples we may require of each unharvested tobacco type must be at least 5 feet wide (at least two rows), and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until after our inspection.
(b) If tobacco types 11, 12, 13, or 14 are insured and you have filed a notice of damage, you also must leave all tobacco stalks and stubble intact for our inspection. The stalks and stubble must not be destroyed until we give you written consent to do so or until 30 days after the end of the insurance period, whichever is earlier.
12. Settlement of Claim.
(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:
(1) For any optional unit, we will combine all optional units for which such production records were not provided; or
(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.
(b) In the event of loss or damage covered by this policy, we will settle your claim by:
(1) Multiplying the insured acreage by its respective production guarantee, by type if applicable;
(2) Multiplying each result in section 12(b)(1) by the respective price election, by type if applicable;
(3) Totaling the results of section 12(b)(2) if there are more than one type;
(4) Multiplying the total production to count (see section 12(c)), for each type if applicable, by its respective price election;
(5) Totaling the results of section 12(b)(4), if there are more than one type;
(6) Subtracting the results of section 12(b)(4) from the results of section 12(b)(2) if there is only one type or subtracting the results of section 12(b)(5) from the result of section 12(b)(3) if there are more than one type; and
(7) Multiplying the result of section 12(b)(6) by your share.
For example:
You have 100 percent share in 1 acre of type 35 (dark air cured) guaranteed tobacco in the unit, with a 2,000 pounds per acre guarantee and a price election of $2.00 per pound. You are only able to harvest 500 pounds. Your indemnity would be calculated as follows:
(1) 1.0 acre × 2,000 pounds = 2,000 pounds guarantee;
(2) 2,000 pounds × $2.00 price election = $4,000.00 value of guarantee;
(4) 500 pounds × $2.00 price election = $1,000.00 value of production to count;
(6) $4,000.00 − $1,000.00 = $3,000.00 loss; and
(7) $3,000 × 100 percent = $3,000 indemnity payment.
(c) The total production to count (pounds of appraised or harvested production multiplied by the applicable price) for all insurable acreage on the unit will include:
(1) All appraised production as follows:
(i) Not less than the production guarantee per acre for the unit for any acreage:
(A) That is abandoned;
(B) Put to another use without our consent;
(C) That is damaged solely by uninsured causes;
(D) For which you fail to provide production records, if required by the Special Provisions, that are acceptable to us; or
(E) Of types 11, 12, 13, or 14 when the stalks and stubble have been destroyed without our consent;
(ii) Production lost due to uninsured causes.
(iii) Potential production on insured acreage that you intend to put to another use or abandon with our consent, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:
(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The value of production to count for such acreage will be the number of pounds harvested or appraised production multiplied by the support price taken from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or
(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and
(2) All harvested production from insurable acreage.
(d) Mature tobacco production that is damaged by insurable causes will be adjusted for quality based on the USDA Official Standard Grades for the insured type if it has an average value less than the market price, as follows:
(1) Divide the average value of the damaged appraised and/or harvested production by the market price;
(2) Multiply the result in section 12(d)(1) (not to exceed 1.0) by the number of pounds of damaged appraised and/or harvested tobacco; and
(3) Multiply the product by your price election.
If no market price has been established for the grade of the damaged tobacco, a market price will be imputed by reducing the lowest available market price by 20 percent for each grade that the production falls below the grade for which such lowest market price is available.
(e) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be given the opportunity to inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed. Failure to provide us the opportunity to inspect such tobacco may result in rejection of any claim for indemnity.
(f) If we consider the best offer you receive for any such tobacco to be inadequate, we may obtain additional offers on your behalf.
(g) Once we agree that any carryover or current year's tobacco has no market value due to insured causes, you must destroy it and it will not be considered production to count. If you refuse to destroy such tobacco, we will include it as production to count and value it at the support price.
13. Late Planting.
In lieu of late planting provisions in the Basic Provisions regarding acreage initially planted after the final planting date, insurance will be provided for acreage planted to the insured crop after the final planting date as follows:
(a) The production guarantee (per acre) for each type planted during the late planting period will be reduced by:
(1) One percent (1%) for the 1st through the 10th day; and
(2) Two percent (2%) for the 11th through the 15th day;
(b) The premium amount for insurable acreage planted to the insured crop after the final planting date will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for acreage planted after the final planting date exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage).
14. Prevented Planting.
The prevented planting provisions in the Basic Provisions are not applicable to guaranteed tobacco.

Signed in Washington, D.C., on June 19, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

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