

DEPARTMENT OF AGRICULTURE**Federal Crop Insurance Corporation****7 CFR Parts 400, 407 and 457**

RIN 0563-AB85

General Administrative Regulations, Subpart T—Federal Crop Insurance Reform, Insurance Implementation, Regulations for the 1999 and Subsequent Reinsurance Years; Group Risk Plan of Insurance Regulations for the 2001 and Succeeding Crop Years; and the Common Crop Insurance Regulations, Basic Provisions**AGENCY:** Federal Crop Insurance Corporation, USDA.**ACTION:** Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend subpart T in the General Administrative Regulations (7 CFR part 400, subpart T); the Group Risk Plan of Insurance Regulations (7 CFR part 407); and the Common Crop Insurance Regulations, Basic Provisions (7 CFR part 457). The intended effect of this action is to make revisions mandated by the Federal Crop Insurance Act (Act), as amended by the Agricultural Risk Protection Act of 2000 (ARPA), and to make other changes and clarify existing policy provisions to better meet the needs of the insured.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business October 18, 2002 and will be considered when the rule is to be made final. Comments on the information collection requirements must be received on or before November 18, 2002.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133-4676. Comments titled "Basic Provisions" may also be sent via the Internet to DirectorPDD@rm.fcic.usda.gov. A copy of each response will be available for public inspection and copying from 7:00 a.m. to 4:30 p.m., CDT, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the Cost-Benefit Analysis, contact Janice Nuckolls, Insurance Management Specialist, Research and Development, Product Development Division, Risk Management Agency, at the Kansas City,

MO address listed above, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, it has been reviewed by the Office of Management and Budget (OMB).

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 changes in the rule will have positive potential benefits for insureds who do not engage in program abuse. The liberalized prevented planting provisions will be beneficial to two groups of producers. One group is made up of those who, under current provisions, would forgo the full prevented planting payment on a first crop in order to plant a second crop. Under the proposed rule, such producers will receive a reduced prevented planting payment to at least partially compensate for pre-planting costs incurred on the first crop. The second group will be made up of producers who change planting decisions and plant a second crop that would not have been planted under current provisions. In taking this action, these individuals will reveal that they perceive a positive economic benefit relative to the options offered them by current provisions. Effects of the prevented planting provisions on total program-wide prevented planting payments and the cost of insurance are indefinite. Whether those payments and costs increase or decrease and the magnitude of any such change will depend on the proportion of reduced prevented planting payments made under the proposed rule that are taken by producers who would have taken a full versus zero payment under current provisions. Double insurance provisions of the proposed rule reduce the incentive for program abuse that is perceived to have occurred under current provisions. New sanctions for failure to report required information or for misreporting material information should also reduce program abuse. Over time, if program abuse is decreased, premium reductions may result. Such reductions would be beneficial to producers who do not abuse the program. However, because the amount of abuse that currently occurs cannot be measured with existing data, immediate rate adjustments are not appropriate. Rather, such adjustments should be made when adequate loss experience is

available to support actuarial calculations that satisfy appropriate credibility standards.

Paperwork Reduction Act of 1995

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the information collection and record keeping requirements included in the proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send your written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for RMA, Washington, DC 20503. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public concerning our proposed information collection and record keeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission responses.)

The collections of information for this rule revise the Multiple Peril Crop Insurance Collections of Information 0563-0053, which expire February 28, 2005.

Title: Multiple Peril Crop Insurance (Common Crop Insurance Regulations, Basic Provisions and GRP).

Abstract: This rule amends the existing General Administrative Regulations, 7 CFR part 400, subpart T—Federal Crop Insurance Reform, Insurance Implementation; Group Risk Plan of Insurance Regulations, 7 CFR part 407, and the Common Crop Insurance Regulations, 7 CFR part 457.

Subpart T is revised to remove reference to the term "limited coverage" and to revise the definition of "approved yield" in conformance with the amendments to the Act.

The Group Risk Plan of Insurance Regulations are revised to: (1) Clarify which policy is in effect when a producer inadvertently has more than one policy in effect; (2) clarify that procedures and handbooks established by FCIC will be used to administer the policy and if there is a conflict between these documents and the terms of the policy, Act or regulations, the terms of the policy, Act or regulations will control; (3) add and revise definitions and provisions for clarification and as needed to implement the amendments to the Act; (4) add new sanctions for misreporting acreage information; (5) add provisions to require insurance be under one policy when the same people are involved in multiple farming operations or are in the same family or household; (6) consolidate the provisions in the policy regarding the effect of failure to timely pay premium or administrative fees, allow avoidance to the beginning of the crop year when a person fails to make payments under the terms of a payment agreement, and specify that premium must be paid by the termination date even if a claim is outstanding, and that failure to do so will result in termination and ineligibility in accordance with the terms of the policy; (7) allow a written agreement to remain in place for up to four years unless conditions under which it was issued change; (8) clarify that any USDA employee has access to the farm or records for the purpose of compliance efforts; (9) add provisions allowing review of loss determinations when there is an issue of whether or not "good farming practices" were followed; (10) delete provisions that allowed arbitration to resolve disputes between insurance providers and producers; (11) clarify provisions regarding collection of information on the application and require social security numbers for all persons having a substantial beneficial interest in the insured crop; (12) clarify that contract changes are effective when filed with the Office of the Federal Register and that they will be published on the RMA website; and (13) implement revisions to the Act regarding indemnities and premiums for multiple crops planted on the same acreage in a crop year.

The Common Crop Insurance Regulations are revised to: (1) Clarify which policy is in effect when a producer inadvertently has more than one policy in effect; (2) remove "good faith and reliance on misrepresentation" provisions. (3) Clarify that procedures and handbooks established by FCIC will be used to administer the policy and if there is a conflict between these

documents and the terms of the policy, Act or regulations, the terms of the policy, Act or regulations will control; (4) add definitions and provisions needed to insure acreage grown under an organic farming practice; (5) add definitions and provisions needed to implement provisions contained in the Federal Crop Insurance Act regarding multiple crops on the same acreage in the same crop year; (6) clarify provisions regarding collection of information on the application and require social security numbers for all persons having a substantial beneficial interest in the insured crop; (7) specify that premium must be paid by the termination date even if a claim is outstanding, and that failure to do so will result in termination and ineligibility in accordance with the terms of the policy; (8) allow retroactive policy avoidance when a person fails to make payments under the terms of a payment agreement; (9) add a requirement to provide supporting records of past production history when a claim is filed, and add sanctions when actual production history (APH) information has been misreported and results in a yield more than five percent different than the correct yield; (10) allow revision when reported yields are inconsistent with APH yields for other units or that are based in whole or in part on an amount of acreage less than 25 percent of the current acreage in the unit; (11) delete provisions allowing liberalization of policy provisions; (12) prohibit revision of prevented planting acreage reports after submission unless approved by the insurance provider; (13) add sanctions for misreporting information on the acreage report; (14) specify premium must be paid by the termination date even if a claim is outstanding, and that failure to do so will result in termination and ineligibility in accordance with the terms of the policy; (15) specify that acreage that has not been planted and harvested in one of the last three crop years will not be insured unless it was not planted in at least two of the previous three crop years to comply with a USDA program; (16) remove provision that allows insurance on acreage that has been prevented from being planted in the last 3 crop years; (17) add provisions to require insurance be under one policy when the same people are involved in multiple farming operations or are in the same family or household; (18) prohibit insurance for damage resulting from water contained or released on any acreage on which there is a water easement; (19) add provisions to allow coverage for losses

resulting from failure of irrigation facilities if failure is due to an insured cause; (20) require earlier notice of prevented planting; (21) restrict the amount of a prevented planting payment when acreage is hayed, grazed or otherwise harvested for animal feed prior to the calendar date for the end of the insurance period; (22) prohibit prevented planting coverage for any acreage on which any pasture or other forage crop is in place on the final planting date; (23) add provisions to allow a producer who has not grown a crop in a certain county and who obtains acreage in that county after the sales closing date to submit an intended acreage report within 10 days after acreage is obtained; (24) add provisions that will not allow a prevented planting benefit when a producer does not have remaining eligible acreage for the insured crop or remaining eligible non-irrigated acreage of another crop; (25) allow a written agreement to remain in place for more than one year unless conditions under which it was issued change, and require that the producer have at least four years of supporting records when requesting insurance for a crop, type, variety or practice not insurable in a county;

(26) add provisions allowing review of loss determinations when there is an issue of whether or not "good farming practices" were followed; (27) delete provisions that allowed arbitration to resolve disputes between insurance providers and producers; (28) specify that, if the producer received compensation from another party for a loss, the amount received from them, not to exceed the amount of indemnity, must be repaid to the insurance provider; (29) allow separate irrigated and non-irrigated units when borders can be discerned by changes in plant populations; (30) allow unit division for acreage grown under an organic farming practice; and (31) require producers to elect substitution of low APH yields on or before the sales closing date.

Purpose: The purpose of this proposed rule is to add provisions mandated by the Agricultural Risk Protection Act of 2000, and make other changes and clarify existing policy provisions to better meet the needs of the insured and the insurance company.

Burden statement: The information that FCIC collects will be used in offering crop insurance coverage, determining program eligibility, establishing a production guarantee, calculating losses qualifying for a payment, combating fraud, waste, and abuse, etc. The burden hours have increased because FCIC assumes more producers will obtain crop insurance

coverage to help protect their investments against risk and producers will be required to provide more documentation and records and notify the insurance provider more often.

Estimate of Burden: We estimate that it will take producers, a loss adjuster, and an insurance agent an average of 1 hour to provide the required information.

Respondents: Producers and insurance providers including their agents.

Estimated annual number of respondents: 1,310,527.

Estimated annual number of responses per respondent: 2.9.

Estimated annual number of responses: 3,818,865.

Estimated total annual burden on respondents: The total public burden for this proposed rule is estimated at 1,406,285 hours.

Record keeping requirements: FCIC requires production records to be kept for all years of the producer's actual production history. However, these records are retained as part of the normal business practice and FCIC's requirement does not place additional burden on insured producers. Therefore, FCIC is not estimating burden related to this record keeping requirement.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant 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 the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. 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. With respect to any action taken by FCIC under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any 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.

Background

FCIC proposes to amend the General Administrative Regulations, subpart T—Federal Crop Insurance Reform, Insurance Implementation, the Group Risk Plan of Insurance Regulations, and the Common Crop Insurance Regulations; Basic Provisions to implement program changes mandated by the Act, as amended by ARPA, and make other changes and clarify existing policy provisions to better meet the needs of the insured. Five significant changes are addressed by this rule: (1) Provisions are added to implement sections of ARPA that place limits on multiple insurance benefits in a single crop year. The provisions provide for insurance payment reductions when

two crops are planted on the same acreage in the same crop year and both sustain insurable losses; (2) Prevented planting provisions are modified in accordance with the provisions of ARPA to allow a second crop to be planted when the first crop is prevented from being planted. In this case, the prevented planting payment will be reduced by 65.0 percent; (3) Several provisions regarding program integrity are addressed. These include new tolerances for misreporting of information (e.g., a 5.0 percent error tolerance for acreage and yield reporting). In addition, a new sanction is added when any person with a substantial beneficial interest in an insured crop does not provide a social security or employer identification number. This new sanction will eliminate program vulnerability caused by persons changing entity names to avoid ineligibility or changing previously used production history; (4) Provisions allowing arbitration to be used to settle contract disputes are removed. Arbitration has been determined by some to be too expensive. In addition, arbitration was intended to resolve any dispute involving acreage determinations, approved yield calculations, determinations of production to count, or other factual determinations. However, in practice, it has been used to resolve all policy disputes, including policy interpretation; and (5) Provisions allowing insurance for organically grown crops are added. The provisions of ARPA direct RMA to include organic farming practices as "good farming practices," thereby making such crops insurable. The proposed changes are as follows:

1. FCIC proposes to amend subpart T to remove all references to limited coverage and revise the definition of additional coverage because there is no longer any practical distinction between limited and additional coverage. The definition of "approved yield" is revised to allow for adjustments in yields authorized by section 508(g)(4) of the Act.

2. FCIC proposes to amend the Group Risk Plan of Insurance Regulations (7 CFR part 407) as follows:

(a) Section 407.2(d) and (e)—Combine and specify that when a person applies for both a Catastrophic Risk Protection policy and an additional coverage policy for the same crop in the same county for the same crop year, and the person can demonstrate that multiple contracts of insurance were not the person's fault, the additional coverage policy will be in effect and the Catastrophic Risk Protection policy will

be canceled if: both policies are insured with the same insurance provider; or the policies are insured with different insurance providers and both insurance providers agree. Also specify that if both policies are additional coverage policies or both are Catastrophic Risk Protection policies, the policy with the earliest date of application will be in force, unless both policies are with the same insurance provider and the insurance provider agrees otherwise or both policies are with different insurance providers and both insurance providers agree otherwise;

(b) Section 407.6—Remove the “good faith reliance on misrepresentation” provisions because of the confusion surrounding the applicability of these provisions and to avoid the perception that FCIC was waiving the protection against the applicability of estoppel afforded it and permitting employees to bind FCIC with their errors;

(c) Section 407.9—Amend the first paragraph in the headings of both the “FCIC policies” and “Reinsured policies” sections to add a provision indicating procedures (including handbooks, manuals, and directives) issued by FCIC will be applied when administering the policy. This change allows introduction of procedures into arbitration and appeal proceedings. Also remove the provisions in the first paragraph in the “FCIC policies” section that indicates if the company cannot pay a loss it will be paid by FCIC and that no state guarantee fund will be liable to pay the loss, and place those provisions in the second paragraph in the “Reinsured policies” section. These provisions only apply to reinsured policies. In the third paragraph under the heading of “Both policies”, change the 55 percent reference for Catastrophic Risk Protection coverage to 45 percent. Also revise the following sections in § 407.9:

Section 1—Definitions—Add definitions of “agricultural commodity” and “cover crop,” for clarification as these terms are used in the provisions. Also add definitions of “double-crop,” “first crop” and “second crop” because they are used in the provisions that limit multiple insurance payments on the same acreage in the same crop year. Also add the definition of “sustainable farming practice” and revise the definition of “good farming practices” to include sustainable and organic farming practices to incorporate the changes made to the Act by ARPA and specify that if producers use farming practices that are not commonly used in the area, they should contact their crop insurance provider to determine if such practice is insurable. Revise the

definition of “catastrophic risk protection” to specify that coverage is equal to 65 percent of the expected county yield indemnified at 55 percent of the maximum protection per acre specified in the actuarial documents to comply with the requirements of the Federal Crop Insurance Act. Also revise the definition of “actuarial documents” to clarify that the information needed to determine the premium rate is contained in the actuarial documents and to add the RMA website address as a location of where the actuarial documents can be found. Add a definition of “substantial beneficial interest” to clarify the amount of interest needed and the status of spouses;

Section 3—Add provisions indicating an insured can elect not to insure acreage of a second crop when there is an insurable loss for planted acreage of a first crop, and to limit insurance on the third or subsequent crop on the same acreage for the same crop year. Delete provisions in section 3(d) because they have been combined with provisions contained in section 3(c);

Section 7—Clarify that it is the producer’s responsibility to accurately report all information and add new sanctions for misreporting acreage report information. Since the operation of the program is dependant on accurate reporting by producers, stronger sanctions are imposed to ensure that producers completely and accurately report material information. Revise the provisions to require insurance under one policy when the same people are involved in multiple farming operations or are in the same family or household. This will improve program integrity by preventing producers from forming multiple entities with the intent to insure acreage under separate policies to gain a disproportionate advantage;

Section 8—Add provisions that specify that, if the amount of premium and administrative fee the producer is required to pay for any acreage exceeds the liability for the acreage, coverage for those acres will not be provided;

Section 9—Revise provisions to allow certain written agreements to remain in place for more than one crop year. Add provisions indicating that supporting records for at least four years must be provided when a request is made to insure a crop, type, variety or practice that is not insurable in the county to ensure that the crop, type, variety, or practice can be used successfully before providing insurance;

Section 10—Add provisions to allow any USDA employee to have access to the insured crop and any records pertaining to the insurance because of

the changes in the Act that enhances the compliance efforts by involving other USDA agencies. Provisions are added indicating that failure to retain required records will result in no indemnity being due and premium still being owed because the need for records are an integral part of the policy because eligibility and premium and indemnities are based on such records. Without these records, program integrity cannot be maintained;

Section 13—Add provisions indicating which policy remains in force when a producer inadvertently obtains two policies on the same crop in the same county for the same crop year;

Section 14—Clarify that a producer may not recover attorneys fees or other charges, or any punitive, compensatory or any other damages except contractual damages, except as authorized in 7 CFR 400.352(b)(4);

Section 15—Revise provisions in both the FCIC policies and Reinsured policies by removing provisions regarding payment of compensatory, punitive or other damages, attorneys fees, or other charges because this language is clarified in section 14(c);

Section 16—Add provisions allowing review of loss determinations regarding “good farming practices” to comply with section 508(a)(3) of the Act. Delete the provisions regarding arbitration. Arbitration was intended to be an inexpensive alternative to the administrative appeals process that was available to producers that were directly insured by FCIC. FCIC has received numerous complaints from producers and the insurance companies regarding the arbitration process. One complaint is that arbitration is no longer inexpensive. Filing fees of up to \$7,500 have been required to seek arbitration. Another problem that has been identified is what constitutes a “factual determination.” While a factual determination was intended to resolve matters involving acreage determinations, approved yield calculations, determinations of production to count, etc., it has been used to handle all disputes under the policy, including policy interpretation. Further, there have been numerous instances where state law has been applied even though state law is preempted by the Act, the policy, and the regulations. Other complaints have to do with the fact that many producers fail to file for arbitration before filing a judicial appeal, inconsistent decisions that have been rendered, and the potential for producers and insurance companies to abuse the system. Further, FCIC discovered that arbitration has been binding on the parties. Binding

arbitration is inconsistent with section 508(j) of the Act, which gives producers the right to file judicial appeals within one year of the denial of the claim. Given that arbitration no longer serves the purpose for which it is intended, FCIC has elected to remove the process from the policy and permit producers to resolve disputes through the judicial process;

Section 18—Revise the effect of failing to provide the social security numbers of persons with substantial beneficial interests or if persons with substantial beneficial interests are ineligible to eliminate the program vulnerability caused by changing the identity of insureds. Also require that all entities with at least a 10 percent interest in the insured or applicant provide the social security numbers of all persons with an interest in the entity. Consolidate provisions regarding the effect of failure to timely pay premium or administrative fees, allow voidance effective at the beginning of the crop year when a person fails to make payments under the terms of a payment agreement, and specify that premium must be paid by the termination date even if a claim is outstanding, and that failure to do so will result in termination and ineligibility in accordance with the terms of the policy;

Section 19—Clarify that policy changes will be posted on the RMA website or filed with the Office of the Federal Register by the contract change date and that such changes are available from the producer's local crop insurance provider; and

Section 21—Add a new section that specifies the amount of an insurance payment reduction when multiple crops are planted on the same acreage in the same crop year. This section also specifies the amount of premium reduction when an insurance payment is reduced. These changes are made to comply with the provisions of the Act that limit multiple crop insurance payments.

3. FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) as follows:

(a) Section 457.2(d)—Revise to specify that when a person applies for both a Catastrophic Risk Protection policy and an additional coverage policy for the same crop in the same county for the same crop year, and the person can demonstrate that multiple contracts of insurance were without the fault of the person, the additional coverage policy will be in effect and the Catastrophic Risk Protection policy will be canceled if: both policies are insured with the same insurance provider; or the policies are insured with different insurance

providers and both insurance providers agree. Also specify that if both policies are additional coverage policies or both are Catastrophic Risk Protection policies, the policy with the earliest date of application will be in force, unless both policies are with the same insurance provider and the insurance provider agrees otherwise or both are with different insurance providers and both insurance providers agree otherwise;

(b) Section 457.6—Delete the “good faith and reliance on misrepresentation” provisions contained in that section because of the confusion surrounding the applicability of those provisions and to avoid the perception that FCIC was waiving the protection against the applicability of estoppel against it and permitting employees to bind FCIC with their errors;

(c) Section 457.8—Change the preamble to make it clear that FCIC issued procedures (including handbooks, manuals, and directives) will be used in the administration of the policy unless they are in conflict with the provisions of the policy, the Act, or the regulations. Also revise the following sections in § 457.8:

Section 1 (Additions)—Add definitions of “annual crop” and “perennial crop” to distinguish the difference between them. Add definition of “average yield” to distinguish the difference between it and the approved yield. Add definition of “border” since that term has been added in the section 34 to recognize different planting patterns or plant densities as borders for unit division. Add definitions of “buffer zone,” “certified organic acreage,” “certifying agent,” “organic farming practice,” “organic plan,” “organic standards,” “prohibited substance,” “sustainable farming practice” and “transitional acreage” because they are used in the provisions to comply with the Act that considers scientifically sound sustainable and organic farming practices to be recognized good farming practices. Add the definitions of “double-crop,” “first crop” and “second crop” because they are used in provisions which limit multiple insurance payments in compliance with the requirements of the Act. Add the definitions of “cover crop,” “disinterested third party,” and “liability” for clarification since they are used in other provisions. Add the definition of “Secretary” because it is used in the definition of certifying agent.

Section 1 (Deletions)—Delete the definitions of “loss, notice of” and “damage, notice of” because these terms

are not needed since section 14 contains provisions regarding these notices.

Section 1 (Revisions)—Revise the definition of “actuarial documents” to clarify that the information needed to determine the premium rate is contained in the actuarial documents and on RMA's website. Revise the definition of “agricultural commodity” to clarify that it is any crop or other commodity produced, regardless of whether or not it is insurable. Revise the definition of “contract change date” for clarification. Revise the definition of “crop year” to specify that this definition may be modified by the Crop Provisions. Revise the definition of “delinquent account” to include administrative fees and interest on amounts due. Revise the definition of “earliest planting date” to clarify that it applies only to the replanting provisions of the policy. Revise the definition of “enterprise unit” to clarify that acreage making up the unit must be planted acreage (acreage that is prevented from being planted will not be used to meet eligibility requirements for an enterprise unit). Revise the definition of “field” to clarify that separate crops or planting patterns do not create separate fields. Revise the definition of “good farming practices” to include sustainable farming practices. Revise the definition of “non-contiguous” to specify that only tracts separated by different land ownership will qualify as non-contiguous units. Revise the definition of “practical to replant” to specify the cost of seed or plants will not be considered. Revise the definition of “prevented planting” by specifying that it must be due to excess moisture or because weather conditions are such that the seed would not be expected to germinate or produce a crop. Also moved current language contained in the definition of prevented planting, regarding the insured cause of loss that prevented planting must be general in the surrounding area and must have prevented other producers from planting acreage with similar characteristics, to the prevented planting provisions contained in section 17. Revise the definition of “price election” to indicate the price election may be contained in a written agreement. Revise the definition of “replanting” to remove the requirement that replacing the seed or plants of the same crop would result in the expectation of producing at least the yield used to determine the production guarantee. This change will allow insurance providers to determine that it is practical to replant after the final planting date if other producers in the

area are also replanting, even though replanting after the final planting date could produce yields less than the yields used to determine the production guarantee. Specify that the same seeds or plants must be placed in the same insured acreage to be considered replanting. Revise the definition of "substantial beneficial interest" to clarify the status of spouses. Revise the definition of "whole farm unit" to clarify that the acreage making up the unit must be planted to two or more insured crops and that acreage that is prevented from being planted will not be used to qualify for a whole farm unit. Require that all crops for which the whole farm unit structure is available must be included in the whole farm unit, and that no one crop can constitute more than 75 percent of the total liability of all insured crops in the whole farm unit. Also require that all crops in the whole farm unit must be insured under the same plan of insurance and with the same insurance provider;

Section 2—Revise the provisions regarding the failure to provide social security numbers of persons with a substantial beneficial interest or if persons with a substantial beneficial interest are ineligible to eliminate the vulnerability caused by changing the identity of insureds. Also require that all entities with at least a 10 percent interest in the insured or applicant provide the social security numbers of all individuals with an interest in the entity. Clarify provisions regarding when ineligibility occurs when the producer fails to make a scheduled payment under a payment agreement and that all premium and administrative fees must still be paid by the termination date even if a claim is still outstanding. This is to eliminate the confusion regarding whether producers are ineligible if they fail to pay the premium or administrative fees by the termination date. References to the nonstandard classification have been removed because the system is no longer in use;

Section 3—Add provisions indicating that coverage cannot be increased if a cause of loss that could result in an insured loss is present at the time the increase is requested. Also add a provision to require the producer to submit previous crop years records of production in any year that a claim is made if such records have not previously been provided. A sanction is added when a corrected yield is lower than 95 percent of the original yield. This change is necessary to protect the integrity of the crop insurance program because the operation of the program

relies heavily on the accurate reporting by producers. A tolerance of 5 percent is included to be consistent with tolerances in other aspects of the program. However, the receipt of complete and accurate information is crucial to the program. Clarify that yields may also be adjusted if they are inconsistent with other similarly situated units unless the producer can demonstrate a physical basis for the discrepancy (e.g., hail or other insured causes, etc.), or if a small amount of acreage is used to establish the yield (representative samples cannot be used to establish yields except when representative samples are used to calculate any indemnity). Given the ease in which production can be shifted to create losses or to increase approved yields, the policy must provide a mechanism to allow correction when the surrounding yields show that the reported yields are not accurate, unless the producer can show that there is a physical reason for the difference in yields. Add provisions stating that an assigned yield will be used to calculate the approved yield for the first crop when a second crop is planted after the first crop is prevented from being planted. This change is made to conform with section 508A(c)(3) of the Act;

Section 4—Clarify that contract changes will be filed with the Office of the Federal Register or placed on RMA's website by the contract change date and will be available from the local crop insurance provider;

Section 5—Delete the liberalization provisions because they conflict with the preamble to the Basic Provisions;

Section 6—Add provisions indicating that insureds cannot revise the acreage report without consent after reporting any prevented planting acreage. Clarify that it is the producer's responsibility to accurately report all information and add new sanctions for misreporting acreage report information. Since the operation of the program is dependent on accurate reporting by producers, stronger sanctions are imposed to ensure that producers completely and accurately report material information;

Section 7—Clarify that the information needed to calculate the premium and premium adjustments are in the actuarial documents since the rates themselves may no longer be included in the actuarial documents. Add provisions stating that coverage will not be provided if the amount of premium and administrative fee the producer is required to pay exceeds the liability for the acreage;

Section 8—Clarify that the crop is not insurable if the information needed to

insure it is not in the actuarial documents, or if the crop is grown using a farming practice or is a type, class or variety that is not adapted to the area. Add provisions stating that a farming practice, type, class, or variety that is not established or widely used in an area may not be considered a good farming practice. This change is made to ensure that determinations of insurability are consistent with good farming practices;

Section 9—Change provisions to allow insurance on acreage when it has not been planted in the previous three crop years if the producer can show that the acreage was not planted in at least 2 of those years to comply with another USDA program, or when the acreage constitutes 5 percent or less of the planted acreage in the unit. This is to clarify the number of years that the acreage can not be planted to comply with another USDA program and to avoid the uninsurability of acreage when a de minimis amount of acreage is uninsurable. Add provisions indicating that coverage will not be provided for acreage on which the insured crop is damaged unless the crop is replanted when practical in a timely manner. Add provisions to allow producers to elect not to insure a crop planted after a first crop to avoid reductions to a first crop indemnity when there is a loss on the second crop. Add provisions to prohibit insurance for any crop following a second crop unless the producer provides records proving that a third crop has been produced and harvested in the past;

Section 10—Change provisions to require insurance under one policy when the same people are involved in multiple farming operations or are in the same family or household. This will improve program integrity by preventing producers from forming multiple entities with the intent to insure acreage under separate policies to gain a disproportionate advantage;

Section 12—Revise the insurable cause of loss provisions to indicate that all insurable causes of loss must be due to acts of nature, except cases in which the policy specifically covers loss of revenue due to reduced prices in the marketplace. Change provisions to prohibit payments for losses due to water released from levee systems, dams, or reservoir projects on any acreage on which there is a water easement. This change prevents payments on acreage that is flooded frequently and where consideration has been received for the right to flood land. Add provisions to allow coverage for losses caused by failure of irrigation facilities or equipment if the failure is

due to an insured cause of loss. Add a provision to exclude causes of loss where the damage does not manifest until the crop is placed in storage unless expressly authorized by the Crop Provisions because of the problems associated with notice and determining losses after the production has been commingled;

Section 14—Revise the section heading to refer to situations in which a producer abandons, destroys, or puts the insured crop or acreage to an alternative use. This change is made to clarify that this section also includes duties in situations other than when there is crop damage or loss. Remove provisions that allow producers to file late notices of loss. This change will prevent late notices of loss and improve accuracy of loss adjustment. Add provisions regarding leaving representative samples of the unharvested crop so that provisions applicable to most annual crops can be removed from the Crop Provisions as they are revised. Add provisions to allow a time extension to submit a claim for indemnity to allow for situations in which determinations necessary to finalize a claim cannot be made within 60 days. Add a 72 hour notice requirement for prevented planting to permit the reinsured company to verify the cause of the prevented planting. Add provisions requiring separate records to be maintained for acreage subject to the indemnity reductions because a second crop is planted on the acreage in order to implement changes required by section 508A of the Act. Add a provision indicating a claim will be denied if the producer fails to comply with the conditions of this section. Add provisions allowing the payment of claims to be delayed until the amount of production can be determined from the acreage on which a second crop was planted, completion of the administrative review regarding good farming practices, or the investigation of a past or present claim by USDA;

Section 15—Clarify the “appraised production” provisions by specifying that appraisals are only used when the acreage will not be harvested and if the acreage is later harvested, that production must be reported. If the harvested production exceeds the appraised production, the indemnity will be adjusted in order to protect program integrity by preventing the overpayment of losses. Add provisions regarding the consequences of planting a second crop on acreage where the first crop had failed or was prevented from being planted in conformance with section 508A of the Act. Add a

provision requiring the producer to show proof of the destruction of a crop if such destruction is required by the Government prior to collecting an indemnity to ensure that producers are not receiving an indemnity based on such destruction when no destruction occurred;

Section 17—Clarify the prevented planting provisions to specify that the producer must have been prevented from planting during the whole planting season, not just the last few days to protect program integrity by avoiding paying claims to producers who had the ability to timely plant the crop and elected not to do so until it was too late. Clarify the terms “surrounding area” and “acreage with similar characteristics”. Clarify that the premium for prevented planted acreage will be the same as for planted acreage unless reduced in accordance with section 15(f) pertaining to second crops. Clarify that uninsured acreage cannot be used to determine the number of acres eligible for prevented planting. Add provisions to allow a producer who has not grown a crop in a certain county and who obtains acreage in that county after the sales closing date to submit an intended acreage report within 10 days after acreage is obtained. No cause that will or could prevent planting can be evident at the time the acreage is obtained. This change will allow a producer to establish eligible prevented planting acres for acreage obtained after the sales closing date. Revise provisions to clarify that the minimum acres or production specified in a processor contract is used when calculating the number of acres eligible for prevented planting. Modify the requirement to call prevented planting acreage the same crop that is in the field when it is clear the crop intended for the remainder of the field would not have been the same because of rotation requirements or processor contract requirements. Clarify that prevented planting acres are limited to the number of acres for which the producer is required to pay either cash or share rent when acreage is leased. This change will prevent payment on acreage in which a producer has no financial interest. Revise provisions containing requirements for double-cropped acreage, and to allow a prevented planting payment for a first crop when a second crop is planted after the late planting period for the first crop. This change is made to conform to section 508A of the Act. Add provisions that prohibit a payment if any pasture or forage crop is in place on the acreage during the time that planting of the insured crop generally occurs in the

area. Add provisions that prohibit a payment for any acreage if at the time the acreage is obtained, a cause of loss has occurred that will or could prevent planting. Add a provision to specify that administrative fees will not be charged for the crop upon which the prevented planting acreage is based, if switching the prevented planting crop results in an extra administrative fee the producer would not have been required to pay had the acreage not been switched to the other crop. Also added a provision to specify that if a producer is prevented from planting a non-irrigated crop and the producer does not have any remaining eligible prevented planting acreage for that crop and also does not have any other remaining eligible prevented planting acres for any other crop under a non-irrigated practice, no prevented planting payment will be made. These changes are made to improve program integrity;

Section 18—Revise provisions to allow written agreements to remain in place for more than one crop year provided the conditions under which it was issued remain constant. Revise the provisions to allow application for a written agreement after the sales closing date, if submitted in accordance with FCIC approved procedure. Add provisions indicating that supporting records for at least four years must be provided when a request is made to insure a crop, type, variety or practice that is not insurable in the county to allow for a determination of proper yields and to ensure that the crop, type, variety, or practice can be used successfully before providing insurance. This will eliminate the possibility of buying losses;

Section 20 (for both FCIC policies and reinsured policies)—Add provisions allowing review of loss determinations regarding “good farming practices” to comply with section 508(a)(3) of the Act. Delete the provisions regarding arbitration. Arbitration was intended to be an inexpensive alternative to the administrative appeals process that was available to producers that were directly insured by FCIC. FCIC has received numerous complaints from producers and the insurance companies regarding the arbitration process. One complaint is that arbitration is no longer inexpensive. Filing fees of up to \$7,500 have been required to seek arbitration. Another problem that has been identified is what constitutes a “factual determination.” While a factual determination was intended to resolve matters involving acreage determinations, approved yield calculations, determinations of production to count, etc., it has been

used to handle all disputes under the policy, including policy interpretation. Further, there have been numerous instances where state law has been applied even though state law is preempted by the Act, the policy, and the regulations. Other complaints have to do with the fact that many producers fail to file for arbitration before filing a judicial appeal, inconsistent decisions that have been rendered, and the potential for producers and insurance companies to abuse the system. Further, FCIC discovered that arbitration has been binding on the parties. Binding arbitration is inconsistent with section 508(j) of the Act, which gives producers the right to file judicial appeals within one year of the denial of the claim. Given that arbitration no longer serves the purpose for which it is intended, FCIC has elected to remove the process from the policy and permit producers to resolve disputes through the judicial process;

Section 21—Add provisions to allow any USDA employee to have access to the farm and records pertaining to the insurance because of the changes in the Act that enhances the compliance efforts by involving other USDA agencies. Provisions are added to clarify that records used to establish the basis of a replant payment must be maintained for 3 years. Clarify that the record retention requirements also apply to records used to establish the insurance guarantee. Provisions are added indicating that failure to retain required records will result in no indemnity or replant or prevented planting payment being due and premium still being owed because the need for records are an integral part of the policy because eligibility and the guarantees, premium and indemnities are based on such records. Without these records, program integrity cannot be maintained;

Section 22—Add provisions indicating which policy remains in force when a producer inadvertently obtains two policies on the same crop in the same county for the same crop year;

Section 24—Add provisions indicating when interest begins to accrue on unpaid administrative fees and revise provisions to allow amounts owed to FCIC to be collected by administrative offset;

Section 30—Specify that if an insured receives any funds from someone else, the insured must repay the insurance provider the amount received from them, not to exceed the amount of indemnity paid to the insured;

Section 34—Clarify the provisions regarding the reporting requirements for enterprise units. Add provisions

indicating the basic unit structure will be applied if a producer elects a whole farm unit but does not qualify for it. Revise the provisions to remove the requirement to have a discernible break in the planting pattern at the boundaries between optional units and to require only that a clear and discernible border be maintained between optional units. This change eliminates the undue burden on producers to change their planting patterns between optional units such as between irrigated and non-irrigated acreage around a center pivot and now allows the producer to use other means, such as plowing bare strips, to separate the acreage. Revise the provisions regarding the record keeping requirements to qualify for optional units to clarify that even though producers must maintain records by optional units to qualify for such unit structure in the next crop year, approved yields will still be based on four years of production history as required by the Act. Add provisions to allow separate optional units for acreage insured under an organic farming practice;

Section 36—Revise provisions to specify that one or more actual yields used to calculate the actual production history yield that are less than 60 percent of the transitional yield due to drought, flood or other act of nature, may be replaced with a yield equal to 60 percent of the transitional yield that was applicable for the crop year in which the replacement occurs, if the producer elects such option by the sales closing date for the insured crop. Current provisions do not specify this option had to be elected by the sales closing date, nor do they specify that the producer can elect to have any one or all such yields replaced; and

Section 37—Add provisions allowing insurance for crops grown using organic farming practices. This change is made to comply with provisions contained in ARPA that require organic farming practices to be considered good farming practices. Current regulations provide coverage for organic farming practices only if approved by written agreement. This is because crop insurance premium rates and insurance guarantees have been established based on conventional farming practices. Written agreements are used to provide a premium rate and insurance guarantee appropriate for the risks involved with organic farming practices.

Under current regulations, if a producer utilizes organic farming practices and does not have an approved written agreement, the producer will be insured under a conventional farming practice.

Therefore, if an organic producer did not have an approved written agreement and suffered a loss, but the loss could have been avoided by using conventional farming practices, such loss would not be covered. However, if a producer had an approved written agreement, any loss of production would be covered if the loss was a result of an insured cause, provided the producer followed the approved organic farming practices.

The proposed regulations provide the terms and conditions under which crops grown using organic farming practices would be insured. Written agreements would no longer be necessary under the proposed regulations for crops grown organically in counties for which the actuarial documents designate a premium rate for organic farming practices.

4. FCIC is also soliciting comments regarding the definition of “limited resource farmer” contained in section 1 of the Common Crop Insurance Regulations, Basic Provisions (7 CFR 457.8). FCIC understands the following definition is being considered for use by other USDA agencies:

“A Limited Resource Farmer/Producer has one or more of the following characteristics:

(a) Total operator household income is under \$20,000; total farm assets are under \$150,000; and annual gross sales are under \$100,000.

(b) Total gross household net income, for both farm and non-farm, is 75 percent or less of the median household income level for the state or county of residence, as determined by State Conservationist.”

Any comments regarding this definition and its effect on the crop insurance program are welcome.

List of Subjects in 7 CFR Parts 400, 407, and 457

Administrative practice and procedure, Claims, Crop insurance, Fraud, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 400, 7 CFR part 407, and 7 CFR part 457 effective for the 2003 and succeeding crop years for all crops with a contract change date of November 30, 2002 or later, to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

1. The authority citation for 7 CFR part 400 continues to read as follows:

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

Subpart T—Federal Crop Insurance Reform, Insurance Implementation

2. Revise the heading of subpart T to read as set forth above.

§ 400.650 [Amended]

3. In § 400.650, remove “limited coverage” from the second sentence.

4. In § 400.651:

a. Revise the definitions of “additional coverage” and “approved yield”;

b. Remove “limited,” from the definition of “administrative fee”; and

c. Remove the definition of “limited coverage”.

The revisions read as follows:

§ 400.651 Definitions.

* * * * *

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

* * * * *

Approved yield. The actual production history (APH) yield determined in accordance with 7 CFR part 400, subpart G, including any adjustment elected by the producer in accordance with the applicable crop insurance policy.

* * * * *

§ 400.652 [Amended]

5. In § 400.652:

a. Remove “,limited,” from paragraph (a);

b. Remove the words “Limited and” from paragraph (b) and capitalize the first letter in the word “additional”; and

c. Remove the words “limited and” from paragraph (d).

§ 400.654 [Amended]

6. In § 400.654:

a. Remove “,limited” from paragraph (a);

b. Remove the words “limited or” from paragraph (c)(6); and

c. Remove “,limited,” from paragraph (d).

PART 407—GROUP RISK PLAN OF INSURANCE REGULATIONS FOR THE 2003 AND SUCCEEDING CROP YEARS

7. The authority citation for 7 CFR part 407 continues to read as follows:

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

8. Amend part 407 by revising the part heading as set forth above.

9. Amend § 407.2 by:

a. Removing paragraphs (d) and (e), adding a new paragraph (d) and redesignating paragraphs (f) through (h) as paragraphs (e) through (g) respectively; and

b. Amend newly designated paragraph (e) by replacing the phrase “§ 407.8, paragraph 21” with the phrase “§ 407.9, paragraph 15”.

The revision reads as follows:

§ 407.2 Availability of Federal crop insurance.

* * * * *

(d)(1) 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 without the fault of the person. If the multiple contracts of insurance are shown to be without the fault of the person and:

(i) One contract is an additional coverage policy and the other contract is a Catastrophic Risk Protection policy, the additional coverage policy will apply if both policies are with the same insurance provider, or if not, both insurance providers agree, and the Catastrophic Risk Protection policy will be canceled (If the insurance providers do not agree, the policy with the earliest date of application will be in force and the other contract will be canceled); or

(ii) Both contracts are additional coverage policies or both are Catastrophic Risk Protection policies, the contract with the earliest signature date on the application will be valid and the other contract on that crop in the county for that crop year will be canceled, unless both policies are with the same insurance provider and the insurance provider agrees otherwise or both policies are with different insurance providers and both insurance providers agree otherwise.

(2) No liability for indemnity or premium will attach to the contracts canceled as specified in paragraphs (d) (1)(i) and (ii) of this section.

* * * * *

§ 407.6 [Removed and reserved]

10. Remove and reserve § 407.6.

§ 407.7 [Amended]

11. Amend § 407.7 by removing the words “Except as may be allowed under § 407.6, and at the sole discretion of the Corporation,” and capitalizing the first letter in the word “no” in the fourth sentence;

12. Amend § 407.9, as follows:

a1. Revise the introductory text of the section;

a2. Revise the first paragraph of both the “FCIC policies” and “Reinsured

policies” sections, and revise the second paragraph in the heading of the “Reinsured policies” section;

b. Amend the third paragraph in the headings of the “Both Policies” section by replacing the number “55” with the number “45”;

c. Amend section 1—Definitions—by adding definitions of “agricultural commodity,” “cover crop,” “double-crop,” “first crop,” “second crop,” “substantial beneficial interest,” and “sustainable farming practice” and revising the definitions of “actuarial documents,” and “good farming practices.” Also replace the number “55” with the number “45” in the definition of “catastrophic risk protection”;

d. Revise section 3(c);

e. Delete section 3(d);

f. Amend section 4(a) by replacing the number “55” with the number “45”;

g. Amend section 7(a) by deleting the last sentence;

h. Delete section 7(c) and redesignate sections 3(d) and (e) as sections 3(c) and (d), respectively;

i. Revise redesignated sections 7(c) and (d);

j. Add new sections 7(e) and (g) and add and reserve section 7(f);

k. Amend section 8 by deleting subsections (g) and (h) and adding a new subsection (g);

l. Revise sections 9(c) and (d) and add sections 9(e) and (f);

m. Revise section 10;

n. Revise section 13;

o. Revise section 14(c);

p. Amend section 15(c) by deleting the second sentences in both the FCIC and the Reinsured policy versions;

q. Revise section 16;

r. Revise section 18(b);

s. Revise sections 18(e) introductory text, (e)(1), (e)(3), (e)(5) through (e)(7), and (e)(9) and (e)(10) and add subsection (e)(11);

t. Revise section 19(b); and

u. Add a new section 21 between the first paragraph of section 20 and the example immediately following that paragraph.

The revised and added sections read as follows:

§ 407.9 Group risk plan common policy.

The provisions of the Group Risk Plan Common Policy for the 2003 and succeeding crop years are as follows:

* * * * *

[FCIC policies]

This insurance policy establishes a risk management program developed by the Federal Crop Insurance Corporation (FCIC), an agency of the United States Government, under the authority of the Federal Crop Insurance Act (Act), as amended (7 U.S.C.

1501 *et seq.*). All terms of the policy and rights and responsibilities of the parties thereto are subject to the Act and all regulations under the Act published in 7 CFR chapter IV. The provisions of this policy may not be waived or varied in any way by the crop insurance provider, an agent or any other agent or employee of the crop insurance provider, FCIC, the Risk Management Agency (RMA) or the Farm Service Agency (FSA). Procedures (including handbooks, manuals, and directives) issued by us and published on the RMA Web site at <http://www.rma.usda.gov/> or a successor Web site will be used in the administration of this policy. If there is a conflict between the provisions of your policy, the Federal Crop Insurance Act (Act), or the regulations published at 7 CFR chapter IV and the procedures issued by us, the terms of your policy, the Act, or such regulations control. All provisions of state and local laws in conflict with the provisions of this policy as published at 7 CFR part 407 are preempted and the provisions of this policy control.

* * * * *

[Reinsured policies]

This insurance policy establishes a risk management program developed by the Federal Crop Insurance Corporation (FCIC), an agency of the United States Government, under the authority of the Federal Crop Insurance Act (Act), as amended (7 U.S.C. 1501 *et seq.*).

This insurance policy is reinsured by FCIC under the provisions of the Act. All terms of the policy and rights and responsibilities of the parties are subject to the Act and all regulations under the Act published in 7 CFR chapter IV. The provisions of this policy may not be waived or varied in any way by the crop insurance provider, an agent or any other agent or employee of the crop insurance provider, FCIC, the Risk Management Agency (RMA) or the Farm Service Agency (FSA). Procedures (including handbooks, manuals, and directives) issued by FCIC and published on the RMA Web site at <http://www.rma.usda.gov/> or a successor Web site will be used in the administration of this policy. If there is a conflict between the provisions of your policy, the Federal Crop Insurance Act (Act), or the regulations published at 7 CFR chapter IV and the procedures issued by FCIC, the terms of your policy, the Act, or such regulations control. All provisions of State and local law in conflict with the provisions of this policy as published in 7 CFR part 407 are preempted and the provisions of such part will control. In the event that we cannot pay a loss, the claim will be settled in accordance with the provisions of the policy and paid by FCIC. No state guarantee fund will be liable to pay the loss.

* * * * *

1. Definitions.

* * * * *

Actuarial documents. The material for the crop year which is available for public inspection in your insurance provider's local office and published on RMA's Web site at <http://www.rma.usda.gov/> or a successor Web site, and which shows the maximum protection per acre, expected county yield,

coverage levels, information needed to determine the premium rates, practices, program dates, and other related information regarding crop insurance in the county.

* * * * *

Agricultural commodity. Any crop or other commodity produced, regardless of whether or not it is insurable.

* * * * *

Cover crop. A crop that is commonly planted in the area for erosion control or green manure and is generally left in place for one growing season.

* * * * *

Double-crop. The practice of producing two or more crops for harvest on the same acreage in the same crop year.

* * * * *

First crop. With respect to a single crop year and any specific crop acreage, the first instance that an agricultural commodity is planted for harvest or prevented from being planted and is insured under the authority of the Act. For example, if winter wheat that is not insured is planted on acreage that is later planted to soybeans that are insured, the first crop would be soybeans. If the winter wheat was insured, it would be the first crop.

* * * * *

Good farming practices. The farming practices that are commonly used in the area where the crop is produced, including sustainable farming practices, that are recognized by FCIC to be necessary for the crop to make normal progress toward maturity and to be compatible with the agronomic and weather conditions in the area. For crops grown under an organic practice, the farming practices approved by a private organization or government agency that certifies organic products in accordance with 7 CFR part 205 and is accredited in accordance with the requirements of the Federal Organic Food Production Act of 1990. If you use a farming practice not commonly used in the area, you should contact us to determine if such practice is insurable.

* * * * *

Second crop. With respect to a single crop year, any agricultural commodity that is planted immediately following a first crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first crop, except the term does not extend to a replanting of a first crop when it is required by the policy. A cover crop, planted after a first crop, that is hayed, grazed or harvested will be considered a second crop.

* * * * *

Substantial beneficial interest. An interest held by any person of at least 10 percent in the applicant or insured. All spouses and children that reside in the same household will be considered to have a substantial beneficial interest in the applicant or insured unless the spouse or children can prove that the acreage farmed by the applicant or insured is a totally separate farming operation in accordance with FCIC issued procedure and that the spouse or children

derive no benefit from the farming operation of the insured or applicant.

* * * * *

Sustainable farming practice. A system or process for producing an agricultural commodity recognized by the Natural Resources Conservation Service (NRCS) or a successor agency as likely to conserve or enhance natural resources and the environment.

* * * * *

3. Insured and Insurable Acreage.

* * * * *

(c) We will not insure any acreage:

(1) Where the crop was destroyed or put to another use during the crop year for the purpose of conforming with, or obtaining a payment under, any other program administered by the USDA;

(2) Where you have failed to follow good farming practices for the insured crop (If any farming practice is not established or widely used in the area, it may not be considered a good farming practice);

(3) Of a second crop if you elect not to insure such acreage when there is an insurable loss for planted acreage of a first crop and you intend to collect an unreduced indemnity for the first crop acreage in accordance with section 21 (You must make the election not to insure acreage of a second crop on or before the acreage reporting date for the second crop and you must report the crop acreage that will not be insured by the applicable acreage reporting date); or

(4) Of a crop that is planted following a second crop or following an insured crop that is prevented from being planted after a first crop, unless it is an established practice in the area to plant three or more crops for harvest on the same acreage in the same crop year, and additional coverage insurance provided under the authority of the Act is offered for the third or subsequent crop in the same crop year. Insurance will only be provided for a third or subsequent crop as follows:

(i) You must provide records acceptable to us that show:

(A) You have produced and harvested the insured crop as a third or later crop on the same acreage in the same crop year in at least two of the last four years in which you produced the insured crop; or

(B) The applicable acreage has had three or more crops produced and harvested on it in at least two of the last four years in which the insured crop was grown on it; and

(ii) The amount of insurable acreage will not exceed 100 percent of the greatest number of acres for which you provide the records required in section 3(c)(4)(i)(A) or (B).

* * * * *

7. Report of Acreage and Share.

* * * * *

(c) The premium amount and payment of an indemnity will be based on your insurable acreage on the acreage reporting date subject to section 7(d).

(d) You should verify all information on the acreage report prior to submitting it to us. If you report information that results in an amount of policy protection 95.0 to 105.0 percent of the corrected policy protection

amount for the crop, any indemnity will be based on the corrected policy protection amount. If the information you reported results in an amount of policy protection less than 95.0 percent or greater than 105.0 percent of the corrected policy protection amount for the crop, no indemnity will be due. Even though there is no indemnity due, you will still be required to pay the premium due under the policy for the crop. The premium amount used for this purpose will be based on the corrected policy protection amount.

(e) 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.

(f) [Reserved]

(g) We will include in your share or under your policy for any insured crop, any acreage or interest held by a corporation, partnership, association, or other legal entity in which you have a share if the other shareholders, stakeholders, or persons affiliated with the corporation, partnership, association, or other legal entity are all members of your family or household or are the same persons that are the shareholders, stakeholders, or persons affiliated with the other corporation, partnership, association, or other legal entity in which you are a shareholder, stakeholder or otherwise affiliated. For example, if you are in one partnership with John Doe and Jane Doe that insures 100 acres and you enter a different partnership with John Doe and Jane Doe, that rents another 100 acres, all 200 acres must be insured under the original partnership policy.

8. Administrative Fees and Annual Premium.

* * * * *

(g) If the amount of premium (gross premium less premium subsidy paid on your behalf by FCIC) and administrative fee you are required to pay for any acreage exceeds the amount of policy protection for the acreage, coverage for those acres will not be provided (no premium or administrative fee will be due and no indemnity will be paid for such acreage).

9. Written Agreements.

* * * * *

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop practice, type or variety, the yield or other basis used to determine the protection per acre, premium rate or information needed to determine the premium rate, and price election;

(d) Each written agreement will only be valid for the number of crop years specified in the written agreement, not to exceed four years, or as long as the conditions under which the agreement was issued exist, whichever time period ends first (Such conditions include, but are not limited to, farming practices used, legal description of the acreage, practice, types or varieties produced, etc. If any condition changes, you must notify us immediately, the written agreement will no longer be effective, and

you must request a new written agreement. Failure to immediately notify us of changed conditions will result in denial of liability under the terms of the written agreement. If a written agreement is not specifically renewed after it expires, insurance coverage for subsequent years will be in accordance with the printed policy);

(e) For a crop, type, variety or practice that is not insurable in the county, you must provide at least four years of records to support the change you are requesting (If you do not have at least four years of records to support the requested change, your request for a written agreement will be denied); and

(f) Any written agreement will be denied if FCIC determines the risk is excessive.

10. Access to Insured Crop and Record Retention.

(a) We, and any employee of USDA, or our employee, agent or loss adjuster have the right to examine the insured crop and any records relating to the crop and this insurance at any location where such crop or records may be found or maintained, as often as required. Records pertaining to the planting of the insured crop and your net acres must be retained for a period of three years after the end of the crop year or three years after the date of final payment of the indemnity, whichever is later.

(b) We may extend the record retention period beyond three years by notifying you of such extension in writing.

(c) Failure to allow access to the crop or records, or failure to maintain records will result in a determination that no indemnity is due. Even though no indemnity is due, you will still be required to pay the premium due under the policy.

* * * * *

13. Other Insurance.

Nothing in this section prevents you from obtaining other insurance not issued under the authority of the Act. However, unless specifically required by policy provisions, you must not obtain any other crop insurance issued under the authority of the Act on your share of the insured crop. If you cannot demonstrate that you did not intend to have more than one policy in effect, you may be subject to the sanctions authorized under this policy, the Act, or any other applicable statute. If you can demonstrate that you did not intend to have more than one policy in effect, and:

(a) One is an additional coverage policy and the other is a Catastrophic Risk Protection policy:

(1) The additional coverage policy will apply if both are with the same insurance provider, or if not, both insurance providers agree; or

(2) The policy with the earliest date of application will be in force if both insurance providers do not agree; or

(b) Both are additional coverage policies or both are Catastrophic Risk Protection policies, the policy with the earliest date of application will be in force and the other policy will be void unless both policies are with:

(1) The same insurance provider and the insurance provider agrees otherwise; or

(2) Different insurance providers and both insurance providers agree otherwise.

14. Legal Action Against Us.

* * * * *

(c) You may not recover any attorneys fees or other charges, or any punitive, compensatory or any other damages except contractual damages, except as authorized in 7 CFR 400.352(b)(4).

* * * * *

[FCIC policy]

16. Determinations.

(a) All determinations required by the policy will be made by us. If you disagree with our determinations, you may:

(1) Except as provided in section 16(a)(2), obtain reconsideration of or appeal those determinations in accordance with appeal provisions published at 7 CFR part 11; or

(2) Request a reconsideration of our loss determination regarding good farming practices in accordance with the review process established for this purpose and published at 7 CFR part 400, subpart J.

(b) In any appeal or reconsideration, the terms of this policy, the Act, and the regulations published at 7 CFR chapter IV are binding and any state or local laws that are in conflict with the terms of the policy, the Act, and the regulations are preempted.

[Reinsured policy]

16. Determinations.

(a) Except as provided in section 16(d), you may appeal any determination made by FCIC in accordance with appeal provisions published at 7 CFR part 11.

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

(c) In any appeal proceeding or reconsideration, the terms of this policy, the Act, and the regulations published at 7 CFR chapter IV are binding and any state or local laws that are in conflict with the terms of the policy, the Act, and the regulations are preempted.

(d) If you do not agree with any loss determination made regarding good farming practices, you may request reconsideration of this determination in accordance with the review process established for this purpose and published at 7 CFR part 400, subpart J.

* * * * *

18. Life of Policy, Cancellation, and Termination.

* * * * *

(b) Your application for insurance must contain all the information required by us to insure the crop.

(1) Applications that do not contain all social security numbers and employer identification numbers of the applicant and all social security numbers of individuals with a substantial beneficial interest in the applicant and shares, as applicable, 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.

(2) If an entity has an interest of 10 percent or more in the insured or applicant, the social security number of all individuals with an interest in the entity must be provided.

(3) Notwithstanding any provision contained in 7 CFR part 400, subpart U, if we discover that a person with a substantial beneficial interest has failed to provide a social security number or if a person with a substantial beneficial interest in the insured crop is ineligible:

(i) For the year of application, the application will not be accepted for the insured crop for which the social security numbers were not provided or the person was ineligible; or

(ii) For any crop year after the year of application, no indemnity will be due for the insured crop for which the social security numbers were not provided or the person was ineligible. Even though no indemnity is due, you will 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. No administrative fee will be due for such crops.

* * * * *

(e) The premium, administrative fee, and any other amount 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 or the date contained in a notice to you of overpayment or any payment agreement. Termination may affect your eligibility for benefits under other USDA programs. Any amount due to us for any crop insured by us under the authority of the Act will be deducted from any indemnity due you for this or any other crop insured with us. All administrative fees and related interest are owed to FCIC and failure to timely pay such fees when due may also subject you to other administrative offsets. If any premium, administrative fee, and any other amount due, plus any accrued interest, is not paid on or before the termination date for the crop on which the amount is due:

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

* * * * *

(3) Ineligibility will be effective on:

(i) The date that a policy was terminated for the crop for which you failed to pay premium, an administrative fee, and any related interest owed;

(ii) The payment date contained in any notification of indebtedness for any overpaid indemnity, if you fail to pay the amount owed by such due date; or

(iii) The termination date for the crop year prior to the crop year in which a scheduled payment is due under a payment agreement if you fail to pay the amount owed by any payment date in such payment agreement;

* * * * *

(5) A crop policy already in effect at the time you become ineligible will not be terminated until the termination date for that crop policy (If you are ineligible, you may not obtain any crop insurance under the Act until payment is made in full, you execute an agreement to repay the debt and make payments in accordance with the agreement, or you file a petition to have your debts discharged in bankruptcy. Dismissal of the

bankruptcy petition before discharge will void all policies in effect retroactive to the date you were originally determined ineligible to participate and any indemnities paid subsequent to that date must be repaid);

(6) If you execute an agreement to pay the debt and fail to make any scheduled payment, all of your policies will be terminated effective on the termination date for the crop year prior to the crop year in which you failed to make the scheduled payment and no indemnity will be due for that year (You will no longer be eligible to obtain crop insurance by execution of an agreement to pay the debt. You will be ineligible for crop insurance until the debt is paid in full or you file a petition to discharge the debt in bankruptcy. Dismissal of the bankruptcy petition before discharge will void all policies in effect retroactive to the date you were originally determined ineligible to participate and any indemnities paid subsequent to that date must be repaid);

(7) Once the policy is terminated, it cannot be reinstated for the current crop year unless the termination was in error because you did not owe any amounts or you paid the amounts owed on or before the termination date;

* * * * *

(9) If we deduct the amount due from an indemnity owed to you, the date of payment for the purpose of determining your eligibility will be the date that you and we sign the claim for indemnity (If the claim for indemnity is not signed by you and us by the termination date or if the claim amount does not satisfy the debt, all amounts owed must still be paid by the termination date or the policy will be terminated and you will not be eligible for insurance in accordance with this paragraph).

(10) For example, if crop A, with a termination date of October 31, 2001, and crop B, with a termination date of March 15, 2002, 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, 2001, and crop A's policy is terminated as of that date. Crop B's policy is terminated as of March 15, 2002. If you enter an agreement to repay the debt on April 25, 2002, the earliest date by which you can obtain crop insurance for crop A is to apply for crop insurance by the October 31, 2002, sales closing date and for crop B is to apply for crop insurance by the March 15, 2003, sales closing date. If you fail to make a payment which was scheduled to be made on April 1, 2003, your policy will terminate as of October 31, 2002, for crop A, and March 15, 2003, for crop B, and no indemnity will be due for that crop year for either crop. You will not be eligible to apply for crop insurance for any crop until after the debt is paid in full or you file a petition to discharge the debt in bankruptcy.

(11) If you are determined to be ineligible under section 18(e), all persons with a substantial beneficial interest in you are also ineligible until you become eligible again.

19. Contract Changes.

* * * * *

(b) Any changes in policy provisions, expected county yields, maximum amounts of protection, premium rates, and program

dates will be posted on the RMA Web site at <http://www.rma.usda.gov/> or a successor website or filed with the Office of the Federal Register not later than the contract change date contained in the Crop Provisions. This information will be available to you from your local crop insurance provider.

* * * * *

21. Indemnity and Premium Limitations.

(a) With respect to acreage where you are due a total or partial loss for your first crop in the crop year, except in the case of double cropping described in section 21(c):

(1) You may elect to not plant or to plant and not insure a second crop on the same acreage for harvest in the same crop year and collect an indemnity payment that is equal to 100 percent of the insurable loss for the first crop; or

(2) You may elect to plant and insure a second crop on the same acreage for harvest in the same crop year and:

(i) Collect an indemnity payment that is 35 percent of the insurable loss for the first crop;

(ii) Be responsible for a premium for the first crop that is commensurate with the amount of the indemnity paid for the first crop; and

(iii) If the second crop does not suffer an insurable loss:

(A) Collect an indemnity payment for the other 65 percent of insurable loss that was not previously paid under section 21(a)(2)(i); and

(B) Be responsible for the remainder of the premium for the first crop that you did not pay under section 21(a)(2)(ii).

(b) The reduction in the amount of indemnity and premium specified in section 21(a)(2)(i) and (ii) will apply even if another person plants the second crop on any acreage where the first crop was planted. The reduction will also apply if a volunteer crop is harvested or a cover crop is hayed, grazed, or otherwise harvested. In the event you receive cash rent for any acreage on which you had a partial or total loss to a first crop, any indemnity you receive for the first crop will be limited to 35 percent of the insurable loss for the first crop, regardless of whether or not a second crop is planted or a second crop suffers an insurable loss and your premium will be commensurate with the amount of indemnity paid. This reduction will not apply if the double-cropping requirements described in section 21(c) have been met.

(c) You may receive a full indemnity for a first crop when a second crop is planted on the same acreage in the same crop year, regardless of whether or not the second crop is insured or sustains an insurable loss, if each of the following conditions are met:

(1) It is an established practice in the area to plant at least two crops for harvest in the same crop year;

(2) The second or more crops are customarily planted after the first crop for harvest on the same acreage in the same crop year in the area;

(3) Additional coverage insurance under the authority of the Act is available on the two or more crops that are double-cropped; and

(4) You provide records acceptable to us of acreage and production that show you have

double-cropped acreage in at least two of the last four crop years in which the first crop was planted, or that show the applicable acreage was double-cropped in at least two of the last four crop years in which the first crop was grown on it.

(d) The receipt of a full indemnity on both crops that are double-cropped is limited to the number of acres for which you can demonstrate you have double-cropped or that have been historically double-cropped as specified in section 21(c).

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

14. Revise § 457.2(d) to read as follows:

§ 457.2 Availability of Federal crop insurance.

* * * * *

(d)(1) 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 without the fault of the person. If the multiple contracts of insurance are shown to be without the fault of the person and:

(i) One contract is an additional coverage policy and the other contract is a Catastrophic Risk Protection policy, the additional coverage policy will apply if both policies are with the same insurance provider, or if not, both insurance providers agree, and the Catastrophic Risk Protection policy will be canceled (If the insurance providers do not agree, the policy with the earliest date of application will be in force and the other contract will be canceled); or

(ii) Both contracts are additional coverage policies or both are Catastrophic Risk Protection policies, the contract with the earliest signature date on the application will be valid and the other contract on that crop in the county for that crop year will be canceled, unless both policies are with the same insurance provider and the insurance provider agrees otherwise or both policies are with different insurance providers and both insurance providers agree otherwise.

(2) No liability for indemnity or premium will attach to the contracts

canceled as specified in paragraphs (d)(1)(i) and (ii) of this section.

* * * * *

§ 457.6 [Removed and reserved]

15. Remove and reserve § 457.6.

16. Amend § 457.8, Common Crop Insurance Policy Basic Provisions, as follows:

a. Revise the first paragraph of both the “FCIC Policies” and “Reinsured Policies” sections that precede the Basic Provisions Terms and Conditions;

b. Amend section 1 by adding definitions for “annual crop,” “average yield,” “border,” “buffer zone,” “certified organic acreage,” “certifying agent,” “cover crop,” “disinterested third party,” “double-crop,” “first crop,” “liability,” “organic farming practice,” “organic plan,” “organic standards,” “perennial crop,” “prohibited substance,” “second crop,” “Secretary,” “sustainable farming practice” and “transitional acreage.” Further amend section 1 to delete the definitions of “loss, notice of” and “damage, notice of.” Also amend section 1 to revise the definitions of “actuarial documents,” “agricultural commodity,” “contract change date,” “crop year,” “delinquent account,” “earliest planting date,” “enterprise unit,” “field,” “good farming practices,” “non-contiguous,” “practical to replant,” “prevented planting,” “price election,” “replanting,” “substantial beneficial interest,” and “whole farm unit.”

c. Revise section 2(b);

d. Revise section 2(e) introductory text;

e. Revise section 2(e)(3);

f. Revise section 2(e)(5);

g. Revise section 2(e)(6);

h. Revise section 2(e)(7);

i. Revise section 2(e)(9);

j. Revise section 2(e)(10);

k. Add a new section 2(e)(11);

l. Revise section 3(b);

m. Revise section 3(d);

n. Redesignate sections 3(e) through (h) as sections 3(g) through (j), respectively and add new sections 3(e) and (f);

o. Amend the last sentence in redesignated section 3(g) by inserting a comma “,” after the word insurance;

p. Revise redesignated section 3(i);

q. Revise section 4(b);

r. Remove and reserve section 5;

s. Revise section 6(d);

t. Amend section 6(e) by replacing “6(g)” with “6(f)”;

u. Revise sections 6(f) and (g);

v. Revise sections 7(a), (b) and (d);

w. Delete sections 7(e)(5) and (6) and redesignate section 7(e)(7) as section 7(e)(5);

x. Add section 7(f);

y. Revise sections 8(b)(1) and (2);

z. Revise sections 9(a)(1) introductory text and 9(a)(1)(i)(A);

aa. Amend section 9(a)(1)(i)(B) by deleting the word “soybean” and replacing it with the word “soybeans” and adding the word “or” after the semicolon;

bb. Remove section 9(a)(1)(i)(C) and redesignate section 9(a)(1)(i)(D) as section 9(a)(1)(i)(C).

cc. Amend section 9(a)(1)(ii) by deleting “or” at the end of the text;

dd. Amend section 9(a)(1) by redesignating section 9(a)(1)(iii) as section 9(a)(1)(iv) and adding a new section 9(a)(1)(iii);

ee. Amend section 9(a) by redesignating sections 9(a)(3) through 9(a)(6) as sections 9(a)(4) through 9(a)(7), respectively and adding a new section 9(a)(3);

ff. Revise redesignated section 9(a)(4);

gg. Amend redesignated section 9(a)(6) by deleting “or” at the end of the text;

hh. Amend redesignated section 9(a)(7) by deleting the period “.” at the end of the text and replacing it with a semicolon “;”;

ii. Amend section 9(a) by adding new sections 9(a)(8) and (9);

jj. Amend section 10(a)(2) by adding two new sentences at the end, “For each landlord that is an individual, you must report the landlord’s social security number. For each landlord that is an entity other than an individual or for a trust administered by the Bureau of Indian Affairs, you must report each landlord’s social security number or employer identification number.”;

kk. Revise section 10(b);

ll. Amend section 12 by revising the introductory text and sections 12(c) and (d) and adding a new section 12(f);

mm. Amend section 12(e) by replacing the period at the end with “; or”;

nn. Amend section 14 by revising the section heading, revising (Your Duties) sections 14(a) introductory text, 14(a)(2) and (3), 14(c), and 14(d), redesignating section 14(f) as 14(g) and adding sections 14(f) and 14(h);

oo. Amend section 14 (Our Duties) by revising sections 14(a)(1) and (2), redesignating section 14(a)(3) as 14(a)(4), and adding a new section 14(a)(3);

pp. Amend section 14 (Our Duties) by deleting section 14(d);

qq. Amend section 15 by revising the section heading, revising section 15(b), deleting section 15(e), and adding new sections 15(e) through (j);

rr. Amend section 16(b)(3) by adding the word “insured” between the words “from” and “acreage”;

ss. Revise section 17(a)(1) introductory text;
 tt. Revise section 17(c);
 uu. Amend section 17(d)(1) by deleting the word “and” in the first sentence and replacing it with the word “or”;

vv. Amend section 17(d)(2) by replacing the word “probability” with the word “expectation”;

ww. Amend section 17(e)(1) by deleting “or (5)” at the end of the first sentence;

xx. Amend the first sentence of section 17(e)(1)(i)(A) by replacing the words “reported for insurance” with “insured acres reported”, replacing the words “substitute crop other than an approved cover” with “second crop,” and adding “unless you meet the double-cropping requirements in section 17(f)(4)” before the closing parentheses;

yy. Amend section 17(e)(1)(i)(B) by adding the following new sentences between the current second and third sentence: “If, on the sales closing date, you do not have any acreage in a county and you subsequently obtain acreage in accordance with the conditions in section 17(e)(1)(i)(A), you must submit your intended acreage report within 10 days of the time you obtain the acreage. The new acreage will not be eligible for prevented planting if a cause of loss has occurred that could prevent planting at the time the acreage was obtained.”;

zz. Revise section 17(e)(1)(ii)(A);
 aaa. Revise sections 17(f)(1) through (5);

bbb. Delete current section 17(f)(6) and redesignate sections 17(f)(7) through (12) as 17(f)(6) through (11) respectively;

ccc. Revise redesignated section 17(f)(6);

ddd. Amend redesignated section 17(f)(10) by deleting the word “or” at the end of that subsection;

eee. Amend redesignated section 17(f)(11) by replacing the period at the end of that section with “; or”;

fff. Add a new section 17(f)(12);

ggg. Amend section 17(h) by adding the following sentence between the current first and second sentence, “Administrative fees will not be charged for a crop if switching the prevented planting crop acreage in accordance with this section results in an extra administrative fee that you would not have been required to pay had the acreage not been switched to the other crop.”;

hhh. Amend section 17(h)(2) by adding the following sentence at the end of the current text, “However, if you were prevented from planting any non-irrigated crop acreage and you do not

have any remaining eligible acreage for that crop and you do not have any other crop remaining with eligible acres under a non-irrigated practice, no prevented planting payment will be made for the acreage.”;

iii. Amend section 18 by revising sections 18(c) through (e) and adding sections 18(f) and (g);

jjj. Revise section 20. Appeals (For FCIC policies);

kkk. Revise section 20. Arbitration (For reinsured policies);

lll. Revise section 21;

mmm. Revise section 22(a);

nnn. Revise section 24(b) (For FCIC policies);

ooo. Revise sections 24(a) and (e) (For reinsured policies);

ppp. Revise section 25(c);

qqq. Amend section 26 by deleting the words “Payment and” in the section heading, deleting section 26(a) and removing the subsection (b) designation;

rrr. Amend section 30 by adding the following sentence between the first and second sentence, “If you receive any funds from someone else, you must repay us the amount you received from us, not to exceed the amount of indemnity paid to you.”;

sss. Revise section 34(a)(2)(iii);

ttt. Amend section 34(a)(3)(i) by deleting “and” at the end of the text;

uuu. Amend section 34(a)(3)(ii) by deleting the period at the end of the text and replacing it with “; and”;

vvv. Revise section 34(a)(3) by adding section 34(a)(3)(iii);

www. Amend sections 34(b)(1) and (3);

xxx. Amend section 34(c)(1) by deleting “ and” at the end of the text;

yyy. Revise section 34(c)(2);

zzz. Amend section 34(c) by adding section 34(c)(3);

aaaa. Revise section 36; and

bbbb. Add a new section 37.

The revised and added sections read as follows:

§ 457.8 The application and policy.

* * * * *

[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 codified at 7 CFR chapter IV 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 provider, an agent or any other agent or employee of the crop insurance provider, FCIC, the Risk Management Agency (RMA) or the Farm Service Agency (FSA). Procedures (including handbooks, manuals, and directives) issued by us and published on the RMA Web site at <http://www.rma.usda.gov/> or a successor website will be used in the

administration of this policy. If there is a conflict between the provisions of your policy, the Federal Crop Insurance Act (Act), or the regulations published at 7 CFR chapter IV and the procedures issued by us, the terms of your policy, the Act, or such regulations control.

* * * * *

[Reinsured Policies]

This insurance policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the provisions of the Federal Crop Insurance Act (Act) (7 U.S.C. 1501 *et seq.*). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act. The provisions of the policy are published in the **Federal Register** and codified at 7 CFR chapter IV 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 provider, an agent or any other agent or employee of the crop insurance provider, FCIC, the Risk Management Agency (RMA) or the Farm Service Agency (FSA). Procedures (including handbooks, manuals, and directives) issued by FCIC and published on the RMA Web site at <http://www.rma.usda.gov/> or a successor website will be used in the administration of this policy. If there is a conflict between the provisions of your policy, the Federal Crop Insurance Act (Act), or the regulations published at 7 CFR chapter IV and the procedures issued by FCIC, the terms of your policy, the Act, or such regulations control. In the event that 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.

* * * * *

Terms and Conditions

Basic Provisions

1. Definitions.

* * * * *

Actuarial documents. The material for the crop year which is available for public inspection in your agent's office and published on RMA's Web site at <http://www.rma.usda.gov/> or a successor website, and which shows the amounts of insurance or production guarantees, coverage levels, information needed to determine premium rates, premium adjustment percentages, practices, types, insurable acreage, and other related information regarding crop insurance in the county.

* * * * *

Agricultural commodity. Any crop or other commodity produced, regardless of whether or not it is insurable.

Annual crop. An agricultural commodity that normally must be planted each year.

* * * * *

Average yield. The actual production history (APH) yield determined in accordance with 7 CFR part 400, subpart G, excluding any adjustments elected by you under section 36.

* * * * *

Border. A readily identifiable distinction between two areas of land (e.g., different

planting patterns or plant densities, or area where no crop is planted, etc.).

Buffer zone. A parcel of land that separates agricultural commodities grown under organic practices from agricultural commodities grown under non-organic practices, and which is sufficient in size, as specified in your organic plan, to prevent the possibility of unintended contact by prohibited substances or organisms.

* * * * *

Certified organic acreage. Acreage in the certified organic farming operation that has been certified by a certifying agent as conforming to organic standards in accordance with 7 CFR part 205.

Certifying agent. A private or governmental entity accredited by the Secretary, for the purpose of certifying a production, processing or handling operation as organic.

* * * * *

Contract change date. The calendar date by which changes to policy provisions will be made in accordance with section 4.

* * * * *

Cover crop. A crop that is commonly planted in the area for erosion control or green manure and is generally left in place for one growing season.

* * * * *

Crop year. The period within which the insured crop is normally grown, regardless of whether or not it is actually grown, and designated by the calendar year in which the insured crop is normally harvested, unless otherwise specified in the Crop Provisions.

* * * * *

Delinquent account. Any account you have with us in which administrative fees or premiums, and interest on those amounts, 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, and the interest on such amounts, which are not paid within 30 days of our mailing or other delivery of notification to you of the amount due.

Disinterested third party. A person or entity that does not have any financial or other interest in the insured such as a familial or other personal relationship.

Double-crop. The practice of producing two or more crops for harvest on the same acreage in the same crop year.

Earliest planting date. A calendar date contained in the Special Provisions that defines the earliest date you may plant an insured agricultural commodity and qualify for a replanting payment if such payments are authorized by the Crop Provisions.

* * * * *

Enterprise unit. All insurable acreage of the insured crop in the county in which you have a share on the date coverage begins for the crop year. An enterprise unit must consist of planted acreage of the same insured crop in:

(1) Two or more basic units that are located in two or more separate sections, section equivalents, or FSA farm serial numbers; or

(2) Two or more optional units established by separate sections, section equivalents, or FSA farm serial numbers.

Field. All acreage of tillable land within a natural or artificial boundary (e.g., roads,

waterways, fences, etc.). Different planting patterns or planting different crops do not create separate fields.

* * * * *

First crop. With respect to a single crop year and any specific acreage, the first instance that an agricultural commodity is planted for harvest or prevented from being planted and is insured under the authority of the Act. For example, if winter wheat that is not insured is planted on acreage that is later planted to soybeans that are insured, the first crop would be soybeans. If the winter wheat was insured, it would be the first crop.

* * * * *

Good farming practices. The farming practices that are commonly used in the area where the crop is produced, including sustainable farming practices, that are recognized by FCIC to be necessary for the crop to make normal progress toward maturity, produce at least the yield used to determine the production guarantee or amount of insurance, and be compatible with the agronomic and weather conditions in the area. If you use a farming practice not commonly used in the area, you should contact us to determine if such practice is insurable.

* * * * *

Liability. The dollar amount of insurance coverage used in the premium computation for the applicable crop.

* * * * *

Non-contiguous. Acreage farmed by you that is separated from other acreage that is farmed by you by land that is neither owned by you nor rented by you for cash or a crop share, except that acreage farmed by you that is only separated by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Organic farming practice. A system of plant production practices approved by a certifying agent in accordance with 7 CFR part 205.

Organic plan. A written plan that describes the organic farming practices that you and a certifying agent agree upon annually or at such other times as prescribed by the certifying agent.

Organic standards. Standards in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*) and 7 CFR part 205.

Perennial crop. An agricultural commodity that normally does not have to be planted each year.

* * * * *

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. It will be considered to be practical to replant

regardless of the cost or availability of seed or plants.

* * * * *

Prevented planting. The inability to plant the insured crop by the final planting date due to excess moisture or because weather conditions are such that the seed would not be expected to germinate or produce a crop. You may also be eligible for a prevented planting payment if you are unable to plant the insured crop with the proper equipment within the late planting period.

Price election. The amounts contained in the Special Provisions or an addendum thereto, or in a written agreement if a price election is not provided in the Special Provisions or 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.

* * * * *

Prohibited substance. Any biological, chemical, or other agent that is prohibited from use or is not provided for use in the organic standards for use on any certified organic, organic, transitional or buffer zone acreage.

Replanting. Performing the cultural practices necessary to prepare the land to replace the seed or plants of the damaged or destroyed insured crop and then replacing the seed or plants of the same crop in the same insured acreage.

* * * * *

Second crop. With respect to a single crop year, any agricultural commodity that is planted immediately following a first crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first crop, except the term does not extend to a replanting of a first crop when it is required by the policy. A cover crop, planted after a first crop, that is hayed, grazed or harvested will be considered a second crop.

Secretary. The Secretary of Agriculture, USDA.

* * * * *

Substantial beneficial interest. An interest held by any person of at least 10 percent in the applicant or insured. All spouses and children that reside in the same household will be considered to have a substantial beneficial interest in the applicant or insured unless the spouse or children can prove that the acreage farmed by the applicant or insured is a totally separate farming operation in accordance with FCIC issued procedure and that the spouse or children derive no benefit from the farming operation of the insured or applicant.

* * * * *

Sustainable farming practice. A system or process for producing an agricultural commodity recognized by the Natural Resources Conservation Service (NRCS) or a successor agency as likely to conserve or enhance natural resources and the environment.

* * * * *

Transitional acreage. Acreage on which organic farming practices are being followed

but that does not yet qualify to be designated as organic acreage.

* * * * *

Whole farm unit. All insurable acreage of two or more insured crops planted in the county in which you have a share on the date coverage begins for each crop for the crop year. All crops for which the whole farm unit structure is available must be included in the whole farm unit. No one insured crop can constitute more than 75.0 percent of the total liability of all insured crops in the whole farm unit, and all crops in the unit must be insured under the same plan of insurance and with the same insurance provider.

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2. Life of Policy, Cancellation, and Termination.

* * * * *

(b) Your application for insurance must contain all the information required by us to insure the crop.

(1) Applications that do not contain all social security numbers and employer identification numbers of the applicant and all social security numbers of individuals with a substantial beneficial interest in the applicant and shares, as applicable, 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.

(2) If an entity has an interest of 10 percent or more in the insured or applicant, the social security number of all individuals with an interest in the entity must be provided.

(3) Notwithstanding any provision contained in 7 CFR part 400, subpart U, if we discover that a person with a substantial beneficial interest has failed to provide a social security number or if a person with a substantial beneficial interest in the insured crop is ineligible:

(i) For the year of application, the application will not be accepted for the insured crop for which the social security numbers were not provided or the person was ineligible; or

(ii) For any crop year after the year of application, no indemnity will be due for the insured crop for which the social security numbers were not provided or the person was ineligible. Even though no indemnity is due, you will 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. No administrative fee will be due for such crops.

* * * * *

(e) The premium, administrative fee, and any other amount 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 or the date contained in a notice to you of overpayment or any payment agreement. Termination may affect your eligibility for benefits under other USDA programs. Any amount due to us for any crop insured by us under the authority of the Act will be deducted from any indemnity due you for this or any other crop insured with us. All administrative fees and related interest are owed to FCIC and failure to timely pay such fees when due may also

subject you to other administrative offsets. If any premium, administrative fee, and any other amount due, plus any accrued interest, is not paid on or before the termination date for the crop on which the amount is due:

* * * * *

(3) Ineligibility will be effective on:

(i) The date that a policy was terminated for the crop for which you failed to pay premium, an administrative fee, and any related interest owed;

(ii) The payment date contained in any notification of indebtedness for any overpaid indemnity, if you fail to pay the amount owed by such due date; or

(iii) The termination date for the crop year prior to the crop year in which a scheduled payment is due under a payment agreement if you fail to pay the amount owed by any payment date in such payment agreement;

* * * * *

(5) A crop policy already in effect at the time you become ineligible will not be terminated until the termination date for that crop policy (If you are ineligible, you may not obtain any crop insurance under the Act until payment is made in full, you execute an agreement to repay the debt and make payments in accordance with the agreement, or you file a petition to have your debts discharged in bankruptcy. Dismissal of the bankruptcy petition before discharge will void all policies in effect retroactive to the date you were originally determined ineligible to participate and any indemnities paid subsequent to that date must be repaid);

(6) If you execute an agreement to pay the debt and fail to make any scheduled payment, all of your policies will be terminated effective on the termination date for the crop year prior to the crop year in which you failed to make the scheduled payment and no indemnity, replanting payment or prevented planting payment will be due for that year (You will no longer be eligible to obtain crop insurance by execution of an agreement to pay the debt. You will be ineligible for crop insurance until the debt is paid in full or you file a petition to discharge the debt in bankruptcy. Dismissal of the bankruptcy petition before discharge will void all policies in effect retroactive to the date you were originally determined ineligible to participate and any payments and indemnities paid subsequent to that date must be repaid);

(7) Once the policy is terminated, it cannot be reinstated for the current crop year unless the termination was in error because you did not owe any amounts or you paid the amounts owed on or before the termination date;

* * * * *

(9) If we deduct the amount due from an indemnity or prevented planting payment owed to you, the date of payment for the purpose of determining your eligibility will be the date that you and we sign the claim for indemnity (If the claim for indemnity is not signed by you and us by the termination date or if the claim amount does not satisfy the debt, all amounts owed must still be paid by the termination date or the policy will be terminated and you will not be eligible for insurance in accordance with this paragraph).

(10) For example, if crop A, with a termination date of October 31, 2001, and crop B, with a termination date of March 15, 2002, 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, 2001, and crop A's policy is terminated as of that date. Crop B's policy is terminated as of March 15, 2002. If you enter an agreement to repay the debt on April 25, 2002, the earliest date by which you can obtain crop insurance for crop A is to apply for crop insurance by the October 31, 2002, sales closing date and for crop B is to apply for crop insurance by the March 15, 2003, sales closing date. If you fail to make a payment that was scheduled to be made on April 1, 2003, your policy will terminate as of October 31, 2002, for crop A, and March 15, 2003, for crop B, and no indemnity or prevented planting payment will be due for that crop year for either crop. You will not be eligible to apply for crop insurance for any crop until after the debt is paid in full or you file a petition to discharge the debt in bankruptcy.

(11) If you are determined to be ineligible under section 2(e), all persons with a substantial beneficial interest in you are also ineligible until you become eligible again.

* * * * *

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

* * * * *

(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. However, you may not increase your coverage level or your price election if a cause of loss that could or would result in an insured loss has occurred prior to the time you request the increase. 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 a 100 percent price election for the previous crop year and you do not select a new price election for the current crop year, we will assign a 100 percent price election for the current crop year.)

* * * * *

(d) It is your responsibility to accurately report all information that is used to determine your average yield. You may certify this information on your production report. However, if you file a claim for any unit, you must provide written verifiable records for that unit for at least the three most recent crop years of your production history to support the information you have certified (if the yields for the three years are not correct, we will require records for all years of your production history for the loss unit). If you misreport any material information used to determine your approved yield, we will:

(1) Correct the unit structure, if necessary;
 (2) Retain the average yield for the current crop year if the information you reported results in an average yield lower than the correct yield or not greater than 105 percent of the correct yield; or

(3) Deny the claim for indemnity or replanting or prevented planting payment on the unit for which the information was misreported, if the information you reported results in an average yield greater than 105 percent of the correct yield. Even though there is no indemnity or replanting or prevented planting payment due, you will still be required to pay the premium due under the policy for the unit. The premium amount used for this purpose will be based on the corrected average yield.

(e) We will revise your approved yield when:

(1) The approved yield for the unit is inconsistent with other units of the insured crop in your farming operation, surrounding farms with acreage with similar characteristics and farming practices, or other persons in which you have a share, unless you provide evidence that will account for the discrepancy in the production of such units (The inconsistent yield will be revised to an amount that is consistent with other units in your farming operation, surrounding farms with acreage with similar characteristics and farming practices, or units of other persons in which you have a share);

(2) The production reported (appraised or harvested) for the unit is obtained from an average number of acres that is less than 25 percent of the current acreage in the unit (Representative samples will not be used to establish the average yield except when representative samples are used to calculate any indemnity paid to you); or

(3) You change your farming practice within a unit during a growing season or between crop years (For example, you have actual production history for a non-irrigated crop, but you decide to partially irrigate the crop).

(f) If you elect to plant a second crop on acreage where the first crop was prevented from being planted, you will receive a yield equal to 60 percent of the actual production history (APH) yield for the first crop to calculate your average yield for subsequent crop years (not applicable to crops if the APH is not the basis for the insurance guarantee). If the unit contains both prevented planted and planted acreage of the same crop, the yield for the unit will be determined by:

(1) Multiplying the number of insured prevented planting acres by its respective yield determined in accordance with this subsection;

(2) Adding the totals from section 3(f)(1) to the amount of appraised or harvested production for all of the insured planted acreage; and

(3) Dividing the total in section 3(f)(2) by the total number of acres in the unit.

* * * * *

(i) Hail and fire coverage may be excluded from the covered causes of loss for an insured crop only if you select additional coverage of not less than 65 percent of the approved yield indemnified at the 100 percent price

election, or a comparable coverage as established by FCIC.

* * * * *

4. Contract Changes.

* * * * *

(b) Any changes in policy provisions, amounts of insurance, premium rates, program dates, and price elections (except as specified in section 3) will be posted on the RMA Web site at <http://www.rma.usda.gov/> or a successor website or filed with the Office of the Federal Register not later than the contract change date contained in the Crop Provisions. This information will be available to you from your local crop insurance provider.

* * * * *

5. [Reserved]

6. Report of Acreage.

* * * * *

(d) You may not revise your acreage report for any planted acreage after the acreage reporting date without our consent. If you report any prevented planting acreage, you cannot revise such acreage after the report is initially submitted to us without our consent.

* * * * *

(f) You should verify all information on the acreage report prior to submitting it to us. If you:

(1) Report information that results in a liability amount 95.0 to 105.0 percent of the corrected liability for a unit, any indemnity, replanting or prevented planting payment will be based on the corrected liability; or

(2) Fail to report any unit, or you report information that results in a liability amount for the unit lower than 95.0 percent or higher than 105.0 percent of the corrected amount, no indemnity, replanting or prevented planting payment will be paid. Even though there is no indemnity or replanting or prevented planting payment due, you will still be required to pay the premium due under the policy for the unit. The premium amount used for this purpose will be based on the corrected liability.

(g) 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.

* * * * *

7. Annual Premium and Administrative Fees.

(a) The annual premium is earned and payable at the time coverage begins. You will be billed for the premium and administrative fee not earlier than the premium billing date specified in the Special Provisions.

(b) Any premium or administrative fees owed by you may be offset from an indemnity or prevented planting payment due you in accordance with section 2(e).

* * * * *

(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). The information needed to determine the premium rate and any premium adjustment percentages that may

apply are contained in the actuarial documents or an approved written agreement.

* * * * *

(f) If the amount of premium (gross premium less premium subsidy paid on your behalf by FCIC) and administrative fee you are required to pay for any acreage exceeds the liability for the acreage, coverage for those acres will not be provided (no premium or administrative fee will be due and no indemnity will be paid for such acreage).

8. Insured Crop.

* * * * *

(b) * * *

(1) If the information necessary to insure the crop or a specific practice, type, class, or variety of it (price election, premium rate information, yields, etc.) is not included in the actuarial documents or in a written agreement (A written agreement may be used to provide a premium rate other than that specified in the actuarial documents for high risk land only);

(2) Grown using a practice or a type, class or variety that is not adapted to the area or is expressly excluded by the policy (Just because a farming practice, type, class, or variety is not excluded by the policy does not mean that it is insurable. If any farming practice, type, class, or variety is not established or widely used in the area, it may not be considered a good farming practice);

* * * * *

9. Insurable Acreage.

(a) * * *

(1) That has not been planted and harvested within one of the three previous crop years unless you can show that:

(i) * * *

(A) In at least 2 of the previous 3 crop years to comply with any other USDA program;

* * * * *

(iii) Such acreage constitutes 5 percent or less of the insured planted acreage in the unit; or

* * * * *

(3) For which the actuarial documents do not provide the information necessary to determine the premium rate, unless insurance is allowed by a written agreement;

(4) On which the insured crop is damaged and it is practical to replant the insured crop, but the insured crop is not replanted as soon as it is practical to do so;

* * * * *

(8) Of a second crop if you elect not to insure such acreage when there is an insurable loss for planted acreage of a first crop and you intend to collect an unreduced indemnity for the first crop acreage in accordance with section 15 (You must make the election not to insure acreage of a second crop at the time the first crop acreage is released by us and you must report the crop acreage that will not be insured by the applicable acreage reporting date); or

(9) Of a crop that is planted following a second crop or following an insured crop that is prevented from being planted after a first crop, unless it is an established practice in the area to plant three or more crops for harvest on the same acreage in the same crop year, and additional coverage insurance

provided under the authority of the Act is offered for the third or subsequent crop in the same crop year. Insurance will only be provided for a third or subsequent crop as follows:

(i) You must provide records acceptable to us that show:

(A) You have produced and harvested the insured crop as a third or later crop on the same acreage in the same crop year in at least two of the last four years in which you produced the insured crop; or

(B) The applicable acreage has had three or more crops produced and harvested on it in at least two of the last four years in which the insured crop was grown on it; and

(ii) The amount of insurable acreage will not exceed 100 percent of the greatest number of acres for which you provide the records required in section 9(a)(9)(i)(A) or (B).

* * * * *

10. Share Insured.

* * * * *

(b) We will include in your share or under your policy for any insured crop, any acreage or interest:

(1) Reported by or for your spouse, child, or any member of your household, unless you can prove that the acreage farmed by your spouse, child, or any member of your household is a totally separate farming operation in accordance with FCIC approved procedures; or

(2) Held by a corporation, partnership, association, or other legal entity in which you have a share if the other shareholders, stakeholders, or persons affiliated with the corporation, partnership, association, or other legal entity are all members of your family or household or are the same persons that are the shareholders, stakeholders, or persons affiliated with the other corporation, partnership, association, or other legal entity in which you are a shareholder, stakeholder or otherwise affiliated. For example, if you are in one partnership with John Doe and Jane Doe that insures 100 acres and you enter a different partnership with John Doe and Jane Doe, that rents another 100 acres, all 200 acres must be insured under the original partnership policy.

* * * * *

12. Causes of Loss.

The insurance provided is against only unavoidable loss directly caused by specific causes of loss contained in the Crop Provisions. All specified causes of loss, except where the Crop Provisions specifically cover loss of revenue due to a reduced price in the marketplace, must be due to a natural disaster. All other causes of loss, including but not limited to the following, are NOT covered:

* * * * *

(c) Water contained by structures designed to channel or contain water such as levee systems, dams, or reservoir projects on any acreage, or water released from such structures on any acreage on which there is a water easement;

(d) Failure or breakdown of the irrigation equipment or facilities unless the failure or breakdown is due to a cause of loss specified in the Crop Provisions (If damage is due to

an insured cause, you must make all reasonable efforts to restore the equipment or facilities to proper working order in a timely manner unless we determine it is not practical to do so);

* * * * *

(f) Any cause of loss that occurs during the insurance period but the damage is not discoverable until after the crop is placed in storage, unless expressly authorized in the Crop Provisions.

* * * * *

14. Duties in the Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage.

Your Duties—

(a) In case there has been a cause of loss that may have affected the amount of production or quality of the insured crop, you must:

* * * * *

(2) Give us notice, by unit for each insured crop, within 72 hours after the occurrence of the cause of loss (For continuing causes of loss such as drought or excess moisture, you must give us notice within 72 hours of your initial discovery that the crop may have suffered any damage);

(3) If provided for in the Crop Provisions, leave representative samples intact of the unharvested crop if you report damage within 15 days of the time you begin harvest of the damaged unit (The samples must be left intact until we inspect them or until 15 days after completion of harvest on the unit, whichever is earlier. Unless specified otherwise in the Crop Provisions or Special Provisions, the samples must be 10 feet wide and extend the entire length of each field in the unit. The period to retain representative samples may be extended if it is necessary to accurately determine the loss. You will be notified in writing of any such extension);

* * * * *

(c) In addition to complying with the 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 unless you request an extension in writing and we agree to such extension. The claim for indemnity must include all information we require to settle the claim.

(d) 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 (In addition, if you insure any acreage that may be subject to an indemnity reduction as specified in section 15(e), you must provide separate records of production from such acreage for all insured crops planted on the acreage. For example, if you have an insurable loss on 10 acres of wheat and subsequently plant cotton on the same 10 acres, you must provide records of the wheat and cotton production on the 10 acres separate from any other wheat and cotton production that may be planted in the same unit. If you fail to provide such records, we will allocate the production of each crop to the acreage in proportion to our liability for the acreage); and

(2) Upon our request, or that of any USDA employee, submit to an examination under oath.

* * * * *

(f) In the event you are prevented from planting an insured crop which has prevented planting coverage, you must notify us within 72 hours after:

(1) The final planting date, if you do not intend to plant the insured crop during the late planting period or if a late planting period is not applicable; or

(2) You determine you will not be able to plant the insured crop within any applicable late planting period.

* * * * *

(h) Failure to comply in a timely manner with all the requirements of this section will result in denial of your claim for indemnity or prevented planting or replant payment for the acreage in which failure occurred. Even though no indemnity or other payment is due, you will still be required to pay the premium due under the policy for the unit.

Our Duties—

(a) * * *

(1) We reach agreement with you, including establishment of the amount of production or the value of any production from acreage on which a second crop is planted;

(2) Completion of arbitration, reconsideration of determinations regarding good farming practices or any other appeal that results in an award in your favor, unless we exercise our right to appeal such decision;

(3) Completion of any investigation by the USDA of your current or any past claim for indemnity if no evidence of wrongdoing has been found (If any evidence of wrongdoing has been discovered, the amount of any indemnity overpayment as a result of such wrongdoing may be offset from any indemnity owed to you); or

* * * * *

15. Production Included in Determining an Indemnity and Payment Reductions.

* * * * *

(b) Appraised production will be used to calculate your claim only if you are not going to harvest your acreage. Such appraisals may be conducted after the end of the insurance period. If your claim is based on appraised production and you later decide to harvest the acreage, you must provide us with the amount of harvested production. Claims will be adjusted if the harvested production exceeds the appraised production and you will be required to repay any overpaid indemnity.

* * * * *

(e) With respect to acreage where you have suffered a total or partial loss to your first crop in the crop year, except in the case of double cropping described in section 15(h):

(1) You may elect to not plant or to plant and not insure a second crop on the same acreage for harvest in the same crop year and collect an indemnity payment that is equal to 100 percent of the insurable loss for the first crop; or

(2) You may elect to plant and insure a second crop on the same acreage for harvest in the same crop year and:

(i) Collect an indemnity payment that is 35 percent of the insurable loss for the first crop;

(ii) Be responsible for a premium for the first crop that is commensurate with the amount of the indemnity paid for the first crop; and

(iii) If the second crop does not suffer an insurable loss:

(A) Collect an indemnity payment for the other 65 percent of insurable loss that was not previously paid under section 15(e)(2)(i); and

(B) Be responsible for the remainder of the premium for the first crop that you did not pay under section 15(e)(2)(ii).

(f) With respect to acreage where you were prevented from planting the first crop in the crop year, except in the case of double cropping described in section 15(h):

(1) If a second crop is not planted on the same acreage for harvest in the same crop year you may collect a prevented planting payment that is equal to 100 percent of the prevented planting payment for the acreage for the first crop; or

(2) If a second crop is planted on the same acreage for harvest in the same crop year and:

(i) Provided that the second crop is not planted on or before the final planting date or during the late planting period (as applicable) for the first crop, you may collect a prevented planting payment that is 35 percent of the prevented planting payment for the first crop; and

(ii) Be responsible for a premium for the first crop that is commensurate with the amount of the indemnity paid for the first crop.

(g) The reduction in the amount of indemnity or prevented planting payment and premium specified in sections 15(e)(2)(i) and (ii) and 15(f)(2)(i) and (ii) will apply even if another person plants the second crop on any acreage where the first crop was planted or was prevented from being planted, as applicable. The reduction in the amount of indemnity or prevented planting payment will also apply if a volunteer crop is harvested from the same acreage in the same crop year, or if a cover crop is grazed, hayed, or otherwise harvested. In the event you receive cash rent for any acreage on which you were prevented from planting or had a partial or total loss to a first crop, any indemnity or prevented planting payment you receive for the first crop will be limited to 35 percent of the insurable loss or prevented planting payment for the first crop, regardless of whether or not a second crop is planted or a second crop suffers an insurable loss and your premium will be commensurate with the amount of indemnity or prevented planting payment paid. This reduction will not apply if the double-cropping requirements described in subsection (h) have been met.

(h) You may receive a full indemnity, or a full prevented planting payment for a first crop when a second crop is planted on the same acreage in the same crop year, regardless of whether or not the second crop is insured or sustains an insurable loss, if each of the following conditions are met:

(1) It is an established practice in the area to plant two or more crops for harvest in the same crop year;

(2) The second or more crops are customarily planted after the first crop for harvest on the same acreage in the same crop year in the area;

(3) Additional coverage insurance offered under the authority of the Act is available in the county on the two or more crops that are double-cropped;

(4) You provide records acceptable to us of acreage and production that show you have double cropped acreage in at least two of the last four crop years in which the first crop was planted, or that show the applicable acreage was double-cropped in at least two of the last four crop years in which the first crop was grown on it; and

(5) In the case of prevented planting, the second crop is not planted on or prior to the final planting date or, if applicable, the end of the late planting period for the first crop.

(i) The receipt of a full indemnity or prevented planting payment on both crops that are double-cropped is limited to the number of acres for which you can demonstrate you have double-cropped or that have been historically double-cropped as specified in section 15(h).

(j) If any Federal or State agency requires destruction of any insured crop production because it contains levels of substances or has conditions that are injurious to human or animal health in excess of the maximum amounts allowed by the Food and Drug Administration, other public health organizations of the United States or agency of the applicable State, you must certify that such production has been destroyed prior to receiving an indemnity payment. Failure to destroy the crop production will result in you having to repay any indemnity paid and you may be subject to administrative sanctions in accordance with section 515(h) of the Act and 7 CFR part 400, subpart R, and any applicable civil or criminal sanctions.

17. Prevented Planting.

(a) * * *

(1) You were prevented from planting the insured crop due to an insured cause of loss that is general in the surrounding area and generally prevents other producers from planting acreage with similar characteristics (Failure to plant at any time on or before the final planting date when other producers in the area with acreage with similar characteristics are planting will result in the denial of the prevented planting claim provided that such planting constitutes a good farming practice. The surrounding area includes all acreage that has experienced the insured cause of loss and acreage with similar characteristics means acreage with similar geography, topography, soil types, and the same weather conditions and exposure) and occurs:

* * * * *

(c) The premium amount for acreage that is prevented from being planted will be the same as that for timely planted acreage except as specified in section 15(f).

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(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. If a minimum number of acres or amount of production is specified in the processor contract, this amount will be used to determine the eligible acres. If a processor cancels or does not provide contracts, or reduces the contracted acreage or production from what would have otherwise been allowed, solely because the acreage was prevented from being planted due to an insured cause of loss, we may elect to determine the number of acres eligible based on the number of acres or amount of production you had contracted in the county in the previous crop year. If you did not have a processor contract in place for the previous crop year, you will not have any eligible prevented planting acreage for the applicable processor crop. The total eligible prevented planting acres in all counties cannot exceed the total number of acres or amount of production contracted in all counties in the previous crop year. If the applicable crop provisions require that the price election be based on a contract price, and a contract is not in force for the current year, the price election may be based on the contract price in place for the previous crop year.

* * * * *

(f) * * *

(1) That does not constitute at least 20 acres or 20 percent of the insurable crop acreage in the unit, whichever is less (Any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop, type, and practice that is planted in the field except that the prevented planting acreage may be considered to be acreage of a crop, type, and practice other than that which is planted in the field, if the acreage that was prevented from being planted constitutes at least 20 acres or 20 percent of the total insurable acreage in the field and you produced both crops, crop types, or followed both practices in the same field in the same crop year within any one of the 4 most recent crop years, or if it is clear that the insured crop planted in the field would not have been planted on the prevented planting acreage because rotation requirements would not be met or because you had planted the total number of acres specified in the processor contract);

(2) For which the actuarial documents do not provide the information needed to determine a premium rate unless a written agreement designates such premium rate;

(3) Used for conservation purposes, intended to be left unplanted under any program administered by the USDA or other government agency, or is required to be left unharvested under the terms of the lease or any other agreement (The number of acres eligible for prevented planting will be limited to the number of acres specified in the lease for which you are required to pay either cash or share rent);

(4) On which the insured crop is prevented from being planted, if you or any other person receives a prevented planting

payment for any crop for the same acreage in the same crop year, excluding share arrangements, unless:

(i) It is an established practice in the area to plant the second crop for harvest following harvest of the first crop, and additional coverage insurance offered under the authority of the Act is available in the county for both crops in the same crop year;

(ii) You provide records acceptable to us of acreage and production that show you have double-cropped acreage in at least two of the last four crop years in which the first crop was planted, or that show the applicable acreage was double-cropped in at least two of the last four crop years in which the first crop was grown on it; and

(iii) The amount of acreage you are double-cropping in the current crop year does not exceed the number of acres for which you provide the records required in section 17(f)(4)(ii);

(5) On which the insured crop is prevented from being planted, if any crop, is planted or a volunteer crop is harvested by you or any other person on the same acreage:

(i) Within the late planting period for the insured first crop, or on or before the final planting date if a late planting period is not applicable; or

(ii) On or before the final planting date for the insured crop unless you meet the double cropping requirements in section 17(f)(4), or the crop planted was a cover crop that was not hayed, grazed or otherwise harvested, or unless allowed by the Special Provisions.

(6) For which planting history or conservation plans indicate that the acreage would remain fallow for crop rotation purposes or on which any pasture or other forage crop is in place on the acreage during the time that planting of the insured crop generally occurs in the area;

* * * * *

(12) If, at the time you lease, buy, or otherwise acquire the acreage or the time the acreage becomes available to you for planting or you request insurance for the acreage, a cause of loss has occurred that will or could prevent planting.

* * * * *

18. Written Agreements.

* * * * *

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

(d) Each written agreement will only be valid for the number of crop years specified in the written agreement, not to exceed four years, or as long as the conditions under which the agreement was issued exist, whichever time period ends first (Such conditions include, but are not limited to, farming practices used, legal description of the acreage, types or varieties produced, etc. If any condition changes, you must notify us immediately, the written agreement will no longer be effective, and you must request a new written agreement. Failure to immediately notify us of changed conditions will result in denial of liability under the terms of the written agreement. If a written

agreement is not specifically renewed after it expires, insurance coverage for subsequent years will be in accordance with the printed policy);

(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 FCIC approved written agreement procedures published on the RMA Web site at <http://www.rma.usda.gov/> or a successor website and, after inspection of the acreage by us, it is determined that no loss has occurred on planted acreage or no cause of loss that could prevent planting has occurred and the crop is insurable in accordance with the policy and written agreement provisions;

(f) For a crop, type, variety or practice that is not insurable in the county, you must provide at least four years of records to support the change you are requesting (If you do not have at least four years of records to support the requested change, your request for a written agreement will be denied); and

(g) Any written agreement will be denied if FCIC determines the risk is excessive.

* * * * *

[For FCIC policies]

20. Appeals and Administrative Review.

(a) All determinations required by the policy will be made by us. If you disagree with our determinations, you may:

(1) Except as provided in section 20(a)(2), obtain reconsideration of or appeal those determinations in accordance with appeal provisions published at 7 CFR part 11; or

(2) Request a reconsideration of our loss determination regarding good farming practices in accordance with the review process established for this purpose and published at 7 CFR part 400, subpart J.

(b) In any appeal proceeding or reconsideration, the terms of this policy, the Act, and the regulations published at 7 CFR chapter IV are binding and any state or local laws that are in conflict with the terms of the policy, the Act, and the regulations are preempted. [For reinsured policies]

20. Appeals and Administrative Review.

(a) Except as provided in section 20(d), you may appeal any determination made by FCIC in accordance with appeal provisions published at 7 CFR part 11.

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

(c) In any appeal proceeding or reconsideration, the terms of this policy, the Act, and the regulations published at 7 CFR chapter IV are binding and any state or local laws that are in conflict with the terms of the policy, the Act, and the regulations are preempted.

(d) If you do not agree with any loss determination made regarding good farming practices, you may request reconsideration of this determination in accordance with the review process established for this purpose and published at 7 CFR part 400, subpart J.

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

(a) We, and any employee of USDA have the right to examine the insured crop and all

records related to planting, replanting, inputs, production, harvesting, and disposition of the insured crop as often as we reasonably require during the record retention period.

(b) For three years after the end of the crop year, you must retain, and provide upon our request, or the request of any employee of USDA:

(1) Complete records of the planting, replanting, inputs, production, harvesting, and disposition of the insured crop on each unit (This requirement also applies to all such records for acreage that is not insured); and

(2) All records used to establish the amount of production you certified on your production reports used to compute your approved yield unless such records have already been provided to us (For example, if your approved yield for the 2003 crop year was based on production records you certified for the 1997 through 2002 crop years, you must maintain all such records through the 2006 crop year, unless such records have already been provided to us).

(c) We may extend the record retention period beyond three years by notifying you of such extension in writing.

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

(e) Failure to keep and maintain the records, provide access to the insured crop or authorize access to the records maintained by third parties will result in:

(1) For failure to keep separate records for optional units, but all other policy requirements are met, combination of the optional units into the basic units; or

(2) In all other cases, a determination that no indemnity or prevented planting or replant payment is due. Even though no indemnity or other payment is due, you will still be required to pay the premium due under the policy for the unit.

22. Other Insurance.

(a) Other Like Insurance—Nothing in this section prevents you from obtaining other insurance not issued under the authority of the Act. However, unless specifically required by policy provisions, you must not obtain any other crop insurance issued under the authority of the Act on your share of the insured crop. If you cannot demonstrate that you did not intend to have more than one policy in effect, you may be subject to the sanctions authorized under this policy, the Act, or any other applicable statute. If you can demonstrate that you did not intend to have more than one policy in effect, and:

(1) One is an additional coverage policy and the other is a Catastrophic Risk Protection policy;

(i) The additional coverage policy will apply if both are with the same insurance provider or, if not, both insurance providers agree; or

(ii) The policy with the earliest date of application will be in force if both insurance providers do not agree; or

(2) Both are additional coverage policies or both are Catastrophic Risk Protection policies, the policy with the earliest date of application will be in force and the other policy will be void, unless both policies are with:

(i) The same insurance provider and the insurance provider agrees otherwise; or

(ii) Different insurance providers and both insurance providers agree otherwise.

* * * * *

[For FCIC policies]

24. Amounts Due Us.

* * * * *

(b) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any part thereof, on any unpaid premium amount or administrative fee due us. With respect to any premiums or administrative fees owed, interest will start to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

* * * * *

[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 or administrative fees 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. We will collect any unpaid amounts or premium and any interest owed thereon.

Administrative fees are owed to FCIC and FCIC will collect any unpaid administrative fees and any interest owed thereon.

* * * * *

(e) Amounts owed by you may be collected in part through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37.

25. Legal Action Against Us.

* * * * *

(c) You may not recover any attorneys fees or other charges, or any punitive, compensatory or any other damages except contractual damages, except as authorized in 7 CFR 400.352(b)(4).

* * * * *

34. Unit Division.

(a) * * *

(2) * * *

(iii) You must comply with all reporting requirements for the enterprise unit (While separate records of acreage and production for basic or optional units must be maintained, if you want to change your unit structure in subsequent crop years, it is not required to qualify for an enterprise unit);

* * * * *

(3) * * *

(iii) If you do not qualify for a whole farm unit when the acreage is reported, we will assign the basic unit structure.

* * * * *

(b) * * *

(1) You must maintain a clear and discernible border between each optional unit (Such border must remain clear and discernible throughout the entire growing season);

* * * * *

(3) You have records, that are acceptable to us, for at least the previous crop year for all optional and basic units that you will report in the current crop year (You may be required to produce the records for all units for the previous crop year);

* * * * *

(c) * * *

(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, there must be a clear and discernible border between the irrigated and non-irrigated acreage. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except the corners of a field in which a center-pivot irrigation system is used may be considered as irrigated acreage if the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit. In this case, production from both practices will be used to determine your approved yield); and

(3) In addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number, or irrigated and non-irrigated acreage, separate optional units may be established for acreage of the insured crop grown and insured under an organic farming practice. To qualify as a separate optional unit, there must be a clear and discernible border between the acreage insured using an organic farming practice and other acreage of the insured crop. Certified organic, organic, transitional and buffer zone acreages do not individually qualify as separate units. (See section 37 for additional provisions regarding acreage insured under an organic farming practice).

* * * * *

36. Substitution of Yields.

(a) When you have actual yields in your production history that, due to insured causes of loss, are less than 60 percent of the applicable transitional yield (T-Yield), as defined in 7 CFR 400.52, you may elect to exclude one or more of any such yields.

(b) Such election must be made on or before the sales closing date for the insured crop and the election will remain in effect for succeeding years.

(c) Each excluded actual yield will be replaced with a yield equal to 60 percent of the T-yield that is applicable in the county for the crop year in which the yield is being replaced (For example, if you elect to exclude your 1998 yield, the T-yield in effect for the 1998 crop year in the county will be used.

If you also elect to exclude your 2002 yield, the T-yield in effect for the 2002 crop year in the county will be used). The replacement yields will be used in the same manner as actual yields for the purpose of calculating the approved yield.

(d) Once you have elected to exclude an actual yield from the database, the replacement yield will remain in effect until such time as that crop year is no longer included in the database.

(e) Premium rates for approved yields that are adjusted under this section will be based on your yield prior to replacing the actual yields or such other basis as determined appropriate by FCIC to cover the increased risk associated with the substitution of higher yields.

37. Organic Farming Practices.

(a) In accordance with section 8(b)(2), insurance will not be provided for any crop grown using an organic farming practice, unless the information needed to determine a premium rate for an organic farming practice is specified on the actuarial table, or insurance is allowed by a written agreement.

(b) If insurance is provided for an organic farming practice as specified in section 37(a), only the following acreage will be insured under such practice:

(1) Certified organic acreage;

(2) Transitional acreage that is being converted to certified organic acreage in accordance with an organic plan; and

(3) Buffer zone acreage.

(c) On the date you report your acreage, you must have:

(1) For certified organic acreage, a written certification in effect from a certifying agent indicating the name of the entity certified, effective date of certification, certificate number, types of commodities certified, and name and address of the certifying agent (A certificate issued to a tenant may be used to qualify a landlord or other similar arrangement);

(2) For transitional acreage, a certificate as described in section 37(c)(1), or written documentation from a certifying agent indicating that an organic plan is in effect for the acreage; and

(3) Records from the certifying agent showing the specific location of each field of certified organic, transitional, buffer zone, and acreage not maintained under organic management.

(d) If you claim a loss on any acreage insured under an organic farming practice, you must provide us with copies of the records required in section 37(c).

(e) If any acreage qualifies as certified organic or transitional acreage on the date you report such acreage, and such certification is subsequently revoked by the certifying agent, or the certifying agent no longer considers the acreage as transitional acreage for the remainder of the crop year, that acreage will remain insured under the reported practice for which it qualified at the time the acreage was reported. Any loss due to failure to comply with organic standards will be considered an uninsured cause of loss.

(f) In addition to the applicable definition of "good farming practices", organic farming practices will be considered to be good

farming practices if they are those specified in the organic plan.

(g) Contamination by application or drift of prohibited substances onto land on which crops are grown using organic farming practices will not be an insured peril on any certified organic, transitional or buffer zone acreage.

(h) In addition to the provisions contained in section 17(f), prevented planting coverage will not be provided for any acreage based on

an organic farming practice in excess of the number of acres that will be grown under an organic farming practice and shown as such in the records required in section 37(c).

(i) In lieu of the provisions contained in section 17(f)(1) that specify prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same practice that is planted in the field, prevented planting acreage will be considered as organic practice acreage if

it is identified as certified organic, transitional, or buffer zone acreage in the organic plan.

Signed in Washington, DC, on September 12, 2002.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

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