

**DEPARTMENT OF AGRICULTURE****Federal Crop Insurance Corporation****7 CFR Parts 435 and 457**

RIN 0563-AB47

**Tobacco (Quota Plan) Crop Insurance Regulations; and Common Crop Insurance Regulations; Quota 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 quota 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 (quota plan) crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current tobacco (quota plan) crop insurance regulation 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 for 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. Thus, 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. 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 Tuesday, May 13, 1997, FCIC published a notice of proposed rulemaking in the **Federal Register** at 62 FR 26248-26252 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.156, Quota 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 quota tobacco found at 7 CFR part 435 (Tobacco (Quota Plan) Crop Insurance Regulations). FCIC also amends 7 CFR part 435 to limit its effect to the 1985 through 1998 crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 510 signed petitions were received from North Carolina and Virginia tobacco producers, and 88 comments were received from an insurance service organization and reinsured companies. The comments received and FCIC's responses are as follows:

*Comment:* Two reinsured companies and an insurance service organization recommended that the definition of "amount of insurance" be revised to read, "the dollar amount determined by multiplying the insured poundage quota by the current year's support price or the percentage of the current year's support price you select." This revision addresses the possibility of insureds selecting price elections of less than 100 percent.

*Response:* FCIC agrees with the comment and has amended the definition accordingly. FCIC also has revised this definition to address the possible reduction in the amount of

insurance for late planted acreage in accordance with section 14.

*Comment:* An insurance service organization recommended that FCIC either revise or delete the definition of "approved yield." The commenter mentioned that since quota 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 quota tobacco support price program is discontinued and quota 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 made the following recommendations to revise the definition of "effective poundage marketing quota": (1) Remove the words "minus the amount of any carryover tobacco" because crop insurance is designed to cover the tobacco crop actually grown the current crop year, and the restriction of yield times acres in the definition of "insured poundage quota" would take care of any allowance the producer made for carryover tobacco; (2) Clarify whether any additional poundage the producer intends to produce must be leased or if it can be grown without any marketing quota; (3) Add language to the definition of "effective poundage marketing quota" from section 7(b), which states that effective poundage marketing quota may not include any tobacco that would be subject to a marketing quota penalty under the United States Department of Agriculture (USDA) Tobacco Marketing Quota Regulations; and (4) Revise the definition to exclude the word "county" because the farm marketing quota is established by the Farm Service Agency (FSA) on a Farm Serial Number (FSN) basis.

*Response:* (1) Although, producers will normally reduce the number of acres grown in the current crop year to account for carryover production from the prior years, they may instead elect to reduce inputs (fertilizer, etc.), thereby producing fewer pounds per acre. To maintain the appropriate relationship between the number of planted acres and the effective poundage marketing quota, the amount of any carryover production should be removed from the

effective poundage marketing quota. Therefore, no change has been made. (2) FCIC agrees with the recommendation and has clarified the definition of "effective poundage marketing quota" to include any additional (above quota) poundage as allowed by the USDA Tobacco Marketing Quota Regulations. Under current (FSA) procedures, a minimal percentage of additional poundage is allowed to be marketed. (3) FCIC agrees and has revised the definition of "effective poundage marketing quota" accordingly. (4) The definition has been clarified to refer to the FSA office for the county and the effective poundage marketing quota for the FSN.

*Comments:* A reinsured company and an insurance service organization expressed concerns 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 necessarily 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 quota tobacco. If a producer is following practices currently not recognized as acceptable by 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 in response to this comment, except that the definition of "good farming practices" has been moved to the Basic Provisions.

*Comments:* A reinsured company and an insurance service organization recommended revising the definition of "harvest" to include a 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 amount of insurance 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 the

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 the requirement 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 in the final rule provisions.

*Comments:* A reinsured company and an insurance service organization noted that the definition of "harvest" refers to the phrase "removing tobacco from the field." They believe this is a determination of when coverage ceases, which is already included in section 9(c) of these provisions.

*Response:* Definitions are included in the crop provisions for clarification of policy provisions. The definition of harvest is needed because this term and its opposite "unharvested" are used repeatedly in section 12 (Settlement of Claim) (redesignated as section 13). The insurance period is defined in section 9 (redesignated as section 10). When the crop is harvested does not solely determine when coverage ceases. Therefore, no change has been made.

*Comments:* An insurance service organization asked why the phrase "the average auction price \* \* \*" in the definition of "market price" was changed to "the previous years' season average price published by National Agricultural Statistics Service \* \* \*"

*Response:* The phrase was changed for clarification. In practice the "average auction price" has been interpreted consistently as the previous years' season average price published by National Agriculture Statistics under the current crop provisions. Therefore, no change has been made.

*Comments:* An insurance service organization recommended deleting "marketing window" from the definition of "practical to replant." The commenters stated that quota 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 quota 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.

*Comments:* 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 quota," for clarity.

*Comments:* An insurance service organization recommended that the definition of "support price" be amended to read "type 31 tobacco" since type 31 is the only type of tobacco that is insurable under these provisions.

*Response:* FCIC believes that the definition is clearly stated. The term "type" is written for the flexibility of insuring other types of tobacco if designated in the Special Provisions.

*Comment:* A reinsured company and an insurance service organization recommended moving the definition of "unit" to section 2 for consistency.

*Response:* All policy definitions are contained in section 1 for uniformity. Therefore, no change has been made in this regard. FCIC has changed the term "unit" to "Basic Unit," however, to conform to recent changes in the Basic Provisions.

*Comments:* An insurance service organization and 510 growers recommended that the unit division guidelines of these provisions be the same as currently specified for Guaranteed Tobacco. Those provisions define basic units by share and optional units by Farm Serial Number (FSN). Commenters believe that this change would resolve the current conflict between basic units (by share) as defined for Catastrophic Risk Protection (CAT) and basic units (by FSN) for buy-up policyholders.

*Response:* FCIC acknowledges that adopting the unit division rules contained in the Common Crop Insurance Policy for quota tobacco would resolve the conflict between unit definition for catastrophic coverage and additional coverage that now exists.

However, the current unit definition for quota tobacco was adopted beginning with the 1985 crop year to resolve a vulnerability that exists in this program. Prior to that time, units were defined similarly for guaranteed and quota tobacco. Consider a landlord who share rents a portion of the quota to a tenant and also produces quota tobacco on the Farm Serial Number (FSN). Under the basic unit definition of the Common Crop Insurance Policy, two basic units are established for the landlord (a 100 percent share and the share with the tenant). One basic unit is established for the tenant. Under the definition contained in the Quota Tobacco Crop Provisions, one basic unit is established for each producer by FSN.

The insured quantity under these provisions is the insured marketing quota, a quantity that is independent of acreage if a sufficient number of acres are planted. Premium is charged only on the amount of insured marketing quota. Under the "Basic unit" definition contained in the Quota Tobacco Crop Provisions, the landlord's share of all production from the FSN is counted against the landlord's share of the quota. Under the "Basic unit" definition contained in the Common Crop Insurance Provisions, there is greater opportunity to plant additional acreage and manipulate production within the FSN so that the entire quota may be produced and sold, yet a loss be paid on one unit. However, premium will not be collected on the additional acreage.

Due to a large number of comments on this particular issue, FCIC will review any additional information that may support a different approach to establishing units for quota tobacco. All such information must specifically address the concern described herein and demonstrate how it will be alleviated by the proposed unit definition. Pending the submission of such information, FCIC will implement the basic unit definition contained in the proposed rule and will consider any changes at such date as the information may be available. If warranted, the unit definition can be changed for the 2000 or a subsequent crop year.

*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 quota tobacco support program is changed or eliminated, it will be necessary to revise several provisions of the policy.

*Response:* Section 3 of these provisions requires annual production reports only when required by the Special Provisions. The current method

of establishing farm yields will continue for the 1998 crop year. If the quota 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 no tobacco support program, FCIC will announce the average price per pound for the type of tobacco.

*Comments:* A reinsured company and an insurance service organization recommended deleting the word "carryover" in section 6(a). 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 maintain the appropriate relationship between the number of planted acres and the effective poundage marketing quota, the amount of any carryover production should be removed from the effective poundage marketing quota. Therefore, no change has been made.

*Comments:* A reinsured company and an insurance service organization recommended that section 6(a) be revised to remove the phrase, "once submitted, you may not revise the acreage report," because section 6(c), now 6(d), of the Basic Provisions already states, "\* \* \*you may not revise this report after the acreage reporting date without our consent." The commenter inquired about the impact of changes in information between the time an acreage report is submitted and the actual acreage reporting date. The commenter stated that, if this sentence remains in the crop provisions, tobacco insureds will wait until the last day to report acreage.

*Response:* FCIC agrees that section 6(d) of the Basic Provisions is adequate and has deleted this language from the Crop Provisions.

*Comments:* A reinsured company and an insurance service organization recommended revising section 7(a) to read "type 31 tobacco designated in the Special Provisions, in which you have a share." Commenters noted that the current quota policy refers to only type 31 tobacco.

*Response:* FCIC agrees that the current quota tobacco policy only refers to type 31 tobacco. However, section 7(a) (redesignated as section 8(c)) is intended to allow the flexibility of insuring other types of tobacco if they are designated in the Special Provisions. Therefore, FCIC has not revised section 7(a). FCIC has changed section 12(d) (redesignated as section 13(d)) to refer to "U.S. Official Standard Grades for the insured type of tobacco," rather than "U.S. Official Standard Grades, Burley Tobacco, U.S. Type 31," for consistency.

*Comments:* 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) (redesignated as section 9(c)) only references a method of planting. Therefore, section 9(c) does not authorize written agreements for types not rated.

*Comments:* A reinsured company and an insurance service organization questioned 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) (redesignated as section 10(a)) to refer to 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 "\* \* \* 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 that section 12(b)(1) reference price elections less than 100 percent of the support price. The commenters indicated that the language as written could be taken to mean that the insured poundage quota will be multiplied by 100 percent of the support price even for CAT policies.

*Response:* FCIC agrees with the recommendation and has amended section 12(b)(1) (redesignated as section 13(b)(1)) to read "multiplying the insured poundage quota by your elected percentage of the current year's support price."

*Comments:* Two reinsured companies and an insurance service organization recommended the following: (1) Add the word "resulting" in section 12(b)(2); and (2) Remove the reference to "section 12(b)(2)" from section 12(b)(3) because it is not necessary to reference the previous item by number.

*Response:* The recommendations do not add any additional clarification to the provision. Therefore, no changes have been made.

*Comments:* Two reinsured companies and an insurance service organization recommended 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) (redesignated as section 13(c)(1)(D)) will only apply if annual production reports are required by the Special Provisions, and the provision has been so clarified.

*Comments:* 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) (redesignated as section 13(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, appraisals for uninsured causes of loss may be made. Therefore, no change has been made.

*Comments:* Two reinsured companies and an insurance service organization expressed concern that there are no instructions in section 12(c) and (d) on how to value appraised production.

*Response:* Section 12(c)(1)(iv) (redesignated as section 13(c)(1)(iii)(A)) has been rewritten to more clearly specify the valuation of harvested and appraised production.

*Comments:* Two reinsured companies and an insurance service organization opposed any reference to the word "carryover" in section 12(h).

*Response:* Section 12(h) (redesignated as section 13(h)) eliminates the adjustment of next year's quota 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 carryover and current years' tobacco has no value and thus increase the indemnity payment. This provision is consistent with FSA's requirement that tobacco having no value be destroyed. Therefore, no change has been made.

*Comments:* Two reinsured companies and an insurance service organization suggested that requiring a written agreement to be renewed each year should be removed in section 14(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 among producers it should be incorporated into the policy, the Special Provisions, or the actuarial documents. Therefore, no change has been made, except the provisions for written agreements have been moved to the Basic Provisions.

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

*Response:* A new section 14 has been added to provide for late planting coverage. Under the new section 15, prevented planting coverage will not be provided for quota 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 effective poundage marketing quota even under extremely adverse 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 7 (Annual Premium). Added to modify section 7 of the Basic Provisions to calculate premium, in part, based on the producer's amount of insurance. As defined in these crop provisions, the definition of "amount of insurance" takes into consideration the insured poundage quota, current year's

support price, and late planting adjustments unique to quota tobacco.

3. Section 12(b) (redesignated as Section 13(b)). Revised for clarification. Also, added an example of an indemnity calculation for illustration purposes.

#### **List of Subjects in 7 CFR Parts 435 and 457**

Crop insurance, Quota tobacco, Tobacco (quota plan) crop insurance regulations.

#### **Final Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR part 435) and the Common Crop Insurance Regulations (7 CFR part 457) as follows:

#### **PART 435—TOBACCO (QUOTA PLAN) CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1985 THROUGH 1998 CROP YEARS**

1. The authority citation for 7 CFR part 435 is revised to read as follows:

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

2. The part heading is revised as set forth above.

#### **Subpart Heading [Removed]**

3. The subpart heading "Subpart—Regulations for the 1985 and Succeeding Crop Years" is removed.

4. Section 435.7 is amended by revising the introductory text of paragraph (d) to read as follows:

#### **§ 435.7 The application and policy.**

\* \* \* \* \*

(d) The application is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Tobacco (Quota Plan) Insurance Policy for the 1985 through 1998 crop years are as follows:

\* \* \* \* \*

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

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

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

6. Section 457.156 is added to read as follows:

#### **§ 457.156 Quota tobacco crop insurance provisions.**

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

FCIC policies:

#### **United States Department of Agriculture**

##### *Federal Crop Insurance Corporation*

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

##### **Quota Tobacco Crop Insurance Provisions**

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

##### **1. Definitions.**

**Amount of insurance.** The dollar amount determined by multiplying the insured poundage quota by the current year's support price or the percentage of the current year's support price you select less any adjustments for late planting as specified in section 14.

**Approved yield.** The yield calculated in accordance with 7 CFR part 400, subpart G, if required by the Special Provisions.

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

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

**County.** In lieu of the definition in the Basic Provisions, county is defined as the county or other political subdivision of a state shown on your accepted application including any land identified by a FSA farm serial number for such county but physically located in another county.

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

**Effective poundage marketing quota.** The farm marketing quota as established and recorded by the local FSA office for the land identified by the FSA farm serial number plus any additional poundage, as allowed by the USDA Tobacco Marketing Quota Regulations, that you intend to produce for each unit in that crop year minus the amount of any carryover tobacco. The term may not include any tobacco that would be subject to a marketing quota penalty under USDA Tobacco Marketing Quota Regulations. For any crop year in which there are no effective USDA Tobacco Marketing Quota Regulations, the effective poundage marketing quota will be the pounds obtained by multiplying the applicable approved yield per acre by the lower of the reported or insured acreage on the basic unit, unless otherwise provided by the actuarial documents.

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

**Farm yield.** The yield per acre used by FSA to establish the effective poundage marketing

quota for land identified by a FSA farm serial number, unless we have established a yield for that land in the actuarial documents.

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

**Hydroponic plants.** Seedlings grown in liquid nutrient solutions.

**Insured poundage quota.** The lesser of:

(1) The product (in pounds) obtained by multiplying the effective poundage marketing quota for the land identified by a FSA farm serial number by your selected coverage level; or

(2) The farm yield or approved yield, as applicable, adjusted for late planting in accordance with section 14, if applicable, multiplied by the appropriate number of insured acres and by your selected coverage level.

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

**Market price.** The previous years' season average price published by National Agricultural Statistics Service for the applicable type of tobacco in the area.

**Marketing year.** The marketing year published by National Agricultural Statistics Service for the applicable type of tobacco in the area.

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

**Pound.** Sixteen ounces avoirdupois.

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

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

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

##### **2. Unit Division.**

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

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

In addition to section 3 of the Basic Provisions, a production report, if required by the Special Provisions, must be filed in accordance with section 3(c) of the Basic Provisions.

##### **4. Contract Changes.**

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

##### **5. Cancellation and Termination Dates.**

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

#### 6. Report of Acreage.

In addition to the requirements of section 6 of the Basic Provisions:

(a) You must report the effective poundage marketing quota and specify any amount of carryover tobacco, if applicable.

(b) You must provide a copy of any written lease agreement between you and any landlord or tenant showing the amount of the effective poundage marketing quota allocated to you. The written lease agreement must:

(1) Identify all other persons sharing in the effective poundage marketing quota; and

(2) Be submitted to your local insurance provider's office on or before the acreage reporting date.

(c) In the event of a loss, if the written lease agreement has been submitted timely, we will distribute the effective poundage marketing quota in accordance with the terms of the written lease agreement. If the written lease agreement is not submitted timely, we will prorate the effective poundage marketing quota across the FSA farm serial number to all insured and uninsured persons based on planted acres within land identified by the FSA farm serial number.

#### 7. Annual Premium.

In lieu of paragraph (c) of section 7 of the Basic Provisions, your annual premium amount is determined by either:

(a) Multiplying the amount of insurance by the rate, your share, and any premium adjustment percentages that may apply; or

(b) If no support price program exists, multiplying the approved yield by the coverage level, the support price, the acres, your share, and any premium adjustment percentages that may apply.

#### 8. Insured Crop.

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

(b) In addition to section 8 of the Basic Provisions, the crop insured will not include any poundage above the effective poundage marketing quota or the insured poundage quota.

#### 9. Insurable Acreage.

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

(a) Planted to a discount variety;

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

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

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

#### 10. Insurance Period.

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

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

(b) Weighing-in at the tobacco warehouse;

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

(d) The February 28 immediately following the normal harvest period.

#### 11. Causes of Loss.

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(a) Adverse weather conditions;

(b) Fire;

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

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

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if caused by a peril specified in section 11 (a) through (g) that occurs during the insurance period.

#### 12. Duties In The Event of Damage or Loss.

In accordance with the requirements of section 14 of the Basic Provisions, any representative samples we may require of each unharvested tobacco type must be at least 5 feet wide (at least two rows) and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until after our inspection.

#### 13. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

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

(1) Multiplying the insured poundage quota by your elected percentage of the current year's support price.

(2) Subtracting the total value of the production to be counted (see section 13(c)) from the amount of insurance; and

(3) Multiplying the result in section 13(b)(1) by your share. For example:

You have 100 percent share of type 31 quota tobacco in the unit, with an insurable poundage quota of 1,000 pounds and a support price of \$1.73 per pound. The amount of insurance equals \$1730.00 (1,000 insurable poundage quota  $\times$  \$1.73 support price). You are only able to harvest 600 pounds. The value of the total production to count equals \$1038.00 (600 harvested pounds  $\times$  \$1.73 support price). Your indemnity would be calculated as follows:

(1) \$1730.00 (amount of insurance) – \$1038.00 (value of the total production to count) = \$692.00 loss

(2) \$692.00 loss  $\times$  100 percent = \$692.00 indemnity payment

(c) The value of the total production to count (pounds of appraised or harvested production) for all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the amount of insurance per insured acre for the unit for any acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

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

(D) For which you fail to provide acceptable production records, if required by the Special Provisions;

(ii) The value of production lost due to uninsured causes which is the number of pounds of such production multiplied by the support price;

(iii) The value of potential production on unharvested insured acreage that you intend to put to another use with our consent, if you and we agree on the number of pounds of such production to count which will be multiplied by the support price. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may allow you to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The value of production to count for such acreage will be the number of pounds of harvested or appraised production taken from samples at the time harvest should have occurred multiplied by the support price. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, the value of production to count will be our appraisal made prior to giving you consent to put the acreage to another use multiplied by the support price); or

(B) If you elect to continue to care for the crop, the value of production to count for the acreage will be the harvested production, or our reappraisal multiplied by the support price if additional damage occurs and the crop is not harvested;

(2) All harvested production from insurable acreage multiplied by:

(i) The average price for any tobacco sold on a warehouse floor; and

(ii) Fair market value for all other tobacco sold or not sold.

(d) Mature tobacco production that is damaged by insurable causes will be adjusted for quality based on the USDA Official Standard Grades for the insured type of tobacco.

(e) To enable us to determine the fair market value of tobacco not sold through auction warehouses, you must give us the opportunity to inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed. Failure to provide us the opportunity to inspect such tobacco may result in rejection of any claim for indemnity.

(f) If we consider the best offer you receive for such tobacco to be inadequate, we may obtain additional offers on your behalf.

(g) Once we agree that any carryover or current year's tobacco has no market value

due to insured causes, you must destroy it. If you disagree and refuse to destroy the tobacco with no value, we will determine the value and count it as production to count.

#### 14. Late Planting.

(a) In lieu of late planting provisions in the Basic Provisions regarding acreage initially planted after the final planting date, insurance will be provided for acreage planted to the insured crop after the final planting date as follows:

(1) For each acre or portion thereof planted during the first 10 days after the final planting date, the farm yield will be reduced by 1 percent per day; and

(2) For each acre or portion thereof planted during the 11th through the 15th day after the final planting date, the farm yield will be reduced by 2 percent per day.

(b) If you plant enough acreage to fulfill the effective poundage marketing quota, there will be no reduction in the insured poundage quota as a result of any late planted acreage.

#### 15. Prevented Planting.

The prevented planting provisions in the Basic Provisions are not applicable to quota tobacco.

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

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

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BILLING CODE 3410-08-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 21 and 29

[Docket No. SW002; Special Condition No. 29-002-SC]

#### Special Conditions: Eurocopter France Model AS-365 N3 "Dauphin" Helicopters, Full Authority Digital Engine Control (FADEC)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special condition; request for comments.

**SUMMARY:** This special condition is issued for the Eurocopter France Model AS-365 N3 "Dauphin" helicopters. These helicopters will have a novel or unusual design feature associated with the Full Authority Digital Engine Control (FADEC). The applicable airworthiness regulations do not contain adequate or appropriate safety standards to protect systems that perform critical functions from the effects of high-intensity radiated fields (HIRF). This special condition contains the additional safety standards that the Administrator considers necessary to ensure that critical functions of systems will be maintained when exposed to HIRF.

**DATES:** The effective date of this special condition is June 17, 1998. Comments must be received on or before August 25, 1998.

**ADDRESSES:** Comments on this special condition may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. SW002, Fort Worth, Texas 76193-0007 or deliver in duplicate to the Office of the Regional Counsel, Southwest Region, at 2601 Meacham Blvd., Fort Worth, Texas 76137. Comments must be marked: Rules Docket No. SW002. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 4:00 p.m.

#### FOR FURTHER INFORMATION CONTACT:

Carroll Wright, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193-0111; telephone 817-222-5120, fax 817-222-5961.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, notice and opportunity for prior public comment are unnecessary since the substance of this special condition has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making this special condition effective upon issuance.

#### Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special condition may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Special Condition must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Rules Docket No. SW002" The postcard will be date

stamped and returned to the commenter.

#### Background

On September 1, 1997, Eurocopter France applied for an amendment to Type Certificate (TC) No. H10EU to include the new Model AS-365 N3 "Dauphin" helicopter. The Model AS-365 N3 "Dauphin" helicopter, which is a derivative of the Model AS-365 N2 helicopter that is currently approved under TC No. H10EU, is a transport category A and B helicopter powered by two Turbomeca Arriel 2C engines with FADEC. The Turbomeca Arriel 1C2 engine has been replaced with the Turbomeca Arriel 2C engine, which includes a digital engine control system.

#### Type Certification Basis

Under the provisions of 14 CFR § 21.101, Eurocopter France must show that the Model AS-365 N3 "Dauphin" helicopter meets the applicable provisions of the regulations incorporated by reference in TC No. H10EU or the applicable regulations in effect on the date of application for the change to the Model No. AS-365 N3. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in H10EU are as follows: § 21.29 and 14 CFR part 29, effective February 1, 1965, plus Amendments 29-1 through 29-11. In addition, the applicant elected to comply with 14 CFR part 29 amendments 29-12 through 29-16, except for 14 CFR part 29.397 concerning the rotorbrake. The certification basis also includes certain special conditions and equivalent safety findings that are not relevant to this special condition.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these helicopters because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model AS-365 N3 helicopter must comply with the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92-574, the "Noise Control Act of 1972."

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).