DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB96

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

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Basic Provisions, Small Grains Crop Insurance Provisions, Cotton Crop Insurance Provisions, Sunflower Seed Crop Insurance Provisions, Coarse Grains Crop Insurance Provisions, Malting Barley Crop Insurance Provisions, Rice Crop Insurance Provisions, and Canola and Rapeseed Crop Insurance Provisions to provide revenue protection and yield protection. The amended provisions replace the Crop Revenue Coverage (CRC), Income Protection (IP), Indexed Income Protection (IIP), and the Revenue Assurance (RA) plans of insurance. These individual plans of insurance will no longer be available. The intended effect of this action is to offer producers a choice of revenue protection (protection against loss of revenue caused by low prices, low yields or a combination of both) or yield protection (protection for production losses only) within one Basic Provisions and the applicable Crop Provisions to reduce the amount of information producers must read to determine the best risk management tool for their operation and to improve the prevented planting and other provisions to better meet the needs of insured producers. In addition, FCIC has revised the Texas Citrus Tree Crop Insurance Provisions, Pear Crop Insurance Provisions, Sugarcane Crop Insurance Provisions, Macadamia Tree Crop Insurance Provisions, Macadamia Nut Crop Insurance Provisions, Onion Crop Insurance Provisions, Dry Pea Crop Insurance Provisions, Plum Crop Insurance Provisions, and Cabbage Crop Insurance Provisions to correct specific references to the revised Common Crop Insurance Regulations, Basic Provisions. Further, FCIC has revised certain provisions to incorporate provisions from previous rules implementing the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill).

DATES: *Effective Date:* This rule is effective April 29, 2010.

Applicability date: The changes will apply for the 2011 and succeeding crop years for all crops with a 2011 contract change date on or after April 30, 2010, and for 2012 and succeeding crop years for all crops with a 2011 contract change date prior to April 30, 2010.

FOR FURTHER INFORMATION CONTACT: Janice Nuckolls, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Stop 0812, Room 421, Kansas City, MO 64141–6205, telephone (816) 926–7730. For a copy of the Cost-Benefit Analysis, contact Leiann Nelson, Economist, at the office, address, and telephone number listed above.

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 the revised provisions in the final rule will have positive potential benefits for producers and insurance providers. The PayGo impact of changing the rapeseed price mechanism for revenue coverage to make the harvest price equal to the projected price is estimated at $5,233. The effect of this change is to reduce the risk, which will lower the premium rate for MPCI coverage, lower the amount of premium subsidy paid due to the lower premium, and decrease the indemnity paid.

A misreported information penalty was put into place in the 2005 crop year. The misreporting penalty was based on any reported information that resulted in liability greater than 110.0 percent or lower than 90.0 percent of the actual liability determined for the unit. The policy already provided a penalty for misreported acres and yields and when the misreporting factor was also applied to the indemnity, the penalty was overly harsh. In addition, the penalty was difficult to determine and administer. The total indemnity withheld in 2005 due to the misreported information factor penalty was slightly under $2.7 million and involved just over 608,000 acres.

Combining yield protection (protection for production losses only) and revenue protection (protection against loss of revenue caused by changes in prices, production losses or a combination of both) within the current Basic Provisions and applicable Crop Provisions will minimize the quantity of documents needed in the contract between the producer and the insurance provider. A producer benefits because he or she will not receive several copies of largely duplicative material as part of the insurance contract if he or she elects to insure different crops under different plans of insurance. Insurance providers benefit because there is no need to maintain inventories of similar materials, thus eliminating the potential for providing an incorrect set of documents to a producer by inadvertent error. Benefits will accrue due to avoided costs (the resources needed to duplicate and administer contract documents), which are intangible in nature. The cost to prepare, publish, store, and mail multiple copies of similar documents is avoided.

Revisions to the prevented planting provisions will clarify certain terms and conditions to reduce fraud, waste, and abuse. For example, the prevented planting payment amount has been changed so that it will not exceed the payment level for the crop prevented from being planted. Current provisions allow payment based on another crop when there are no remaining eligible acres for the crop prevented from being planted. Previously, the payment was based on the other crop even when its value was higher. The provisions still allow eligible acres for another crop to be used but limit the payment amount to the crop prevented from being planted.

The CRC, RA, IP, and IIP plans of insurance currently use a market-price discovery method to determine prices. This final rule generally uses the same method for determining the projected price for crops with both revenue protection and yield protection. The benefits of this action to FCIC are that it will no longer be required to make multiple estimates of the respective prices for these crops. Insurance providers benefit because they no longer will be required to process multiple releases of the expected market price for a crop year. Producers also benefit because the price at which they may insure the crops included under yield protection should more closely approximate the market value of any loss in yield that is subject to an indemnity. In addition, the variation in prices between yield protection and revenue protection will be reduced. There are essentially no direct costs to provide these pricing benefits because

the pricing mechanisms to be used are essentially the same as those currently being used for the revenue plans of insurance listed above. All required data are available and similar calculations are currently being made.

These changes will simplify administration of the crop insurance program, reduce the quantity of documents and electronic materials prepared and distributed, better define the terms of coverage, provide greater clarity, and reduce the potential for fraud, waste, and abuse.

Many of the benefits and costs associated with this rule cannot be quantified. The qualitative assessment indicates the benefits outweigh the costs of the regulation.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053. The revisions made in this regulation may result in minor changes in how the information is collected, but the fundamental nature of the information collection is not changing.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

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 direct action taken by FCIC or to require the insurance provider to take specific action 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 economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This rule finalizes changes to the Common Crop Insurance Regulations; Basic Provisions, Small Grains Crop Insurance Provisions, Cotton Crop Insurance Provisions, Sunflower Seed Crop Insurance Provisions, Coarse Grains Crop Insurance Provisions, Malting Barley Crop Insurance Provisions, Rice Crop Insurance Provisions, and Canola and Rapeseed Crop Insurance Provisions to provide revenue protection and yield protection in one policy and to make other changes that were published by FCIC on Friday, July 14, 2006, as a notice of proposed rulemaking in the **Federal Register** at 71 FR 40194–40252. The public was afforded 60 days to submit written comments after the regulation was published in the **Federal Register.** Based on comments received and specific requests to extend the comment period, FCIC published a notice in the **Federal Register** at 71 FR 56049 on September 26, 2006, extending the initial 60-day comment period for an additional 30 days, until October 26, 2006.

A total of 897 comments were received from 88 commenters. The commenters were insurance providers, attorneys, trade associations, State agricultural associations, agents, an insurance service organization, producers, State departments of agriculture, grower associations, agricultural credit associations, and other interested parties.

The public comments received regarding the proposed rule and FCIC's responses to the comments are listed below (under applicable subject headings) identifying issues and concerns, and the changes made, if any, to address the comments.

Commodity Exchange Price Provisions

FCIC received a number of comments regarding the Commodity Exchange Price Provisions (CEPP). Numerous comments were received with respect to the CEPP including, but not limited to, comments requesting: (1) Reinstating revenue coverage for sunflowers; (2) Increasing the maximum percentage the harvest price can move from 160

percent of the projected price to a larger amount; (3) Changing the projected price discovery period to 30 days; and (4) Establishing an earlier price discovery period to allow more time for sales.

The CEPP was provided for comment as a courtesy to the public and it is not part of the regulation and will not be published in the Code of Federal Regulations. Therefore, it is not subject to the formal notice and comment rulemaking process. As a result, FCIC is not publishing its responses to all of these comments in this final rule. FCIC thanks the public for their assistance in reviewing the CEPP and will consider all comments received and make appropriate changes in the CEPP.

Basic Provisions—General

Comment: Many commenters commended FCIC for their efforts to combine CRC, RA, IP, and Actual Production History (APH) into a single policy. They stated it will strengthen the efficiency and integrity of the program, simplify product selection, reduce unnecessary documents, and facilitate producers' understanding of coverage options. The commenters stated they were encouraged by many of the revisions proposed by FCIC, as they believe these provisions will reduce program vulnerabilities, resolve existing ambiguities and increase the accountability and responsibility of the producers. They recognized the high value of Federal crop insurance to producers and appreciated the continuing efforts of FCIC to further improve the effectiveness and administration of this important program. A commenter stated using the same method for determining prices for both revenue and yield protection is a move in the right direction. A commenter stated that yield protection prices will more truly reflect expected market prices. Another commenter stated that with the price being the same for the two coverages, producers will be able to more easily compare revenue protection against yield protection, thereby making a more informed decision. The commenters stated the procedures proposed by FCIC should provide a smooth transition. A commenter stated the combination policy also eliminates potential conflicts and mistakes that occur when individual plans of insurance are revised independently and differently. A commenter stated the proposed rule will govern the future terms and conditions by which producers will be insured against price and production risks under the Federal crop insurance program, and believed the ultimate success of the rule will be measured in direct proportion to the level of attention paid to each and every detail and the level of collaboration with insurance providers who deliver these important risk management products. The commenter stated careful avoidance of any unintended consequence, as well as substantive and procedural changes that have not been thoroughly vetted, whether such changes are express or implied, is absolutely critical.

Response: FCIC agrees combining the different plans of insurance into one program will be beneficial. FCIC also agrees generally using the same projected price by crop for both yield protection and revenue protection for all crops for which revenue protection is available should reflect expected market prices and assist the producer to make an informed decision when choosing between revenue and yield protection. However, the projected price for yield and revenue protection may not always be the same because FCIC reserves the right to set the projected price for yield protection to a price determined by FCIC. FCIC also agrees the revisions will reduce program vulnerabilities, resolve existing ambiguities, and increase the accountability and responsibility of the producers. The regulation is thoroughly reviewed to ensure the crop insurance program provides producers with viable risk management tools and can be marketed successfully.

Comment: A commenter stated the Federal crop insurance program is unique among Federal programs. Insurance providers must market and sell the products authorized under the program and farmers and ranchers, in turn, must make significant financial investment in risk management products most appropriate to their operations. Accordingly, the commenter believed it is inappropriate to review the proposed rule in the same context as an entitlement program, which is made available by the government and received by beneficiaries free of cost and usually without choices. Rather, the proposed rule should be reviewed to ensure risk management products offered under the program can be effectively marketed and sold by insurance providers in such a manner that consumers can make prudent risk management investments based on informed decisions.

Response: FCIC agrees that the Federal crop insurance program should not be reviewed strictly as an entitlement program. Unlike entitlement programs that are offered free of cost, most producers invest their premium dollars in the purchase of insurance. However, those premiums are also heavily subsidized by taxpayer dollars so FCIC has a heightened duty to protect program integrity and ensure the program operates in an actuarially sound manner and the review has been conducted accordingly.

Comment: A commenter suggested the proposed regulation did not simplify the regulations and they saw no benefit to the public. Another commenter stated the proposed rule is a serious and complex proposal that should be fully explained to companies, agents, and producers in order for FCIC to get the maximum benefit from their input. The commenter stated they have some concerns and reservations about the effectiveness of the proposed rule in achieving its stated objectives of providing greater simplification. The proposed rule presents new definitions and new changes that could make things even more complicated and difficult to learn than the present system. For instance, for just corn and soybean producers, there are 51 changes and 32 new definitions. While they applaud FCIC's intent to simplify what is nearly universally identified as an overly complex and burdensome program, they believe the agency could use this major restructuring as an opportunity to truly simplify the program for producers and agents alike and not merely shift 5 complicated and complex coverages (APH, RA, CRC, IP, and IIP) into one massively complicated and complex Basic Provisions and the applicable Crop Provisions.

Response: Previously, CRC, RA, IP and IIP all provided revenue coverage with different pricing mechanisms, varying unit structure, different underwriting rules, different rating structures, and different availability of crops and options. This meant that agents and producers were required to examine the coverages and terms and conditions, for each separate plan of insurance every year to determine which plan of insurance offered the best risk management fit for the producer. In this final rule, most of the differences between these plans of insurance have been eliminated so that now there is only one pricing mechanism for revenue coverage, the unit structures have been standardized, the options have been standardized, and the rating methodology has been standardized. This effort alone will eliminate considerable complexity within the program. As a result, except for the addition of revenue coverage, the policy terms remained substantially the same because all the unit structures, options, *etc.,* were already available under the APH Basic Provisions. This should also simplify the training of agents.

Further, the changes made to incorporate the revenue plans of insurance into the APH Basic Provisions and Crop Provisions should not be confused with the other changes made to enhance coverage and protect program integrity. While these changes will also have to be explained to producers and agents, such changes were necessary regardless of whether the revenue coverage was added to the APH Basic Provisions and Crop Provisions. FCIC believes the additions and revisions in this regulation simplify and improve the crop insurance program.

Comment: Several commenters urged FCIC to hold a public hearing or a series of public hearings on the proposed rule and extend the public comment period. They stated public hearings will further enable the producer, agent, and insurance groups to fully understand the scope and potential impact the proposed changes will have on the entire Federal crop insurance program so they can offer additional comments to FCIC. A commenter stated it is vital the agency provide adequate time for both producers and private insurance providers to fully educate themselves about the proposed changes. A commenter stated the comment period established from July 14, 2006 to September 12, 2006 has come at the busiest time for most farmers in the Pacific Northwest because it is harvest season, then it is time to begin the fall seeding of winter wheat. A few commenters believed it would improve the opportunity for many more farmers to respond if the comment period could be extended another 50–60 days. Growers across the country rely heavily on the Federal crop insurance system and allowing them the opportunity to provide direct input is vital to improving the effectiveness of this program.

Response: FCIC determined that public hearings were not appropriate. To provide meaningful participation of all program participants, numerous meetings would have been required. Further, the scheduling, implementation, and efforts to record and collect comments would have required massive resources and could have delayed the implementation of this rule by years. Instead of public hearings, FCIC elected to reopen the comment period and on September 26, 2006, a notice of reopening and extension of the comment period was published in the **Federal Register**. Written comments and opinions on the proposed rule were accepted until close of business on October 26, 2006.

Comment: A few commenters applauded FCIC for moving forward with consultation of producer and insurance groups. They thanked FCIC for engaging in this comprehensive review of the impact the proposed rule could have on all participants in the crop insurance program.

Response: FCIC did not consult with producer groups or insurance groups during the comment period. FCIC held requested informational meetings where it provided explanations regarding the proposed provisions. FCIC did not solicit or accept comments during these informational meetings. FCIC hopes such meetings were helpful in explaining the proposed changes so that audience members could provide meaningful written comments through the rulemaking process.

Comment: A few commenters stated one issue that is not fully explained, but that is of critical importance, is the impact these changes may have on premium rates. If a significant level of re-rating becomes necessary, it could have significant impacts on producers. A commenter noted that, while not part of the proposed rule, the rating of Group Risk Protection (GRP) and Group Risk Income Protection (GRIP) policies nevertheless affect policies included in the proposed rule. The commenter believed any rating method changes should be fully vetted with insurance providers to ensure a complete understanding of the proposed rule and its impact on farmers and ranchers. The commenter strongly urged FCIC to clearly disclose and discuss rating methods and impacts without which a full appreciation of the rule cannot be known by companies, agents, or the producers they serve. By providing additional information on this issue and others that will arise, FCIC will assure the shift to the revised Basic Provisions and applicable Crop Provisions is more transparent and will provide adequate opportunity for producers to have additional input on issues that might negatively impact them.

Response: Under this rule, one revenue protection approach will replace the current multiple approaches contained in the RA, CRC, IP, and IIP plans of insurance. The current revenue plans each have a different rating methodology. Therefore, the change to a single rating methodology for all revenue coverage under the revised Basic Provisions and applicable Crop Provisions will make the premium rates less variable. As with every crop insurance policy, the risk under such policy must be assessed and premium must be calculated to cover that risk. This will also occur under this final rule. A preliminary review shows that the amount of premium will change by less than five percent in the majority of states/crops as a result of the combination of these plans of insurance.

The actual premium rating methodology is a complex process that could not be adequately explained in a proposed rule. To the extent that persons are interested in FCIC's ratemaking process, information is available and can be requested from FCIC. FCIC does not know the basis of the commenter's assertion that the premium rating assessment under GRP and GRIP will affect the premium under this rule. GRP and GRIP offer a significantly different type of coverage than is provided under this rule (area versus individual coverage).

Comment: A commenter stated modern producers need individualized risk management and individually rated policy premiums. County data, individual production history, and loss ratio data is available. The commenter stated that low loss ratios and stable yields get the discounts and high loss ratios and variable yields pay the higher price and that regardless of the cause for excessive loss (bad farming, fraud, or bad luck), those policies should pay a recapture premium. The commenter stated that like T-yields, high-risk areas would only need to be identified until the actual data was sufficient to take over. The actual data should drive the premium. The commenter asserted that producers also need a guarantee based on the ability to produce a crop in an average year, which is not the same as an average yield. Other lines of insurance rely on comparable, not simple, averages. The commenter stated the combo process may also be applied to GRP and GRIP. The commenter stated that from his desire to provide the best individual coverage and premium possible, he saw little reason to waste time on group policies. The commenter stated that the term "group" is misleading (should be called "County Risk Plan"), because these plans do not identify loss nor indemnify for loss and, therefore, the word "insurance" should never be allowed when referencing these plans. The commenter provided additional details regarding the problems of product misrepresentation brought on by these plans. The commenter stated rather than combining county plans, he would just as soon scrap them. A lottery (with house odds) is not a proper substitute for insurance.

Response: Premium rates use actual data and reflect the producer's loss history because the lower the yield average, the higher the premium rate. If the commenter is suggesting that

premium rates be developed for each individual producer, such an effort would be impossible given the number of insureds and the variability in information at the individual level.

With respect to GRP and GRIP, since FCIC did not propose any changes to GRP or GRIP, no changes can be made in the final rule.

Comment: A commenter was concerned about the implementation timeline of the new policy. The commenter stated insurance providers will need to receive the final version of the revised Basic Provisions and applicable Crop Provisions in adequate time to make the necessary system changes, rewrite the agent and adjuster training materials and procedure manuals, and then train agents, adjusters, underwriters, *etc.* The commenter asked if there is a timeline available that FCIC plans to follow to provide insurance providers adequate time to make the required changes and provide training for implementing the new policy. The commenter also asked what information FCIC will provide insurance providers to assist with implementation.

Response: At this time, FCIC expects the final rule to be implemented for the 2011 crop year. To accomplish this, FCIC will work diligently to get the final rule published in the **Federal Register** in time for insurance providers to make system changes, prepare procedural documents, and train underwriters, loss adjusters and agents.

Comment: A commenter recommended creating an insurance policy like hail insurance so the producer could insure each crop by field for a certain amount of dollars an acre.

Response: The commenter is proposing a substantive change that would require considerable research, development, and notice and comment rulemaking. Further, FCIC does not currently have plans to conduct a feasibility study for such a policy. However, the commenter can develop such a policy and submit it under section 508(h) of the Act.

Comment: A commenter stated Congress passed the Agricultural Risk Protection Act of 2000 (ARPA) with a clear intent of expanding crop insurance availability, improving coverage levels, and encouraging planting flexibility. The commenter urged FCIC to carefully consider and assure changes made through this rule are not contradictory to the intent of ARPA and/or diminish producer program participation.

Response: Before provisions are proposed, changes are reviewed with consideration given to potential impacts on participation. FCIC does not believe that any of the final changes will adversely affect program participation, available coverage levels, or planting flexibility. The elimination of program complexity may encourage more producers to participate.

Comment: A commenter stated acreage reporting dates for FCIC and Farm Service Agency (FSA) should be the same. The commenter believes different acreage reporting dates pose a problem for insurance providers, agents, and producers and the matter should be revisited to ensure the dates are the same (or at least closer) and appropriate. The commenter would support making the FSA date closer to or the same as the FCIC date.

Response: Acreage reporting dates are listed in the Special Provisions, not in the regulations. Further, no changes have been proposed regarding the acreage reporting dates. Therefore, no change can be made as a result of this comment. However, FSA and FCIC are already reviewing acreage reporting dates with the goal of making them the same when practical.

Comment: A commenter stated FCIC is only meeting the needs of a small segment of the economy, rather than meeting the needs of the American citizens, as a whole. The commenter stated crop insurance is being paid out when there is no damage to the crop. The agency does not physically go out and check what is reported to them by agribusiness; it just issues checks from the U.S. Treasury. This kind of payout is completely unacceptable. The commenter also stated the agency needs regular and close auditing to ascertain only actual losses are paid.

Response: FCIC takes its program oversight responsibilities very seriously. However, given the large magnitude of the crop insurance program and FCIC's limited resources, it is impossible for it to review all or even a large portion of the claims. FCIC has no choice but to rely on the activities and audits of insurance providers to ensure that claims are properly paid. Further, the Risk Management Agency (RMA) Compliance Division conducts routine audits and reviews of the insurance providers, taking corrective actions as appropriate. FSA also assists this effort by monitoring producers whose losses have been outside the norm and notifying RMA when there is suspected fraud, waste, or abuse.

Comment: A commenter questioned whether the premium discount for good experience will be applicable to the revised Basic Provisions and applicable Crop Provisions. Under CRC, IP, and RA, the good experience discount was suspended but retained by the insurance provider in the event the insured would change back to APH coverage, at which time the experience would be reinstated and applicable. The commenter asks whether the good experience discount will now apply to both yield and revenue coverage since the new combo product offers both yield and revenue coverage.

Response: Many years ago, FCIC offered a good experience discount for producers. This discount was eliminated from the 1985 through 1998 Crop Provisions as they were revised. However, FCIC allowed those producers who had previously qualified for the discount under those old policies to continue to receive such discount as long as they continued to qualify. There are very few producers who continue to qualify for such discounts and they can only qualify for the discount under the same terms and conditions that were in effect for the last year such discount was available for the crop. Although the good experience discount is only available to crops that were insurable at the time the discount was offered, the good experience discount did not apply to the revenue plans of insurance. Therefore, the discount will be available to previously insured crops that now have yield protection, but will not be applicable to revenue protection.

Comment: A commenter stated it was their understanding once the proposed rule is finalized, there are plans to combine the GRIP and GRP plans of insurance into an area plan revenue and yield product. There are some significant changes being recommended in this proposed rule that will likely carry over to the area plan products (*i.e.,* removal of the misreporting information factor). It would be advantageous to everyone who works with these programs that the implementation timeframes be as close as possible so that multiple systems and different ways of handling things will be minimized.

Response: FCIC has not proposed any revisions to the GRIP and GRP plans of insurance in this rule. Therefore, no changes have been made. However, FCIC hopes to propose changes to the GRIP and GRP plans of insurance as soon as practicable.

Comment: A commenter stated there appears to be a geographic discrimination favoring southern U.S. farmers that should be addressed, if not in the hearings for the proposed rule, at least by RMA/USDA, perhaps via administrative directive. Southern farmers have a distinct advantage in terms of evaluating the growing season prior to determining whether to

purchase crop insurance. For instance, the closer to planting time a decision can be made to buy crop insurance, the better off the farmer is in making a sound decision. In Wisconsin, the sales closing date is March 15 for corn and soybeans. This date was previously April 1 and was changed to March 15 some time ago with no justifiable reason provided. It is also 27 days prior to when corn can first be planted. The further south you go, the closer those days become (Illinois is 22 days, Kentucky is 16 days, Mississippi is 11 days, Alabama is 1 day). Obviously, this is very discriminatory and should be corrected by FCIC.

Response: There are locations where the number of days between the sales closing date and planting varies. However, section 508(f)(2)(B) of the Act limits FCIC's ability to change sales closing dates because it requires sales closing dates to be established 30 days earlier than the sales closing dates in effect for the 1994 crop year. In addition, section 508(f)(2)(C) of the Act specifies that if the revised sales closing date would be earlier than January 31, the spring sales closing dates will be January 31. This means that there are locations where FCIC cannot change the sales closing dates to make the number of days between sales closing and planting more consistent. No change has been made.

Comment: A few commenters stated they disagree with the proposed elimination of revenue protection to the producers of sunflowers, canola, rapeseed, and corn silage. If market and/or agronomic decisions suggest producers should produce these crops, Federal crop insurance should not create a disincentive. They urged FCIC to provide revenue protection for these crops in the final rule.

Response: There was never an intent to provide a disincentive to produce a particular crop. However, FCIC has an obligation to ensure that the revenue prices reflect the market price as accurately as possible. To determine the revenue price, these products rely on commodity exchange prices for the crop or methodology based on a commodity exchange price for another crop that would produce a price that closely reflects the market price. There is no commodity exchange price for the crop or methodology based on a commodity exchange price for another crop that has proven to reflect the price of corn silage. Therefore, there is no basis upon which to offer protection against a change in price for corn silage. With respect to canola, there is a commodity exchange price for canola so coverage against a change in price will still be offered. With respect to rapeseed, there is no commodity exchange price available for rapeseed and the methodology previously used based on the canola commodity exchange price has proven to no longer be adequate in reflecting the market price for rapeseed. Additionally, commenters have provided suggested methodologies to be used to reflect the market price for sunflowers and FCIC has studied these methodologies. FCIC has determined that there is a sunflower pricing methodology that can reflect the market price for sunflowers so protection against a change in price can be offered. Even though protection against a change in price is not available for rapeseed and corn silage, they may be insured under revenue protection in order to preserve the existing whole-farm units currently available under RA.

Comment: A commenter stated they are not sure how the Texas citrus tree and Texas citrus fruit policies are classified (*i.e.,* yield policy or revenue policy) and, therefore, are concerned how these policies may be affected by the amended Common Crop Insurance Policy even though these policies may not be the primary target for the changes.

Response: The revenue protection discussed in the proposed rule will only be applicable to the crops that previously had CRC, IP, IIP, or RA coverage. Texas citrus trees and Texas citrus fruit were not included in any of these plans of insurance. Therefore, Texas citrus trees and Texas citrus fruit will not be affected by the revenue protection or yield protection provisions. However, Texas citrus trees and Texas citrus fruit will be affected by other applicable changes in the Common Crop Insurance Policy Basic Provisions.

Comment: A commenter cautioned that the Crop Insurance Handbook and the Loss Adjustment Manual will interpret the new policy language and write them into rules to which Standard Reinsurance Agreement holders have to adhere. The commenter stated it is vital the proposed policy enhancements for simplification, integrity and efficiency are carried over into both the Crop Insurance Handbook and Loss Adjustment Manual. The commenter stated these improvements cannot be lost in the interpretation.

Response: One purpose of the changes is to simplify the program. This should be reflected in the reduction in the number of underwriting rules needed to administer the program. The appropriate procedural documents will be revised as necessary to reflect the changes made in the policy provisions.

Comment: A commenter recommended extending the sales closing date from March 15th to March 30th to give them more time to sell the product with accurate prices/rates.

Response: FCIC cannot extend the sales closing date to March 30. Section 508(f)(2) of the Act requires sales closing dates to be established 30 days earlier than the applicable sales closing date for the 1994 crop year. The current March 15 sales closing date was previously April 15 in 1994. Therefore, no change can be made.

Comment: A few commenters stated they greatly appreciated the agency's extension of the comment period for the proposed rule to allow more time to study the provisions.

Response: The extended comment period served its purpose in providing the public additional time to study the provisions and offer comments.

Comment: A few commenters stated they believe the issues are significant enough to warrant an interim final rule rather than a final rule.

Response: Even though the issues may be significant, they did not require such major changes to the proposed rule to warrant the necessity for an interim final rule. The public was afforded additional time to comment and FCIC has considered all of the comments and made appropriate revisions in accordance with the recommendations.

As stated more fully below, there were many comments recommending changes to provisions where no changes were proposed. Since changes were not proposed, the public was not afforded an opportunity to comment. FCIC considered addressing those comments that may not be substantive in nature but this was too subjective because there may be disagreement with respect to what is considered substantive. Therefore, as a general rule, these recommended changes were not considered unless they were addressing conflicting provisions or program integrity issues.

The Application and Policy

Comment: A few commenters stated it appears coverage equivalent to the producer's current coverage will be provided to the producer without having to get a new signature from the producer, when the current programs are rolled into the Basic Provisions and applicable Crop Provisions. The commenters stated that, though this process will not be without pitfalls, not requiring a cancel and rewrite of all revenue policies should help provide a seamless transition to the new provisions. The commenters were supportive of this proposal as it will

help in administering the conversion of all carryover policyholders to the Basic Provisions and applicable Crop Provisions. Another commenter stated they were interested in the details underlying this process (for example, the revisions to plans of insurance, insurance choices, and premium calculations).

Response: Given the number of policies affected by this rule, it was impractical to require cancellation and rewriting of all of these policies. It will be imperative that agents explain the affects of these changes to the policyholder and assist them in their selection of the most appropriate risk management tool. However, without the additional paperwork burden, agents should have more time to fulfill these responsibilities. FCIC will release the details of the transition process and any other necessary information in time to allow insurance providers to take appropriate actions.

Section 1 Definitions

Comment: A commenter stated the definition of "acreage reporting date" was not proposed to be revised but it would read better by either putting the phrase "contained in the Special Provisions or as provided in section 6" in parentheses or rearranging as "The date by which you are required to submit your acreage report, and which is contained * * *"

Response: Since no change to this definition was proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A few commenters suggested adding something in the definition of "actual yield" about the possibility of actual yields being reduced (or adjusted) instead of in the definition of "average yield" (and elsewhere as well). The commenters suggested two possibilities for consideration: (1) Add language to the end of the first sentence so it reads something like "The yield per acre for a crop year calculated from the production records or claims for indemnities and reduced [or "adjusted" if this refers to anything besides the maximum yield edits] if required * * *"; and (2) Add a sentence at the end such as "* * * Actual yields may be reduced as required * * *"

Response: The producer's actual yield is and should be the yield per acre for a crop year calculated from the production records or a claim for indemnity and determined by dividing the producer's total production by planted acres. The producer's yield would not be an actual yield if it were adjusted. No change has been made.

Comment: A few commenters recommended FCIC consider whether the term and/or definition of "actuarial documents" should be revised since the intended implementation of eWA will result in actuarial "information" (rather than "documents") being made available on the RMA Web site. A commenter also questioned whether the "actuarial documents" include the Special Provisions, or just everything else.

Response: FCIC believes the defined term of "actuarial documents" will still be appropriate with the implementation of a new information technology system because even though the actuarial information will be filed electronically on RMA's Web site, the information still can be printed out as a hard-copy document. The definition of "actuarial documents" contains information that is found in the Special Provisions. However, because the Special Provisions contain the terms and conditions of insurance, it is provided to the insured with the Common Crop Insurance Policy Basic Provisions and Crop Provisions. No change has been made.

Comment: A commenter stated the existing, unrevised definition of "administrative fee" reads as though one fee applies to both levels of coverage, or possibly even that one fee serves to provide both catastrophic risk protection (CAT) and buy-up coverage on the same crop/county. They suggested revising this definition to read: "The applicable amount you must pay for either catastrophic risk protection or additional coverage * * *" At a minimum, "and" should be changed to "or."

Response: Since no change to this definition was proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: Several comments were received regarding the definition of "agricultural experts." A commenter stated FCIC defines "agricultural experts" to include "other persons approved by FCIC", however, the Basic Provisions do not indicate how an insurance provider may learn the identity of such experts. The commenter believed FCIC has an obligation to inform the public of the persons who qualify as experts and should amend the definition of "agricultural experts" to state: "A list of the agricultural experts approved by FCIC is published on RMA's Website." A commenter requested that FCIC identify guidelines they will use to determine who is an approved agricultural expert and the process by which an individual will become an FCIC approved agricultural expert. The commenter stated guidelines do not belong within the Basic Provisions, but insurance providers, agents, and insureds have a right to know the standards and guidelines used to determine who an agricultural expert is and the process by which they are determined. A commenter disagreed with using the Cooperative Extension System in the definition of "agricultural experts." The commenter also suggested the RMA Regional Offices (ROs) put together a list of agricultural experts that can be used as a resource. The commenter stated that, according to the recent Good Farming Practices Bulletin, there is a need in the field for unbiased and experienced resources. A few commenters stated they believe Certified Crop Advisers (CCAs) should also be included in the definition of "agricultural experts" given their required training and expertise and their widespread use in the field. A commenter stated the definition of "agricultural experts" should be expanded to read as follows: "Persons who are employed by the Cooperative Extension System or agricultural departments at universities; persons approved by FCIC, whose research or occupation is related to the specific crop or practice for which such expertise is sought; and other persons, whether or not approved by FCIC, whose research or occupation is related to the specific crop or practice for which such expertise is sought and whose experience is equivalent to persons approved by FCIC." The proposed revision recognizes there may be persons with recognized expertise in addition to employees of the Cooperative Extension System and agricultural departments in universities, as well as any persons approved by FCIC. The proposed revision also is desirable because it gives insurance providers the option of consulting with and utilizing the skills of persons in addition to those set forth in the definition as written. When time is critical, having this option would be important.

Response: FCIC has developed procedures that can be used to determine who qualifies as agricultural experts in Manager's Bulletin MGR–05–010. Insurance providers and producers can use these procedures in selecting their experts. However, it is not practical to list all FCIC approved "agricultural experts" on RMA's Web site or for the ROs to maintain such a

listing because it would be impossible to list the name of every potential agricultural expert and it would be impossible to keep it up-to-date. In MGR–05–010, agricultural experts are not listed by name but by categories of people who are currently approved by FCIC to be agricultural experts. Any person who falls within the category is considered approved by FCIC. CCAs are included as a category of experts approved by FCIC. There is no basis to exclude Cooperative Extension System from categories of approved agricultural experts. These persons have experience in the production of the crop in the area. The phrase "whether or not approved by FCIC" should not be included in the definition. There must be a clear standard set for who qualifies as an agricultural expert and FCIC has established that through MGR–05–010. If insurance providers or producers know of other persons that should qualify as agricultural experts but they are not included in one of the listed categories, they may submit the person's name to FCIC for approval. If approved, FCIC will include the category of such person in the Bulletin. No change has been made.

Comment: A commenter stated the third sentence in the definition of "application" is problematic. As worded, it suggests that any time a policy is canceled or terminated, "* * * a new application must be filed for the crop." Certainly, this is true if the producer is willing and eligible to reinstate the canceled/terminated coverage, but not if the application would be unacceptable because the entity is ineligible.

Response: New applications must always be made after a policy has been canceled or terminated. The insurance provider should not accept the application if the applicant is ineligible. No change has been made.

Comment: A commenter stated the definition of "approved yield" is not revised in the proposed rule but requested FCIC to see their comments to the definitions of "actual yield" and "average yield" regarding the term "actual yield."

Response: Since no change to this definition was proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A few comments were received regarding the definition of "assignment of indemnity." A commenter questioned the meaning of the term "legitimate" and whether FCIC intends on setting forth the standards by which an insurance provider is to determine whether an assignment of indemnity is legitimate. The commenter stated it is noteworthy that section 29, entitled "Assignment of Indemnity," does not employ the term "legitimate." The commenter stated FCIC must provide additional guidance in this regard. Another commenter opposed FCIC's proposal that would restrict a producer's ability to assign an indemnity to a third party other than "legitimate creditors." The commenter stated their opposition is based on the fact that some companies have worked to create programs that directly incorporate crop insurance and marketing plans into one comprehensive program. For example, their company has worked with their grain division to create a cash grain contract that guarantees a producer a dollar per acre amount. It is a "production contract" as opposed to a typical "bushel" contract. The producer can sell the total production to the elevator at a guaranteed minimum (dollar/acre) and maintain the upside on price. This instrument is very sophisticated. It involves over-the-counter options, the assignment of indemnity to the elevator, and a cash delivery obligation of the producer. FCIC's educational efforts encourage these sorts of integrated programs. The private marketplace has responded by creating them. The commenter stated they will not work without an assignment of indemnity and they encourage FCIC to reconsider this change.

Response: FCIC agrees it may be difficult for an insurance provider to determine if a creditor is legitimate. Therefore, FCIC has removed the word "legitimate" and instead has specified the producer may assign his or her right to an indemnity for the crop year only to creditors or other persons to whom the producer has a financial debt or other pecuniary obligation. The insurance provider will have the ability to request that the producer show proof of the debt or pecuniary obligation before accepting the assignment of indemnity. FCIC also agrees assignments used in pricing/delivery agreements should be allowed. Such agreements would be considered "pecuniary obligations."

Comment: A few comments were received regarding the definition of "average yield." A commenter stated the definition is confusing and needs to be clarified. The commenter noted the definition states "* * * including actual yields reduced * * *", and later states "* * * prior to any yield adjustments." Another commenter suggested instead of adding the phrase "* * * (including actual yields reduced in accordance with the policy) * * *" to "clarify the reference to actual yields", they suggested revising the definition of "actual yield." Otherwise, the commenter believes it would be necessary to add a similar phrase in the definition of "approved yield" and in other references to actual yields throughout the policy provisions. A commenter suggested the remainder of the phrase proposed in the "average yield" definition, "* * * in accordance with the policy," needs to be reconsidered. The commenter stated the maximum yield procedure does not appear to be addressed in the Basic Provisions. The commenter added since the Basic Provisions are part of the "policy" any reference should be to the specific provisions, or to the procedure (which might be preferable instead of including detailed procedures in the policy that cannot easily be revised if and as needed).

Response: FCIC agrees the definition may be confusing and has revised it by removing references to "adjusted yields" (except adjusted transitional yields) and "actual yields adjusted in accordance with the policy." The revised definition includes actual yields, assigned yields in accordance with redesignated sections 3(f)(1) (failure to submit a production report), 3(h)(1) (excessive yields) and 3(i) (second crop without double cropping records for prevented planting), and adjusted and unadjusted transitional yields. The definition of "actual yield" should not be revised because it refers to the actual production produced in the unit. As revised, these actual yields will become a component of the "average yield."

Comment: A few comments were received regarding the definition of "catastrophic risk protection." A commenter recommended the first sentence in the definition that states "The minimum level of coverage offered by FCIC that is required before you may qualify for certain other USDA program benefits" be verified with the Farm Service Agency (FSA). The commenter stated he has received information from FSA stating the minimum level of coverage required for linkage is one level above CAT. A commenter stated catastrophic risk protection is not available for revenue protection under the definition of "catastrophic risk protection", however, under section 523(c)(2)(B) of the Crop Insurance Act (Act) it states, "Revenue insurance under this subsection shall offer at least a minimum level of coverage that is an alternative to catastrophic crop insurance." To date, the commenter is unaware of any product offered by FCIC,

which addresses this provision and the commenter suggested FCIC consider this aspect in the Basic Provisions. A commenter stated they respectfully oppose the proposed regulations for the simple reason the proposed pricing structure creates a disincentive for producers to cover their risks by purchasing the least amount of crop insurance required to accept Federal disaster assistance. A commenter suggested that levels of crop insurance below 65 percent be eliminated from the policy. The commenter stated CAT policies in particular require the same amount of paperwork and have no real value and many producers with lower levels would buy up. A few commenters stated the proposed rule allows CAT coverage under yield protection. They requested CAT coverage be eliminated, or, at the least, be subject to the same actuarial parameters for calculation of premiums to which other coverage levels are held. A commenter requested a paper drafted by another person be submitted into the record and thoroughly analyzed prior to the adoption of the final rule pertaining to the Basic Provisions. A commenter asked why there is no revenue coverage available on catastrophic risk protection policies. Many producers need the revenue coverage on high risk ground, where premiums are too high to be insured on their other policy, which may have revenue protection. The commenter asked if there has been any thought given to allowing a producer to have revenue coverage on a catastrophic risk policy if the companion policy is revenue protection.

Response: FCIC agrees the phrase "that is required before you may qualify for certain other USDA program benefits" is no longer appropriate. Many current FSA programs do not require linkage. Some past disaster programs have required crop insurance coverage, however, each disaster program stipulates its own criteria and catastrophic risk protection may not be the level of coverage required. The definition has been revised accordingly. Section 523 of the Act contains provisions applicable only to pilot programs and FCIC implemented this section when it offered the IP policy. However, the statutory mandate in section 523(c) of the Act to require CAT was only for the 1997 through 2001 crop year. When combining all the revenue products in this rule, FCIC declined to include revenue coverage in CAT policies because it would provide a disincentive for producers to purchase additional levels of coverage. CAT was only intended to be a minimal coverage risk management tool and not compete with the additional coverage policies. Therefore, as stated in the background section of the proposed rule, the definition of "catastrophic risk protection" is revised to preclude producers who elect revenue protection from obtaining CAT coverage because revenue protection is considered an option and CAT policies are not eligible for optional coverage. Since the paper referenced by the commenter was not submitted to FCIC as a comment to this rule, FCIC cannot consider the individual comments or recommendations contained in the paper in finalizing this regulation. FCIC does not have the authority to eliminate CAT coverage. Such coverage is mandated by section 508(b) of the Act and cannot be eliminated without a change in the law. Questions remain with respect to whether coverage levels less than 65 percent can be eliminated. However, since FCIC has not proposed or sought comments on such a change, it cannot be considered in this rule.

Comment: A commenter stated they recommend additional clarification for the definition of "claim for indemnity" because it is often confused with a notice of loss. The commenter stated additional language might include "Additionally, you must provide any documents required by the policy to determine the amount of indemnity, including but not limited to, harvested production records, crop input records, documents needed for verification of reported information, *etc.,* as stated in section 14." Alternatively, this could be included in section 14 rather than the definition.

Response: Notice of loss is simply a written notice, or an oral notice followed up with a written notice, that damage has occurred or production has been reduced. A claim for indemnity is a document executed by the producer and loss adjuster that contains the information necessary to pay the indemnity as specified in the applicable procedures. While the claim for indemnity must be supported by the production records, *etc.,* as required by section 14, such records are not generally transmitted to the insurance provider. FCIC will clarify that the claim for indemnity is the document that contains the information necessary to pay the claim.

Comment: A comment was received regarding the definition of "Commodity Exchange Price Provisions (CEPP)." A commenter requested FCIC explore the possibility of determining and releasing the projected price 20 to 30 days prior to the end of the sales period versus the current 15 days (approximate). The commenter stated they believe the current methodology to determine the price is good, but with the current projected price release date; there is a significant time crunch to properly service insureds. They believe the change in release dates will not materially change the projected price offered.

Response: The definition of "Commodity Exchange Price Provisions (CEPP)" does not contain any discovery period dates or commodity exchanges. The dates, commodity exchanges and other relevant information are located in the actual CEPP. However, FCIC has reviewed all comments related to the CEPP and will consider changes to provide additional time between the price release date and the sales closing date if reliable prices can be established and it is in the best interests of producers.

Comment: A few comments were received regarding the definition of "common land unit." A commenter recommended adding the phrase "as determined by FSA" to the end of the definition of "common land unit" because it helps to clarify the common land unit is determined by FSA and is not a determination made by the insurance provider. A few commenters questioned whether the term "common land unit" should be defined and used in the Basic Provisions at this point before the implementation issues between FCIC and FSA have been resolved. The commenters suggested keeping the definition rather generic, such as "The smallest unit of land as defined by FSA" if it is added. A commenter stated it appears the definition would define corn and soybean acreage in the same field on the same farm as being different common land units. The commenter questioned if that was the intent. The commenter also questioned if this definition matches FSA's definition of common land unit. A commenter strongly opposed use of a "common land unit" without a meaningful definition that specifies the insurance unit definition of what it constitutes for a unit at the farm level. The commenter stated that, unless the summary of protection reflects the insurance guarantee for each unit, the producer does not have a basis for determining whether crop damage constitutes a covered loss. Furthermore, without knowing the insurance guarantee by unit, the producer cannot fulfill the notice of damage reporting requirements. Therefore, when USDA decides to allow producers to file a common acreage report for both FCIC and FSA programs, the commenter strongly recommended that the common

units for each agency become FSA tract numbers. A commenter stated they are concerned about the definition of "common land unit" since citrus in south Texas has a rather unique legal description. The commenter stated he hopes the new definition does not place citrus growers at a disadvantage.

Response: There are several issues that need to be resolved before the definition of "common land unit" is included in the policy provisions. Therefore, the proposed definition will not be retained in the final rule. However, it is possible that common land unit numbers may be used by FSA and provided to producers. If this occurs, such numbers may be utilized for the purposes of crop insurance. Therefore, FCIC has added a reference to common land unit numbers in section 6 with respect to the reporting of acreage but made it clear that such information need only be reported if a common land unit number has been provided to the producer by FSA and it is required to be reported by the acreage report form.

Comment: A commenter questioned whether the definition of "conventional farming practice" needed both phrases "* * * for producing an agricultural commodity * * *" and "* * * that is necessary to produce the crop * * *" The commenter was concerned that there were so many separate phrases in this sentence as it is. The commenter questioned if a producer really has to "* * * conserve or enhance natural resources and the environment * * *" in order for it to be considered a conventional farming practice.

Response: There is no need to include the provisions regarding to "* * * conserve or enhance natural resources and the environment * * *" because this language is contained in the definition of "sustainable farming practices. " Therefore, FCIC is revising the definition to remove the language. FCIC is also removing the redundancy regarding the production of the crop.

Comment: A few comments were received regarding the definition of "Cooperative Extension System." A commenter supported the proposed definition and stated the issue of who should be considered "agricultural experts" has been a tricky one and adding this definition would help to make it clearer. Another commenter stated the definition of "Cooperative Extension System" refers to "* * * offices staffed by one or more agronomic experts * * *" instead of the defined term "agricultural experts." The commenter stated if there is a distinction, perhaps a definition of "agronomic experts" might be needed as well.

Response: The references to "Cooperative Extension System" are more accurate than "Cooperative State Research, Education and Extension Service (CSREES)" because the agricultural experts may not have been employees of CSREES but they worked in cooperation with CSREES. Further, the term "agricultural experts" should be used instead of "agronomic experts" to be consistent with other provisions in the policy. Therefore, this change has been made in the final rule.

Comment: A few comments were received regarding the definition of "delinquent debt." A few of the commenters suggested delinquent debt be defined in the policy to alleviate the chance of misunderstanding between the insurance provider and the insured on what constitutes a delinquent debt. A commenter stated current procedures allow a corporation not to pay the premium and then the substantial beneficial interests (SBIs) of the corporation get insurance via an individual policy. The commenter recommended the wording be changed to the following: A delinquent debt for any policy will make you (as an individual) or a person with a substantial beneficial interest in you, ineligible to obtain crop insurance authorized under the Act for any subsequent crop year and result in termination of all policies in accordance with section 2(f)(2). A commenter stated there could be misunderstandings of certain details that are included in the current definition—whether administrative fees are included in a delinquent debt, when it is considered delinquent (not postmarked versus not received), *etc.* Some of this information should be retained in the Basic Provisions, whether in this definition or in section 24 [Amounts Due Us]. A few commenters stated FCIC has cited the definition contained in 7 CFR part 400 subpart U, but they suggested it is unlikely that many insureds have access to the Code of Federal Regulations. The commenters stated simply referring to the regulations does not seem very helpful to insureds, who need to know exactly what is included in their contracts. A commenter stated the insurance providers could put the CFR link on their Web sites to make it easier for their policyholders to locate the referenced regulations; however, if a difference of opinion results in a legal dispute, there might be some question as to whether something not specified in the policy itself would be considered something the policyholder should be expected to know and understand.

Response: FCIC understands the commenters concerns of referring the readers to another document for the definition of "delinquent debt." However, it is not uncommon for the Basic Provisions to contain cross references to other provisions in 7 CFR part 400 (*e.g.,* definition of "actual production history (APH)" refers to 7 CFR part 400, subpart G). Further, these regulations are part of the policy as it is defined. Maintaining one definition of "delinquent debt" in 7 CFR part 400, subpart U and a cross reference in the Basic Provisions will prevent any conflicts between the Basic Provisions and subpart U. Further, the definition of "Code of Federal Regulations (CFR)" specifies the Web address where the applicable CFR can be found. In addition, FCIC has added a link on RMA's Web site to 7 CFR part 400, so that interested parties may have access. With respect to the issue of postmarked versus received, these terms go to the core of the definition of "delinquent debt" and will be addressed in subpart U. No change has been made in response to these comments.

Comment: A commenter suggested it might be helpful in the definition of "disinterested third party" to list the people who have a familial relationship in a sequential order (generational or relational, where spouse would come before children).

Response: FCIC has considered this change but it does not substantially clarify the rule or improve readability. No change has been made.

Comment: A comment was received regarding the definition of "earliest planting date." The commenter stated the defined term is "earliest" but the Special Provisions refer to "initial" planting date. The commenter asked why not choose one or the other to make it consistent; then the definition could begin "The date in the Special Provisions * * *".

Response: The Special Provisions now refer to the earliest planting date so the provisions are consistent. No change has been made.

Comment: A commenter questioned whether the definition of "economic significance" should be updated to refer to "agricultural commodity" instead of "crop" or if the definition is still needed.

Response: The definition of "crop of economic significance" is not in the Basic Provisions in 7 CFR part 457. No change has been made.

Comment: A commenter agreed with moving most of the details from the definition of "enterprise unit" to proposed section 34(a)(2)(i) but stated a reference to that section would be helpful.

Response: FCIC has changed the provision accordingly.

Comment: A commenter questioned whether the term "agricultural commodity" is necessary in the definition of "first insured crop" when the rest of the definition uses "crop" and makes it clear we are talking about the first crop "planted" (so it is not going to be livestock as "first insured" followed by soybeans as the "second").

Response: Since no change to this definition was proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter suggested the definition of "good farming practices" is not proposed to be changed but contains a serious deficiency. Specifically, the language in clause (1) relating to practices "generally recognized by agricultural experts for the area" and in clause (2) relating to "generally recognized by the organic agricultural industry for the area" should be modified. The deficiency becomes apparent in those situations in which a processor is either the exclusive or dominant determiner of farming practices in a geographic area. Such processors generally specify the acceptable seed varieties to plant, cultivation practices (including inputs necessary to produce a crop), harvesting times and practices, and storage practices. The commenter stated insurance providers are concerned that the definition, as written, effectively delegates to processors the determination of good farming practices with respect to the crop to be processed simply by repetition of past practices. Under the definition, a processor's routine practices simply become "good" because they have been repeated yearly in the local area. In short, once a processor's practices become routine, they become a self-fulfilling embodiment of "good" practices no matter how inadequate or outdated they are and no matter how poorly implemented. The commenter stated this issue is an important one, as it potentially affects several crops with high dollar values such as sugar beets, green peas, hybrid seed corn, sweet corn, processing beans, processing tomatoes, dry peas, and dry beans. The problem identified in the existing definition can be solved by adding the term "conditions in the" after the word "for" and preceding the word "area" in each clause of the definition. Making this change eliminates the "closed circle" approach of the existing definition. The change would permit utilization of comparative practices involving similar conditions from comparable geographic areas in determining whether a good farming practice has been applied. Stated bluntly, the change would eliminate the situation in which a processor's negligence in failing to update its requirements based on new research, testing, or experience, or its negligence in administering its requirements for planting, growing, and harvesting a crop, divests an insurance provider, and ultimately, FCIC from determining what constitutes a good farming practice for loss adjustment purposes.

Response: Since no change to this definition was proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A few comments were received regarding the definition of "harvest price exclusion option." A commenter stated that allowing producers to exclude the Harvest Price Option rather than having to elect to receive it helps avoid the potential for producers not receiving a benefit. They urged FCIC to maintain this provision in the final rule. A commenter suggested language be added to indicate and clarify the projected price will be used to determine the guarantee and further clarify the harvest price will be used in the calculation of revenue to count for indemnity purposes. A commenter stated FCIC proposes that the revised policy provide coverage for both an increase and decrease in price, unless the producer selects the harvest price exclusion option. If a producer is allowed to eliminate coverage for upward price protection, the commenter asks why they should not also be allowed to eliminate downward price protection, if they so choose. This may be a viable additional option for many producers given the downward price protection already built into the current farm program provisions such as the counter-cyclical payments and loan deficiency payments. Many producers also cover their downward price risk through use of hedges, hedge-to-arrive contracts, forward contracts, and options.

Response: It is not necessary to include the uses of the projected price and harvest price in the definition of "harvest price exclusion" because the definitions of "harvest price" and "projected price" and section 3 already specify how each price will be used. Since the option to exclude downside price protection was not proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. All references to "option" have been removed because it was redundant with the ability of the producer to elect to exclude the upward price protection.

Comment: A few commenters suggested the definition of "insurable interest" be expanded to further clarify and define the term as used in the Crop Insurance Handbook (CIH) and Loss Adjustment Manual (LAM). The commenters stated "share" is defined in the proposed rule as "Your percentage of insurable interest in the insured crop * * *" while "insurable interest" is defined as "The value of your interest in the crop * * *" This suggests "share" is only the percentage figure (not sure this is the intent), while the "insurable interest" is a value amount (not entirely clear on this either). The commenters requested FCIC to consider whether it is intended for "share" to apply to "the insured crop" while "insurable interest" applies to "the crop" (insured or not). The commenters stated the last sentence of each definition addresses the maximum share or insurable interest for loss purposes but they do not match exactly. For "share," it reads "* * * your share will not exceed your share at the earlier of the time of loss or the beginning of harvest." For "insurable interest," it reads "* * * The maximum indemnity payable to you may not exceed the indemnity due on your insurable interest at the time of loss" and does not include the reference to "* * * or the beginning of harvest." If both definitions are kept, one of these sentences probably should be deleted; keep the one that is most accurate. A commenter stated it is unclear how one would pinpoint "* * * the time of loss."

Response: The applicable procedures will be revised to conform to the definitions in the policy. Further, it is intended that both the definition of "insurable interest" and "share" refer to the producer's percent interest in a crop so the definition of "insurable interest" is revised to refer to the percentage of the insured crop that is at financial risk and the definition of "share" is revised to cross-reference "insurable interest" to eliminate any conflicts. Both the definitions of "insurable interest" and "share" were intended to refer to the insured crop and the definitions have been revised accordingly. There was an apparent conflict between "insurable interest" and "share" with respect to the time each was determined. FCIC has revised the definition of "insurable interest" to remove all references to timing because it was intended to determine the percentage of the crop that was at risk. The definition of

"share" still refers to the time of loss or the beginning of harvest.

Comment: A few comments were received regarding the definition of "insurable loss." The commenters asked if it would be considered an insurable loss if the insured did not accept payment.

Response: In accordance with the definition of "insurable loss," if the insured does not accept an indemnity payment, the loss will not be considered to be an insurable loss under the policy.

Comment: A few comments were received regarding the definition of "liability." A commenter had some concerns with this revised definition since "* * * determined in accordance with the claims provisions * * *" instead of referring to the "premium computation" takes share out of the equation. This would seem to have implications for when misreported information is corrected, second crop (for prevented planting purposes) and data processing. The commenter also recommended the reference should be to "* * * the Settlement of Claim provisions * * *" rather than "* * * the claims provisions * * *"

Response: The liability is based on the total value of the crop for the unit, not the producer's share of the crop. For the purpose of determining a claim, the total production to count is subtracted from this total liability and the result is multiplied by the share to obtain the producer's share of the indemnity. This is because all determinations are done on a unit basis, which would include the whole value, all production, *etc.,* for the unit, not just the producer's share. If the liability were to refer to the premium computation, it would result in a double reduction for the share, once in the determination of liability and again in the indemnity calculation. This means it is not necessary to take share into consideration when determining misreporting or prevented planting payment reductions for second crops or for data processing because share is factored into any payments. FCIC agrees "the claims provisions" should be "the Settlement of Claim provisions" and has modified the definition accordingly.

Comment: A commenter stated "optional unit" is not defined in the definitions, yet "basic unit", "enterprise unit" and "whole-farm unit" are defined. The commenter suggested that either all types of units should be defined in the definitions, or all should be addressed in section 34.

Response: It is not practical to define the term "optional unit" because there are a large number of variations available and FCIC has determined that such variations are best left in section 34 of the Basic Provisions and the applicable Crop Provisions. No change has been made.

Comment: A commenter requested the defined term of "organic agricultural industry" be changed to "organic agricultural experts" to reflect the meaning of the definition as given. This would also be consistent with the new term "agricultural experts" that is proposed in the rule. The commenter noted the industry is composed of a broad variety of businesses and believe the industry as a whole should not be confused with those who are expert in organic agriculture. In addition, they would hope experiment stations would be eligible to be the employers of "organic agricultural experts" along with the other institutions listed. The commenter stated they appreciate the consideration given to organic farming methods, especially the recognition that organic farming practices may vary from non-organic practices.

Response: The commenter is correct and "organic agricultural industry" is a misnomer and the definition really describes organic agricultural experts in the same manner as agricultural experts. Therefore, the name has been changed, along with the other references in the policy.

Comment: A comment was received regarding the definition of "perennial crop." A commenter stated that with the implementation of the Basic Provisions it would be an appropriate time to include some kind of qualifier such as "* * * that has an expected life span of more than one year" or "* * * that normally has a life span * * *" to the definition of "perennial crop." This revision would make the "perennial crop" definition consistent with the one for "annual crop."

Response: Since no change to this definition was proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter questioned if the definition of "policy" should be revised. They requested FCIC to note their comments regarding whether "* * * the Commodity Exchange Price Provisions, if applicable * * *" must be provided to policyholders along with the Basic, Crop and Special Provisions or whether information can be made available on the web site or in the agent's office like the other actuarial documents.

Response: The CEPP, if applicable, is a part of the policy so the definition of "policy" must be revised to include those provisions. Like the Basic Provisions, Crop Provisions and Special Provisions, the insurance provider will be responsible for providing to producers who purchase revenue or yield protection those pages of the CEPP that correspond to the crops the producer insures. The CEPP will also be available on RMA's Web site. In subsequent years, the insurance provider will only be required to provide the producer with changes to the CEPP. FCIC has revised section 4(c) to specify changes to the CEPP must be provided in writing to the insured not later than 30 days prior to the cancellation date for the insured crop. The CEPP will be formatted so that the page(s) applicable to the crop and sales closing date can be printed exclusive of other information.

Comment: A commenter recommended the definition of "premium billing date" be revised as follows: "The earliest date upon which premium and/or administrative fees are due for insurance coverage based on your acreage report. The premium billing date is contained in the Special Provisions." This has been an issue on reviews by FCIC regarding the wording needed on premium billings and notices.

Response: The premium billing date is not the date the premium is due. It is the date that premium bills are to be sent to the producers by insurance providers. Premium is due thirty days after the premium billing date. No change has been made.

Comment: A few comments were received regarding the definition of "prevented planting." A commenter stated the second sentence of the definition of "prevented planting", which addresses "[t]he failure to plant the insured crop within the late planting period," is misleading in light of the final sentence of section 17(d)(2). To wit, an insured who initially seeks to plant during the late planting period will not receive a prevented planting payment if other producers had planted prior to the late planting period. The commenter stated this inconsistency must be reconciled. A commenter stated they view as positive the prevented planting provisions being changed to clarify prevented planting coverage is not available because of lack of equipment or labor or failure to plant when others in the area are planting. A commenter stated FCIC proposes to revise the definition of prevented planting to clarify failure to plant because of lack of equipment or labor is not considered prevented planting because lack of equipment or labor are not insured causes of loss. The commenter noted prevented planting claims, which implicate the issue of

inputs such as manpower and equipment, are always very difficult. The commenter stated while the proposed amendment to the definition goes a long way in clarifying this troublesome issue, it may not go far enough to encompass other often-recurring problems associated with uninsured causes of loss. The commenter stated with minimum, and particularly no-till, farming practices becoming more and more prevalent, insurance providers are often met with an argument from insureds that "my land was wet because I am a no-till farmer. My neighbor's land was drier and he was able to plant because he follows a conventional tillage method." The commenter stated a farming practice such as no-till or minimum till is not a characteristic of the land; rather, it is a farm management decision. Consequently, a decision relative to a farming practice is not an insured cause of loss for prevented planting purposes. The commenter stated the definition of prevented planting should be revised to clarify this increasingly encountered problem.

Response: FCIC has revised the definition of "prevented planting" by combining the first and second sentences. This clarifies the provisions regarding a cause of loss general to the surrounding area and that prevents other producers from planting acreage with similar characteristics is applicable to both situations in which planting is prevented by the final planting date and during any applicable late planting period. This revision also removes any potential conflict between the definition and section 17(d)(2). FCIC also has clarified that the use of a particular production method does not constitute an insured cause of loss. Management decisions are never an insured cause of loss.

Comment: A commenter stated FCIC should consider whether the definition of "production guarantee (per acre)" should be identified as for yield protection only (unless it also applies to revenue protection).

Response: The definition of "production guarantee (per acre)" should not specify for yield protection only. The definition of "revenue protection guarantee (per acre)" includes a reference to the "production guarantee (per acre)," so the term is applicable to both yield and revenue production. No change has been made.

Comment: A comment was received regarding the definition of "production report." The commenter suggested that "* * * planted acreage and harvested production" is not necessarily wrong, but may be somewhat outdated now that yields are assigned for prevented planting acreage when a second crop is planted and there is no double cropping history and sometimes appraised production. The commenter also recommended replacing the "or" before "* * * by measurement of farm-stored production" with a comma to set off the three separate phrases.

Response: The definition is not totally accurate because there are situations where yields are assigned for prevented planting acreage when a second crop is planted and there is no double cropping history and appraised yields may be used. However, there are also situations where there are appraised yields but they are not used, such as appraisals for uninsured causes. Therefore, to eliminate any potential conflict with other policy provisions and FCIC issued procedures, FCIC is removing the term "harvested." Further, FCIC has removed the term "or" and added a comma in its place.

Comment: A commenter stated the definition of "projected price" is potentially ambiguous. Because "[a] price" is singular, and the reference is to the plural "all crops," it could be read to mean that an identical price is used for each insured crop. Thus, we recommend rewriting this definition.

Response: FCIC has revised the definition to specify that the price is for each crop.

Comment: A few comments were received regarding the definition of "replanted crop." The commenters referenced Bulletin No. MGR–06–008—Grain Sorghum Planting in South Texas that was issued on June 9, 2006. A commenter stated it is their understanding the position taken in the bulletin was developed as a result of the following portion of the language in the "replanted crop" definition "* * * if the replanting is specifically made optional by the policy and you elect to replant the crop and insure it * * *;" The commenter understands this portion of the definition was only intended to address winter wheat or barley, which is damaged under the Wheat or Barley Winter Coverage Endorsement. In this situation the insured has the option not to replant, and be paid based on the appraisal. This language was not intended to address grain sorghum or any other crops as indicated in the bulletin. The commenter recommended additional language be added to clarify whenever an insured plants the same crop back on the same acreage in the same crop year this is always considered being a replanted crop. Another option would be to remove the above referenced language from the definition and redefine replanted crop in either the Small Grains Crop Provisions or the Wheat or Barley Winter Coverage Endorsement to include this language where it was intended. The commenter also questioned if the definition is intended to exclude the use of this term for a second crop. Another commenter stated the bulletin indicated a crop replanted to the same crop after it was no longer practical to replant the damaged first insured crop would be considered an uninsurable second crop. Although the bulletin addressed grain sorghum, the provisions cited were all from the Basic Provisions. The commenter believes the bulletin was written such that its direction will lead to unintended consequences and should not have cited provisions applicable equally to all crops and should not have triggered solely on a determination of whether or not it was practical to replant. The commenter recommended the definition be rewritten so it is clear that, if a crop is replanted back to the same crop on the same acreage in the same crop year, it is always considered the same original crop unless specified otherwise in the Crop Provisions. Then, particular issues such as the grain sorghum issue dealt with in MGR–06–008 could be better addressed in the Crop Provisions.

Response: Section 508A(a)(2) of the Act makes it clear that a second crop can be the same crop as the first crop unless such crop qualifies as a replanted crop. Section 508A(a)(3) of the Act defines a replanted crop as "any agricultural commodity replanted on the same acreage as the first crop for harvest in the same crop year if the replanting is required by the terms of the policy of insurance covering the first crop." Therefore, unless replanting is required under the policy, a second planting of the same crop has to be considered a second crop. This would apply to all crops. However, there are only certain crops where it is appropriate to allow replanting to be optional. FCIC has previously revised the Basic Provisions to specify that if the policy makes replanting optional and the producer elects to replant (*i.e.,* replanting spring wheat after the failure of winter wheat and continue carrying insurance on the winter wheat under the Winter Coverage Endorsement), the second planting is considered a replanted crop. Therefore, the Basic Provisions should contain the rule and the Crop Provisions the exception. No change has been made in this rule.

Comment: A comment was received regarding the definition of "revenue protection." A commenter suggested replacing the first "or" in both sentences with a comma and making other

changes as follows: "* * * against production loss, price decline/increase, or a combination of both * * * only against production loss, price decline, or a combination of both."

Response: FCIC has revised the definition to remove each "or" between "production loss" and "price decline" and added commas. Additionally, FCIC has revised the "Causes of Loss" sections in the Crop Provisions to clarify that a price change is an insurable cause of loss as long as the cause of the price change is not determined to be an uninsurable cause of loss. This change is consistent with the definition of "revenue protection" which states both price declines and increases are covered.

Comment: A commenter stated the defined term is "RMA's Web site." This is sometimes referred to as "RMA's Web site" and other times as "the RMA Web site" in the Basic Provisions. It would be helpful to use one term consistently.

Response: FCIC has revised the provisions to consistently use the defined term.

Comment: A commenter suggested deleting the parentheses in the definition of "section" and beginning "For the purposes of unit structure, a unit of measure * * *".

Response: FCIC has revised the provision as suggested because it could be perceived that the parenthetical was not actually part of the definition.

Comment: A commenter recommended revising the third sentence in the definition of "second crop" for clarification.

Response: FCIC has considered this change but does not know how to write the provision any clearer. If there are specific suggestions, FCIC will consider them when it next revises the Basic Provisions. No change has been made.

Comment: A few commenters stated clarifying the definition of "share" is appropriate, especially since the proposed rule adds a definition of "insurable interest," which speaks to the "value of your interest in the crop." The definition of "share" is relevant to performing calculations in the sale and service of the MPCI policies. The definition can be improved, therefore, by changing it to read as follows: "Your insurable interest in the insured crop, expressed as a percentage, as an owner, operator, or tenant at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the earlier of the time of loss or the beginning of harvest." This minor change makes the definition consistent with its utilization in the program, and it avoids creating any ambiguity when this definition is read along with the definition of "insurable interest." The commenter referred FCIC to their comments above to the proposed new definition of "insurable interest" and asked whether they match and/or are redundant. Also consider changing "* * * your share will not exceed your share * * *" to "* * * your share will not exceed your insurable interest * * *"

Response: As stated above, FCIC revised the definition of "insurable interest" in response to other comments to specify that "insurable interest" is expressed as a percentage. Therefore, it is no longer necessary to clarify "share" is expressed as a percentage. FCIC revised the definition of "share" to remove the reference to percentage and only refer to insurable interest.

Comment: A few comments were received regarding the definition of "substantial beneficial interest." A commenter stated the proposed rule amends the definition to provide, in part, that a "spouse * * * will be considered to have a substantial beneficial interest unless the spouse can prove they are legally separated or otherwise legally separate * * *". In its explanatory discussion portion of the proposed rule (71 FR 40215), FCIC states this change is to clarify "that spouses are presumed to share in the spouse's share." If, as it seems, FCIC's intention is to create a presumption, then the definition of "substantial beneficial interest" should reflect this. Moreover, the terms "presumed" and "presumption" create an evidentiary standard that will be relevant to a legal action involving this issue. For this reason, the commenter urged FCIC to amend the definition to state that a "spouse will be presumed to have a substantial beneficial interest unless the spouse can prove they are legally separated or otherwise legally separate * * *". In addition, a commenter questioned the continued inclusion of the phrase "legally separated or otherwise legally separate under applicable State dissolution of marriage laws." The 2007 Crop Insurance Handbook (CIH), specifically Exhibit 32 section 2G(l), sets forth seven criteria that, if met, entitle a spouse to a separate policy regardless of marital status. Thus, there appears to be an inconsistency between the Basic Provisions and the CIH, as currently written. A few commenters recommended FCIC consider if the definition of "substantial beneficial interest" is affected by the proposed changes in sections 10(a) & (b), where the interest of any children or other household members are to be included as well as the interest of the spouse. The commenters also suggested FCIC might need to clarify whether a "child" is limited to minor children, or to offspring residing with the individual insured, or in some other way.

Response: FCIC has revised the definition to use the term "presumed." There appears to be confusion regarding SBI and separate shares for the purposes of having separate policies. SBI is only applicable to identify those persons who are required to provide their social security numbers because of their interest in the applicant or insured. This is different than insurable interest or share because those refer to the interest in the crop. To have a separate share or separate policies, there must be an insurable interest in the crop. Therefore, the phrase "legally separated or otherwise legally separate under the applicable State dissolution of marriage laws" should be included in the definition because it is necessary to specify when a spouse is no longer considered to have a SBI in the producer. The term "child" is intended to take its common meaning, which would include a child of any age. For the purposes of SBI, no child is presumed to have a SBI in the insured. To have a SBI, a child must have some other legal relationship to the insured, such as entering into a partnership of some other entity. However, FCIC has revised section 10 to clarify that although a child can be of any age, only children who reside in the same household as the insured are considered to be included in the insured's share. Children who reside outside of the insured's household are not included in the insured's share and can only obtain insurance if they have a separate share of the crop and obtain a separate policy.

Comment: A few comments were received regarding the definition of "whole-farm unit." The commenters asked why it could not also be applied to a producer who only requests yield protection coverage for all of his/her insurable crops in the county.

Response: The definition just described whole-farm units. The restriction of the applicability of whole-farm units is contained in section 34. Currently whole-farm units are only available under the Revenue Assurance plan of insurance and are incorporated into revenue protection. However, a rating methodology has not yet been developed for whole-farm unit coverage under yield protection. To allow greater flexibility, FCIC has revised section 34 to allow the Special Provisions to include a whole-farm unit for policies other than revenue protection in the

event rating methodology is developed in the future.

Comment: A few commenters stated it is unclear why the definition of "yield protection" should be restricted to those crops/counties for which revenue protection is available (whether elected or not). It would seem to be appropriate terminology also for crops/counties where revenue protection is not available (instead of having to distinguish between "yield protection" and "APH coverage"). In that case, this definition should be revised to something like "Insurance coverage that provides protection against a production loss only." [delete the phrase "* * * for crops for which revenue protection is available but was not elected"]. If this is not done, it would seem to be necessary to add a definition of "APH coverage" (the term used in the "Background" of the Proposed Rule) for those other crops/counties; otherwise, it could be interpreted that the Basic Provisions apply only to those crops/counties that have the choice.

Response: There is apparently some confusion about yield protection and its relationship to revenue protection and APH coverage. FCIC has clarified in section 3 that yield protection is a different plan of insurance than APH, revenue protection and any of the other plans of insurance, such as the dollar amount plan of insurance. Further, revenue protection and yield protection will be available for the applicable crops in all counties with actuarial documents for such crops. Once revenue protection and yield protection plans of insurance are available for a crop, the APH plan of insurance will not be available for the crop. Because yield protection and APH are different plans of insurance, the definition of yield protection cannot simply refer to protection against loss of production. The most important distinction between yield protection and APH is that the yield protection pricing mechanism is based on a projected price determined in accordance with the CEPP. Therefore, yield protection and revenue protection will be available for the same crops in the same counties. For this reason, yield protection correctly references the crops for which revenue protection is available. FCIC has clarified in the definitions of "yield protection" and "revenue protection" that they are separate plans of insurance. In this rule, the distinction is only made between revenue protection, yield protection and all other plans of insurance. Therefore, it is not necessary to include separate definitions for these other plans of insurance. Their terms and conditions are very well explained in the Crop Provisions, Special Provisions, and actuarial documents.

Comment: A few comments were received regarding the definition of "yield protection guarantee (per acre)." Some commenters recommended deleting the phrase "* * * for a crop that has revenue protection available" so this applies to any crop/county not insured under revenue protection. Some commenters recommended deleting this definition since yield protection coverage would be addressed by the existing definition of "production guarantee (per acre)", or group the definitions of "production guarantee (per acre)," "revenue protection guarantee (per acre)" and "yield protection guarantee (per acre)" as subparagraphs under the overall general definition of "guarantee (per acre)" to clarify the distinctions and similarities between the three. Commenters also suggested that FCIC might also need to add something for the non-revenue protection crops that are insured under a dollar amount plan rather than under an APH/yield plan.

Response: As stated above, the "dollar amount plan of insurance," "APH plan of insurance," and "revenue protection plan of insurance" are separate and distinct. The phrase "for a crop for which revenue protection is available" cannot be deleted because this definition is only applicable to the yield protection plan of insurance, which is only available for crops for which revenue protection is available. It is not applicable to the dollar amount plan of insurance or the APH plan of insurance. Further, the definition cannot be deleted because, under yield protection, the guarantee is based on both the yield and the price to obtain the dollar value of the insurance coverage. Under the APH plan, the guarantee is only based on the yield. FCIC does not need to add additional definitions or terms for the dollar amount plans of insurance since their guarantees are explained in the Crop Provisions. No change has been made in response to these comments. Minor editorial changes were made for clarity.

Section 2 Life of Policy, Cancellation, and Termination

Comment: A commenter stated they agree the social security numbers (SSN), employer identification number (EIN), or identification numbers must be provided on the application.

Response: FCIC has retained the provisions requiring identification numbers on the application.

Comment: A commenter stated proposed section 2(b) indicates the applicant must provide a SSN if the applicant is an individual or an EIN if the applicant is a person other than an individual. However, the Crop Insurance Handbook (CIH) (Exhibit 32) and Appendix III of the Standard Reinsurance Agreement (SRA) do allow individual entities to be insured using an EIN and some entities other than individuals to use an SSN. The commenter stated a literal reading of this policy language would not seem to support how these entities are currently being administered per the CIH and Appendix III. The commenter recommended the policy language be rewritten to support how these entities are currently being insured. They suggested the provision could indicate something to the effect that the applicant must provide a SSN or EIN, whichever is applicable. Another commenter stated because proposed section 2(b)(1)(i) refers to "* * * SSN, EIN or identification number," the first sentence of (b) should refer to that third possibility as well.

Response: EINs can still be included on the application for any entity. However, under the Basic Provisions, the CIH, and Appendix III, all individuals with a SBI in the entity must also provide the SSNs for such individuals. For example, a producer who operates a farm and has an EIN, can report the EIN on the application but the producer must also provide their SSN. The provisions have been clarified to allow EINs to be used as long as the SSNs are also provided. However, the producer cannot be allowed to make the election of whether to provide the EIN or the SSN because EINs can change and it would be impossible to track the producer for the purposes of eligibility and yield history. FCIC has removed all references to "or identification number" in section 2(b)(1), (2), (3) and (5) and added a new section 2(b)(10) to specify a person who is not eligible to obtain a SSN or EIN must request an assigned number.

Comment: Several commenters disagreed with the provisions proposed in section 2(b)(1)(ii) (redesignated section 2(b)(5)(ii)) that specify no insurance will be provided if the SSN, EIN, or identification numbers are not corrected prior to any indemnity being paid. A commenter stated if the producer is eligible for insurance, there should be no penalty for misreporting. The commenter believes corrections should be allowed without loss of program benefits. A few commenters stated errors can occur at virtually every stage of information transfer. They believe producers should not automatically have their coverage canceled, as is now the case, if they

inadvertently provide, through their mistake or someone else's, an inaccurate SSN, EIN, or ID Number. The commenter believes this is an overly harsh punishment for what is usually an inadvertent clerical error and the provisions should be revised. The commenter stated the only necessary exception to this would be when, upon further investigation, the numbers provided identify the producer as being ineligible to participate in programs under the Federal Crop Insurance Act or shows them to be listed on the Ineligible Tracking System (ITS). A few commenters stated they believe an erroneous SSN or other number should not automatically cause coverage to cancel unless the number or numbers indicate the person is ineligible to participate in the program. A commenter stated as an alternative, a less draconian penalty other than complete denial of coverage should be meted out to those who make an error in providing a SSN or other ID number. A commenter supported the ability to correct an EIN/SSN before payment.

Response: Section 506(m)(1) of the Act requires the producer to provide a SSN as a condition of eligibility. This means a correct SSN. Therefore, failure to provide a correct SSN makes the producer ineligible for insurance and FCIC does not have the discretion to change this requirement. However, there may be instances producers may not be aware that they provided the incorrect SSN because application was made years ago. Therefore, FCIC is revising the provisions to allow a producer to correct errors the producer can prove were inadvertent. While FCIC is allowing a small amount of leeway with respect to a producer's eligibility for past years, producers must be aware that a producer's certification of incorrect identification numbers generally constitutes a false statement that can subject the producer to criminal, civil and administrative sanctions and if a claim has been paid there may be additional consequences. FCIC has revised the provisions to notify the producer that the submission and certification of an incorrect identification number may subject the producer to civil, criminal or administrative sanctions. FCIC has left in the requirement that if a producer provides and certifies an incorrect identification number and fails to correct it, that producer is ineligible for insurance for any year for which the incorrect information was used and any payments made during such period must be repaid. Further, the provisions are revised to state that, even if the identification number information is corrected, the producer will still be ineligible for insurance for any year for which the incorrect information was used (and any payments made during such period must be repaid) if the producer received a disproportionate benefit, was otherwise ineligible for crop insurance, or avoided any obligation or requirement under any State or Federal law.

Comment: A commenter stated FCIC proposes to revise section 2(b) to better define the ramifications for an applicant or insured whose application either does not include the requisite SSNs, EINs or other identification numbers or includes erroneous information for persons that have a SBI in the policy. Further and more specifically, proposed section 2(b)(2)(ii) (redesignated section 2(b)(5)(ii)) addressed situations in which the subject person is not eligible for insurance and provides, with one exception, that such policy is void and no indemnity is due. With regard to the premium and fees, FCIC distinguished between policies for which the premium and fee are paid and those policies for which they are not. The former is entitled to a refund less 20 percent of the premium; the latter is not liable for any premium. The commenter did not understand and did not agree with FCIC's application of differing penalties. The commenter added that presumably, the work expended by the insurance provider in reviewing an application does not vary based on whether or not premium is paid. Thus, the commenter believes if the 20 percent premium charge is intended to offset expenses incurred by the insurance provider, such compensation is warranted regardless of whether the premium is paid. The commenter stated that likewise, if the 20 percent assessment is a punitive measure, there is no reasonable basis to distinguish between persons who pay premium early and those who do not. The commenter believes the disparate treatment set forth in proposed section 2(b)(2)(ii)(A) and (B) may encourage insureds to delay the payment of premium until the last possible minute. The commenter recommended FCIC eliminate the arbitrary distinction underlying sections 2(b)(2)(ii)(A) and (B)), and amend section 2(b)(2)(ii) to provide that 20 percent of the premium is due on any policy for which the subject person is ineligible for insurance. Another commenter stated administrative fees and 20 percent of the premium should be applicable regardless if the premium has or has not been paid by the producer prior to the policy being voided. The commenter believes the insurance provider should have the option to bill for these amounts and the producer and SBIs should be considered ineligible if these debts are not paid by the termination date.

Response: There is no basis to treat producers who have previously paid the premium different from producers who have not paid the premium. The retention of 20 percent of the premium was intended to offset the expenses of the approved insurance provider, not be punitive in nature. FCIC has revised redesignated section 2(b)(7)(ii) to require all producers to pay 20 percent of the premium the producer would otherwise be required to pay if the policy is voided.

Comment: A commenter recommended proposed section 2(b)(1)(ii) (redesignated section 2(b)(7)(iii)) be clarified in more detail regarding whether or not the return of premium applies to only the current year or all previous years when the application has the wrong SSN. For example, a producer reported the wrong SSN to an insurance provider and paid the premium for the last three years with no loss. If in the fourth year, the producer is paid a small payment and later it is determined the producer reported the incorrect SSN, would the insurance provider return the prior three years premium or does the return of premium only apply to the year the loss was paid. If it applies to all four years, the program runs the risk of a producer intentionally misreporting his SSN in hopes of receiving a small claim payment, then notifying the insurance provider of the wrong SSN. The producer would have to repay the small payment, but the insurance provider would have to return the prior three years premium.

Response: If an incorrect identification number is provided and it would result in the application not being acceptable, no insurance would have been, or considered to have been, in place, and the policy is voided under the revised provisions. Therefore, any crop policies associated with that application would be void for all crop years for which such identification number was incorrect. If the policy is void, it has been the practice of FCIC to only require the producer to pay 20 percent of the premium to offset costs (see sections 23 and 27). There is no basis to change this practice for these producers who similarly have their policies voided. There should not be a significant risk that producers will seek to have their policies voided for the return of premium because it presumes that the producer will know that there

will be a number of good years in which no indemnity will be due and only a small claim made in later years. This is unlikely to occur. FCIC has clarified that if the policy is void, no insurance is considered to have attached for any year in which the incorrect identification number has been provided, and the producer would be responsible for 20 percent of the premium for all years covered by the application. FCIC has also moved provisions regarding the effect of voidance to a new section 2(b)(7). Additionally, the provisions in section 27(b) have been clarified to specify the amount of premium that can be retained by the insurance provider when a policy is void is 20 percent of the premium amount the producer would otherwise be required to pay. Current provisions in section 27(b) do not specify whether the 20 percent of premium is based on producer paid premium or the total premium under the policy (producer paid premium plus subsidy). All other sections of the policy that referred to retention of 20 percent of the premium were clear that it is based on the amount paid by the producer. FCIC has revised section 27 to specify the 20 percent is applied to the producer paid portion of the premium.

Comment: A commenter stated they agree with the intended change in proposed sections 2(b)(1)(ii) and (ii)(A) through (C) but are concerned implementation could be problematic since the application would have been accepted long before the time a claim payment could be made, and there could be data processing issues as well. The commenter stated these subsections need to be rewritten for clarity. For example, FCIC could delete "If the information is not corrected," at the beginning of (A) since the lead-in already makes this clear.

Response: As stated above, FCIC has revised the provisions to reduce the impact on producers who have made inadvertent errors and have received absolutely no benefit from using the incorrect identification number. Further, the reference to correction by the claim payment has been removed because many incorrect identification numbers are discovered after the claims have been paid and the 1099 tax forms are issued. However, there will still be some impact on the program because, if the conditions exist that result in an unacceptable application and the policy is voided, previously paid indemnities must be refunded and the correct premium owed reconciled.

Comment: A few comments were received regarding the provision proposed in section 2(b)(1)(ii) (redesignated section 2(b)(5)(ii)). A commenter stated they view as positive allowing the correction of incorrect SSNs or EINs before any claim payment is made. A commenter stated since the proposed policy language will allow correction of SSNs, EINs or other identification numbers to be made, they assume the RMA Data Acceptance System will now allow these corrections to be made without a late sales reduction applying. Another commenter stated they expect FCIC will amend Appendix III to the SRA so insurance providers are not penalized for corrections that occur prior to the payment of an indemnity or a replant or prevented planting payment.

Response: As stated previously, the provisions have been revised to allow revisions upon discovery of errors and removed the reference to the payment date as the deadline for corrections. If corrections to the identification number are allowed by the revised provisions, the insurance provider cannot be penalized for the correction unless the correction was necessary because of agent or insurance provider error.

Comment: A commenter stated they disagree with the proposed provision in section 2(b)(2)(i), which states the amount of coverage will be reduced proportionately by the percentage interest of such persons. The commenter believes that if the person with a SBI is eligible for insurance, there should be no penalty for misreporting and that corrections should be allowed without loss of program benefits.

Response: To be consistent, coverage should not be reduced if the correct identification number is provided. As indicated above, the provisions have been revised to allow correction of an inadvertent error. However, if it is determined that the person with the SBI is otherwise ineligible or the incorrect number would have allowed the producer to obtain disproportionate benefits under the crop insurance program, or avoid an obligation or requirement under any State or Federal law, the policy will be void. FCIC is maintaining those provisions that specify that if an identification number is not provided for any SBI holder, the policy will be void. This is because the SBI holder will be presumed to be ineligible. The identification numbers are required to ensure eligibility and the proper administration of the program. These provisions have been moved to section 2(b)(6).

Comment: A few commenters stated the added phrase "* * * (presumed to be 50 percent for spouses of individuals) * * *" in section 2(b)(2)(i) (redesignated section 2(b)(6)(i)) could be problematic when taken together with section 10(a) and (b). They stated the spouse's interest in the insured entity may be presumed to be half when the spouses are the only ones with such an interest in the entity. If children and/or other household members will be considered to be part of the insured entity as well (as proposed), that leaves less than 50 percent for the actual named insured. Another commenter expressed concern regarding including children and other household members as being among those with a SBI in the insured entity [as proposed in section 10(a) & (b)]. The commenter stated that, with respect to this subsection, such a change would enlarge the pool of people whose eligibility must be determined though they are not officially part of the insured entity.

Response: There appears to be confusion between having an interest in the insured (SBI) and having an interest in the crop (share). SBI is only for the purpose of determining who must report identification numbers. Spouses are presumed to have an interest in the insured but are not presumed to have an interest in the crop. To have an interest in the crop, the spouse must show a legitimate risk of loss. It is possible that a spouse may not have a share of the crop. Further, simply because a person has a share of the crop does not mean the person has a SBI in the insured. For example, a landlord and tenant can insure their shares under separate policies and unless there is another type of legal relationship, *i.e.,* partnership, *etc.,* the landlord does not have to be reported as a person with a SBI in the tenant. The definition of "substantial beneficial interest" clearly states that children are not considered to have a SBI in the producer unless the child has a separate legal interest in the person. Such interest could include a family trust or the child could be a partner in the insured. No change has been made.

Comment: A commenter stated they agree with the proposed provision in section 2(b)(2)(ii) (redesignated section 2(b)(6)(ii)), which states the policy is void if the person is not eligible for insurance.

Response: FCIC agrees that policies should be void when the person with a SBI is not eligible for insurance.

Comment: A commenter suggested deletion of the words "authorized under the Act" in section 2(e).

Response: Since no changes to these provisions were proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter asked if the language in section 2(e)(2) means the

date for the Ineligible Tracking System is the date the claim is completed by the adjuster and signed by the insured, the date the insurance provider processes the claim, or the date the claim is submitted to the insurance provider.

Response: Consistent with the revised definition of "claim for indemnity," the payment date is the date the form containing all the information necessary to pay an indemnity is submitted to the insurance provider.

Comment: A commenter stated section 2(f)(2)(i)(C) has caused problems in areas where the crop has a termination date that is different than the sales closing date. For example, wheat in Montana (with the exception of the four spring only counties) has a sales closing and cancellation date of September 30 and a termination date of November 30. If the insured purchases wheat by September 30, 2005 for the 2006 crop year, and does not pay the premium by the termination date of November 30, 2006, per the provision contained in section 2(f)(2)(i)(A), the wheat coverage would be terminated and no coverage should be effective for the 2007 crop. However, the interpretation the commenter has received from the FCIC is that per the language in section 2(f)(2)(i)(C), if the wheat had already been planted prior to November 30, 2006, so that insurance had already been considered to have attached for the 2007 crop year, the wheat could not be terminated until November 30, 2007. Under this interpretation, the insured would be able to insure wheat for two years without having paid a single dollar of premium. The commenter stated it had always been their understanding the intent of this item was to apply to "other" crops insured by the policyholder, not to the insured crop, which is indebted (wheat in the above example). The commenter recommended the policy language be revised so this item is only applicable to "other" crops insured on the policy and not the crop causing the indebtedness. The commenter provided two different recommendations as follows: (1) "For each policy for which insurance has attached before you become ineligible (excluding the crop(s) with unpaid administrative fees or premiums), the termination date immediately following the date you become ineligible;" and (2) The commenter suggested deletion of this item as it becomes administratively difficult to determine if insurance has attached or not on all of the other crops on the policy. This would then default back to item 2(f)(2)(i)(A). The commenter stated that policyholders with unpaid amounts should not get a free grace period of a year of coverage simply because the termination date falls after the cancellation date.

Response: FCIC has clarified the provision because it never intended to allow continued coverage for the crop for which premium was not paid by the termination date. The purpose of the difference in the termination and sales closing dates was to allow producers who have both spring and winter varieties of the same crop to only have one billing date. It was most practical to move the billing date for the winter variety to coincide with the spring. After the billing date there must be sufficient time to allow for payment and due process before making the producer ineligible and terminating the policy. However, it is not practical to move the sales closing date to coincide with the termination date because it is too close to the date of planting and could lead to adverse selection. FCIC has revised the provision to specify that if the sales closing date is prior to the termination date, and the amount owed is not paid by the termination date, termination is retroactive to the previous sales closing date and insurance is considered not to have attached to the crop for the crop year.

Comment: A few commenters stated sections 2(f)(2)(i)(E) and 2(f)(3)(iii) should be revised to tie regaining eligibility to the discharge of a bankruptcy petition instead of the filing of a bankruptcy petition. The commenters stated that allowing individuals that have merely filed for bankruptcy to participate in the program creates a program vulnerability that should be stopped. The commenters understand that FCIC adopted the filing of a bankruptcy petition as the trigger for regaining eligibility based upon concerns that denying participation until discharge would violate 11 U.S.C.A. 525(a). The commenters stated that this is not true. Section 525(a) provides: (a) * * * a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

The courts of appeals that have approached the question have read the statute's reach narrowly, focusing upon the specific language of the statute. See, *e.g., Watts* v. *Pennsylvania Hous. Fin. Co.,* 876 F.2d 1090, 1093–94 (3d Cir. 1989); *In re Goldrich,* 771 F.2d 28, 30 (2d Cir. 1985). *Watts* involved an emergency mortgage assistance program designed by the State of Pennsylvania to prevent imminent mortgage foreclosures by providing for loans to distressed borrowers in the form of direct payments to their mortgage lenders, keeping their mortgages current. When plaintiff borrowers filed for bankruptcy, the program suspended these payments for the duration of the Bankruptcy Code's automatic stay. Plaintiffs contended this suspension violated § 525(a). In response, the court of appeals noted that a loan from the Pennsylvania program simply was not a "license, permit, charter [or] franchise," and that since those terms "are in the nature of indicia of authority from a governmental unit to pursue some endeavor," the term "similar grant" should be given the same meaning. *Watts,* 876 F.2d at 1093. Similarly, the court in *In re Goldrich* concluded that § 525(a) did not prohibit consideration of prior bankruptcies in credit decisions, since "the language of section 525 may not properly be stretched so far beyond its plain terms." Goldrich, 771 F.2d at 29.

The items enumerated in the statute-licenses, permits, charters, and franchises are unrelated to insurance. They reveal that the target of § 525(a) is government's role as a gatekeeper in determining who is authorized to pursue certain livelihoods. It is directed at governmental entities that might be inclined to discriminate against former bankruptcy debtors in a manner that frustrates the "fresh start" policy of the Bankruptcy Code, by denying them permission to pursue certain occupations or endeavors. The intent of Congress incorporated into the plain language of § 525(a) should not be transformed by employing an expansive understanding of the "fresh start" policy to insulate a debtor from all adverse consequences of a bankruptcy filing or discharge. *Toth* v. *Michigan State Housing Development Authority,* 136 F.3d 477 (6th Cir. 1998) (housing authority did not violate Bankruptcy

Code's antidiscrimination provision when it denied debtor's home improvement loan solely because she had received discharge within three years of application).

The commenters stated that alternatively, if FCIC remains concerned that denying participation until discharge would violate 11 U.S.C.A. § 525(a), the commenters suggest that 2(f)(2)(i)(E) must be changed to make the "termination date" the date of dismissal of the bankruptcy. If disallowing participation during the pendancy of a bankruptcy violates 11 U.S.C.A. § 525(a), which the commenters do not believe is true, then back dating the termination is also a violation as participation is denied "during the case but before the debtor is granted or denied a discharge."

Response: Since no changes to these provisions were proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter recommended addressing the situation in section 2(g) regarding when an insured passes away within 30 days of the sales closing date and the insured's holdings convert to an estate, or in the event the death is a family member like a child, *etc.*

Response: There are situations where an individual may die, *etc.,* and the estate may not pass on to a spouse or the spouse may not meet all the criteria. Provisions have been added in section 2(g) to address these issues. A child's death would be covered under the provisions regarding either the individual insured whose beneficiary is the spouse, the entity insured, or the new provisions regarding an individual insured if the beneficiary is someone other than the spouse, whichever is applicable.

Comment: Many commenters stated the proposed rule states if a married insured dies or is declared incompetent, the policy automatically converts to the spouse's name and will continue in effect until canceled by the spouse. This is a positive change and they urged FCIC to retain it in the final rule.

Response: FCIC has retained the provision in the final rule.

Comment: Many comments were received regarding the provision proposed in section 2(g)(1) that specifies the policy will automatically convert to the name of the spouse if the insured individual dies, disappears, or is judicially declared incompetent. A commenter asked if the policy will convert to the name of the surviving spouse, no matter when the insured dies. In other words, if they die anytime during the insurance period, can the insurance provider make this change? A commenter stated the concept in section 2(g)(1) of allowing coverage to convert to the surviving spouse (if listed as SBI holder) should alleviate some of the problems that have been encountered, but there may be some concerns with implementation. For example, the spouse might not be the heir to the farming operation in all cases, yet this proposed language would make that the default. The commenter believes this might be workable as long as other cases, such as a son inheriting the farm, can be handled through the procedures for a successor-in-interest or transfer of right to an indemnity. A commenter stated while theoretically a positive change, there may be situations in which a spouse dies and the farming operation is taken over by a child of the deceased, the deceased's estate, or another farming operation. The commenter stated an option should, therefore, be provided to convert the deceased spouse's coverage over to these individuals or entities. A commenter stated the provision sets forth two conditions under which the policy automatically will convert to the spouse's name. However, the provision does not specify what occurs if either or both of these conditions are not satisfied. The commenter asked if the policy is terminated or if it is void. The commenter asked whether the policy is void, is it void ab initio. The commenter questioned if the insurance provider is obligated to provide a premium refund for a policy that is voided. The commenter asked if, for example, the death occurs after the filing of notice of loss but before the issuance of an indemnity check, if the claim is extinguished. The commenter stated that arbitration and litigation will not arise if the surviving spouse satisfies the criteria in subsection (1)(i) and (ii) but what happens when he or she does not. The commenter suggested FCIC provide guidelines applicable to this eventuality. The commenter stated, in light of the existing procedures relating to successors-in-interest, the Basic Provisions should expressly state that a new application is not required. The commenter added that FCIC must amend Appendix III to ensure that an insurance provider is not penalized when it changes the SSN from that of a deceased policyholder to that of the surviving spouse.

Response: FCIC has revised the provisions to add the situation where the beneficiary of the insured's estate may be someone other than a spouse or the spouse does not meet the specified criteria. The same terms and conditions that relate to when a member of an entity dies, *etc.,* apply. The policy is never voided. The policy either (1) continues in the spouse's name, or in all other situations, (2) is canceled as of the cancellation date for the current crop year if the event occurs more than thirty days prior to such cancellation date, or (3) continues in effect for the crop year if the event occurs within thirty days of the cancellation date. Even successor in interest must file a new application that will allow the use of the previous experience. Appendix III of the SRA will be made consistent with the Basic Provisions as necessary.

Comment: A commenter stated in each of subsections 2(g)(1) through (3), FCIC employs the term "automatically" to describe the end result of certain occurrences, *e.g.,* "automatically converts," "automatically dissolves" and "automatically canceled." However, a condition precedent to the automatic consequence assumed by section 2(g) is notice to the insurance provider. For example, without notice that a married individual has died, an insurance provider cannot "automatically convert" the policy to the name of the surviving spouse. Therefore, the commenter recommended FCIC amend section 2(g) to provide: "In cases where we have received notice that there has been a death, disappearance, or judicial declaration of incompetence * * *"

Response: FCIC has added a provision that requires notice in any case except where the beneficiary is the spouse and the spouse is listed as a SBI holder and has a share of the crop. If the beneficiary is such spouse, the policy automatically converts and there is no penalty if notice is not provided. The insurance provider should correct the documents whenever notice is provided. In all other instances, notice is required but whether it is provided timely or not does not change the fact that the policy is cancelled by the date specified in section 2(g). This means that if notice is not provided until three years later, the policy is still considered to have been canceled by the specific date and any indemnities, replant payments, prevented planting payments, administrative fees and premium paid in the interim must be repaid.

Comment: Several comments were received regarding the provisions proposed in section 2(g)(2). A few commenters urged FCIC to consider revising the provision regarding surviving partners, members, and shareholders, to maintain the policy if the death occurs within 45, rather than 30, days of the sales closing date. A

commenter stated a 30-day time limit seems rather narrow because there are obviously a number of matters, both personal and business related, which must be handled in short order following the death of a partner in a partnership. The commenter believes that requiring the submission of a new application within a short 30 day window following the death may be asking a bit much from the remaining partners. They stated a 45- to 60-day window would seem more reasonable. A commenter stated section 2(g)(2) states if any partner, member, shareholder, *etc.,* of an insured dies * * * it automatically dissolves the entity. The commenter added it depends on when the insured dies to determine if the policy will be canceled or if it continues. The commenter asked if a partner, member, shareholder, *etc.,* dies, and it only changes the entity but does not dissolve the entity, how should this be handled.

Response: FCIC believes 30 days provides an adequate amount of time for needed changes and has retained the proposed provisions. There is not a single date that can be established by which all estates would be settled. However, in farming situations, there is usually someone carrying on the farming operations and 30 days should provide sufficient time. If no one is carrying on the farming operations, then insurance is not required and there is no harm if the policy is canceled. If a partner, member, shareholder, *etc.,* dies and the entity does not dissolve, the policy would continue in force. Any changes in persons having a SBI would be submitted in accordance with the provisions in redesignated section 2(b)(9). The provision has been clarified to indicate that death, dissolution or declaration of incompetence must be an event that results in dissolution of an entity.

Comment: A few commenters recommended FCIC consider putting "dissolution" of an insured entity into a separate subsection in section 2(g), to make it clearer that it is handled differently. The commenters stated in fact, (g)(2) might be better addressed by referring first to this being an issue of the dissolution of the insured entity rather than the death, disappearance or declaration of incompetence of any of its members, adding that grouping (2) and (3) together might eliminate some of the duplicate language.

Response: Whether another basis for dissolution or death, disappearance, *etc.,* is referred to first or second does not change the meaning of the provisions or provide any additional clarity. As revised, it makes more sense to keep the existing order because FCIC has added provisions regarding when the beneficiary is other than a spouse or the beneficiary spouse does not meet all the criteria for automatic conversion to the spouse's name and the consequences are the same for both the entity and such beneficiary when the insured, dies, disappears, *etc.* Dissolution for reasons other than death, disappearance or judicially declared incompetence is covered by the provisions in redesignated section 2(g)(4). Different timeframes are required for cases in which there is a death, disappearance or judicially declared incompetence because of the additional personal matters that generally must be attended to in such cases. These different timeframes should be addressed in separate sections because combining them would result in more complex and confusing provisions. No changes have been made in response to this comment.

Comment: A commenter stated they disagree with the provisions proposed in section 2(g)(2) establishing a more or less than 30-day time period for required actions prior to the sales closing deadline. The commenter stated although 30 days prior to the sales closing date seems to be adequate time to take appropriate action, these situations are typically discovered much later. The commenter believes corrections based on these circumstances should be handled similar to section 2(g)(1) for spouses.

Response: FCIC understands some cases of dissolution are not discovered in a timely manner but business relationships should not be treated like spouses. FCIC is considering not only the personal nature but the relationship of the parties under the policy. As stated above, FCIC has clarified that the automatic conversion only applies when the spouse is listed as a SBI holder and has a share of the crop to be insured. In such cases, the spouse is the only possible insured so there is no basis for requiring a new application and novation is permitted. However, with respect to business relationships, if the entity is dissolved, it is unknown who will continue to have a share of the crop or who will be the insured. Therefore, a new application is necessary. FCIC has revised the provision to clarify that it is only when the entity is dissolved that the policy will be canceled. If the entity is not dissolved, insurance continues in the entity name and only those persons with a SBI need to revise the application in accordance with redesignated section 2(b)(9). FCIC has also added provisions requiring notice be provided to the insurance provider by the remaining persons in the dissolved entity or beneficiary. No change has been made in response to this comment.

Comment: A commenter stated in section 2(g)(2), allowing coverage to continue when the insured entity is dissolved due to death, *etc.,* of one of its members less than 30 days before the sales closing date would alleviate some of the problems that currently exist, but it might create some confusion for those who do not want coverage to continue. The commenter stated this provision seems to run counter to current procedures that consider coverage to have ceased upon death or dissolution of the insured entity. The commenter stated the language in section 2(g)(2)(ii) (redesignated section 2(g)(3)(ii)) needs to be tweaked somewhat. For example, if the entity dissolves "Less than 30 days before the sales closing date, * * * the policy will continue in effect through the crop year * * *" but which crop year? If this occurs before the cancellation date, the "continued" coverage will be only for less than 30 days. Similar concerns need to be addressed with regard to the language in section 2(g)(2)(ii)(A) (redesignated 2(g)(3)(ii)(A)): "prior to the sales closing date for coverage for the subsequent crop year * * *" These "crop years" will be different years depending on whether the occurrence affecting the insured entity happened before or after the sales closing/cancellation date. The commenter stated FCIC also needs to consider what other policy or procedure language is affected and might require revision. The proposed language requiring the remaining party(ies) to sign a timely cancellation request might still present difficulties if the entity dissolution took place only a day or so before the cancellation date. FCIC also should consider those crops where the cancellation date is not the same as the sales closing date.

Response: The 30-day provisions were added because even businesses need some time to handle the details necessary when a member dies. However, even if less than 30 days, and insurance could automatically continue, there is a provision included in redesignated section 2(g)(3)(ii) that would allow for a voluntary cancellation by the cancellation date. These provisions are clear and should not result in any confusion. FCIC issued procedures will be updated to reflect the new provision. As proposed, if the death, disappearance, or judicially declared incompetence occurred within 30 days of the sales closing date, it was intended that coverage be provided for the crop year immediately following the sales closing date. However, to reduce

confusion associated with crop programs having more than one sales closing date, the provisions have been changed to reference the cancellation date instead of the sales closing date. The provisions have also been clarified in redesignated sections 2(g)(3)(ii) and 2(g)(4)(ii) to indicate the crop year covered is the crop year immediately following the cancellation date. Clarifying these sections with regard to the year coverage is provided makes it unnecessary to clarify the provisions in redesignated section 2(g)(3)(ii)(A) regarding the subsequent crop year. If death occurs very close to the cancellation date, there would be a very limited time to cancel coverage. However, the cancellation date cannot be extended because it could allow situations where producers could adversely select against the program. Since the provisions have been changed to reference the cancellation date, concerns involving different sales closing and cancellation dates are resolved because insurance does not attach before the cancellation date.

Comment: A commenter stated they agree with the proposed action in section 2(g)(3) (redesignated section 2(g)(4)) if the insured entity is dissolved.

Response: FCIC has retained the provision in the final rule.

Comment: A commenter stated that, in section 2(g)(3)(ii) (redesignated section 2(g)(4)(ii)), presumably the phrase "* * * unless canceled by the cancellation date prior to the start of the insurance period" refers to crops with a cancellation date later than the sales closing date; otherwise, this would not be possible when the insured entity dissolved "On or after the sales closing date * * *"

Response: As stated above, FCIC revised the provision so that the 30 days now refers to the cancellation date. Therefore, cases in which the sales closing date and cancellation date are different should no longer be an issue.

Comment: A commenter suggested that section 2(k) be revised by changing "* * * any applicable consequences * * *" to "* * * any other applicable consequences * * *" to clarify that these would be in addition to "* * * the consequences in section 6(g) * * *"

Response: FCIC has revised the provision as recommended because there may be other consequences, such as voidance of the policy under section 27, disqualification and civil fines under 7 CFR part 400, subpart R, or other applicable civil, criminal or administrative sanctions, if information has been misreported.

Section 3 Insurance Guarantees, Coverage Levels, and Prices

Comment: A few comments were received regarding section 3(b). A few commenters did not think the first parenthetical, which relates to CAT was necessary. A commenter stated the definition of CAT already provides that revenue coverage is not available for CAT. Another commenter stated if FCIC is insistent on restating this exclusion, then a separate subsection would be more appropriate. A commenter stated the provisions could be rewritten to reduce the length and to improve clarity. Since section 3(b) makes no reference to the same price percentage, presumably it is intended to address "the same coverage" (level and type of protection) but with the added phrases, it is not clear. Instead of indicating a choice between CAT and additional coverage, and then a choice of additional coverage level, consider simply requiring the same level of coverage (which will be either CAT or one of the additional levels). The commenter requested FCIC consider their other comments about clarifying the terminology for the different choices of protection (amount of insurance, yield coverage for those crops for which revenue protection is not available, yield protection, or revenue protection). The commenter questioned if it is necessary to distinguish between "yield coverage" and "yield protection." A commenter stated FCIC employs the term "yield coverage" which is not a defined term. The Basic Provisions define the term "coverage." If "yield coverage" and "coverage" are synonymous, FCIC should use the defined term, *i.e.,* "coverage." If the terms are not identical in meaning, the commenter stated FCIC must define "yield coverage." This provision is unnecessarily confusing and, perhaps, should be further subdivided. A commenter stated the current Crop Provisions require producers to purchase the same levels of coverage on both irrigated and non-irrigated units. It is the commenter's position this provision is unnecessarily restrictive and that producers who grow both irrigated and non-irrigated crops should be allowed to purchase different levels of insurance to better match coverage to the overall level of risk associated with each practice. By not providing producers the flexibility to match coverage to a specific practice, the agency forces producers to underinsure their irrigated crops due to the costs associated with insuring non-irrigated crops at higher levels. Producers should be allowed to select a single level of coverage for irrigated units and a different coverage level for non-irrigated units insured on their policy. To safeguard against possible abuse of this provision, a producer's choice for non-irrigated coverage should be limited to the same level or lower than the coverage level selected for irrigated units. The commenter urged FCIC to include this change in the final rule and provide producers the flexibility to select appropriate levels of coverage for their crops.

Response: The provisions have been revised by removing the first parenthetical phrase regarding CAT coverage, separating the provisions into subsections, and removing other unnecessary information for clarity. Additionally, the provisions have been revised to clarify the producer must select the same plan of insurance (*e.g.,* yield protection, revenue protection, actual production history, amount of insurance, *etc.*), the same level of coverage (all catastrophic risk protection or the same level of additional coverage), and the percentage of the applicable price. Further, the term "yield coverage" has been removed from the provisions because it was confusing with the term "yield protection." Therefore, no definition is required. Since no change was proposed to allow separate coverage levels for irrigated and non-irrigated acreage, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule.

Comment: A few comments were received regarding high-risk land. A commenter requested other coverage levels be allowed for high-risk land, not just catastrophic risk protection. The commenter suggested the producer be given the choice of any level of coverage up to the buy-up level of coverage the producer selected for the non high-risk land. Another commenter stated if the producer chose revenue protection on non high-risk ground, then the producer should have the choice of either revenue protection or non revenue protection on the excluded high-risk ground. If the producer did not choose revenue protection on the non high-risk ground, they should not be able to select it on their excluded high-risk ground. Requiring the level and type of coverage on the excluded high-risk ground to be the same or lower than what is allowed on the non high-risk ground alleviates any concern of the risk of adverse selection. This would not affect the producer that farms all non high-risk ground (Producer A) or the producer who farms all high-risk ground (Producer B). These producers can

consider the cost and coverage and arrive at a level and revenue/non revenue selection that best fits their circumstances. The commenter stated there is a large number of producers (the commenter called this group Producer C) who have ground in the same county that is rated both high-risk and non high-risk. Currently and as part of the proposed rule, this group of producers has two choices: insure all high-risk and non high-risk at the same level and type of coverage, or insure the non high-risk ground on a buy-up policy and exclude the high-risk ground and not insure it or only insure it at the catastrophic level. Producer A in this county who farms all non high-risk ground might choose 70–80 percent coverage while Producer B who farms all high-risk ground might choose 55–65 percent coverage (high-risk premium rates are from 1-to-3 times higher—sometimes even higher—than non high-risk rates for the same level and type of coverage). The commenter stated, for example, in Wayne County located in southern Illinois using a 120-bushel APH on corn and 2006 crop year rates: Producer A (non high-risk ground) chooses 70 percent RA coverage, which costs $11.24 per acre and provides $217.56 coverage per acre. Producer B (all high-risk ground classified AAA) chooses 55 percent CRC coverage, which costs $15.57 per acre and provides $170.94 coverage per acre. Producer C, whose farming location is 50 percent non high-risk and 50 percent high-risk under the proposed rule has four choices: (Option 1) insure all of their farm at 70 percent RA coverage (like Producer A) incurring premium on their non high-risk ground of $11.24 per acre and coverage of $217.56 per acre; but their high-risk rate is $30.47 per acre for the same $217.56 per acre coverage (three times higher than non high-risk ground); (Option 2) insure all of their farm at 55 percent RA (like Producer B) incurring premium on their non high-risk ground of only $5.22 but lowering their coverage to $185.19, which makes their entire policy a lot less responsive to drought and revenue losses at this lower coverage level on higher elevation farm ground; (Option 3) Producer C can insure their non high-risk ground at 70 percent RA coverage and request a High-Risk Land Exclusion Option and not insure their high-risk ground, which gives them no coverage on their high-risk ground; or (Option 4) insure their high-risk ground with a high-risk CAT policy, which will only cost them the $100 administrative fee for all of their high-risk acres but only providing them with coverage of $66 per acre and they would not be provided optional units or replant coverage. Neither Option 3 nor Option 4 offers the producers much coverage. Option 1 makes the cost of the high-risk ground prohibitive and would cause some producers to insure high-risk ground at a higher level than they would have had they had the option of choosing a lower level on their high-risk ground. Option 2 lowers the coverage on the non high-risk ground to a less responsive area not really covering them well in a drought or low revenue loss. All Producer C wants is to be able to make the same choice Producer A was able to make on their non high-risk ground and Producer B was able to make on their high-risk ground. The commenter stated there are more acres of high-risk land than total acres covered by the several different specialty crops or other provisions provided for practices such as organic farming. Thus, there are a lot more producers with the dilemma of having high-risk ground and non high-risk ground than producers who are affected by organic practices or producers who grow a lot of different insured specialty crops. The commenter stated if high-risk rates are actuarially sound, (it appears if they are anything, they are too high when compared to non high-risk ground) giving producers the choice of the same or a lower level of coverage and the same or a lower type of coverage on their high-risk ground compared to their non high-risk ground should not be giving FCIC or the insurance providers any more exposure than they already have because this choice is already given to the producer who only has high-risk ground and reduces the risk of producers carrying an unduly higher level of coverage on their high-risk ground because they want or need a higher level of coverage on their non high-risk ground. Administratively, this choice should not be a big change because a producer is already given a choice of a High-Risk Land Exclusion Option on their high-risk ground with the option of buying a high-risk CAT policy. This proposal would only let the producer have additional choices of type and levels of coverage above the catastrophic policy on their excluded high-risk land but the same or below the level or type of coverage carried on their non high-risk ground.

Response: Since CAT coverage is not available with revenue protection, a clarification was added in the proposed rule to specify if the producer has revenue protection and excludes high-risk land; the CAT coverage will be yield protection only for the excluded high-risk land. With respect to allowing differing additional coverage levels for non high-risk and high-risk land when the high-risk land is excluded, FCIC did not propose the change and the public was not provided an opportunity to comment on the recommended change. Therefore, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter stated FCIC establishes two standards throughout the Basic Provisions: one applies to crops for which revenue protection is not available and the other to crops for which revenue protection is available, apparently without regard to whether the insured selects yield protection or revenue protection. The commenter questions FCIC's penchant for this classification. If an insured selects yield protection for a specific crop, regardless of whether revenue protection is also available, the commenter contends the standards applicable in that situation should be comparable to those that apply if revenue protection is not available, *i.e.,* the insured must purchase yield protection. FCIC should establish one set of guidelines for yield protection, regardless of whether it was one of two options or the only option. The commenter stated the confusion engendered by this distinction is well-illustrated in sections 3(c) and (d). The commenter contended it is more logical to differentiate between policies for which the insured selects yield protection and those for which the insured selects revenue protection. If revenue protection is not available, the insured automatically will default into the former category; if revenue protection is available, then the insured's election is dispositive.

Response: FCIC has revised and separated the provisions to clarify that yield protection and revenue protection are separate plans of insurance that are available for the same crops. FCIC has also clarified that the other plans of insurance (*i.e.,* APH, dollar amount of insurance, *etc.*) are available for those crops for which revenue protection is not available. Now within each plan of insurance or category of plans of insurance, there are provisions regarding the changes to coverages, prices, *etc.* The provisions regarding yield protection and revenue protection refer to "if available for the crop" to allow flexibility in the expansion of these plans of insurance. As stated above, yield protection is not synonymous with APH because the pricing mechanisms are different between the two and they are considered as separate plans of insurance.

Comment: A few comments were received regarding the proposed Harvest

Price Option. A commenter stated they support allowing producers to exclude the Harvest Price Option rather than having to elect to receive it. This helps avoid the potential for producers not receiving a benefit they ultimately wished to have and the commenter urged FCIC to include this change in the final rule. The commenter also suggested producers should be able to elect to receive the Harvest Price Option without having to purchase revenue protection and urged FCIC to also make this modification in the final rule. The commenter quoted another person as stating, "This would provide growers with replacement coverage that would replace lost bushels at their current market value and growers could then cover lower prices with forward contracts, futures, options, and FSA commodity programs." While this proposed revision offers producers yet another risk management option to consider, its viability is predicated on appropriate rating. Another commenter stated they are concerned about the proposed changes that potentially diminish the protection and overall value of coverage. The provision that limits the harvest price option to crops with revenue protection, in their view, is overly restrictive. To enhance a producer's ability to better compliment their crop insurance coverage with other farm program support and private risk management tools, the commenter recommends the producer be allowed the flexibility to select the harvest price exclusion with the option to purchase an upside price replacement coverage endorsement.

Response: Allowing producers to elect the harvest price exclusion rather than producers having to elect to receive the harvest price will be advantageous to many producers. In the past, the vast majority of producers elected this additional coverage. FCIC will retain this provision in the final rule. It is not possible to have a harvest price with a yield protection or APH plan of insurance because it would be revenue coverage. Further, the harvest price is based on commodity exchanges and for many crops, such exchanges are not available. FCIC has revised the provisions to allow expansion of revenue coverage as the ability to determine projected and harvest prices are developed. If there are private insurance products available for supplemental price protection, producers are not precluded from purchasing such policies, provided that such policies have been determined by FCIC to not shift any risk to the underlying policy. Private supplemental policies or other policies submitted and approved under section 508(h) of the Act, may be utilized to provide additional insurance protection both for crops covered under revenue protection and those that are not. No change has been made.

Comment: A commenter stated the references in sections 3(c)(2), (i) & (ii) to "* * * percentage of the price election or amount of insurance * * *" suggest policyholders may choose a percentage of the amount of insurance on dollar plan crops. Because this is contrary to the Crop Insurance Handbook Section 8A(2), which states the producer may "* * * select one of several dollar amounts of insurance * * *", they suggested revising it to "* * * the amount of insurance or the percentage of the price election * * *" or at least adding "the" before "* * * amount of insurance" to separate it from "price election," and rewriting (i) and (ii) since the amount of insurance would not be multiplied by a percentage.

Response: As a general rule, the commenter is correct that for dollar amount of insurance plans, the producer selects a percentage of the dollar amount of insurance, akin to the level of coverage, not the percentage of price election. Therefore, in the provisions relating to plans of insurance other than revenue and yield protection, they have been revised to distinguish between amounts of insurance and percentage of the price elections.

Comment: A commenter proposed changing language in section 3 to "* * * at the 100 percent of the projected price or price election for crops for which revenue protection is not available or equivalent coverage * * *" The commenter stated as currently written, 100 percent price election would only apply to crops in which revenue protection is not available. The current price election definition only refers to crops for which revenue protection in not available.

Response: As stated above, FCIC has revised section 3 to clearly distinguish between revenue protection, yield protection, and all other plans of insurance. A commenter requested that revenue coverage only receive 100 percent of the projected price and harvest price. During the review of this comment, FCIC determined that the commenter was correct and that only 100 percent of the projected price and harvest price could be used because of rating issues. Therefore, FCIC has clarified that under revenue protection, the producer will receive 100 percent of the projected price and harvest price. Under yield protection and all other plans of insurance, producers may select a percentage of the applicable prices or dollar amounts of insurance.

Comment: A commenter stated as a prefatory note, section 3(c)(2) provides that, for a crop for which revenue protection is not available, an insured "may change the coverage level or percentage of the price election or amount of insurance * * *" However, section 3(d)(1), which applies to a crop for which revenue protection is available, an insured may change the "coverage level." By implication, if revenue coverage is available the insured may not change the percentage of the price election. However, section 3(d)(2) refers to "the percentage of projected price and harvest price selected" by the insured, thereby suggesting that the insured may choose a percentage of the price if revenue protection is selected. A similar reference appears in section 3(d)(3). This seemingly conflicting language is confusing. The commenter recommended that FCIC clarify subsection (d) and, in particular, state clearly, that an insured who purchases revenue protection may not select a percentage of the price; 100 percent of the price should be the only option.

Response: As stated above, redesignated section 3(c) has been revised to only allow 100 percent of projected and harvest prices under revenue protection. Producers will be able to choose a percent of the projected price under redesignated section 3(d) relating to yield protection and all other plans of insurance.

Comment: A few commenters stated periods of extended drought or other recurring loss events can erode producers' individual yield history to unusable levels. The commenters encouraged FCIC to develop a solution to this problem. Producers affected by successive years of disastrous weather are also those who can least afford to be underinsured. The commenters were aware FCIC has been researching the problem for several years, but this important deficiency is not addressed in the proposed rule. Another commenter stated basic crop insurance works okay until one hits a number of consecutive years of bad crops due to drought and hail. The resulting lowering of APH makes this insurance ineffective and also affects any disaster relief due to lowering APH and National Agricultural Statistical Service (NASS) yields in a prolonged drought area. The commenter states this problem needs to be fixed. The commenter proposed excluding the years of a disaster declaration from the APH calculation and stated until this is done, Federal crop insurance will always fall short of covering the needs

of production agriculture. The commenter provided information from his farm in drought stricken South Central Montana and hoped it would be of some use to show the effect of declining yields.

Response: FCIC is continuing to look at ways to improve the program to benefit producers and solve problems such as the affects of declining yields. When it discovers such an improvement, FCIC will take such action as necessary for implementation.

Comment: A commenter stated FCIC's record-keeping requirements for grain type crops, for both APH records and loss claims are not attainable for policies with optional units on farms with central drying or storage. The requirement of disinterested third party determinations is unworkable in all parts of the U.S. for these kinds of operations. Authority similar to the new flexibility in the 2007 Crop Insurance Handbook for APH records (page 217, section 10) needs to be expanded to apply to multiple unit policies for both APH and claims for this category of crops.

Response: Redesignated section 3(g)(3) requires producers to maintain written verifiable records by unit. "Verifiable records" is defined as "contemporaneous records of acreage and production provided by the insured, which may be verified by FCIC through an independent source, and which are used to substantiate the acreage and production that have been reported on the production report." The requirement for disinterested third parties relates to quality adjustment and that requirement should not adversely affect any producer who utilizes a central storage facility because it involves the person who is authorized to pull the samples, not maintain the records.

Comment: A commenter recommended changing the production deadline in section 3(e) (redesignated section 3(f)) to be the sales closing date and not the earlier of the acreage reporting date or 45 days after the cancellation date. The commenter also recommended adding the additional clarification of "If production is not reported by the production reporting deadline, we are not able to update until the following crop year."

Response: Since no changes to these provisions were proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter stated the added phrase in section 3(e) (about the possibility of a different production reporting deadline when a written agreement is requested) (redesignated section 3(f)) results in two different exceptions to the usual deadline. They suggested either putting parentheses around the first exception ["* * * (unless otherwise stated in the Special Provisions), except as specified * * *"] or changing "* * * except as specified * * *" to "or as specified * * *"

Response: There are two exceptions to the stated deadlines and FCIC has clarified this language for readability. Further, FCIC has revised the provision to correct the citation in the proposed language. The correct cite should only refer to section 18 regarding requests for written agreements, which must include a completed APH form, and must be submitted by the sales closing date or acreage reporting date, as applicable.

Comment: A few commenters stated they supported the provisions in section 3(f) (redesignated section 3(g)), which permit producers to correct misreported data by the production reporting dates without penalty, and they urged FCIC to retain this proposed provision in the final rule. Another commenter suggested with the added "However * * *" phrase in section 3(f)(2) (redesignated section 3(g)(2)), FCIC should consider if it is still correct for the first sentence to state "* * * you will be subject to the provisions * * *" The commenter suggests changing it to read "* * * you will be subject to the provisions regarding misreporting contained in section 6(g), unless the information is corrected: (i) On or before the production reporting date; or (ii) Because the incorrect information was the result of our error * * *"

Response: FCIC has retained the provision in the final rule. FCIC has also revised redesignated section 3(g)(2) as suggested.

Comment: A commenter questioned if the reference to "and 7 CFR part 400, subpart G" in sections 3(f)(3) and 3(g)(1) (redesignated sections 3(g)(3) and 3(h)(1) respectively)) are necessary in addition to the reference to section 3(e)(1) (redesignated section 3(f)(1)).

Response: The references to 7 CFR part 400, subpart G are necessary because redesignated section 3(f)(1) only applies when no production report is provided and it states that not more than 75 percent of the producer's previous year's yield will be used. This provides the maximum yield that can be assigned under redesignated sections 3(g)(3) and (h)(1). For example, with respect to the failure to have written verifiable records in redesignated section 3(g)(3), 7 CFR part 400, subpart G, states that the yield will be a percentage of the transitional yield depending on the number of years of verifiable records that are provided. This yield may be less than the maximum allowed in redesignated section 3(f)(1), in which case, the yield determined in accordance with subpart G would apply. If the yield were higher, the maximum in redesignated section 3(f)(1) would apply. No change has been made.

Comment: A few comments were received regarding proposed section 3(f)(4). A commenter questioned if the provision means as a result of an APH review or does this mean if the producer brings in hard copy production and acreage information after the initial report of production and acres, the insurance provider would need to consider this information or the insured would incur a misreporting penalty. The commenter questioned if the "production reporting date" of the policy would be superseded if the production and acreage information were being provided to correct misreported information. The commenter also questioned if not required by an APH review, whether an insured could submit information to correct a yield after an indemnity is paid and if so, would the APH need to be corrected for the current year and the indemnity revised. The commenter asked whether the allowance for an insurance provider to correct the APH the following year provided the tolerance was not exceeded is being removed from procedure. A few commenters suggested the proposed revisions state the insurance provider will make any corrections necessary "* * * any time we discover you have misreported any material information * * *" but it is not clear exactly how this will apply, such as whether the corrections are subject to the APH tolerances in procedure. Perhaps the intention to follow APH tolerance procedures is covered by the statement "* * * the following actions may be taken" although this is somewhat confusing since the "following actions" all use the word "will": "We will correct * * *" and "You will be subject * * *" [Maybe these details belong in procedure rather than in the policy, but it needs to be clarified.] The potential confusion between "may" and "will" also extends to the linking "and" between (ii) and (iii)—"and" could suggest that all three subsections "will" apply rather than "may" apply. A commenter stated that perhaps it could be deleted and the semicolons changed to periods. One of the commenters stated that changing "may" to "will"

sends a stronger program integrity message.

Response: The phrase "At any time we discover" in redesignated section 3(g)(4) means whenever the insurance provider becomes aware of the error. It would not matter if it was a result of an APH review or an insured providing corrected information. The production reporting date is not superseded. The production report still must be provided by the production reporting date and all corrections must be made by the production reporting date or the consequences in section 6(g) will apply. If a producer corrects a production report after the production reporting date and the correction would result in a higher liability, the liability will not be increased for that crop year but the correction will apply to succeeding years. If the correction would result in a lower liability, the producer's liability will be reduced for the current crop year. FCIC has revised the provisions to require the insurance provider to correct approved yields if they are not correct, to correct the unit structure, and apply the provisions in section 6 regarding misreporting, as applicable. It does not matter whether this discovery occurs in the same crop year or subsequent crops years. The insurance provider will correct the information and take the appropriate actions. FCIC has changed the provision to specify "will" instead of "may" to make it clearer. The procedures will be changed to conform to the policy provisions. However, when there are inadvertent inconsistencies, the preamble to the Basic Provisions states that the procedures will apply to the extent that they are not in conflict with the policy provisions.

Comment: A commenter questioned whether it is FCIC's intent that only data will be corrected (for example, APH databases), in section 3(f)(4)(i) (redesignated section 3(g)(4)(i)) but financial changes (premiums, indemnities) will not be corrected. If it is FCIC's intent that financial changes be made, making corrections for years subsequent to the year for which there was incorrect information will likely be difficult in some cases. For example, if an insurance provider gets a policy via transfer in 2009, and an error is discovered relating to the 2007 year, the insurance provider will likely not have all necessary information to correct claims, which may have occurred in 2007 or 2008. Multiple insurance providers could be involved, and the insurance provider that has the policy now may not be owed money but another insurance provider may be owed money. Further, section 7 U.S.C. 1515 prohibits FCIC from imposing financial changes on insurance providers after three years. Thus, the commenter assumed the proposed language addresses data but not financial changes. Is this correct?

Response: Redesignated section 3(g)(4) provides provisions regarding the insured's responsibility to provide accurate information used to determine approved yields, and the actions that may be taken when such data is found to be incorrect. FCIC has revised the provisions to specify that if correct information would result in an overpayment of premium or indemnity such amounts must be repaid. FCIC has a responsibility to ensure that taxpayer dollars are spent properly so it must require the repayment of overpaid amounts. However, FCIC recognizes that this could be difficult if the producer has switched insurance providers. FCIC procedures require the insurance provider to make the corrections for the year for which they insured the policy and collect the amounts owed. If the discovery of the incorrect information is outside the three-year period specified in section 515 of the Act, the insurance provider would have to collect the amounts owed from the producer and submit the amounts owed to FCIC.

Comment: A commenter recommended that section 3(g)(1) (redesignated section 3(h)(1)) be revised to allow insurance providers the ability to revise yields that exceed the lower level yield edits in the same manner as excessive yields if the insurance provider determines there is not a valid basis to support the differences in the yields.

Response: FCIC is not aware of any lower level yield edits. Major disasters can result in zero yields and they have to be accepted by the system. Further, there is no benefit to producers to underreport their yields since it has the effect of reducing their guarantee. If there are instances where producers are shifting their production, which results in a high yield on one unit and a very low yield on another, redesignated section 3(h) specifies that the high yield may be adjusted but the low yield would remain the same. To allow adjustment of the low yield would result in no consequences for shifting production and adversely impact program integrity.

Comment: A commenter recommended additional language be added in section 3(g)(2)(ii) (redesignated section 3(h)(2)(ii)), such as the following: "Appraisals for yields in excess of 400% of T-Yields cannot be accepted as production evidence for following years."

Response: Since no changes to these provisions were proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A few comments were received regarding the phrase "valid basis" in section 3(g)(2)(iii) (redesignated section 3(h)(2)(iii)). A commenter stated FCIC should consider defining "valid basis." Producers are confused when records can be provided to support yields that are being reduced due to no valid basis. Another commenter recommended the provisions be reworded to remove the term "valid basis." "Valid basis" has been defined to mean a difference in yields from one farm to another for purposes of the excessive yield procedure. This term is not appropriate for use with inconsistent approved APH yield procedures. This procedure does require that the inconsistent approved APH yield be higher than the others but the primary qualification is the acreage triggers must also be met. APH reviews are required for excessive yield situations but are not required when an inconsistent approved APH yield meets the acreage triggers.

Response: FCIC does not agree the phrase "valid basis" needs to be defined because it intends for the common meaning to apply. The term "valid" commonly means there is a legitimate, sound, well-founded reason. In this case, there must be a valid reason for the inconsistent yields. For example, can the difference in yield be attributed to significantly different soil types, microclimates, different topography, *etc.* There must be some verifiable reason, agronomically based, that would support the difference in yields. FCIC has added the term "agronomic" for clarity.

Comment: A few comments were received regarding the hail and fire exclusion. A commenter supported FCIC for making the hail and fire exclusion available for revenue protection. The commenter hoped the discount for excluding hail and fire for MPCI will be equitable to what is charged in the private sector. With the increased subsidies and lowered credit for the hail and fire exclusion, the dollar amount for the exclusion becomes much less important to the producer and fewer producers exclude hail and fire perils because the benefit is so small. A producer with a 75 percent coverage level policy receives 55 percent subsidy. If they decide not to exclude hail and fire, 100 percent of the hail and fire producer expense is subsidized, but only 55 percent of the producer hail loss

cost is subsidized. Therefore, a producer receives less of a benefit by excluding hail and fire from a MPCI policy. The more hail and fire exclusions that are encouraged and excluded will reduce premiums paid by policyholders and reduce FCIC's liability and subsidy payments. The commenter stated it is important to note the hail and fire exclusion was created to provide producers an option to substitute private hail and fire coverage for such risk covered in the MPCI policy. It was not the intent of Congress for FCIC to be in direct competition with the wholly private crop hail insurance industry. Another commenter stated although it is a basic principle of crop insurance that it should not duplicate products or services that are available in the private sector, the current approach does not fully honor that principle. This approach allows a modest reduction or offset in MPCI premium rates for producers who opt out of a single hazard such as hail or fire by buying a private policy, but the method used to calculate that amount is flawed and allows for a far smaller reduction than would be truly justified by the decrease in likelihood of an indemnity. The commenter stated they understand FCIC has contracted a study to analyze the existing methodology that establishes the private hail/fire offset, and to suggest ways to improve that methodology. Since FCIC intends to complete implementation of the combined policy by the 2009 reinsurance year, the commenter believes this process also provides an opportune time to implement recommendations from the pending study and adjust the private hail/fire offset provisions in the Basic Crop Insurance Provisions, as well.

Response: FCIC can only reduce the premium for the hail/fire exclusion in an amount commensurate with the risk. FCIC has previously evaluated that risk but FCIC has contracted for a study of hail and fire rate reductions and will implement appropriate changes based on the results of the study. Further, the amount of subsidy is set by the Act and FCIC does not have the discretion to change the manner in which it is applied. Provisions allowing the exclusion of hail and fire protection under revenue protection are retained in the final rule. However, some additional study is needed to determine if hail and fire coverage can be excluded from whole-farm units. Therefore, provisions have been added indicating hail and fire coverage can be excluded from whole-farm units only if allowed by the Special Provisions.

Comment: Many comments were received regarding the provisions in section 3(k)(1) that address the availability of revenue protection if someone, either the Secretary of Agriculture, Administrator of the Risk Management Agency or other designated staff of the Risk Management Agency believes market conditions are significantly different than those used to rate or price revenue protection. A few commenters stated they are particularly concerned that the rule contains three instances where revenue protection could be denied and withdrawn. First, producers are denied price protection whenever USDA believes a third party has created unexpected market conditions. The rule states revenue protection will not be available in the event of an occurrence that "results in market conditions significantly different than those used to rate or price revenue." The provision would create a considerable amount of uncertainty in the reliability of revenue protection. Any effort to determine how much, if any, change in price is attributable to an act of a third person is speculative and would lead to significant uncertainty relative to the reliability of revenue protection. They urged this provision be deleted in the final rule or that FCIC define the term "significantly different" to better delineate the conditions upon which FCIC would terminate revenue protection. A commenter believed FCIC should avoid taking on the responsibility of imposing such a severe recourse and explore less drastic options. One possible option to avoid this result may be to reserve authority to simply look back at the requisite number of market days prior to the event in question in order to establish an appropriate price for revenue protection. A commenter opposed these provisions on the basis that producers, who purchased revenue protection in good faith, are being forced to suffer the consequences of such catastrophic exogenous market events. It is unreasonable to offer price protection to producers and then reserve the right to withdraw the protection if the market suddenly moves unfavorably, regardless of the source. Their position is based on the widely accepted notion that no individual producer has the ability to influence market prices. A commenter recognized that the Secretary of Agriculture and FCIC must have the discretion to suspend revenue protection in order to safeguard the "Federal fisc" and ensure the financial integrity of the crop insurance program. However, the line between discretion and caprice is a fine one. Moreover, given the sensationalism endemic in the media, many news reports that suggest a dire outcome often prove to be premature or hyperbolic. For this reason, the commenter suggested that FCIC define the term "significantly different" or FCIC should delineate the conditions upon which FCIC will terminate revenue protection. A commenter stated when a producer has already purchased revenue protection it does not seem fair that it can be reverted to yield protection if deemed necessary by the Secretary of Agriculture or the RMA Administrator. The commenter stated they understand the logic with preventing producers who have not already purchased revenue protection from now doing so with the new information, but to automatically switch those who have already purchased the protection does not seem appropriate. It would seem that an alternative solution could be developed and still protect the pricing strategy developed by FCIC. A commenter believed more information must be provided about the circumstances under which this authority would be invoked. It could arbitrarily withdraw critical coverage. For example, if the Secretary had possessed such authority in 2005, the commenter questioned whether it would have been invoked in the aftermath of the market disruption that occurred with the bottleneck in the Mississippi River transportation system in the wake of hurricanes Katrina and Rita. If that is the case, such a decision would cause grave harm to farmers who rely upon having revenue coverage when engaging in forward marketing or similar transactions. A commenter stated they have grave concerns about the proposed provisions. They are confused by FCIC's comment stating the use of commodity exchanges is relatively new. They stated that commodity exchanges have existed for hundreds of years. The Chicago Board of Trade has been in existence since 1848 and these marketplaces are incredibly stable and have efficient methods of assimilating information and translating that information into the value of commodities. The commenter stated FCIC's comment that commodity exchanges can respond significantly and quickly is correct. The commenter stated they would propose that "the market" has greater knowledge and information than RMA or the Secretary of Agriculture. The commenter stated that to say the USDA can simply nullify the program when they see fit, would be the same as a private company (such as State Farm) telling their insureds the same thing. Would someone purchase a

policy if they thought it might not be there later? The commenter stated this provision seems to undermine the integrity of the program and they believe it is unworkable. The commenter stated it is hard to imagine how eliminating revenue protection during periods of price volatility can be a positive element of the program. Producers understand the elements of purchasing crop insurance. They understand (after years of education) how the policies work and they know that price volatility is part of the equation. Still, they see the overwhelming benefit of purchasing policies. To set up a system where agents and companies have to tell them that they are purchasing something that may "or may not" be there later is inconceivable. The commenter stated they strongly urge FCIC to eliminate this line of thought in developing the Common Crop Insurance Policy. A commenter stated the language allowing the suspension of revenue insurance if the markets are deemed "significantly" different from those used to rate the policy is vague, unnecessary, and undermines the purpose of revenue protection. The commenter stated Revenue Assurance was developed in 1997 to protect pre-harvest marketing activities. In a bad year, farmers rely on the policy to help fill pre-harvest contracts with bushels provided through insurance valued at the current harvest rate. Over the years, revenue insurance participation has increased because producers find value in its stability. However, the proposed "significant" language introduces uncertainty which will destroy producers' confidence. If the product's availability to protect pre-harvest marketing activities is questionable, then producers will not buy it and will just as soon revert to accepting delivery price at the elevator than to purchase puts and calls through a broker. The commenter understood the author of the proposed rule is trying to avoid a replay of the Christmas Eve "BSE Experience"; however, a suspension of revenue insurance would affect about one million policyholders with over twenty-three billion dollars of liability. On the contrary, there were fewer than 5,000 livestock policies sold in 2006. When the livestock policy is "turned back-on," the producer can purchase a policy the next business day. In contrast, revenue protection cannot be purchased until the next crop year. The commenter argued that revenue price discovery is based on a period of average daily settlements. A "hiccup" in trading would be absorbed over the discovery period lessening the effects of a "significant" event. Likewise, the commodity exchange has trading-limit safety valves which would naturally limit the effects of a "significant" event. To ensure the certainty of revenue protection providing protection for pre-harvest marketing activities, the commenter opposed any language that arbitrarily and vaguely gives the power to suspend the product or revert it to yield protection. A commenter stated if an insured buys this policy before an announcement he or she will have revenue protection, but if after the announcement he or she will have only yield protection. This will seriously weaken FCIC in insured's eyes. The commenter asked what is the person making this decision going to base it on. Markets can go up or down a great deal based on not only crop production but world events. The commenter questioned if it is possible for the decision maker to stop sales and then turn them back on if the market returns to normal. Many farm loans are based on insurance coverage. If the producer obtains a loan based on revenue protection and then revenue protection is suspended before the producer obtains insurance the lender may not honor the loan agreement. A commenter stated FCIC is proposing to set the projected price for a crop if there is insufficient price information and no revenue protection will be available. Producers who elected revenue protection will automatically have yield protection, unless the policy is canceled or the producer changes the plan of insurance by the cancellation date, and the projected price determined by FCIC will be used to establish the value of the guarantee and production to count. The commenter stated they understand the use of a projected price for a crop, but what protection does a customer have if they chose to insure both yield and revenue and FCIC drops them to a yield policy with no revenue coverage. The commenter asked if they should not have the opportunity to elect not to carry the coverage if FCIC cannot offer the product. The commenter questioned if FCIC should provide a deadline for the issuance of the price. A commenter stated they are concerned that FCIC reserves the right to convert previously purchased revenue protection into yield protection without due consideration for the additional risk shifted to producers as a result. Moreover, in differentiating between events that occur before the announcement of the projected prices and those that occur after, FCIC will create an administrative quagmire and expose the program to abuse, such as backdating of applications. To alleviate the burdens that always accompany the disparate treatment of policyholders, the commenter suggested that, in the event section 3(k)(1) is triggered, all policies convert to yield protection. A commenter stated section 3(k)(1)(ii) will be difficult for insurance providers to administer. The commenter stated FCIC should consider applying procedures outlined in section 3(k)(1)(i) to all producers if conditions in section 3(k)(1) exist. A commenter stated both sections 3(k)(1)(i) and (ii) refer to announcements that occur before the sales closing date. As this term is uniform for both subsections, it should be incorporated into subsection (1). In this regard, the commenter believes FCIC should delete the reference to the sales closing date. It is axiomatic that an insured cannot elect coverage after the sales closing date. Moreover, section 3(k)(1) does not refer to announcements that occur after the sales closing date. What happens in such instances? If such announcements do impact the operation of the policy, the policy should so state. A commenter stated that in section 3(k)(1)(i) & (ii) the use of "announcement" in the lead-in to (1) *and* in the subparts creates a source of potential ambiguity. The word, when used in the subparts, suggests some form of governmental declaration, which differs from use of the same word in the lead-in. To promote clarity, the lead-in should read: "If there has been an event that occurs during or after trading hours, including but not limited to a news report, which is believed * * *"

Response: The provisions that were initially proposed in section 3(k) have been moved to redesignated section 3(c). With respect to proposed section 3(k)(1), there may be difficulties in determining when market conditions are significantly different than those used to determine the rates. Therefore, FCIC has removed these provisions. To ensure actuarial soundness, a price volatility factor is included and FCIC has capped the amount the price can change in the CEPP. This will allow FCIC to determine the maximum liability for the purposes of rating. With respect to proposed section 3(k)(2), FCIC also removed the proposed provisions that would set the harvest price equal to the projected price if the required data were not available to set the harvest price. Instead, in section 3(c), FCIC has included provisions that specify that revenue protection will continue to be provided but FCIC will establish the harvest price. If the projected price cannot be established, FCIC will

establish the projected price but revenue protection will not be provided. The producer will receive yield protection unless the policy is canceled by the cancellation date or the producer changes the plan of insurance by the sales closing date. However, the Act is very clear that only losses due to natural disasters are covered. This would include the market price. Therefore, if FCIC can establish that the change in the market price was due to an uninsured cause of loss, such price change cannot be covered under the policy.

Comment: A few comments were received regarding section 3(k)(2). A few commenters stated the proposed language states if the projected price cannot be calculated, the policy reverts back to a yield protection policy. This could leave only 10 days for an agent to contact all of their policyholders. This could create a logistical nightmare for the agent needing to contact a large number of policyholders so they would be notified their revenue policy was switching to a yield policy and not allow them ample opportunity to change their coverage levels or cancel their policy. A few comments were received regarding section 3(k)(2)(ii), which specifies in the event that the fall harvest price cannot be calculated by the procedures outlined in the CEPP, the harvest price will be set equal to the projected price. The premium rates will reflect this risk so no adjustment to the premium rates will be made if such action occurs. They stated this language constitutes the denial of revenue protection to the grower after the fact and further denies the grower the right to a premium refund for coverage he or she does not receive. They stated neither of these situations is fair to the producer that purchased revenue protection to protect them from changes in the market environment. They recommended rather than canceling the affected revenue insurance contract, in the event of insufficient price information, a provisional adjustment to the CEPP be made. They believe that significant additional effort needs to be put forth to develop reasonable alternatives short of arbitrarily denying revenue coverage to the producer. FCIC should develop methods for looking back at a sufficient number of trading days in order to capture the market activity needed to establish either a projected or a harvest price that ensures revenue protection is always available. In the event of a potentially market altering occurrence, they see no reason why FCIC cannot simply look back at market activity in the days prior to this market changing event to establish the projected price if it is not deemed appropriate to include days affected by the event. They also do not consider adjustments to premium rates sufficient in the event that price protection is denied. However, if provisional adjustment fails to establish a fall price, it is the commenters' position that, at the very least, the producer should be rebated the premium difference between revenue protection and yield protection products. A commenter also stated the projected price is not always appropriate for determining both the value of the production guarantee and the value of the production to count for indemnity purposes.

Response: FCIC understands there may be very little time for agents to notify their policyholders if revenue protection is suspended. Based on historical trading, it is unlikely this will occur. However, setting the pricing period earlier to allow more time between the release of the price and the sales closing date may result in a reduction in the accuracy of the price. FCIC has determined that the benefit obtained by the additional time is more than offset by the potential for a price that does not accurately reflect the market price at the time insurance is purchased. If FCIC later determines that moving the price discovery period does not adversely affect the accuracy of the pricing, FCIC will revise the discovery period at that time. With respect to the calculation of the projected price, the CEPP contains information regarding the prices to be used for each crop's projected price and allows for additional daily settlement prices to be included based on alternative contracts if enough prices are not available in the specific contract applicable to the crop. As stated above, FCIC will consider all comments and make appropriate revisions when the provisions of the CEPP are finalized. The producer should not be required to pay premium for revenue protection if revenue protection is suspended. Therefore, the provisions have been revised to specify if the harvest price cannot be calculated by the procedures outlined in the CEPP, FCIC will determine the harvest price and revenue protection will continue to be effective. Additionally, the proposed provision that specified the premium would not be reduced has not been retained in the final rule. It is appropriate to include a provision in the policy clarifying revenue protection will not be available for the crop year if the required data for establishing the projected price cannot be calculated in accordance with the CEPP. If the projected price cannot be determined, then appropriate premium rates for revenue protection cannot be calculated.

Comment: A comment was received regarding section 3(k)(2)(i)(A) & (B). The commenter stated since (i) states "* * * no revenue protection will be available", the opening phrases of (A) ["If revenue protection is not available"] & (B) ["In such instances,"] are not necessary and should be deleted.

Response: The proposed provision has been revised and moved to section 3(c).

Comment: A commenter stated it can be very confusing for the producer if they sign up for revenue protection, which gets changed this year to yield protection, but next year would possibly be changed back to revenue protection. The commenter asked when it reverts back to revenue protection. The commenter asked whether it would be before they may possibly determine the market conditions are significantly different than the price used to establish rates again. Another commenter stated the last sentence in section 3(k)(3) should be revised to state "* * * unless you change the type of protection * * *" so it does not imply canceling the crop insurance policy.

Response: If the producer elects revenue protection and revenue protection is not provided for the current crop year, the producer's coverage will automatically be changed to yield protection for the current crop year and revert back to revenue protection for the next crop year as long as the projected price can be determined in accordance with the CEPP. Currently, changes in plans of insurance, such as switching from CRC to RA, require cancellation and rewriting of the policy. Now, producers can change plans of insurance by simply changing coverage. FCIC has clarified this provision accordingly and moved it to redesignated section 3(c).

Section 4 Contract Changes

Comment: A commenter asked if it is necessary to add "* * * or the Commodity Exchange Price Provisions" to the list of changes in section 4(b) that can be reviewed on the web site. They asked if it would be considered part of the "policy provisions."

Response: It is important to inform the public that any changes to the CEPP can be viewed on RMA's Web site not later than the contract change date contained in the Crop Provisions. The CEPP, if applicable, is a part of the policy and is listed with the other applicable documents in the definition of "policy." The change has been retained in the final rule.

Comment: A commenter stated section 4(c) still states the policyholder will receive "a copy of the changes to the Basic Provisions and Crop Provisions, and a copy of the Special Provisions * * *" without any mention of the new CEPP. Reference to the CEPP should be added here or the other references should be made more generic as in (b).

Response: The producer should be provided a copy of changes to the CEPP not later than 30 days prior to the cancellation date for the insured crop. The provisions have been amended accordingly.

Section 6 Report of Acreage

Comment: A few commenters believe the proposal should allow a producer who discovers an error in an acreage report to correct the acreage report without penalty provided that: (1) The producer offers evidence through FSA documentation, GPS mapping, or other verifiable means; and (2) the initial report was an inadvertent error rather than an attempt to misreport acres, as determined by the insurance provider. A few additional commenters believe FSA should also provide documentation of historical compliance by the producer demonstrating the lack of any pattern of misreporting in addition to the two items listed above.

Response: Many acreage-reporting errors may be inadvertent mistakes. However, it is difficult to determine when a mistake is or is not inadvertent. Further, whether the error was inadvertent or not, it could have the effect of changing liability, premiums, and indemnities. Therefore, accurate reporting is critical on each acreage report. This is different than reporting SSNs and EINs because misreporting there does not affect the coverage and the SSN and EIN are only reported on the application. There are numerous producers who have not filled out an application in years and they may not know their SSN or EIN was misreported. However, the current provisions do allow revisions without penalty in certain instances, including those in which information is clearly transposed or when the insurance provider or someone from USDA caused the error. No change has been made.

Comment: A commenter stated FCIC should allow producers to report all acreage information to their crop insurance agent or to FSA on a field-by-field basis. This information could then be downloaded to the other agency. Many of the problems in getting accurate information stem from forcing producers to report their acreage twice, in two different formats, and with two different deadlines for FSA and FCIC. The commenter stated they are always comparing information that has been reported to them to what has been reported to FSA. However, the real problem is by the time they find a difference, it is too late to make any changes. FCIC also forces producers to report acreage with 100 percent accuracy, which is not possible. The commenter stated almost all cases he has seen of misreported acreage are inadvertent errors, and there needs to be allowance for those. There is no incentive for a producer to misreport acreage. If producers over-report, they pay additional premium. If they under-report, their liability cannot be increased at loss time, so they get a decreased loss payment. If producers do not want to insure some of their crop(s), they do not have to buy insurance at anything but the CAT level, which is basically free. The commenter stated FSA is just completing the digitizing of their maps in their area and that is a good first step in standardizing the reporting process for producers.

Response: For crop insurance, producers must report acreage of a crop on a unit basis since the guarantee and indemnity is computed for each unit. FSA requires reporting by Farm Serial Number (FSN). The crop acreage within an insurance unit and within a FSN is not necessarily the same number of acres. If producers have many small fields and they report each field by line on the acreage report, the chance of transposed numbers or omitting a field greatly increases. However, as stated above, misreporting acreage, regardless of the reason, can affect liability, premiums, and indemnities. Therefore, every effort must be made to ensure accurate reporting. FCIC is currently working with FSA to find common identifiers for acreage that would allow producers to file one acreage report that can be used by both FSA and crop insurance. No change has been made.

Comment: A commenter stated section 6(a)(3)(ii)(C) identifies when the acreage report is due for planted, late planted and prevented planting acreage. In the past couple of years, the commenter has had situations in Arkansas and Mississippi where acreage was planted more than five days after the end of the late planting period. The commenter stated according to section 6(a)(3)(ii), (C) is applicable as the acreage reporting deadline because (A) and (B) had already passed. The commenter stated the producer could not have submitted a timely acreage report because the producer did not finish planting until after the indicated acreage reporting deadline. The commenter stated this was an acceptable practice in those areas because of how the dates were established. The commenter recommended this item be extended from 5 days after the end of the late planting period to 15 days after the end of the late planting period to account for these situations.

Response: The end of the late planting period is the last date the crop can be planted and be insurable unless the acreage was prevented from being planted. If the producer plants acreage after the late planting period, the producer is still required to submit the acreage report within the 5 days after the end of the late planting period. In such case, the producer should list all acreage of the crop. Acreage planted before the end of the late planting period should be listed as insurable and the planting dates provided. Acreage planted after the end of the late planting period should be listed as uninsured unless the insured crop was prevented from being planted, and the producer wants to insure it as planted acreage. No change has been made.

Comment: A few comments were received regarding section 6(c)(5). A few commenters recommended the provisions be amended to require a producer to report on a daily basis, any acreage planted during the late planting period. One of the commenters stated this information is necessary to apply the coverage reductions for late planted acreage described in section 16. A commenter stated this provision should address what happens if the acreage is not reported by day. The commenter asked if it will be assumed that all of the acreage was planted the date planting is complete for the unit. A few commenters stated there has been some confusion in the past as to the appropriate date to enter on an acreage report when the planting of a unit takes more than one day. To bring clarity to this issue, FCIC proposes to revise section 6(c)(5) to state the date to be entered on the acreage report must include the final date acreage was planted on the unit. The common sense approach to acreage reporting proposed in section 6(c)(5) should be retained in the final rule.

Response: FCIC has revised the provisions to combine sections 6(c)(1) and (5) because both are dealing with the amount of acreage planted before the final planting date and planted during the late planting period. Redesignated section 6(c)(1)(ii) requires the producer to report the amount of acres planted each day during the late planting period and this requirement is retained in the final rule. Such information is necessary

to determine the proper guarantee or dollar amount of insurance under section 16. The commenters are correct that the consequences of not reporting the acres planted each day during the late planting period should be included in the provisions. FCIC has revised the provisions to indicate failure to report each date acres were planted in the late planting period will result in the presumption that all acreage planted in the late planting period was planted on the last day planting took place in the late planting period and the guarantee will be adjusted accordingly. Although revised for clarity, FCIC has retained the provision that only requires the reporting of the last date the acreage in the unit was planted for acreage planted on or before the final planting date. This is for ease of administration because it provides a total of the timely planted insured acreage.

Comment: A few comments were received regarding section 6(d)(1). A commenter stated FCIC should amend this section to incorporate the interpretation provided by FAD–58 even though FCIC did not propose changes. Another commenter stated the 2006 LAM specifies the insurance provider cannot lower acres unless they have determined there is not a loss on the acreage. This results in the insurance provider going out and inspecting the acreage. The commenter asked if this language would be removed in the combo policy. The commenter stated that it seems unnecessary for the insurance provider to have to go out and inspect a crop where they are reducing liability. No one would want to reduce liability if they think there could be a loss.

Response: Section 6(d)(1) states the producer can revise acreage with consent from the insurance provider only when: (1) No cause of loss has occurred; (2) the approved insurance provider's appraisal has determined the crop will produce at least 90 percent of the yield used to determine the guarantee; (3) the information on the acreage report is clearly transposed; (4) the insurance provider or someone from USDA committed an error regarding the information on the acreage report; or (5) if expressly allowed by the policy. FAD–58 simply reiterates these requirements. Therefore, there is no need to incorporate these FAD–58 provisions into the policy. FAD–58 also deals with the procedures applicable once one of the criteria in section 6(d)(1) has been met and specifies what must be done in order to make the acreage adjustment. These procedures do not modify the requirements in section 6(d)(1) or add any new criteria that would permit a revision to the acreage. They just specify the manner in which such revision is made and this is no different than the manner in which loss adjustment is done. These requirements are more appropriately included in the procedures. FCIC is not allowing producers to substitute one certification of acreage for another without proof that the second certification is correct by an acreage measurement. It is unlikely producers would want to reduce liability or acres if they thought there could be a loss but if they did not think a loss was probable they might want to reduce acres to reduce premium. Therefore, an inspection must be made to ensure that the reduction in acreage is legitimate. No change has been made.

Comment: A commenter stated FCIC seeks to revise section 6(d)(2) to clarify once prevented planting acres are reported on the acreage report, the producer cannot change the crop or the type reported as being prevented from planting even though the acreage reporting date may not have passed. However, the producer can amend the acreage report to add additional acreage for the insured crop that was prevented from being planted. The common sense approach to acreage reporting proposed in section 6(d)(2) should be retained in the final rule.

Response: The commenter is correct that regardless of whether the acreage reporting date has passed, section 6(d)(2)(iii) precludes the information regarding crop or type from being revised. FCIC has retained the provision in the final rule.

Comment: Many comments were received regarding section 6(d)(3). A commenter stated producers should not be penalized if they request a certified acreage measurement service but the certified acreage measurement service fails to complete the acreage measurement. The commenter stated in this case, as a matter of equity, the producer should pay the premium owed and the appropriate indemnity should be paid. A commenter recommended the provisions regarding acreage measurement requests be removed from the Basic Provisions and be put in the Special Provisions in states for which this language was intended. If the language is not removed from the Basic Provisions, the commenter would prefer to keep the current language which states "Failure to provide the measurement to us will result in the application of section 6(g) if the estimated acreage is not correct and estimated acreage under this section will no longer be accepted for any subsequent acreage report." The commenter stated producers could request a measurement service and intentionally under report their acres for a lower premium under the proposed language. The commenter stated if producers do not think they will have a claim, they do not provide the measurement and they pay a lower premium. If the producers think they will have a claim, they provide the measurement service information. The commenter stated under the proposed language, this action is permissible and was not permissible under the current language. A commenter stated the language "you may request an acreage measurement * * *" could be interpreted by insureds to mean they may make this request to the insurance provider. The commenter stated insurance providers are not in a position to perform these services for free, yet insurance providers are not allowed to charge for these services. The commenter stated FSA charges for their measurement services and, therefore, insurance providers should not be expected to provide these services for free. The commenter suggested the language be modified to clarify insurance providers are not expected to provide free acreage measurement services. A commenter stated they understand FCIC cannot apply the sanctions set forth in section 6(g). However, the commenter found FCIC's solution to be inadequate. The commenter stated if an insured requests an acreage measurement, but fails to submit a measurement within 60 days of submitting a notice of loss, the reported acreage should be treated as certified acreage. The commenter also stated that in addition, the insured should be barred from submitting a request for an acreage determination in subsequent crop years. A commenter stated the provisions in section 6(d)(3)(ii)(B) and (iii)(A) seem to conflict. The commenter stated if this language is not revised as indicated above, the following changes need to be made to the current language: (a) Section 6(d)(3)(ii)(B) states the insurance provider will revise the premium and indemnity due once an acreage measurement is provided if the initial indemnity paid and premium charged was based on the insurance provider's measurement; (b) Section 6(d)(3)(iii)(A) cannot occur in any situation. The commenter stated the insurance provider can only revise the indemnity and premium if the insured provides an acreage measurement after the initial indemnity has been paid and the initial premium has been charged based on the insurance provider's measurement. If it is not provided, no revision could take place; and (c)

section 6(d)(3)(iii)(A) would not apply. The commenter recommended section 6(d)(3)(iii)(A) be removed and add the requirement to section 6(d)(3)(ii)(B) that the deadline for providing the acreage measurement is the termination date and failure to provide the acreage measurement by the termination date will result in the insurance provider no longer accepting an estimated acreage report from the producer for any subsequent acreage report. A commenter stated the provision in section 6(d)(3)(iii)(A) seems unnecessary if the insurance provider has determined acreage for claim purposes. The commenter stated the penalty described in section 6(d)(3)(iii)(B) should be sufficient. A commenter stated FCIC should reconsider whether the termination date is the appropriate deadline for subsection section 6(d)(3)(iii). In the commenter's opinion, 60 days after the acreage reporting date provides an insured ample opportunity to obtain and submit an acreage measurement. The commenter also recommended FCIC direct the insurance providers on how to address this issue, rather than giving insurance providers a variety of alternatives. The commenter stated one choice will lead to consistent action by insurance providers and treatment of policyholders. A few commenters stated the proposed language provides insurance providers with a choice [measure the acreage, or settle the claim based on reported acreage and then revise as needed if, or when, the insured's measurement information is received] that could put one insurance provider at odds with another from the producer's viewpoint. The commenters stated such a choice seems unnecessary. They stated producers who commit to providing the measurement service should be held responsible for doing so. The commenters added their biggest concern with the existing language is there is no ultimate deadline for the insured to provide the measurement information. They believe stipulation of a reasonable deadline is necessary. The commenters suggested the deadline be 15 calendar days prior to the premium billing date and that the provisions be revised as follows: "(3) You may request an acreage measurement prior to the acreage reporting date and submit documentation of such request and an acreage report with estimated acreage by the acreage reporting date. You must provide the measurement to us and we will revise your acreage report if there is a discrepancy. (i) If an acreage measurement is not received by the time we receive a notice of loss, we will defer any prevented planting payment, replant payment, or indemnity until the acreage measurement is received for the unit. (ii) If you fail to provide the measurement to us by no later than 15 calendar days prior to the premium billing date in the Special Provisions, no prevented planting payment, replant payment, or indemnity will be due for the unit and premium will still be owed. We will no longer accept estimated acreage from you for any subsequent acreage report."

Response: Given the advances in technology, there should no longer be the lag times between the request for a measurement and the receipt of such measurement. However, when estimated acreages are provided, there needs to be a measurement to ensure that the proper premium and any indemnity is paid. Further, it is the producer who elects who will conduct the acreage measurement and the producer should be held responsible for the selection. Therefore, producers are held accountable for ensuring that acreage measurements are timely provided to the insurance provider. The provisions allowing acreage measurement should not be removed from the Basic Provisions because all producers, regardless of their location should have the same opportunity to request an acreage measurement. This is not a situation where such measurement will only be available in selected areas. In addition, FCIC never intended requests for acreage measurements be made to the insurance providers. FCIC has revised the provision to indicate producers may request the service from FSA or a business that provides such service. If a producer fails to provide the measurement, the reported acres should not be considered as the certified acres. All the participants in the program have a responsibility to ensure that the information used to determine premium and indemnity is correct. However, as proposed, a burden is placed on the system when the policy allows claims to be paid based on the estimated information and then any overpayments to be repaid. To ease this burden, FCIC has elected to adopt the recommendation requesting that the claim be deferred until the acreage measurement is provided or the insurance provider elects to conduct its own acreage measurement. Therefore, the two choices are maintained because there may be situations where the insurance provider may already be required to determine the acreage under existing procedures and may elect to use the determined acreage here. The commenters are correct that FCIC cannot require the insurance providers to perform a measurement service when it is not required by the procedures but they certainly should be provided the option to do so. If the producer does not provide the measurement to the insurance provider, the claim is never paid unless the insurance provider elects to perform the measurement. In this case the estimated acreage will not be accepted from the producer for subsequent crop years. Since the claim will not be settled until the correct acreage is known, the under-reporting provisions in section 6(g) will not apply for incorrect reporting of acreage for any acreage for which a measurement was requested. These revisions should eliminate any conflict between the provisions. FCIC has also revised the provisions to separate out the requirements for the payment of premium to avoid confusion with respect to whether premium must still be paid while the claim is deferred. FCIC has clarified that the premium must still be paid but that if the acreage measurement is not provided at least 15 days before the premium billing date, premium will be based on estimated acreage and revised if the acreage is later corrected by the measurement. Failure to provide the measurement by the termination date will result in the inability to use acreage estimates for all subsequent crop years.

Comment: A few comments were received regarding section 6(g). A commenter stated the removal of the liability adjustment factor (LAF) penalty is a very good change. A commenter supports the proposed revision that omits punitive penalties for errors in over and under reporting acreage and believes the remedy provided under the proposed revisions is adequate to deter any abuse. The commenter urged FCIC to retain it in the final rule. A few commenters suggested revising (1)(i) to read "A lower liability than the actual liability determined, the liability reported will not be increased and the premium will be adjusted to the amount we determine to be correct (in the event the insurable acreage is under-reported for any unit, all production or value from insurable acreage in that unit will be considered production or value to count in determining the indemnity); or". The commenters stated this revision should eliminate the current problems associated with application of a LAF. The commenters believe this will allow for greater flexibility on the procedure side in the proper calculation and processing of claim payments and premium.

Response: FCIC did not propose removing the LAF provisions currently

contained in section 6(g)(1). However, it did propose removing the additional misreported information factor provisions currently contained in section 6(g)(2) and has not retained the misreported information factor provisions in this final rule. FCIC agrees the retained LAF provisions are adequate to deter abuse. The recommended change would require charging more premium than would be necessary to cover the risk for the coverage provided. Since no changes to section 6(g)(1) were proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter stated the provisions contained in section 6(g) are contradictory because one area of section 6 reads that "the waiver of the misreporting provisions only applies to the acreage for which a measurement was requested" and then further states it is impossible to separate out the production guarantee and production to count for acreage because these are reported on a unit basis making it difficult to access a penalty for not reporting the measured acreage timely. The commenter recommended if the measurements are not provided to the insurance provider and a claim is filed, the existing misreported information factor procedures should apply. The commenter added if a claim is not filed, the premium should be surcharged.

Response: Redesignated section 6(d)(5) does provide for a waiver of misreporting penalties when an acreage measurement has been requested and results in a revision to the acreage report. If a producer requests a measurement for only a part of a unit and then misreports another part of the unit, the liability adjustment factor will be calculated by comparing the liability based on the correct measured acres plus the incorrect unmeasured acres and the liability for the correct amount of acreage in the unit. As stated above, the misreported information factor provisions have been removed from the provisions. Therefore, the misreported information factor provisions cannot be applied. Even if they were still in the policy, they could not be applied because if the acreage measurement is not provided, it is impossible to determine whether the acreage was incorrect or by how much. The only way to obtain the information is through measurement of the acreage by an insurance provider and since such measurement is at the election of the insurance provider, producers cannot be penalized when such an election is made. There is no basis to apply a surcharge to the premium when a producer fails to provide the measurement. Now that claims will not be paid until the measurement is provided, there is an incentive for producers to provide the measurements. If the producer does not provide the measurement, they will no longer be allowed to submit estimated acreage for any subsequent acreage report. The provisions in section 6(d)(3) have been revised accordingly.

Comment: Many comments were received regarding the provisions proposed in section 6(g)(2). Many of the commenters stated they agreed with removal of the misreported information factor penalty in section 6(g) for the following reasons: (1) The misreported information factor penalty duplicated penalties already in place for misreporting; (2) Prior rules carried a sufficient penalty for under or over reported acres; (3) The misreported information factor penalty was very difficult to administer and justify to the policyholder; (4) The penalty was too harsh on producers when in most instances the producer forgot to report the acreage in a certain field; (5) Prudent claims adjusting should quell any incentive to over-report acreage by not paying claims on the over-reported liability; (6) Producers have no other incentive to under-report or over-report acreage since they only penalize themselves by doing so; and (7) The penalties for misreporting were draconian, especially since a producer has little to gain from either under or over-reporting his or her acreage. Another commenter supported the proposed revision indicating if the share is misreported, the production guarantee and amount of insurance will not be revised but either the correct share or the reported share will be used to determine the indemnity depending on which is lower. The commenter stated this proposed change is a positive one and urged FCIC to retain it in the final rule. A few commenters stated they commented against the severity of the penalties when they were proposed and believed they were too harsh for producers making innocent reporting errors. The commenters commended FCIC for proposing to revoke this provision and urged them to retain this proposal in the final rule.

Response: Provided that insurance providers are diligent in verifying acreage, the remaining penalties for under or over-reported acres in section 6 of the Basic Provisions are adequate. FCIC will retain the revisions proposed in section 6(g)(2).

Section 7 Annual Premium and Administrative Fees

Comment: A commenter suggested perhaps the price information (whether the projected price in the CEPP or the price election in the actuarial documents) should continue to be referenced in section 7(d) instead of being deleted.

Response: The first sentence in section 7(d) is redundant with section 7(c)(1) because section 7(c)(1) expressly uses the price election or projected price in the calculation of premium. Therefore, a separate section is not needed stating that the price election or projected price will be used to calculate premium. No change has been made.

Comment: A commenter questioned if FCIC is going to retain the "grandfathering" of the old limited resource farmer definition in section 7(e)(4)(ii) in the new policy. The commenter thought this was going to be dropped. The commenter stated there is no mention of it in the definition in section 1.

Response: USDA has gone to a standard definition of "limited resource farmer" and to avoid any potential conflicts, FCIC has revised this definition to specify the term has the same meaning as the USDA definition found at *http://www.lrftool.sc.egov.usda.gov/LRP-D.htm.* With respect to the provisions in section 7(e)(4)(ii), since FCIC has not proposed to remove this provision, and the public was not provided an opportunity to comment, no change has been made.

Section 8 Insured Crop

Comment: A commenter stated FCIC should consider whether the reference to "* * * price election, if applicable * * *" in section 8(b)(2) should be revised to accommodate projected and harvest prices since sections 8(b)(2)(ii)(A) & (B) refer to projected and harvest prices in the CEPP. In addition, it is unclear why "* * * included in the actuarial documents * * *" is being changed to "* * * included on the actuarial documents * * *" here but not consistently throughout. Previously the standard seems to have been to use "included in" and "contained in" but "shown on".

Response: All prices should be referenced in section 8(b)(2) to avoid any confusion with respect to the applicable prices. However, FCIC has not retained proposed sections 8(b)(2)(i) and (ii) because the information contained therein was redundant with the information contained in section 18 regarding written agreements for

revenue protection. Section 8(b)(2) now simply states that insurance is not available unless allowed by written agreement in accordance with section 18. FCIC has also reviewed all references to the actuarial documents and revised them as necessary to be consistent.

Section 9 Insurable Acreage

Comment: A few comments were received regarding proposed section 9(a)(2). A commenter recommended adding the phrase "or wheat" after the phrase "sorghum silage." Another commenter stated the reference to "* * * except corn or sorghum silage * * *" is unclear as to whether it is considered a "* * * cover, hay, or forage crop * * *" Based on how it is addressed in proposed section 9(a)(3), it appears that corn/sorghum silage is not considered to be a cover, hay or forage crop for insurability purposes. The commenter stated they question whether it is necessary to include the exception here, and in proposed (a)(3), if that is the case. If it is determined to be necessary here, it needs to be rewritten for clarity. The commenter stated this can be accomplished by placing a comma between "silage" and "unless" prior to (i) and (ii).

Response: FCIC has restructured section 9(a) to more clearly delineate when acreage is insurable and when it is not insurable. Previously the provisions had double negatives, and multiple uses of the terms "except" and "unless" that made them confusing. The newly revised, streamlined provisions should eliminate these problems. Wheat can be produced for hay and, therefore, this exception has been added. However, it is considered a hay, not a forage and a parenthetical has been added after the reference to "hay." In the context of redesignated sections 9(a)(2)(i) and (ii), corn silage and sorghum silage are not considered to be cover or hay crops, but are considered to be forage crops. However, the provisions specify acreage planted to either of these crops in one of the last three years will be insurable. Since there may be additional acceptable silage types, FCIC has modified the provisions to refer to "insurable silage" to accommodate any expansion. In addition, the provisions in redesignated section 9(a)(1)(i)(C) have been revised to allow acreage to be insurable when a perennial crop was on the acreage for two of the three previous crop years.

Comment: A few commenters stated insurance providers should be required to provide notice to a producer if the producer may be eligible for an indemnity on a second crop. This notice should be provided in time to allow the producer to gather information required to request the indemnity, including harvesting, production, and marketing records.

Response: The producer is only eligible for an indemnity on a second crop if they have elected to insure the second crop. If such an election is made, as with any other crop, it is the producer's responsibility to provide notice to the insurance provider if there has been damage to the insured crop. It is not the responsibility of the insurance provider to notify the producer that they may be eligible for a payment. No change has been made.

Comment: A commenter stated that existing section 9(c) should be reconsidered in view of current underwriting procedures that do not allow any production history from irrigated acreage reported and insured as non-irrigated acreage to be used for acreage that is truly non-irrigated (since it would raise the approved yield above what could be reasonably expected for a non-irrigated farming practice).

Response: FCIC has considered the provision and revised section 9(c) to clarify that if a producer elects to insure irrigated acreage under a non-irrigated practice, the irrigated yield will only be used to establish the approved yield if the producer continues to use a good irrigation practice. If the producer does not use a good irrigation practice, the producer will receive a yield determined in accordance with section 3(h)(3).

Section 10 Share Insured

Comment: A few commenters stated they continue to oppose current provisions allowing a tenant to insure the landlord's share and vice versa. The commenters recommended requiring separate applications and policies. The commenters recommended removing the current provisions and the proposed provisions that would extend the ability to insure under one policy to parents and children, spouses, or members of the same household. The commenters recommend removing the provisions because: (1) "Person" is defined in the policy and each "person" should only be allowed to insure their own share; (2) As acknowledged in the preamble to the rule, there is already significant confusion regarding when spouses may obtain separate policies; (3) The provisions were implemented to minimize paperwork by having only one policy, but they have resulted in so much confusion it has required additional procedures; (4) The provisions provide a way to sidestep the general rules that a person must insure all his/her interest in the crop/county and at the same level, price, *etc.* For example, a landlord has two different acreages with two tenants. One tenant farms the good piece of ground and chooses CAT coverage and the other tenant farms the poor piece of ground and chooses 85 percent coverage; (5) There have been significant problems with the implementation of spousal SBI reporting requirements; (6) Additional problems are foreseen if children and other household members are added to the list of "other" shares covered under an individual entity's policy; (7) The language in this section does not set forth clear rules for when separate policies may be obtained; and (8) If a landlord does not wish to deal with crop insurance, the landlord can assign a power of attorney to his tenant so the tenant can obtain a policy on the landlord's share.

Response: Since removal of the provision was not proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. FCIC has not retained the proposed change in the final rule to allow a person to insure the share of their spouse, child, parent, or other member of the household. FCIC had failed to include the reporting of the SBI's for all of these persons under proposed section 10(a)(3)(iii). Further, FCIC agrees this proposed change adds unnecessary complexity and confusion.

Comment: A few commenters stated they viewed the addition in section 10(a) as being positive because it allows members of the same household to insure each others share in the same manner as landlords and tenants. However, they stated it is not clear if the person completing the application for insurance has to have a share in the crop that will be insured. One of the commenters stated the provision allows someone to insure an interest in a crop even though they do not have an insurable interest in it.

Response: As stated above, FCIC has not retained the provisions proposed in section 10 in the final rule that would have allowed a person to insure the share of their spouse, child, parent, or other member of the household. FCIC has retained the current provision that allows a landlord or tenant to insure the other person's share. However, before a person can insure the other person's share, they must both have a share in the insured crop. FCIC has revised section 10(a) to make this clearer.

Comment: A commenter stated the proposed language in section 10(a) seems to contradict itself because if insurance "* * * will only attach to that

person's share * * *", it cannot then be extended to the other people listed in (1) and (2). The commenter recommended clarifying the provisions by combining the two sentences as follows: "* * * share in the insured crop, and will attach only to that person's share unless the application clearly states:" (1) The insurance is requested for an entity other than an individual (for example * * *); (2) You will insure your landlord's or tenant's share; or (3) The share insured includes the share of your spouse * * *"

Response: There was a potential contradiction and FCIC has revised the provisions to make it clear that insurance will attach only to the applicant's share except when the application specifies the insured is an entity and in landlord tenant situations. Additionally, as stated above, FCIC has not retained the provisions proposed in section 10 in the final rule that would have allowed a person to insure the share of their spouse, child, parent, or other member of the household.

Comment: A commenter stated both sections 10(a)(1) and (2) provide that "insurance will not extend to any other person having a share in the crop: unless the application clearly states * * *" Because the insurance policy is continuous from year to year, the insured may not complete an application each year. Accordingly, the commenter recommended that if, in a crop year after the completion of the application, an additional person obtains a share in the crop, insurance may be extended to that person upon completion of a company-approved form, such as a policy change form.

Response: As stated above, FCIC has not retained the proposed provisions authorizing a person to insure the share of their spouse, child, parent, or other member of the household. Therefore, this will no longer be a problem. With respect to landlords or tenants, there is no requirement that persons insure the share of other persons in an entity with a share of the crop or the landlord insure the tenant's share or vice versa. This is a choice that is made by the insured. Policy change forms are to change coverage, *i.e.,* coverage level percentages, price elections, types, *etc.* To extend coverage to another person there must be a new application to ensure the eligibility of the additional person. No changes have been made in response to this comment.

Comment: A commenter stated section 10(a)(2)(iii) appeared to be superfluous and, therefore, confusing. Section 10(b)(1)(i) provides that an insured's share will include "any acreage or interest reported by or for your spouse * * *" Similarly, the definition of "substantial beneficial interest" creates the presumption that a spouse has an interest in the insured. The commenter asked why is it necessary to state in section 10(a)(2)(iii) that an application includes the spouse's share. As this is a contentious issue, the commenter suggested FCIC combine the guidelines relating to spouses and spousal interests in one subsection rather than dividing them among several subsections. This will alleviate confusion and obviate the need to refer to multiple provisions.

Response: Proposed section 10(a)(2)(iii) is unnecessary and FCIC has removed the provision. The sections dealing with spouses and spousal interests cannot be combined. Section 2 and the definition of "substantial beneficial interest" involve the interest of the spouse in the insured for the purposes of determining which tax identification numbers have to be reported. Section 10 involves the interest of the spouse in the insured crop. This is to determine under what circumstance spouses can have separate policies. No changes have been made in response to this comment.

Comment: A few commenters stated the added language in sections 10(a)(2)(iii), (a)(3), and (b) [regarding insuring the share of the spouse, children, parents and/or other household members on an "individual" policy] does not seem to mesh and leads to the following questions and suggested changes: (1) Section 10(a)(2) requires that the application must clearly state the share of other family/household members is included, suggesting that those shares are not included if there is no such indication on the application. However, section 10(b)(1) states "We will consider to be included * * * any acreage or interest reported by or for * * *" [emphasis added] those other family/household members. This language would allow such acreage/interest to be added at acreage reporting time instead of requiring that it be specified by the sales closing date. If this is supposed to be an option elected on the application, then section 10(b) should continue to say "We may consider * * *" Changing it to "We will consider * * *" suggests it is mandatory instead of a choice; (2) The language in section 10(a)(2)(iii)(A)–(D) indicates that the individual's policy can (if stated on the application) include the share of: (A) The spouse, (B) a child, (C) a parent, or (D) other household members. This could be taken to mean that if the spouse's share is included, none of the others can be (or one child's share can be included but not more than one). Presumably the intent would be better served with "and/or"; and (3) The language in section 10(a)(2)(iii)(A)–(D) does not seem to match the added language in section 10(b)(1), with a distinction between spouses [in (i)] and children or other household members [in (ii)]; parents are not mentioned separately. If section 10(b)(1)(i) is intended to correspond to current procedures that require policies for married individuals to include the spouse's share unless they are legally separate or unless they can prove they have separate farming operations, this does not fit with the phrases suggesting there is a choice of whether or not to include the spouse's share. In addition, section 10(b)(1)(ii) states that a child or other household member is included "* * * unless the child or other member of the household can demonstrate such person has a separate share in the crop." The wording in paragraph (a)(2) would seem to suggest that "separate share" could be insured as long as it was clearly stated on the application.

Response: As stated above, FCIC has not retained the provisions proposed in section 10 in the final rule that would have allowed a person to insure the share of their spouse, child, parent, or other member of the household. FCIC has retained the provisions in section 10(b) that states if it is determined the spouse, child, parent or other household member does not have a separate farming operation or share in the crop, as applicable, there can be no separate policy and the share reported by the spouse, child, parent or other household member will be considered to be included in the insured's share. As stated above, there is a difference between having an interest in the insured and having a share of the crop. Section 10 only deals with the latter. Under section 2 and the definition of "substantial beneficial interest," spouses are presumed to have an interest in the insured and there is no exception as long as they remain married and not legally separated. However, spouses and children are presumed not to have a separate share of the crop. Therefore, they cannot have separate policies unless they can demonstrate they have a separate farming operation or share of the crop, as applicable. If they meet this burden, they must have separate policies.

Comment: A few commenters stated they have serious concerns regarding the addition of the introductory phrase in section 10(a)(3) "If a producer insures any of the shares under section 10(a)(2), * * *" When section 10(a)(2) applies, section 10(a)(3) requires "* * * evidence of the other party's approval

(lease, power of attorney, *etc.*) * * *" and [in (3)(i)] "* * * the percentage shares of each person * * *" not only when the landlord's/tenant's share is being insured, as in the current Basic Provisions, but also for spouses, children, parents and other household members. The commenters strongly recommended that these requirements continue to apply only to the tenant/landlord situations "* * * under section 10(a)(2)(i) & (ii) * * *" Otherwise, this expansion of these requirements would lead to the following serious problems: (1) Family members who do not have separate shares in the farming operation would not be likely to have any official documentation that they approved having their share included in the "individual" policy; (2) If, according to one interpretation of the new language in sections 10(b)(1) and (1)(ii), the interest of a child or other household member will be considered to be included "* * * unless the child or other member of the household can demonstrate such person has a separate share in the crop * * *", it would seem to be difficult (if not impossible) to designate the percentage of share for those children and household members. These shares are not separate and distinct as is the case with landlords and tenants; (3) If, according to the added phrase in section 2(b)(2)(i), the spouse is considered to have 50 percent interest in the insured entity, that leaves only 50 percent to be divided among the named insured, children, parents and other household members; and (4) Although the proposed language would require children and household members to report their percentage shares (if they actually can be determined), there is no clear indication whether their names and identification numbers would have to be listed on the SBI form, as required in section 10(a)(3)(ii) and (iii) for tenant/landlord policies. Refer to the definition of SBI: "* * * Any child * * * will not be considered to have a substantial beneficial interest in the applicant or insured unless the child has a separate legal interest in such person * * *" If that is the intention, there is likely to be strong resistance to that added requirement. When the spousal SBI reporting requirements were added to procedure several years ago, it created an administrative burden on insurance providers to obtain the SBI information for spouses of policyholders and led to serious objections from some policyholders who did not want to provide that information for spouses who were not actively involved in the farming operation and were not a signing party to the policy contract. At that time, questions were raised whether the spousal SBI reporting requirements would be expanded to include the children and other household members (based on the policy language that "We may consider * * *" their interest to be included), and FCIC provided assurances that would not happen.

Response: As stated above, FCIC has elected not to retain the provisions in section 10(a)(2) related to spouses, parents, children, and other members of the household. Therefore, the requirement for providing leases, power-of-attorneys, *etc.,* only applies to landlord-tenant situations or entity situations. Further, as stated above, there is a difference between having an interest in the insured and having a share of the crop. Section 10 only deals with the latter. Under section 2 and the definition of "substantial beneficial interest," spouses are presumed to have an interest in the insured and there is no exception as long as they remain married and not legally separated. However, spouses and children are presumed not to have a separate share of the crop. Therefore, they cannot have separate policies unless they can demonstrate they have a separate farming operation or share of the crop, as applicable. If they meet this burden, they must have separate policies. There is no presumption of children having an SBI in the insured so they do not have to be reported as an SBI unless they have some other legal interest in the insured.

Comment: A commenter stated section 10(a)(3)(ii) requires that a landlord or tenant that insures the other's share must report that person's SSN. The same obligation should be imposed on a parent who insures a child's share and vice versa. It is the commenter's understanding that section 2 already imposes the obligation on an insured to report his or her spouse's SSN.

Response: Since, as stated above, FCIC has not retained the proposed provisions that would have allowed the producer to insure the share of his or her spouse, child, parent, or other member of the household, it is no longer necessary to require the identification number for such persons.

Comment: A commenter stated section 10(b) requires "separate equipment" to prove the spouses have separate farming operations. The 2007 Crop Insurance Handbook language requires separate accounting of inputs (*e.g.,* labor and equipment), but not "separate equipment." The CIH language seems to be more appropriate.

Response: FCIC has removed the requirement for separate equipment because many farming operations share equipment even though they are separate and distinct. This should be no different for spouses or children. However, they must still have all the other attributes of separate farming operations.

Comment: A few commenters asked if the change in section 10(b)(1) from "may consider" to "will consider" means the share of any spouse, children and/or other household members must be included or whether the phrase "* * * reported by or for * * *" means those shares do not have to be included if they do not want to report them.

Response: The provisions in section 10(b) mean any share reported by or for the spouse, child or other member of the household will be considered to be included in the insured person's share. As stated above, FCIC has clarified that only children that reside in the insured's household are considered to be included in the insured's share. This means the insured can still report 100 percent share of the crop and the spouse and children in the household are presumed to be included in that 100 percent. However, if the spouse or children in the household can show they have a separate farming operation or share, as applicable, they must separately insure their farming operation or share, as applicable, under a different policy. For example, a father and son who live in the same household both produce corn in the county. If the son can prove that he has a share of the crop (*i.e.,* the son receives a share of the crop in exchange for his labor), the son must have a separate policy to insure the corn produced on his farming operation. If the son was living outside the insured's household, the son could not obtain insurance unless he could show he has a separate share and again he would be required to insure his share under a separate policy.

Comment: A few commenters recommended clarifying provisions in section 10(b)(1)(i) regarding spouses with separate farming operations, by adding parentheses as follows: "* * * separate land (excluding transfers of acreage from one spouse to another), * * *"

Response: FCIC has revised the provisions accordingly.

Comment: A commenter recommended removal of provisions in section 10(b)(1)(i) regarding proof of separate farming operations. The combined interest can/should be insured under one individual/spousal policy. This option causes confusion with interpretation of separate farming

operations by producers which leads to coverage penalties described in section 10(b)(2)(i).

Response: There are legitimate situations where the two spouses have totally separate farming operations. If they can meet their burden of proof that the operations are separate, then two separate policies are needed. If there is only one farming operation, then it is appropriate that the interests of the spouses be combined in order to protect program integrity. Further, the proposed rule clarified which policy should be voided and the provisions have been retained. Therefore, there should no longer be confusion. No change has been made in regard to this comment.

Comment: A commenter asked whether a couple that is legally separated (not divorced), each with a farm, can qualify for two separate policies. The spouse would not have any SBI, so the commenter assumes they could each have a policy even if one is paying child support.

Response: If the spouses are legally separated, they would no longer have a SBI in each other. This simply means that the spouse's identification number would not have to be reported. This is a separate issue from whether the spouses have separate insurable interests in the insured crop. If the spouses can prove the two farming operations are separate, then they are entitled to separate policies regardless of whether child support or alimony is being paid.

Comment: A commenter stated forcing a husband and wife to have one policy creates some problems. FSA is still allowing a husband and wife to be two "persons" as far as payment eligibility is concerned, if certain criteria are met. One of these criteria are the "separateness" of their operations. Forcing them into one crop policy could jeopardize that "separateness." The commenter stated they have people who consider not insuring their crop because of this issue.

Response: The provisions allow separate policies for spouses who meet the requirements for separate farming operations. FCIC understands FSA may have different program requirements for spouses to be considered "separate." However, since the two programs have different purposes, the requirements may need to be different. The fact that FCIC may not consider the spouses to have separate shares should have no impact on the eligibility of a spouse for FSA programs. Each program is administered under its own requirements. Further, FCIC does not believe that its requirement spouses be insured under one policy if the they cannot meet the criteria for separate farming operations for the purposes of crop insurance adversely affects the spouses' ability to meet the FSA requirements for a separate farming operation. No change has been made.

Comment: A few commenters stated the concerns and recommendations listed below regarding the new section 10(b)(2) which states [in part]: "If it is determined that the spouse, child or other member of the household has a separate policy but does not have a separate farming operation or share of the crop * * *" that other policy will be void and there will be no premium due or indemnity paid. If each spouse takes out a separate policy and it is later determined they do not have separate farming operations, the proposed wording could result in the voidance of both policies (each one has a policy saying the "spouse's policy will be void"). Presumably the intent is that one policy would remain in effect. A commenter suggested where the producer's spouse, child, or other member of the household holds a policy that is voided, the acreage insured under the voided policy should be insured under the producer's policy. The commenter stated this change would be helpful, particularly in community property states, where inequities can otherwise result. The commenter urged FCIC to include this change in the final rule. An additional commenter stated no penalties should be imposed for spouses or other household members obtaining separate policies that are later determined to not qualify to have separate policies, until definitive rules are established. Per section 10(b)(2)(i), "The spouse's policy will be void and will be determined in accordance with section 22(a) * * *" There is some question as to whether the reference is appropriate. Section 22(a) addresses "Other Like Insurance," which is understood to mean duplicate coverage on the same acreage/share, while it is likely that separate spousal policies that do not qualify to be separate would not be insuring the same acreage or share (each would show 50% share, for example). If this situation is supposed to be covered by 22(a), it would seem to conflict with the statement in 10(b)(2)(i) that the "spouse's policy will be void * * *" since section 22(a)(1) & (2) provide guidelines for determining which of the duplicate policies remain in effect. It is not clear whether the intention is to specify which spouse's policy would remain in effect or whether it would be allowed for the parties involved to decide. At the least, it might help to change the reference to "22(a)(1) & (2)." The proposed language does not match the explanation given in the "Background" section of the proposed rule, which indicates the acreage and share must be combined. The proposed policy language only says the other policy will be void; it makes no mention of adding the acreage/share from the voided policy to the remaining policy. If an insurance provider determines the two spouses do not meet the requirements for insuring their farming operations under separate policies, the total coverage for both operations should be combined under a single policy and the other policy voided. Since both operations had full coverage in effect, there should be no loss of coverage but the coverage should be consolidated under a single policy at the time this determination is made. The penalties as currently outlined in the draft provisions are unduly harsh and should be reconsidered. When the determination is made that the two policies need to be combined, the language needs to address which policy's coverage takes precedence and should serve as the policy in effect for the remainder of the crop year (*i.e.,* level of coverage, price percentage, options, *etc.*). The provisions state "No premium will be due and no indemnity will be paid for a policy that is voided * * *" Presumably, this is because the premium and indemnity would apply to the other policy remaining in place. Otherwise, there should be some consideration of allowing the insurance provider to retain a percentage of the premium to cover the administrative costs incurred, as in other cases where the policy is voided. Proposed section 10(b)(2)(ii) should be changed as follows: "The policy for the child or other member of the household will be void;" or alternatively, change "child" to "child's policy". Also, in section 10(b)(2)(iii), change "* * * for a policy that is voided in accordance with sections 10(b)(2)(i) and (ii)" to "* * * for the voided policy." It is not necessary to refer to the two immediately preceding subsections given the context and the lead-in from section 10(b)(2).

Response: If spouses do not have separate farming operations, it was always intended that one policy be void and one policy should remain in effect and the acreage and shares from the voided policy should be combined under the remaining effective policy. The provisions have been clarified accordingly. The commenter is correct that section 22(a) is referring to the case in which there are duplicate policies on

the same share and acreage, while section 10(b) refers to different policies on separate acreage or shares. The provisions have been revised to refer only to sections 22(a)(1) and (2). These sections will specify which policy will remain in effect. Sections 22(a)(1) and (2) will determine the coverage levels, price elections, *etc.,* that apply. There is no penalty contained in section 10(b). Full coverage is provided under a single policy.

Comment: A commenter stated section 10(b)(2)(ii) provides that a spouse's policy will be void in accordance with section 22(a) if the spouse has a separate policy but does not have a separate farming operation or share in the crop, and asked if the spouse whose policy is voided is considered to have a SBI in the surviving policy. The commenter questioned if the spouse was not reported as having a SBI in the surviving policy, which is possible if the spouses considered their farming operations to be separate, whether the surviving policy is subject to the penalties in section 2(b). The commenter recommended FCIC clarify the ramification to the policy that is not voided.

Response: A SBI is not the same as a share. As stated above, SBI involves the spouse's interest in the insured. A share involves the spouse's interest in the crop. Therefore, regardless of whether there are separate policies or a single policy, the spouse's social security number must be included on the application. If the spouse's social security number is not reported on any application, the consequences in section 2 apply, not any consequence stated in section 10.

Section 11 Insurance Period

Comment: A commenter stated section 11(b)(2) specifies harvest of the unit is one of the events that triggers when coverage ends. The commenter asked if the intent of the policy is to cover grain in storage until all of the "unit" is harvested. The commenter stated current language could be interpreted to cover grain in storage. The commenter provided an example where a producer had a 200 acre unit and harvested 180 acres and stored the production in a bin. Lightning strikes the bin and all of the grain is destroyed. The commenter asked since the producer still had 20 acres left to harvest, and therefore had not completed harvest of the unit, whether the burned up grain should be counted as production since an insured cause of loss happened during the insurance period. The commenter stated if FCIC does not want this situation to be covered since the acreage was harvested, FCIC would need to clarify section 11 in more detail. The commenter suggested language such as harvest of the "crop" instead of unit could be used.

Response: FCIC has not proposed any changes to section 11. However, the commenter has raised a statutory issue that needs to be addressed. Section 508(a)(2) of the Act prohibits insurance extending beyond the period during which the insured commodity is in the field, except in the case of tobacco and potatoes. Therefore, the policy does not cover the insured crop after it has left the field. FCIC has added a new section 11(c) that specifies that coverage ends on any acreage within a unit where an event resulting in the end of the insurance period occurs on the acreage. Therefore, in the commenter's example, insurance would end on any acreage in the unit that had been harvested even though coverage remained in effect on the unharvested acreage. This will preclude coverage for any grain in storage because it will have come from acreage where the insurance period had already ended. However, this situation also applies to other events that can cause the insurance period to end. Therefore, FCIC has revised section 11(b) to clarify that coverage ends on each unit or part of a unit at the earliest of one of the events specified in sections 11(b)(1) through (6), even though the insurance period may not have ended for other acreage within the unit. FCIC has also clarified that the calendar date for the end of the insurance period may be contained in the Special Provisions because there have been occasions when the end of the insurance period stated in the Crop Provisions may no longer be reflective of the period of risk due to changing technologies, *etc.*

Section 12 Causes of Loss

Comment: A commenter suggested revising section 12(a) to add a reference to landlords as follows: "Negligence, mismanagement, or wrongdoing by you, any member of your family or household, your tenants and/or landlords, or employees."

Response: Negligence, mismanagement, or wrongdoing by any person is not intended to be covered by the policy. Section 508(a) of the Act only authorizes coverage for natural disasters. Further, there may be confusion regarding the distinction between proposed sections 12(a) and (g). Therefore, FCIC has revised section 12(a) to make it inclusive of any act by any person, that affects the yield, quality or price of the insured crop and proposed section 12(g) has not been retained in the final rule.

Comment: A few comments were received regarding the introductory text in section 12. A commenter stated the prefatory phrase in the opening paragraph is unwieldy and confusing. The commenter requested FCIC amend this provision as follows: "The insurance provided is only those unavoidable * * * When revenue protection is elected, protection also is provided against decline in the harvest price below the projected price." Another commenter stated the proposed language specifically identifies causes of loss that are not covered. Previous language (the current policy) has a much broader provision relative to causes of loss not covered ("* * * all other causes * * *"). The commenter asked whether this change was intended, and if so, what the rationale was for it. Further, the prior/current language indicates that coverage is against only unavoidable loss directly caused by specific causes. The proposed language removes the "directly caused by" language. The commenter asked what was the reason for this change.

Response: The proposed introductory text was not clear as it was intended and FCIC has revised the first sentence to improve readability and clarity. The provision providing coverage when the harvest price is less than the projected price is contained in the Crop Provisions and is subject to the same restrictions as any other cause of loss. Therefore, to avoid a potential conflict, FCIC has not added the provision to section 12. FCIC has also included the provisions omitted in the proposed rule stating that all other causes of loss, including those listed were not covered. The phrase "directly caused by" was removed because some losses are covered even though they are not directly caused by an insurable cause of loss but the insurable cause of loss was the proximate cause of the loss. For example, disease is not covered under the policy but adverse weather is covered. There could be a situation where the presence of excess moisture caused a disease in the insured crop. Excess moisture was not the direct cause of the loss but it was the proximate cause and, therefore, the loss is covered.

Comment: A commenter disagreed with the provisions added to section 12(d). The commenter felt FCIC is asking the insurance providers to make judgment calls, which will create more fraud, waste and abuse in ways that are already used in the prevented planting system.

Response: FCIC presumes that the judgment call referred to is the determination of whether the producer was unable to prepare the land for irrigation using the producer's established irrigation method. This is not similar to prevented planting because in prevented planting the judgment is whether the soil is too dry to permit germination or progress toward crop maturity if the crop was planted. However, the judgment here is only whether the acreage was too dry to permit the producer to prepare the soil without extensive damage. Further, under proposed section 14(e)(4)(iii) (Your Duties), the burden is on the insured to prove the loss was caused by an insured cause of loss. The burden is not on the insurance provider to prove that such a cause of loss did not occur. This clear enunciation of the burden should mitigate any potential fraud, waste, and abuse. No change has been made.

Comment: Many comments were received regarding the proposed addition of section 12(g). A few commenters were concerned about provisions that specify any act by a third person adversely affecting the yield or price, such as terrorism, chemical drift, theft, *etc.,* is a cause for loss for revenue protection coverage. A commenter stated the addition may make common sense regarding yield, but asked how it can apply to price. The commenter asked, for example, if a car bomb goes off in the Middle East and markets react, if this would be deemed a "terrorist act" and would FCIC disallow coverage because "prices changed due to a third party or terrorist." The markets do not operate in a vacuum. Theoretically, every single event happening in the world each day affects price. The commenter asked how FCIC can make decisions about what is and is not a "terrorist act" or the result of a "third person." Market efficiency ultimately rules and sorts everything out. The commenter asked how FCIC can ever say prices are not reacting to a "third person." Prices do what they do. Everyone in the system is aware of the risk, especially producers. The commenter stated they understand the need to suspend the system should catastrophic events occur (*i.e.,* government itself is unable to function). This can be better said than the open-ended language proposed. The commenter stated they would suggest language that simply says if markets are closed for an extended period due to acts of God or other reasons other than routine market policy or function, or if the government itself is essentially inoperable for a prolonged period due to acts of God or other acts beyond the government's control, then the Secretary of Agriculture has the right to suspend the policy/program. A commenter stated the proposed addition is impossible to administer and would create deep uncertainty in the reliability of revenue protection. A commenter opposed any provision that would consider actions by a terrorist that cause a price change for revenue policies to be due to an uninsurable cause. The commenter strongly recommended yield or revenue losses from terrorist activities be added as a named peril to all crop insurance policies. Furthermore, the commenter recommended FCIC develop a multiple-year terrorism policy that provides producers with such protection when a multiple year cleanup period is required. Such a policy could be based on the average of prior year's income tax returns. A commenter asked how market price fluctuations caused by an uninsured cause of loss will be determined. The commenter asked what the effect on the wheat market is if the World Trade Center gets bombed. Suppose commodity prices would have risen sharply five years ago, would there have been a push to reduce crop insurance coverage because of the attack? It seems there are always about a million reasons why the commodity markets move, and to try to determine that one of them is responsible for the movement seems impossible. The commenter believes the market price should be used, no matter what it is, as it is truly what producers can receive for their product, and truly represents their risk. Crop insurance needs to be a product that producers and their lenders can rely on through whatever is happening. A commenter stated they agree with the proposed changes, however, they believe the text could be improved by restating it as follows: "Any act by a third person, whether the result of negligence or intentional misconduct, that adversely affects the yield or price, such as terrorism, chemical drift, fire, theft, and similar third-party actions." The commenter stated their fundamental proposed change in the definition is the addition of the clarifying clause after "third person" in the first line. It is important to be explicit that third-party acts of negligence and intentional misconduct are not covered. That should present no problem because negligence itself is defined appropriately in section 1 of the Basic Provisions. Further, its applicability is implicit in new subsection (g) (*e.g.,* recognition that "chemical drift" is not an insured cause of loss). It is important to recognize negligence as a form of third-party action that could adversely affect yield or price, and it is critical to do so explicitly to avoid any risk of ambiguity. While acts such as terrorism are important to exclude, due to their inherent evil, negligent acts can have the same impact on yield or price and, therefore, should also be specifically excluded. Finally, the commenter recommended "fire" be added because it is one of the most common causes of loss resulting from third-party conduct. Another commenter suggested adding "fire" to the list in section 12(g), because fire and chemical drift are the two most common causes of loss caused by a third party. An additional commenter stated they are concerned that FCIC reserves the right to deny or withdraw coverage due to unfavorable market moves suspected of resulting from "third person acts." The commenter stated the proposed addition of a new section 12(g) states that "[a]ny act by a third person that adversely affects the yield or price, such as terrorism, chemical drift, theft, *etc.*" is a cause for loss of coverage. The commenter stated they oppose the denial of coverage solely on the basis of sudden unfavorable market moves, regardless of the source. A few commenters stated they oppose the denial or withdrawal of coverage when based on suspicion or speculation. The commenters stated any effort to determine price impacts directly attributable to third person acts (*i.e.,* terrorism) would be speculative at best. The interjection of such a subjective and unpredictable factor would lead to deep uncertainty relative to the reliability of revenue protection. Therefore, they urge these provisions be omitted in the final rule. A commenter stated the provisions are not clear with respect to who is authorized to make the official determination that an event has occurred because of the acts of a third person.

Response: The commenter is correct that it is difficult to determine if a price change or at least how much of a price change was due to third party action. However, FCIC must still be compliant with the provisions of the Act that do not allow man made acts to be covered. This limitation applies to price changes as well as other causes of loss. To ensure that the revenue protection is meaningful, FCIC is presuming that usual market price changes are an insured cause of loss. To interpret the Act in any other manner would effectively negate revenue coverage. Therefore, usual causes of price swings, such as over or under production

domestically or abroad, are considered normal market price changes. This is not the case with terrorism or the accidental release of a pest, unapproved genetically modified seed, *etc.* These are incidents that are not usual in the market and may involve a situation where a single person or limited number of people may have the ability to affect the price for all. However, even after an act of terrorism, *etc.,* there may still be other reasons for the price change. Therefore, FCIC has revised the cause of loss section in the Crop Provisions to clarify that the price change is covered unless FCIC can prove the price change was the direct result of an uninsured cause of loss in section 12(a) and can quantify the effect the uninsured cause had on the price. If FCIC cannot meet these burdens, the price change is covered under the policy. Under usual market conditions, this will be a very difficult burden to meet but if there are those instances where it can be met, the Act precludes payment. As stated above, FCIC has revised the provisions to add the requirements of proposed section 12(g) to section 12(a). This should eliminate any confusion whether the acts of persons that cause the loss are covered. Terrorism cannot be added as an insured cause of loss and FCIC cannot develop a multiple year terrorism policy. Section 508(a)(1) of the Act requires that to qualify for coverage under a plan of insurance, the losses of the insured commodity must be due to drought, flood, or other "natural" disaster (as determined by the Secretary). Therefore, the Act does not authorize coverage for terrorism.

Section 13 Replanting Payment

Comment: A few comments were received regarding replant payments. A commenter stated producers who incur 100 percent of the replant cost should receive 100 percent of the replant payment although the crop is insured by more than one person on a share basis. The commenter appreciated FCIC's openness to working to implement a fair and equitable provision in this regard notwithstanding any administrative challenges. The commenter proposed a workable solution to the current problem is to have tenants who buy insurance on a share basis receive 100 percent of the replant payment when the tenant provides verifiable evidence that he/she paid 100 percent of replant costs. Conversely, landlords would not receive a replant payment if they cannot provide evidence they bore any share of replant costs. A commenter recommended keeping the current language and adding "or Special Provisions" to the end of the paragraph.

Response: As stated in the background section of the proposed rule, FCIC proposed to remove the provisions that allow the person who incurs the total cost of replanting to receive a replant payment based on the total shares insured when more than one person insures the crop on a share basis. To make the provision work, FCIC required the two producers with a share in the crop to be insured with the same insurance provider before the producer incurring all the costs could receive the replant payment. This was necessary to allow the insurance provider to track the payments to ensure not more than 100 percent of the replant payment is paid out (*e.g.,* the tenant received a 100 percent replant payment from one insurance provider and the landlord received a 50 percent replant payment from another insurance provider). FCIC also required that both producers insure with the same insurance provider to ensure that the insurance provider making the 100 percent replant payment received 100 percent of the premium associated with replant payments (*e.g.,* if two producers with 50 percent shares insure with two insurance providers, each insurance provider would receive only 50 percent of the premium associated with the replant payments). Subsequently, FCIC received complaints that this resulted in disparate treatment based on which insurance provider the producer insured with because producers insured with different insurance providers could not receive 100 percent of the replant payment even if they incurred 100 percent of the costs. The recommended changes, while achieving equity by allowing the person who paid the replant costs to recoup the payment, would make the program vulnerable to mistakes and abuse if the producers are insured with different insurance providers. FCIC has not found a way to provide 100 percent of the replant payment to one producer that does not result in this disparate treatment or open the program to potential vulnerabilities. However, FCIC is open to new ideas. No change has been made.

Comment: A few comments were provided to section 13(c). A commenter stated that the proposed language could be misleading to policyholders who think their actual cost of replanting will be paid. The commenter questioned why FCIC needs to bring up the actual cost of replanting in the Basic Provisions if it is not intended to be used in any Crop Provisions. A commenter recommended FCIC substitute the term "limited" for "specified." It is doubtful the Crop Provisions or Special Provisions would permit replant payments in excess of an insured's actual cost. A commenter stated they consider the provisions positive regarding if the Replant Cost Study finds actual replanting costs paid are consistently higher than the amounts specified in the Crop Provisions, then the insurance provider does not have to verify replanting costs prior to paying replant claims. A commenter supported the proposed revision, which would allow replant payments to be more responsive to actual costs and the commenter urged FCIC to retain it in the final rule.

Response: FCIC does not agree that the word "limited" should be used. For certain crops, it has been determined the replant payment will be the amount specified in the Crop Provisions, regardless of the actual costs. However, for other crops, the actual costs will be used. Therefore, FCIC agrees that as proposed, the language can be confusing. FCIC has revised section 13(c) to specify the replant payment will be the lesser of the producer's actual cost for replanting or the amount specified in the Crop Provisions unless otherwise specified in the Special Provisions. The replant study that FCIC has contracted out is not complete and there may need to be some adjustment to the amount contained in the Crop Provisions. Revising section 13(c) to specify that the amount will be contained in the Crop Provisions unless otherwise specified in the Special Provisions will allow for an expedited adjustment. FCIC is attempting to reduce the burden on the producer and insurance provider to provide records for crops for which it has been determined that the actual costs always exceed the amount payable under the Crop Provisions by having the Crop Provisions no longer consider the actual costs.

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

Comment: A commenter stated they do not understand FCIC's proposal in section 14. They understand what FCIC is trying to address but do not understand FCIC's proposed solution. The commenter stated this needs further clarification.

Response: FCIC proposed several changes to the provisions contained in section 14. Since the commenter did not specify which proposed change their comment applied to, FCIC cannot specifically respond to this comment. No change has been made in response to this comment.

Comment: A commenter stated it appears the burden of proof is greatly increasing for producers through several of the proposed provisions. While they completely endorse efforts to crack down on fraud and abuse, they also caution against overly strenuous and burdensome rules that may prove difficult for producers to remember and meet in a timely fashion. The commenter stated producers are extremely busy, and to expect them to remember numerous crop insurance rules, dates, time deadlines, and other regulations, or risk loss of coverage seems rather harsh. The commenter fears many producers may not be made aware of the numerous reporting deadlines being proposed such as reporting added land within 10 days, notice of damage within 72 hours, final planting dates, the date and amount of acreage planted per day during the late planting period, notice of expected revenue loss within 45 days after the harvest price is released, and for revenue coverage, the deadline to submit a claim for indemnity within 60 days after the latest date the harvest price is released. The commenter stated it will be imperative for producers to work with knowledgeable agents who can help them remember all of the reporting requirements and deadlines. However, for agents to be successful they must work with a large number of producers, which makes it difficult for them to have firsthand knowledge of all of the variables that must be reported.

Response: There have always been numerous dates that producers and agents must be aware of because they affect insurance coverage. However, these dates are necessary to properly administer the crop insurance policy. Without deadlines related to the submission of notices of loss and claims, it would be extremely difficult to correctly determine the cause and amount of loss. Further, while deadlines from the existing revenue products have been incorporated into this rule, they have been clarified to make them more workable and consistent with current deadlines in the Basic Provisions. However, as stated more fully below, some of the proposed provisions may have been impractical and have been revised in this final rule.

Comment: Many comments were received regarding the provision proposed in section 14(b) that requires notice of loss to be given the earlier of 72 hours of discovery of damage or within 72 hours after the end of the insurance period, regardless of whether the producer has harvested the crop. A few commenters stated that a 72-hour time period to report the discovery of damage or a potential loss is insufficient. They stated there are instances in which damage or loss may occur, but, because of the type of damage or loss, it may take more than 72 hours for the damage or loss to be apparent to the insured. Similarly, there may be instances where the insured is physically unable to report the damage or loss within 72 hours of discovery. For example, it would have been impossible for some of the producers in Louisiana to have reported losses during the recent hurricane disaster, since there was no electricity or phone service available for quite some time following the disaster. The commenters stated that by shortening the time period, it is likely a number of producers will be caught unaware of whether they sustained a loss by the notice of loss deadline. The commenters urged FCIC to retain the current 15 day loss notification deadline. A few commenters stated the tighter time-frame is too short. They recommended the current provision be retained. Another commenter stated the proposed change places an undue burden on the producer. The commenter stated the fact that whether a claim is reported within 72 hours or 15 days after the end of the insurance period does not hamper the ability to properly evaluate the damage. The commenter stated they see nothing wrong with leaving the 15 day requirement as it is today. A commenter stated the proposed change will cause a large number of unnecessary losses to be submitted just to ensure the policyholder has complied with the terms of the policy. The commenter stated this could result in less than reasonable or realistic loss ratios being submitted to FCIC and additional expense incurred by insurance providers with setting up losses and inspecting released claims. A commenter stated the 72-hour period will cause a significant increase in the number of delayed claim notices. The commenter stated although the selection of a deadline for submitting a notice of damage or potential loss is arbitrary, the 72-hour time period is too short to be reasonable or justified. A few commenters stated the proposed change will increase the workload on insurance providers and producers by making producers report all potential loss events. The commenters stated it appears FCIC is requiring notice of every potential loss event, including those that may not by themselves trigger an indemnity. The commenters stated producers should only be required to provide notice when they believe with reasonable certainty that a loss for which an indemnity will likely be paid has been sustained. The commenters stated implementation of this proposed change will create a considerable and unnecessary additional workload on the system. The commenters stated currently, producers may provide notice within 15 days after the insurance period ends and the common practice is for producers to provide a single notice of loss, especially when a series of events eventually trigger an indemnity. They recommend FCIC strike the proposed change and retain the current notice time-frame. The commenters stated the current rules are understood by both producers and insurance providers and will still allow for the orderly submission of required notices of loss. A commenter recommended there be an exception like that provided for producers who are unable to submit requests for written agreements by the sales closing date. A commenter stated reducing the number of days after the insurance period from 15 days to 72 hours (three days) is unnecessary and unfair to a producer, particularly for a producer with revenue coverage. The commenter stated it takes numerous calculations to determine if there is a loss and this proposed change will cause more producers to turn in unnecessary claims. A few commenters stated the notice provisions set forth in section 14 apply in the event of "damage or a potential loss of production or revenue." The commenters pointed out the Basic Provisions define "damage" but "potential loss," whether to production or revenue, is not defined. The commenters asked how a producer is to judge when there is a potential loss. They noted that in disputes involving notice or lack thereof, producers often allege they did not anticipate or did not know that loss would occur. The commenters asked how an insurance provider is to assess whether a producer knew or should have known of a potential loss when assessing whether a producer provided timely notice. The commenter recommended FCIC define the term "potential loss" or otherwise provide objective criteria for determining whether there was a "potential loss of production or revenue." A commenter stated the proposed change will require a producer to give notice within 72 hours after the end of the insurance period regardless of whether the producer knows if there has been damage to the crop. The commenter added that the proposed 72-hour requirement could cause a large number of unnecessary notices to be submitted just to ensure the producer has complied with policy provisions, which

could result in increased expenses incurred by insurance providers in inspecting and investigating these "precautionary" claims. A commenter believed the proposed change provides insufficient time in which to provide notice of loss, thereby creating considerable and unnecessary additional workload, and actually exacerbates the problem FCIC seeks to remedy. The commenter stated FCIC notes the change is "needed because there may be circumstances where the producer is unable to harvest the crop before the end of the insurance period or even 15 days after. In such case, the producer may have no knowledge whether a loss has occurred. Therefore, it would have been impossible for the producer to timely give notice." The commenter added that FCIC then goes on to state, "Now producers will have to give notice not later than 72 hours after the end of the insurance period regardless of whether the producer knows there is damage." The commenter stated by shortening the notice of loss deadline from 15 days after the insurance period ends to the earlier of within 72 hours of discovery of damage or 72 hours after the end of the insurance period, it is highly probable, if not absolutely certain, that the number of producers caught unaware of whether they sustained a loss by the notice of loss deadline will only increase and become an even greater problem for producers than it already is. The commenter stated the only solution will be for producers to report losses whenever in doubt, regardless of whether they know for certain that a loss has actually been sustained, thus imposing considerable new and unnecessary workload on the system. The commenter added this problem is further exacerbated by the requirement that the reporting of any loss, regardless of whether it is likely to trigger an indemnity or not, appears to be required within 72 hours of discovery. The commenter stated currently, producers may provide notice within 15 days after the insurance period ends and the common practice is for producers of a crop to provide notice of loss all at once. The commenter believes the current timeline maximizes the chance the producer will know by the notice of loss deadline whether or not a loss was sustained, provides for the orderly submission of notices of loss, and minimizes unnecessary additional workload. The commenter urged FCIC to maintain the current notice of loss deadline and requirements. A commenter opposed the proposed change because they do not believe it is practical. The commenter stated the 72-hour deadline would be virtually impossible for: (a) Producers who sell production because often they do not know whether their production is less than the insurance guarantee until they receive the settlement sheet from the elevator or processor and this commonly is not received within 72 hours; (b) producers to make insured loss determinations by insurance unit in the midst of harvesting, when their primary goal is to keep the harvest progressing as rapidly as possible to minimize further crop losses; (c) landlords who rely on their tenants to grow their crops because usually they do not have the results of the harvest within 72 hours; (d) producers who store their grain on the farm to make determinations of the amount of production on a unit basis within 72 hours of harvesting; and (e) producers who obtain the services of a third party to determine the amount of their production.

Response: FCIC proposed to revise the notice provisions contained in section 14(b) to require producers to give notice of damage within 72 hours of their initial discovery of damage or a potential loss of production, or to provide notice within 72 hours after the end of the insurance period. The commenters are correct that the proposed requirement to provide notice within 72 hours after the end of the insurance period may not provide adequate time for producers to determine if there is a loss. Therefore, FCIC has revised the provisions to require notice within 72 hours of the producer's initial discovery of damage (but not later than 15 days after the end of the insurance period, even if the insured has not yet harvested the crop). However, the later the notice is provided after the insured cause of loss, the more difficult it will be for the producer to prove that the damage was caused by such cause of loss. FCIC has also retained the proposed provisions that require producers, who do not initially discover damage by the 15th day after the end of the insurance period, to provide notice no later than 15 days after the end of the insurance period even if the crop is not harvested. This will eliminate any confusion regarding whether a delay in harvest will allow a delay in the notice. Producers are now required to report any damage even if harvest is not complete. This will allow insurance providers to timely adjust the loss and verify that the insured cause of loss occurred during the insurance period. Provisions contained in proposed section 14(b)(4)(i) allow the insurance provider to pay the claim when the notice is late, provided the insurance provider determines they still have the ability to accurately verify the amount and cause of the loss. Therefore, an exception, similar to the exception that is allowed for written agreements when extenuating circumstances prevent a producer from timely applying for the written agreement, is not necessary. Additionally, in cases of widespread losses, where an insured cause of loss such as a hurricane or flood prevented timely notice, insurance providers should be aware of the cause of loss and be able to make the claim determinations. These revisions should eliminate most of the problems raised by commenters regarding precautionary notices of loss and the burden they would impose on insurance providers. Further, the policy has always required that notice of loss be given within 72 hours of the discovery of damage. This requirement has not changed. However, as revised, if a producer does not know there is a loss until they harvest the crop, they can still give notice of damage after harvest provided notice is given within 15 days after the end of the insurance period. In all cases, the producer must be able to show the loss occurred due to an insured peril. The commenters are correct that insurance providers cannot determine whether a producer may believe he or she has a potential loss. Therefore, FCIC has removed the term "potential" from the provisions. Producers must give notice of the discovery of damage or loss of production or loss of revenue, as applicable.

Comment: A commenter recommended proposed sections 14(b)(1)(i) and 14(b)(1)(ii) (except section 14(b)(1)(ii)(B)) be combined since it is the same wording. The commenter also recommended the language in section 14(b)(1) be revised to: (1) Remove the phrase "For crops for which revenue protection is not available and crops for which revenue protection is available but not selected" so the provision will apply to all crops; and (2) Add at the end "For crops which revenue protection is elected and notices are not required under section 14(b)(1)(ii)(A), not later than 45 days after the latest date the harvest price is released for any crop in the unit where there is a potential revenue loss."

Response: FCIC has revised the provisions to eliminate redundancies and improve readability.

Comment: A commenter stated section 14(b)(1)(ii) has too many subsections and is confusing. More specifically, the term "within" in

subsections (A)(1) and (2) should be deleted. In addition, subsection (B), which is an exception to subsection (A), should be designated as subsection (1)(iii). The commenter recommended reorganizing this provision as follows: "(ii) For crops for which revenue protection is elected, the earlier of: (A) 72 hours of your initial discovery of damage or a potential loss of production; or (B) 72 hours after the end of the insurance period * * * (iii) If notices are not required under section 14(b)(1)(ii), not later than 45 days after the latest date the harvest price is released * * *".

Response: As stated above, FCIC has revised the provisions by removing the redundancies and combining the provisions where appropriate.

Comment: A commenter recommended FCIC clarify that proposed section 14(b)(2)(ii) pertains to revenue only losses and does not include losses that contain both production and revenue loss.

Response: FCIC is unsure of what provision the commenter is referencing. Proposed provisions contained in section 14(b)(2)(ii) pertain to notices of loss for prevented planting, which apply to prevented planting losses under all policies with prevented planting coverage, not just policies with revenue protection. No change has been made.

Comment: A commenter stated proposed section 14(b)(4) (redesignated section 14(b)(5)) provides penalties for a producer's failure to comply with certain notice requirements and, in doing so, differentiates between (i) the failure to report production losses or prevented planting acreage and (ii) revenue losses. With respect to the latter, subsection (b)(4) (redesignated subsection (b)(5)) expressly provides that the producer "will still be required to pay all premiums owed." However, there is no such statement with respect to the former. The commenter recommended that (i) and (ii) be consistent in their treatment of premium.

Response: The provision contained in proposed section 14(b)(4)(ii) requires the producer to give timely notice of a revenue loss. FCIC has removed the provision in the final rule and elected to treat failure to give notice of a revenue loss in the same manner as failure to give notice for a production loss. FCIC has revised the provisions contained in proposed section 14(b)(4) (redesignated section 14(b)(5)) to differentiate between notice of losses for claims purposes and notice of loss for prevented planting purposes. With respect to prevented planting, no premium will be owed or prevented planting payment made if the insurance provider cannot verify the crop was prevented from being planted because coverage is considered not to have attached to the acreage. With respect to an indemnity, no indemnity will be paid if the insurance provider cannot accurately adjust the loss, but the producer would still be required to pay the premium, because coverage would have attached and would have been provided during the insurance period until the loss occurred. FCIC has also revised the provision to refer to the ability of the insurance provider to accurately adjust the loss. As proposed, there could be a potential conflict with section 14(e), which places the burden on the producer to establish the loss, that the loss occurred during the insurance period, and that it was due to an insurable cause of loss.

Comment: A commenter stated proposed section 14(b)(4)(i) would be strengthened by adding "solely" between the words "considered" and "due." This change should foreclose any proration or allocation of fault argument made by a policyholder.

Response: FCIC agrees with the commenter and has revised the provisions in redesignated section 14(b)(5) accordingly.

Comment: A commenter recommended additional language be added to section 14(c)(1) that expands the policy requirement for leaving representative samples. They stated the current language only addresses cases where a notice of loss was provided within 15 days of harvest or after harvest had begun. The commenter recommended the following revision: (c)(1) If representative samples are required by the Crop Provisions, leave representative samples intact of the unharvested crop, (1) if you report damage less than 15 days before the time you begin harvest, (2) during harvest of the damaged unit or (3) as required by us throughout the growing season.

Response: When losses occur early in the season, it is appropriate for the insurance provider to require that representative samples be left intact. FCIC has revised the provisions to require the insured to also leave representative samples when required by the insurance provider.

Comment: A commenter stated section 14(c)(1) should be revised to provide: "* * * less than 15 days before the time you "will" begin harvest * * *"

Response: FCIC agrees with the commenter and has revised the provision accordingly. FCIC has also revised section 14(c)(2) to specify harvest on the remainder of the unit for clarification.

Comment: A commenter stated section 14(d)(3) should read "in accordance with the Settlement of Claim provisions of the applicable Crop Provisions" to tie it directly to the nomenclature used in the Crop Provisions.

Response: FCIC agrees with the commenter and has revised the provision accordingly.

Comment: A commenter recommended section 14(e)(1) be clarified so it is clear this information and the deadlines referenced in section 14(e)(3) also apply to information for replant payments.

Response: The commenter is correct that the deadlines were also intended to apply to replant payments and prevented planting payments. FCIC has revised the provisions in sections 14(e)(1), 14(e)(3)(i) and (ii) by removing the phrase "for indemnity" so the provisions will include all claims, not just those for indemnities.

Comment: A commenter stated section 14(e)(1) would be enhanced by adding at the end of the proposed text this additional language: "and if we have time to make a loss determination under applicable FCIC procedures." The commenter stated this addition simply reinforces the concept that late claims should not be adjusted if the insurance provider lacks sufficient time to follow approved procedures.

Response: Insurance providers have a responsibility to ensure that they have the personnel available to adjust losses in a timely manner. When there are widespread losses where it may be difficult to timely complete all the claims, FCIC has generally taken measures to relax the loss adjustment procedures as long as such action does not adversely affect program integrity. Therefore, the procedures should not be an impediment to the completion of claims. Extensions should be granted if the information needed to determine the amount of the loss is not available by the deadline to submit the claim (for example, the production records or quality test results are not yet available). Subsequent to the proposed rule, FCIC published a final rule on September 3, 2009, to implement the provisions in the 2008 Farm Bill that allow claims to be delayed in cases when producers have farm-stored grain production, FCIC has reformatted section 14(e)(1) to include these provisions.

Comment: A commenter suggested adding language in section 14(e)(2) to create a clear distinction between a "notice of loss" and a "claim for indemnity." The commenter

recommended the following language: "(e)(2) Failure to timely submit a claim and provide the required information necessary to determine the amount of indemnity, as stated in subpart 4 below, will result in no indemnity, prevented planting * * *" The commenter also stated this additional language would also need to be included in section 14(e)(3)(i) & (ii).

Response: FCIC has revised the provisions in section 14(e)(2) to specify failure to timely submit a claim or provide the required information "necessary to determine the amount of the claim" will result in no indemnity, prevented planting payment or replant payment. There is no need to add this language to sections 14(e)(3)(i) and (ii) because these sections simply provide the date by which the information referenced in section 14(e)(2) must be submitted. Further, section 14(e)(4) contains requirements beyond the information needed to be submitted with the claim. Therefore, it would not be appropriate to include such references in section 14(e)(2).

Comment: A commenter stated section 14(e)(3)(i) applies to "crops covered by yield protection and for which revenue is not available," and section 14(e)(3)(ii) to "crops covered by revenue protection." The commenter stated FCIC has omitted crops covered by yield protection and for which revenue coverage is available (*i.e.,* the insured selects yield protection though revenue protection is available). The commenter stated it is likely FCIC intended this third category to be addressed by subsection (i); however, FCIC's wording is imprecise and confusing. The commenter recommended FCIC amend subsection (i) to state: "crops covered by yield protection" because whether or not revenue coverage is available but not selected or simply not available is immaterial once yield protection attaches to the crop.

Response: As stated in previous comments, FCIC has divided section 3 of the Basic Provisions into yield protection, revenue protection and all other plans of insurance (*e.g.,* APH and dollar amount of insurance coverage). For the purpose of section 14(e)(3), the only distinction needed is between revenue protection and all other plans of insurance and FCIC has revised the provisions accordingly.

Comment: A commenter recommended sections 14(e)(3)(i) and (ii) need to be clarified so if revenue coverage is selected, and the loss is due to price drop only, the policyholder has 45 days, not 60, after the price announcement to file a loss. However, if a loss is due to both a production and revenue loss, the claim needs to be filed within 72 hours after the end of the insurance period.

Response: The commenter has confused the filing of the notice of loss with the filing of the claim. Section 14(b) contains the deadlines for filing a notice of loss. Section 14(e) contains the deadlines for filing a claim. If FCIC were to adopt the commenter's suggestion of a 45 day deadline, the deadline to submit the claim and the notice of loss would be the same day. As proposed, the producer will have an additional 15 days after the last date the notice of loss was filed to submit a claim. No change has been made.

Comment: A commenter stated the second prong of the notice provisions in section 14(e)(3)(ii) is confusing and amenable to different interpretations. For example, the reference to "the latest day" may cause confusion with respect to determining when the insurance period ends under section 11(b).

Response: The commenter is correct that the proposed language could cause confusion. FCIC has removed the reference to latest date and instead revised the provisions to refer to the date the insurance period ends for all acreage in the unit. When there is acreage in the unit where the insurance period ended on different dates, it is the last date the insurance period ends on the unit. For example, if a unit has corn acreage that was put to another use on July 15 and corn acreage where harvest was completed on September 30, the claim must be submitted not later than 60 days after September 30. This should make it clear that the 60 days starts running on the actual date the insurance period ended in the unit, not just the calendar date stated in the Crop Provisions. For revenue protection, FCIC has revised the provisions to make it clear that the 60 days starts to run on the later of the last date the harvest price is released for the crops in the unit or the date the insurance period ends for all acreage in the unit.

Comment: A commenter recommended changing the wording in section 14(e)(3)(ii) as follows: With regard to declaring the amount of the producer's loss by the later of 60 days after the latest date the harvest price is released for any crop or 60 days after the end of the insurance period for any unit of the crop in the county.

Response: Claims must be submitted by unit. Therefore, it is appropriate to establish the deadlines for the filing of the claim by unit. Further, the suggested change does not address the situation for units where there may be acreage with different ends of the insurance periods. As stated above, FCIC has revised the provision to clarify the 60 days starts to run on the date the insurance period ends for the unit. No change has been made in response to this comment.

Comment: A commenter recommended adding the following phrase before the parenthetical in section 14(e)(4)(i)(B)(*1*): "and that second crop acreage must have produced above the per acre guarantee in order for the insured to receive the rest of the indemnity on the first crop acreage."

Response: It is not appropriate to add the recommended language. There could be cases where there was a production loss but ultimately not a payable indemnity on the unit or cases where the second crop acreage did not contribute to any indemnity due for the unit (*e.g.,* a producer with revenue protection suffered a small production loss on the second crop acreage; however, after the revenue price was announced it was determined there was no payable indemnity for the unit or the second crop acreage did not contribute to any payable indemnity on the unit). Further, section 14(e)(4) involves the records that must be maintained to be eligible for an indemnity. Section 15 specifies how payments will be made on first and second crop acreage. Therefore, it could potentially be confusing to add the language in section 14. Additionally, provisions previously contained in this section were omitted in the proposed rule. These provisions allowed production to be prorated when separate records were not maintained for acreage subject to an indemnity reduction. Removal of these provisions was not addressed in the background section of the preamble of the proposed rule. Therefore, the public was not notified of the change and did not have an adequate opportunity to comment. These provisions have been added in section 14(e)(4)(i)(B)(*1*) of this final rule. In addition to the public not having an opportunity to comment, FCIC has determined that removing this provision would have a detrimental effect on producers and the crop insurance program. Retaining the provisions is appropriate and does not put the program in any risk of adverse selection or moral hazard.

Comment: A commenter recommended making the same deadline date for submitting claims in section 14(e)(3), regardless of whether the producer elected revenue or yield protection. The commenter recommended requiring the producer to submit a claim for indemnity not later than 60 days after the calendar date

contained in the Crop Provisions for the end of insurance period.

Response: For producers who elect revenue protection, the revenue portion of a loss cannot be determined until after the harvest price is announced. As stated above, FCIC has revised the provisions to make it clear that the actual date the insurance period ends for all acreage in the unit starts the 60 day deadline. It is possible that the end of the insurance period may be more than 60 days before the harvest price is announced. For example, the crop fails and the acreage is put to another use on July 1. The harvest price will be announced more than 60 days later. Therefore, producers must be given 60 days after the date the harvest price is announced to submit their claim. No change has been made.

Comment: A commenter stated proposed section 14(e)(4)(iii)(C) contains the language "* * * directly caused by * * *" one or more of the insured causes of loss. As they noted above in section 12, the "directly caused by" language no longer appears in the proposed language.

Response: Since FCIC removed the requirement in section 12 that the loss be "directly" caused by an insured cause of loss, FCIC has also removed the reference to "directly" in section 14(e)(4)(iii)(C).

Comment: A commenter stated sections 14(e)(4) and (5) would read better, and be clearer, if the references to the insured's "burden" were revised. They suggest changing (e)(4) from "* * * the burden is on you * * *" to "it is your responsibility" or "you must" [since this is under "Your Duties"], and changing (e)(5) from "meet any burden on you" to "meet any obligation" established in the relevant provision. The commenter stated these changes would eliminate any argument over the meaning of "burden." They believe the suggested language is linguistically superior. The commenter added they agree with the changes proposed in section 14 and, in support of changes proposed to be made, they note that they conform to existing case law involving the Federal Crop Insurance program. For instance, the new language in subsection (e)(5) is directly supported by controlling law. *See, e.g., FCIC* v. *Merrill,* 332 U.S. 380, 385 (1947), *and Scaife* v. *FCIC,* 167 F.2d 152, 154 (8th Cir. 1948).

Response: FCIC agrees the proposed provisions should be revised. FCIC has revised the provisions to specify producers must comply with the requirements contained in section 14(e)(4). FCIC has also revised section 14(e)(5) to specify failure of the producer to meet any of his or her duties specified in section 14(e)(4) will result in denial of the claim and premium is still owed except for prevented planting claims. This change is to be consistent with other changes made that no longer requires producers to pay premium when prevented planting coverage is denied.

Section 15 Production Included in Determining an Indemnity and Payment Reductions

Comment: A commenter suggested changing the language in section 15(b) to provide that either harvested or appraised production, as determined by the insurance provider, will be used to determine the production to be counted. This will strengthen the insurance providers' ability to use appraisals in cases where harvested production records that are reported are inconsistent with pre-harvest appraisals.

Response: There are issues with respect to possible differences between appraised and harvested production. However, allowing the insurance provider to elect which to use could result in disparate treatment. Rather than the recommended change, FCIC has inserted the word "verifiable" before the word "records." This requires the records to be verifiable through independent sources. If the records cannot be verified, they should not be accepted. However, if the records are verifiable records, they are presumed to be more accurate than the appraisal. Further, if there is a significant difference, the producer will have to show that the loss of production was due to an insurable cause of loss.

Comment: A commenter stated the references in unrevised section 15(b)(3)(i) & (ii) to "* * * the end of the insurance period * * *" conflict with the procedures in the Loss Adjustment Manual, which refer to "* * * the calendar date for the end of the insurance period * * *" Either the policy or the procedures need to be revised.

Response: The policy provisions are correct and the procedures have been revised to be consistent with the policy. Once the insurance period ends, regardless of the event that ends the insurance period, appraised production should be used to adjust the loss unless the producer can prove there was no subsequent damage to the crop.

Section 17 Prevented Planting

Comment: Several comments were received in support of the changes proposed in section 17 that clarify and reduce abuse of the prevented planting provisions, and provide additional flexibility for producers. A commenter stated they finally could commend FCIC for proposing changes that improve the prevented planting provisions through clarification of terms and conditions as well as some additional flexibility for producers. A few commenters supported the changes that provide clarification and reduce abuse of the prevented planting provisions. A commenter stated they view the incorporation of several modifications and clarifications, which came directly from the prevented planting workgroup, as positive. Another commenter stated while prevented planting is consistently one of the most vexing issues faced in the Federal crop insurance program by both insurance providers and producers alike, they believe the proposed revisions clarify a number of prevented planting issues. A commenter stated they support measures in the proposed rule to reduce abuse of the prevented planting provisions.

Response: FCIC appreciates the support for its efforts to clarify provisions, reduce program vulnerability, and also provide additional flexibility for producers.

Comment: A commenter thought the prevented planting and late planting programs were working fine.

Response: While FCIC agrees many of the current prevented planting provisions are sufficient, it also recognizes certain provisions needed revision based on questions and issues that have arisen, as well as comments FCIC received recommending revisions to the prevented planting provisions. FCIC believes the proposed changes improve readability of the provisions, provide clarification and additional flexibility for producers, and also help prevent abuse of the prevented planting provisions.

Comment: A commenter stated the revised provisions in section 17 are burdensome and confusing. The commenter feels because such detail has been incorporated into this section, and subsections (d)–(f) in particular, the procedures cannot be understood. The commenter doubts any producer could be expected to understand the concepts set forth in section 17 and the conditions precedent to the receipt of a prevented planting payment.

Response: There have been issues in the past with prevented planting raised by producers and insurance providers. To adequately address these issues, additional detail is necessary. These details should allow greater understanding and more consistent application of the provisions. Without further details regarding the perceived problems with the provisions cited,

FCIC is unable to make any revisions in response to this comment.

Comment: A commenter stated the revision proposed in section 17(a)(1) to specify a prevented planting payment may be made only in connection with insurable acreage seems to be simply a codification of common sense. There have been questions raised in the past, primarily in legal actions, with respect to whether the provisions concerning insurable acreage applied to prevented planting. The commenter stated the proposed revision should be retained in the final rule.

Response: FCIC has retained the proposed revision in the final rule.

Comment: Several commenters opposed the changes proposed in section 17(b)(4) that specify prevented planting coverage cannot be increased if any cause of loss has occurred prior to the time the producer requests the increased prevented planting coverage level. A commenter stated that currently, prevented planting coverage cannot be increased if there has been a cause of loss that could or will prevent planting. FCIC states the change is needed because it may be impossible to make such determinations at the time the producer is seeking to increase coverage because the insurance provider cannot predict whether the cause of loss really would prevent planting when other intervening events could change the outcome. While the commenter greatly appreciates FCIC working to resolve this legitimate concern, they fear the change does not alleviate the problem because it still may not be known by the insurance provider that a cause of loss has occurred at the time the producer seeks to increase prevented planting coverage. In fact, it may not be known until such time that the producer seeks a prevented planting payment after having already increased coverage under the new rule, at which time the increased coverage has to be denied after the fact. The commenter believes a more straightforward and workable solution is to disallow increased prevented planting coverage when it is known a peril will prevent planting. The commenter urged FCIC to include this modification in the final rule. Another commenter believed the proposed provision is overly broad because the insured could not increase prevented planting coverage if any cause of loss, however slight (such as an isolated incidence of hail), occurs during the prevented planting insurance period. The commenter suggested one solution to this difficulty is to eliminate the increased levels of prevented planting coverage. The commenter stated that likewise, the provisions contained in the Crop Provisions that allow policyholders with additional coverage to increase the prevented planting coverage above the prevented planting default level should be eliminated. The commenter stated producers already have the ability to increase or decrease coverage through their base policy level of protection (*e.g.,* CAT or level of additional coverage). A commenter asked FCIC to consider removing the additional levels of prevented planting coverage because it would eliminate the concern of producers increasing levels when losses have occurred and remove the burden for insurance providers to administer the requests for increased levels. A commenter recommended eliminating section 17(b) entirely because the commenter believes the base coverage level for prevented planting provides adequate levels of prevented planting coverage. The commenter stated these additional levels of prevented planting coverage are not needed and are difficult to administer. A commenter stated it will still be impossible for the insurance provider to know whether the cause of loss has occurred during the prevented planting insurance period. The commenter proposed the buy-up levels be eliminated or increase prevented planting coverage by 5 percent for each crop.

Response: There is an issue with determining whether a cause of loss that occurs before the coverage is increased will cause the acreage to be prevented from being planted. At the time the coverage is increased, it may be impossible to know whether the acreage will actually be prevented from being planted several months later since other intervening events could change the outcome. While FCIC agrees an isolated hail storm may result in an insurable cause of loss to a planted crop, it is not likely an isolated hail storm would be an event that prevents producers from planting. Therefore, FCIC has revised the proposed provisions to clarify an increase in the prevented planting coverage level will not be allowed if a cause of loss that "could" prevent planting has occurred prior to the time the producer requests the increased prevented planting coverage level, regardless of whether it is known if the cause of loss "will" actually prevent planting. This will only require examination of the type of cause of loss and if it is a type that could prevent planting, then, producers cannot increase their coverage. It would be too difficult to administer if insurance providers are required to look at the timing of occurrences or whether the cause of loss caused or contributed to the prevented planting. FCIC cannot incorporate the commenters' recommendations that the additional levels of prevented planting coverage be removed in the final rule since the recommended change was not proposed, the recommended change is substantive in nature, and the public was not provided an opportunity to comment on the recommended change.

Comment: A commenter supported the provisions proposed in section 17(d) that allow prevented planting coverage for some producers who do not plant due to drought conditions, even though other producers in the area do plant. The commenter hopes the paper work for those who choose to take prevented planting in that situation will decrease from what was required this year. The commenter added because of the paper work requirement, some producers said they should have just gone ahead and planted even though doing so was destined to result in crop failure (in this case, planting would result in higher costs to the government than prevented planting).

Response: The proposed provisions specify producers who do not plant in drought conditions when other producers plant in anticipation of receiving adequate precipitation, may be eligible for prevented planting coverage. However, the fact that other producers may be planting does not change the standards applicable to be eligible for prevented planting. The current requirement is that producers must provide documentation supporting that on the final planting date (or within the late planting period if the insured elects to try to plant within the late planting period) for non-irrigated acreage, there was insufficient soil moisture for germination of seed or progress toward crop maturity due to a prolonged period of dry weather, or for irrigated acreage, there was not a reasonable expectation of having adequate water to carry out an irrigated practice. Further, even if producers elect to plant the crop in drought conditions it does not mean that they will receive an indemnity. The issue is whether such planting meets the requirements of section 8(b)(1). No change has been made.

Comment: A commenter recommended, with respect to non-irrigated practices, that FCIC amend section 17(d) to require that, prior to the final planting date, an insured obtain the opinion of an "agricultural expert" recommending that, because of drought, the insured cannot or should not plant. The commenter stated under the current policy and procedures, an insurance provider is forced to gather information

regarding moisture, seed germination and similar data well after the final planting date. This often is difficult and hinders the insurance provider's ability to adjust the prevented planting loss. Likewise, an insured's decision not to plant because of drought should be based on soil conditions during the planting or late planting period. However, insureds frequently justify their decision not to plant based on the failure of crops planted, as opposed to the specific insured's individual situation. The commenter stated FCIC must revise the policy to address the problems associated with prevented planting claims due to drought.

Response: As stated above, provisions contained in section 17(d) require documentation of the drought conditions that prevented planting. FCIC has revised the provision to make it clear that it is the producer who is required to provide the applicable documentation consistent with the requirements of section 14(e)(2), which specifies it is the producers responsibility to establish that an insured cause of loss occurred during the insurance period. If the producer cannot meet this responsibility, no prevented planting payment should be made.

Comment: A commenter stated the addition of "* * * failure or breakdown of irrigation equipment or facilities * * *" in proposed section 17(d) could allow the insured to delay repairs when such an event occurred well in advance of the final planting date. The commenter stated this may be addressed in section 12(d)(1), which requires "* * * all reasonable efforts to restore the equipment or facilities to proper working order within a reasonable amount of time * * *" The commenter stated there is a general reference to 12(d) in section 17(d)(1)(ii). However, the commenter does not believe this is entirely clear in section 17(d).

Response: The same causes of loss apply to both prevented planting and planted acreage. Therefore, to be eligible for a prevented planting payment due to failure of the irrigation equipment or facilities, the producer must make all reasonable efforts to restore the equipment or facilities within a reasonable amount of time in accordance with section 12(d). To make this clearer, FCIC has revised the provisions to separate failure of the irrigation equipment or facilities from the other causes and make section 12(d) expressly applicable to failure of the irrigation equipment or facilities. FCIC has also clarified the provisions in section 17(d). This should avoid any confusion.

Comment: A commenter stated they do not feel failure or breakdown of irrigation equipment or facilities should be added as a reason for qualifying for a prevented planting payment in section 17(d)(1).

Response: Failure or breakdown of the irrigation equipment or facilities is only a covered cause of loss if such failure or breakdown was caused by an insured cause of loss (for example, a tornado destroyed a producer's irrigation equipment). Further, FCIC is requiring that all reasonable efforts be made to restore the equipment or facilities. Therefore, program integrity should not be adversely affected by providing coverage for the results of a natural disaster. No change has been made as a result of this comment.

Comment: A commenter stated the requirement in the last sentence of proposed section 17(d)(2) ["* * * if it is possible for you to plant on or prior to the final planting date * * *"] needs to apply to producers who are prevented from planting during the late planting period as well.

Response: Producers are not required to plant during the late planting period. Therefore, producers cannot be denied a prevented planting payment for failure to plant during the late planting period. No change has been made.

Comment: A commenter stated their interpretation of prevented planting is that if a producer elects not to plant due to excessive moisture and others in the area plant, the producer will not be eligible for a prevented planting payment. The commenter stated some areas have very diverse soil types within the same field, there are upland acres and bottomland acres on the same farm serial number, some fields and areas do not drain as well as others, rainfall across an area or county can vary significantly, and conditions may vary so much across a county, it could be valid for a producer to not plant in one end of a county while another producer in the other end of the county plants. The commenter gave an example of a producer planting corn for silage very late since the producer needed the fodder for the cattle and another producer choosing not to plant corn for grain during the same time-frame since the producer missed the optimum window needed to produce corn for grain. The commenter suggested the same approach be taken for excessive precipitation as FCIC is proposing for drought. Producers should not be penalized because they elect not to take the risk. The commenter questioned what the definitions of area and similar conditions are.

Response: The definition of "prevented planting" requires the comparison of acreage with similar characteristics. Therefore, if two producers have similar acreage and one is able to plant and the other does not, there must be a determination of whether the requirements in section 8(b)(1) have been met for the acreage that was planted. If it is determined that the conditions under which the crop is planted are not generally recognized in the area, then the crop is not insurable and the producer that did not plant the crop would be eligible for a prevented planting payment. Further, it is possible that there may be situations where the planted crop is insurable under section 8(b)(1) and the producer that elects not to plant the crop is still eligible for prevented planting. For example, in some cases there may be a prolonged drought and some producers are prevented from planting, yet agricultural experts may recognize it is appropriate to plant in dry conditions because if conditions were to change and normal rainfall is received, it will still allow the producer to make a crop. Under such an uncertain situation, the policy would not require the producer to plant and the producer may be eligible for a prevented planting payment. The producer must plant the insured crop, whenever it is possible to plant the crop, even if it is later than the date the optimum yield could be expected as long as it is before the final planting date. Drought and excessive precipitation cannot be treated the same because in a drought situation the seed will not germinate until adequate moisture is received and it is not uncommon for weeks to go by with no precipitation. In an excessive moisture situation there is a better chance of producing the insured crop. Section 1 defines "area" as "Land surrounding the insured acreage with geographic characteristics, topography, soil types and climatic conditions similar to the insured acreage." This definition should also be sufficient to explain "similar characteristics" of the acreage referred to in the definition of "prevented planting." No change has been made.

Comment: A commenter stated the phrases "insured acres reported" and "acreage for which payment is made based on another crop" in section 17(e)(1)(i)(A) conflict with one another.

Response: The commenter is correct. In addition, as indicated more fully below, FCIC has revised section 17(h) so that if a crop that was prevented from being planted no longer has eligible prevented planting acreage but the producer has eligible prevented planting acreage for another higher dollar crop,

the remaining eligible acreage can be used for prevented planting but the payment will be based on the crop that was prevented from being planted. Therefore, there is no longer a need for the phrase "acreage for which payment is made based on another crop."

Comment: Several comments were received regarding the provisions proposed in section 17(e)(1)(i)(C) that allow irrigated acres to be increased for prevented planting purposes if irrigation equipment is added to the farm or if irrigated acreage is added to a farming operation. A few commenters believe this provision should enhance the current prevented planting provisions. A commenter stated they agree with the proposed change. They believe it follows a common sense approach and it should be retained. Another commenter stated the language in section 17(e)(1)(i)(C) which states, "* * * or if you acquired additional land for the current crop year * * *" should be changed to " * * * or if you acquire * * *" to match the tense used in the first phrase "If you add * * *" [and in (i)(B)].

Response: FCIC has retained the change in the final rule. Additionally, FCIC has changed the word "acquired" to "acquire" in section 17(e)(1)(i)(C) as suggested.

Comment: A few commenters agreed with the change proposed in section 17(e)(1)(ii)(A)(*2*), which allows a producer who is farming for the first time in a county and who purchases land after the sales closing date to notify the insurance provider within ten days of the purchase to be eligible for prevented planting. The commenters stated this should enhance the current prevented planting provisions. Another commenter supported the proposed allowance of submissions of intended acreage reports on new ground after the sales closing date and urged FCIC to retain this provision in the final rule.

Response: FCIC has retained the proposed provisions in the final rule.

Comment: A commenter questioned if the references to "intended acreage report" in section 17(e)(1)(ii)(A)(*1*)–(*2*) & (B)–(D) should be revised to "intended prevented planting acreage report" to limit this to that situation or whether FCIC should add a definition of "intended acreage report" to clarify when and why it would be used.

Response: FCIC has added a definition of "intended acreage report" to avoid any possible confusion between the intended acreage report, which is intended to report acreage by crop the producer intends to plant solely for the purpose of determining prevented planting acreage eligibility, and the acreage report, which is the report of actual planted and prevented planted acreage by crop in accordance with section 6.

Comment: A commenter suggested that in section 17(f)(3), the word "is" at the beginning of the third phrase ["* * * or is required * * * "] should not be added, since it is not included in the first two phrases.

Response: The proposed change will not be retained in the final rule.

Comment: A commenter did not support the change proposed in section 17(f)(4) because they believe it will allow adverse selection by permitting the first producer to claim prevented planting on a fall crop and the second producer to claim prevented planting on a spring crop, when neither have to produce records regarding prevented planting payments. The commenter stated this circumvents the double cropping requirements. The commenter suggested that the following example from FCIC's Claims Advisory be included anywhere there is reference to double cropping history. After posting FAD–045 regarding double cropping history, questions remain as to what records of acreage and production the Federal crop insurance policy requires to prove a double cropping history. Either: (1) The producer must provide records of acreage and production that show that the producer successfully double cropped both crops; or (2) the producer must provide acreage and production records that show the specific acreage was successfully double cropped with both crops. In either case, records must be only from the acreage that was double cropped and cannot be combined with records from acreage that was not double cropped. For example, if a producer has never double cropped in the county but is renting acreage on which another producer double cropped wheat and soybeans on seven out of twenty fields in two of the last four years, to prove a history of double cropping wheat and soybeans the records of acreage and production for wheat and for soybeans must be provided from the seven fields and these are the only fields that qualify for double cropping. If a producer has their own records of double cropping, they must still provide separate records from the seven fields that were double cropped; however, the producer can use the number of acres eligible for the double cropping anywhere in their farming operation.

Response: The provisions in section 17(f)(4) do not allow producers to circumvent the double cropping requirements. Provisions proposed in section 17(f)(4)(i), (ii), and (iii) set forth the double cropping requirements that must be met before prevented planting payments can be made for both a fall crop and a spring crop on the same acreage in the same crop year. A question was previously raised regarding what acreage the double cropping exemption would apply to when the producer submits his or her own double cropping history records, versus when the producer is farming newly obtained ground and submits the double cropping history records of a previous producer for the newly added ground. FCIC addressed this issue in both Final Agency Determination (FAD) 045 and in an FCIC Claims Advisory. These clarifications regarding records and the applicability of the double cropping history should also be reflected in section 17(f)(4) and FCIC has revised the double cropping history provisions contained in sections 15(i) and 17(f)(4).

Comment: A commenter stated that section 17(f)(4)(ii) is very confusing and hard to follow. The commenter stated the parenthetical phrase ["* * * (the crop that was prevented from being planted following another crop that was planted if qualifying under section 17(f)(5)(i)(A))"] is included twice and most, or all, of it does not seem to be necessary since "second crop" is defined in section 1. The commenter noted the parenthetical phrases end with a reference to "* * * if qualifying under section 17(f)(5)(i)(A)" and section 17(f)(5)(i)(A) refers back to section 17(f)(4)(ii) to determine if the insured meets "* * * the double cropping requirements in section 17(f)(4)." Therefore, the commenter believes the reference in section 17(f)(4) appears to be unnecessary since it ultimately rebounds back onto itself. The commenter added eliminating the parenthetical phrases would at least make the sentence a little easier to read and understand: "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 second crop that was prevented from being planted was planted, or show the applicable acreage was double cropped in at least two of the last four crop years in which the second crop that was prevented from being planted was grown on it; and." The commenter stated the provision still includes some repetition that could be minimized, and believes some rewording could eliminate the potential confusion of the phrase "* * * second crop that was prevented from being planted was planted * * *"

Response: FCIC has revised section 17(f)(4)(ii) for clarity. As revised, the provisions make it clear that if a prevented planting payment has already been paid on the acreage, the producer is not eligible for a prevented planting payment on the insured crop unless, with respect to the insured crop: (1) The producer can provide acceptable records showing that the producer has a double cropping history with the insured crop that was prevented from planting for at least two of the previous four crop years; or (2) the acreage has a double cropping history with the insured crop that was prevented from planting for at least two of the previous four crop years. FCIC has also added provisions specifying that the insured's double cropping history can apply to any acreage in the county but the history for another producer is only applicable to the acreage that was double cropped. This is consistent with FAD–045 and clarifies the acreage to which the records must apply. FCIC has made a conforming change in section 15(i) in order to ensure that the provisions are consistent.

Comment: A commenter stated the provisions proposed in section 17(f)(6) specify cover crops or volunteer crops that are in place longer than twelve months prior to the final planting date for the insured crop will be considered pasture or forage and will result in no prevented planting payment. The commenter believes this revision to the prevented planting provisions should help remedy the situation where a producer claims to be prevented from planting on the same piece of ground a number of consecutive years and it is clear he or she has no real intention of planting.

Response: FCIC has retained the proposed revision in the final rule.

Comment: A commenter suggested the provisions proposed in sections17(f)(6), (i) & (ii) be revised by moving "Cover or volunteer plants that are seeded, transplanted, or that volunteer" to the end of (6), with a colon at the end, instead of repeating it in both (i) & (ii), which would then begin: "(i) More than 12 months * * *" and "(ii) Less than 12 months * * *", making the difference easier to identify. The commenter added as rewritten, the phrase that cover/volunteer plants will or will not "* * * be considered pasture or other forage crop * * *" does not work. Therefore, the commenter suggested revising either to "* * * pasture or forage crop * * *" or "* * * pasture or another forage crop * * *"

Response: FCIC has revised the provisions in section 17(f)(6) accordingly.

Comment: A commenter recommended revising section 17(f)(9)(i) by deleting the phrase "* * * to plant and produce a crop with the expectation of at least producing the yield used to determine your production guarantee or amount of insurance" since this is a duplicate of the same phrase in (9). The commenter added that since this would leave only "Inputs include, but are not limited to, sufficient equipment and manpower necessary", this could perhaps be consolidated into (9), something like "* * * proof that you had the inputs (*i.e.,* sufficient equipment and manpower) available * * *"

Response: FCIC has revised the provisions in section 17(f)(9) accordingly.

Comment: A commenter stated the added language in sections 17(f)(9)(ii)(A) & (B) referring to "* * * a substantial change in the availability of inputs * * *" in (A) and "* * * insufficient inputs * * *" in (B) could lead to questions of what is considered substantial or insufficient.

Response: The commenter is correct that the word "substantial" can be removed thereby eliminating questions regarding its meaning. Section 17(f)(9)(ii) has been revised to clarify the provision is referring to changes in inputs that could impact the ability to plant the insured crop. However, the word "insufficient" cannot be removed because the intent of the provision is to deny prevented planting coverage when the producer cannot show that he or she had the ability to actually plant the crop but for the insured cause of loss. It is possible that a producer can have a quantity of an input, such as 1,000 pounds of seed, but it would take considerably more inputs to plant all the acreage using good farming practices. If there are not adequate resources to produce the crop, the acreage cannot be considered to have been prevented from planting. FCIC has clarified that when determining the sufficiency of inputs, the insurance provider must consider all the crop acreage to avoid paying prevented planting claims when the producer uses all available inputs on planted acreage and then claims prevented planting on the remaining crop acreage.

Comment: Several comments were received regarding the provisions proposed in section 17(h) regarding prevented planting payments that are made based on another crop. A commenter stated while there may be no perfect solutions to the problems encountered when a crop's eligible prevented planting database acres are exhausted, the commenter believes the proposal in section 17(h) is a vast improvement over the current provisions. Another commenter stated allowing eligible acres for another crop to be used to determine overall acreage on which prevented planting payments will be made relative to the actual crop prevented from being planted is a positive change that reflects the actual loss on the farm. The commenter observed that important safeguards are put in place in order to prevent any abuse and urged FCIC to retain the proposed change in the final rule. A few other commenters also supported the provisions proposed in section 17(h).

Response: FCIC has retained provisions that prevent a prevented planting payment based on a value higher than the crop prevented from being planted.

Comment: A commenter stated they do not fully understand the need for the calculation in section 17(h)(1)(i)(A)(*1*), which simply gets one back to the amount of the crop for which the prevented planting was reported.

Response: The factor used in proposed section 17(h)(1)(i)(A)(*1*) added an unnecessary complication. FCIC has removed the factor and revised the provision to specify that when the insured crop that is prevented from being planted has insufficient eligible prevented planting acreage and the crop with remaining eligible prevented planting acreage has a value that is higher than the insured crop, the value of the insured crop will be used to determine the prevented planting payment and the producer would report all the prevented planting acreage as the insured crop for the purpose of determining future prevented planting eligible acreage.

Comment: A commenter stated the price terminology is the only difference in the calculations in section 17(i)(1)(ii)(A) & (B) when revenue protection is, or is not, available. Therefore, the commenter proposes consolidating this into, "(ii) The amount determined by multiplying the production guarantee (per acre) for timely planted acreage of the insured crop (or type, if applicable) by your price election or projected price (whichever is applicable);"

Response: FCIC has revised the provisions accordingly.

Section 18 Written Agreements

Comment: A commenter stated they agree continuous written agreements should continue to be in effect.

Response: FCIC has retained the provisions in the final rule that allow continuous written agreements.

Comment: A commenter encouraged FCIC to leave any revisions to Written Agreements in the Written Agreement Handbook instead of within the policy.

Response: The policy, since it is published as a regulation, carries the force of law, which is applicable to all program participants. The Written Agreement Handbook is FCIC issued procedure, which does not provide provisions of insurance. It simply provides instructions and guidance to address provisions in the policy. Accordingly, changes or revisions to the policy cannot be accomplished by modifying the Written Agreement Handbook alone. No changes have been made in response to this comment.

Comment: A commenter stated it is unclear whether the parenthetical phrase "* * * (except for a written agreement in effect for more than one year) * * *" in section 18(c) applies only to "the guarantee," as currently written, or also to the "premium rate" or whether it is not needed since the following phrase could cover multi-year written agreements "* * * or information needed to determine the guarantee and premium rate * * *". This potential ambiguity should be resolved in the final rule. Presumably the phrase "* * * projected and harvest prices in accordance with the Commodity Exchange Price Provisions * * *" is intended to require that the written agreement will identify which board/exchange and other CEPP information will apply to the requested crop/county, but perhaps this could be revised for brevity and clarity so it does not suggest that the written agreement will specify a harvest price that would not have been released at that time. They suggested the following approach: "(c) If approved by FCIC, the written agreement will include all variable terms of the contract, including, but not limited to, crop practice, type or variety; guarantee and premium rate (or information needed to determine them); and the amount of insurance or the applicable price information (price election or the information needed to determine the projected and harvest prices), as follows: "(1) If a price election is applicable, it will not exceed the price election contained in the actuarial documents for the county (or the county used to establish the other terms of the written agreement). "(2) If revenue protection is available (or made available by the written agreement), the written agreement will include the information needed to determine the projected price and/or harvest price (if revenue protection is not selected, the harvest price is not applicable). "(3) If the applicable price election or projected price cannot be provided, or is not appropriate for the crop, the written agreement will not be approved." (Combined current and proposed language to cover both kinds of prices.) Another commenter questioned if the same type of written agreement will be available for both yield protection and revenue protection in section 18(c)(3).

Response: The placement of the parenthetical statement could lead to a misinterpretation of the intent of the language and the provisions were revised and reformatted to provide greater clarity. The same type of written agreement will be available for both yield protection and revenue protection under section 18(c)(3). The provisions of section 18(c) are intended to specify the terms that must be contained in the written agreement. These include the prices or the mechanisms to calculate them. However, section 18(c)(3) makes it clear that the written agreement will only offer revenue coverage for the crop if it is already provided in the county or State. Section 18(c)(4) clarifies if revenue coverage is not provided in the State, the written agreement will only offer yield protection. These prices will be based on existing CEPP.

Comment: A commenter stated they believe section 18(d) reads better if the lead-in is divided into two sentences: "Each written agreement will only be valid for the number of crop years specified in the written agreement. A multi-year written agreement:". To follow properly from the lead-in in (d), part of (3) should be changed to read: "* * * then insurance coverage will be in accordance * * *" to "* * * will have insurance coverage in accordance * * *" Also, FCIC should change in (4) the spelling of "cancelled" to "canceled" to be consistent with how it is spelled elsewhere, such as in (d)(3), or change the others to match this, since either spelling may be acceptable, depending on the source.

Response: As stated above, FCIC has revised the provisions to make the spelling of "canceled" consistent throughout the policy. FCIC has not proposed any changes to section 18(d). Therefore, the other recommended changes are not adopted.

Comment: A few commenters stated the provisions in section 18(e) permit an insured to submit a request for a written agreement after the sales closing date if the insured physically was unable to submit said request. However, section 2, which governs the submission of applications, does not contain a similar safe harbor. A commenter stated, for example, a tornado struck Springfield, IL just two days before the March 15, 2006, sales closing date disrupting power and telephones. For what reason is the physical inability to submit a request a legitimate excuse for a written agreement but not for an application? A commenter stated the late filed application procedure is completely deleted from the 2006 CIH apparently because there was no authorization in the policy. A commenter recognized FCIC did not propose changes to section 18(e)(1), though changes are proposed for other provisions of section 18. However, the commenter did not understand the seemingly arbitrary distinction, described above, and recommended FCIC remedy this inconsistency. A commenter stated written agreement requests may be made after the sales closing date with sufficient justification such as hospitalization.

Response: As stated above, to be eligible for insurance, applications must be submitted by the sales closing date, which are statutorily set for spring planted crops and cannot be revised. This precludes accepting late filed applications for such crops. Further, the sales closing dates are established to provide the maximum amount of time for applications to be submitted without adversely affecting program integrity. FCIC can ensure there is no adverse selection and maintain program integrity through its right of rejection of written agreements. No change has been made in response to this comment.

Comment: A few commenters stated they are not sure what is meant by the new language in proposed section 18(e)(2)(i)(A) "except acreage that qualifies under section 9(a)(1),". The commenters asked whether this means that it is uninsurable, or that it must be requested by the sales closing date. A commenter stated that section 9(a)(1) addresses acreage that is not considered "insurable acreage," with exceptions listed in 9(a)(1)(i)–(iii). The exception in section 9(a)(1)(ii) is if "The Crop Provisions or a written agreement specifically allow insurance for such acreage" that was not planted and harvested at least one of the last three years; part of this also is mentioned in section 18(e)(2)(i)(B). Since the possibility of a written agreement is allowed in section 9(a)(1)(ii), it does not seem that it should be precluded in section 18(e)(2)(i)(A). If section 18(e)(2)(i)(A) is intended to exclude some other part of section 9(a)(1), the reference needs to be more specific. If the exclusion is intended to apply to the timeframe of "On or before the acreage reporting date" in section 18(e)(2)(i), or something else, that also needs to be clarified. FCIC also should clarify that the reference to "the expiration date" is

the expiration date for the insured to accept the written agreement (as opposed to the expiration date for an annual written agreement). The commenter also recommended removal of the language "on the day the first field is appraised" as this is unreasonable to expect the insured to sign the written agreement the same day the crop was appraised. Another commenter stated as written, existing section 18(e)(2) does not follow from the lead-in in (e), which states "A request for a written agreement may be submitted: "(2) For the first year the written agreement will be in effect only:" If the information in (e)(2) is supposed to apply to those written agreement requests made "After the sales closing date but on or before the acreage reporting date * * *" in (1), it should be combined with (1). If it is supposed to apply to all first-year written agreements, it needs to be a separate subsection.

Response: The exception in proposed section 18(e)(2)(i)(A) was unclear and FCIC has removed it. The provisions have also been restructured to improve readability. The provisions requiring a written agreement to be signed by the insured by the earlier of the first date the crop was appraised to determine whether the potential production meets the requirement or the expiration date should not be removed. These appraisals are generally later in the production period and producers will have already received an offer for a written agreement contingent upon the result of the appraisal. Producers can always sign the offer before the appraisal and it will only come into effect if the appraised amount is sufficient. However, if producers are able to wait until after the appraisals are completed to sign, there is a potential vulnerability because producers may have more information regarding whether they will likely have a loss. The written agreement needs to be signed during the appraisal process and since the producer already knows the terms of the agreement, and insurance providers can set up appointments to ensure the producer is present to sign, it should not be a problem to obtain the signature at appraisal. The first date of appraisal is used because multiple appraisals may be required and this eliminated the question of what appraisal date is used. FCIC agrees the expiration date should be clarified and has revised the provisions in redesignated section 18(e)(2)(i)(A)(*2*) to specify it is the expiration date for the producer to accept the offer.

Comment: A commenter stated the added phrase "* * * or to insure a practice, type or variety where the actuarial documents in another county do not permit coverage * * *" is unclear in section 18(e)(2)(ii). The explanation in the "Background" of the proposed rule says this is to add a "* * * reference to the time a written agreement request must be submitted to insure a practice, type or variety where there are no actuarial documents for the practice, type or variety" but it is unclear whether this is referring to actuarial documents not existing in the county where coverage is desired, or not existing in any county in the entire country. If it is really intended to allow a written agreement request to insure non-irrigated rice (as an example of a practice that is not rated anywhere), perhaps it should be worded: "* * * or to insure a practice, type or variety for which there are no actuarial documents in any county." In addition, it would be interesting to know how often FCIC approves a written agreement for a completely unrated practice, type or variety, and on what basis.

Response: The proposed addition was never intended to change the current requirement that allows written agreements even though there are no actuarial documents in any county in the country that covers the requested practice, type or variety as long as the producer has adequate production history upon which the guarantee and premium rates can be established. This is consistent with section 508(a)(4)(B) of the Act. Therefore, FCIC has removed language that refers to situations in which there are no actuarial documents in any county.

Comment: A commenter stated section 18(e)(3) reads: "(e) A request for a written agreement may be submitted: "(3) On or before the sales closing date, for all requests for renewal of written agreements, except as provided in section 18(e)(1);". The commenter stated that FCIC needs to consider whether this should be set up as a separate subsection from (e), which also would separate this from the reference in (e)(4), which does not appear to involve straightforward renewal requests but does fit with the "may" in (e). It addresses the deadline for renewal requests, and the wording of (e)(3) suggests they "must" be submitted by the sales closing date (with the only exception being physical inability to do so), rather than "may."

Response: FCIC has revised section 18(e) by moving the provisions for renewal of written agreements by the sales closing date to section 18(a). This now places all the provisions regarding the sales closing date deadline in one subsection. The provisions in section 18(e) only reference written agreements that can be requested at a time other than the sales closing date.

Comment: A commenter stated in sections 18(f)(1)(i)–(vi), (2)(i)–(vi) & (3) the readability and substantive text of subsection (f) would be improved by revising the outline numbering. Currently, (1) reads "For all written agreement requests:" but (1)(i) does not apply to "* * * policies that do not require APH * * *" and (v) applies only to perennial crop policies. Therefore, we suggest: (a) eliminating the phrase in (1); (b) changing (1)(i)–(v) to (1)–(5); (c) deleting (2)(i), which would be covered by the second part of currently numbered (1)(i); (d) changing (2)(ii)–(v) to (6)(i)–(iv); and (e) combining (1)(vi), (2)(vi) & (3) into (7), or (7) & (8) if the requirements for "all other information that supports * * *" should be kept distinct from "Such other information as specified in the Special Provisions * * *".

Response: There are separate types of written agreements in section 18(f)(1) and (2), with different requirements so it is not practical to combine these. Further, while there are a few exceptions in section 18(f)(1), these exceptions are clearly stated. To combine and redraft the provisions as suggested by the commenter would not provide any additional clarification. No changes have been made in response to this comment.

Comment: A commenter stated unless every field in the country is identified with an FSA Farm Serial Number, perhaps the reference in section 18(f)(1)(iv) should include a qualifier similar to the one for legal descriptions. The commenter also referred to their comments on the proposed definition of "common land unit," as to whether these references should be added to the Basic Provisions until the details of the joint FCIC–FSA project are settled.

Response: The provision only requires the FSN, if available. In addition, as previously stated, FCIC agrees there are issues that should be resolved before the definition of "common land unit" is included in the policy provisions. Therefore, the proposed definition and the reference in section 18 will not be retained in the final rule. However, the term has been included in section 6(c) so it can be used in the future without requiring policy revisions.

Comment: A comment was received regarding section 18(i). A commenter stated the language "A written agreement will be denied unless" should be rewritten and reorganized to read: "(i) A written agreement will be approved if: "(1) FCIC approves the written agreement request; "(2) The crop meets the minimum appraisal amount

specified in section 18(e)(2)(i)(A), if applicable; and "(3) The original written agreement is signed by you and postmarked not later than the expiration date." The commenter stated they also believe this provision should include some reference to agreement or approval by the insurance provider, who is one of the parties to the policy contract.

Response: FCIC has revised the provision to require acceptance of the written agreement by the insurance provider before it is effective. FCIC has not adopted the recommendation that the provision specify when the written agreement will be approved because there may be other conditions for approval that are not stated in the list. Section 18(i) is intended to identify those requirements, which if not met, will result in denial.

Section 20 Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review

Comment: A commenter recommended FCIC amend section 20 to provide that any legal action resulting from FCIC's termination of revenue protection as per proposed section 3(k) shall be brought in accordance with 7 CFR part 400 subpart J or appeal in accordance with 7 CFR part 11.

Response: As stated above, the proposed provisions in section 3(k) have been revised and redesignated as section 3(c)(5). These provisions involve determinations made by FCIC or USDA regarding market forces and whether revenue protection should be available. Since those decisions are clearly made by FCIC, they fall within section 20(e). Therefore, there is no need to add other provisions to section 20.

Comment: A commenter stated the proposed changes are of three types in section 20: (1) Conforming changes; (2) linguistic improvements; and (3) changes driven by existing procedures regarding good farming practice determinations. The commenter stated as a general matter, changes of this sort are understandable. They stated that because section 20 was radically revised when the existing Basic Provisions were published in August 2004, there has been relatively little experience with the actual operation of the new arbitration and litigation provisions because policyholder disputes under the current provisions contained in section 20 have only recently been entering the litigative process. They believe this suggests an argument in favor of leaving the current text of section 20 basically intact, except for the limited changes made in the proposed rule and suggested herein. The commenter also stated the current provisions and the proposed provisions in section 20 are replete with cross-references, exceptions, and limitations. As such, the commenter does not believe the provisions are readily understood. The commenter is concerned with the complexity of the provisions contained in section 20, combined with a producer's potential argument that its terms are not easily comprehended, presents a State court trial judge with an opportunity to disregard their applicability and to rule that they deprive a producer of the right to a jury trial. While the commenter firmly believes that any such holding would be unwarranted, they remain concerned that this risk is present. Thus, the commenter encourages FCIC to restructure section 20 to make it flow more logically (as has been done with section 14) and to simplify the text.

Response: FCIC agrees with the commenter that the current and proposed provisions in section 20 should basically remain intact. However, FCIC is concerned that a major restructuring between proposed and final rule could lead to an inadvertent error or omission that would normally be caught in the public comment period. Further, the current structure, while it may be improved, reads as FCIC intended when the provisions were drafted. FCIC may revisit these provisions next time it revises the Basic Provisions. No change has been made.

Comment: A few commenters stated the text of section 20(a)(2) requires a written reasoned decision by an arbitrator. The commenters recognized this approach may be appropriate in significant cases, especially when judicial review is likely, but believe it adds unnecessarily to the cost of resolving smaller disputes. The commenter stated there can be occasions when it is not prudent, for reasons of precedent, to have a written reasoned decision. The commenter proposed, instead, the parties to the arbitration should determine by mutual agreement whether a written reasoned decision by the arbitrator is required. If the parties disagree on this issue, a written reasoned decision should be mandatory only if the insurance provider requests one.

Response: The provisions contained in section 20 allow arbitration as a method to resolve most disputes between producers and their insurance provider. However, other provisions in section 20(a) also require that if the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, an interpretation must be obtained from FCIC. The provisions also specify such interpretation will be binding in any arbitration. Failure to obtain any required interpretation from FCIC will result in the nullification of any arbitration award. If the arbitrator is not required to provide a written statement describing the factual findings and the determinations, there would be no way to determine if the arbitrator ruled on a policy provision or procedure without the required FCIC interpretation, or whether the arbitrator failed to apply the FCIC interpretation, which in either case would result in nullification of the arbitration award. In addition, it is possible that the arbitration award may have been the result of insurance provider, loss adjuster or agent error. Under such circumstances, the policy would not be eligible for reinsurance. Therefore, a written arbitration decision is necessary to the operation of the program. No change has been made.

Comment: A few comments were received regarding mediation. A commenter stated they understand the importance of mediation as an alternative dispute resolution mechanism. However, they believe mediation has limited utility with respect to disputes under crop insurance policies because the preamble to the Basic Provisions and the explicit terms of section 14(d) ("Our Duties") compel utilization of FCIC's established or approved loss adjustment procedures. The commenter stated the type of compromise inherent in mediation may not permit an insurance provider to reach a settlement that both resolves the dispute with the policyholder and simultaneously is sufficient to avoid criticism by the Compliance Division. The commenter stated if the final rule does not revise subsection (a), FCIC's published discussion of this comment (and any similar comments offered by insurance providers) should affirmatively state FCIC supports resolution of disputes by mediation, encourages utilization of mediation, and will respect the parties' decision to settle a dispute with the aid of a neutral third-party mediator. The commenter stated a clear statement that settlement discussions will not be second-guessed by hindsight should provide comfort to the parties. Another commenter stated since the preamble of the policy provides procedures issued or approved by FCIC will be used in administering the policy and adjusting losses, they question whether there is any room to resolve differences via mediation, as

mediation usually involves some type of compromise to achieve resolution. Therefore, they believe the mediation reference should be removed from the policy.

Response: FCIC supports resolution of disputes through the use of mediation, because mediation may be a faster, less expensive alternative than arbitration and litigation. However, while the commenter is correct that the insurance provider cannot waive or in any way modify any policy provision or procedure issued by FCIC, many of the disputes involve factual matters within the discretion of the insurance provider (for example, what the insured did or did not do, when something was done, the amount of appraised production, *etc.*). Such types of disputes may be agreed upon through mediation based on evidence available that supports the factual determination. It will be up to the parties to determine whether the dispute can be resolved through mediation. No change has been made.

Comment: A few commenters recommended language be added in section 20(f) as follows: "Any suit must be brought against us in the United States District Court for the district in which the insured acreage is located." The commenters believe this is necessary to ensure uniform application of Federal law. A commenter requested FCIC to note the text of 7 U.S.C. 1508(j)(1), which they read to support the recommended revision.

Response: Use of the word "us" in the recommended language in the reinsured version would refer to the insurance provider but 508(j)(2)(A) of the Act states if a claim for indemnity is denied by the Corporation or an insurance provider, an action on the claim may be brought against "the Corporation or Secretary" only in the United States district court for the district in which the insured farm is located. This statutory provision does not require a producer to file suit against the "insurance provider" in the United States district court. Even the revisions to section 508(j) of the Act as a result of the 2008 Farm Bill, which clarifies that producers can only sue FCIC when FCIC makes determinations under the policy or instructs the insurance provider to take certain actions under the policy, do not require producers to file suit against insurance providers in the United States District Court. Therefore, FCIC cannot preclude producers from filing claims against the insurance provider in State court. However, FCIC agrees section 20(e) of the reinsured version should be revised to be consistent with section 508(j)(2)(A) of the Act and specify any suit must be filed against FCIC in the United States district court for the district in which the insured farm is located.

Comment: A few commenters disagreed with the change proposed in section 20(j). They stated the current provision mirrors section V.F. of Appendix IV of the SRA and it should be retained. The commenters stated FCIC may accompany an insurance provider when it works a claim and provide instruction on how to pay the claim during the loss adjustment process. They believe if the insurance provider follows FCIC's instruction on how to pay the claim during the loss adjustment process, the insurance provider should not be held responsible for any litigation that may result. They pointed out in such a situation, no modifications, revisions, or corrections were made by FCIC, yet FCIC was directly involved in determining how the final payment would be made. The commenters stated if FCIC was directly involved in determining how the final payment would be made, FCIC should be responsible for any litigation that may occur as a result of its instructions and the insurance provider should not be held responsible for any litigation that may result.

Response: If FCIC participates in the actual adjustment of the claim, any suit filed by the producer should be against FCIC. Therefore, the proposed change will not be retained in the final rule.

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

Comment: A commenter stated they appreciated the relaxed misreporting standards for production, especially within the 3-year record retention period. Such a rule change will permit true continuity of actual production from year to year in recordkeeping.

Response: FCIC is not sure which provision in section 21 the commenter is referring to. Therefore, FCIC cannot respond to the comment.

Comment: Several comments were received regarding section 21(b)(3). A commenter stated the preamble of the rule specified FCIC intends the language to apply in cases where the record retention period has expired. The language should specifically state this intent if that is indeed the intent. A few commenters stated the proposed language has FCIC determining if yields are knowingly misreported and the insurance provider may replace any yield in the APH it determines is incorrect. If FCIC and an insurance provider dispute that yields were incorrect, the insurance provider would have the option of only changing yields they feel are incorrect and not the yields FCIC feels are incorrect. The commenters stated if FCIC is determining if yields are knowingly misreported, they should determine which yields are incorrect. The commenters recommended removing the three references to "we" (insurance provider) and replacing with "FCIC." The revised wording could be "If FCIC determines you or anyone assisting you knowingly misreported any information related to any yield you have certified, FCIC will require us to replace all yields in your APH FCIC determines to be incorrect with the lesser of an assigned yield or the yield FCIC determines is correct." Even with the proposed language, a commenter expressed concern about how the producer could be held accountable for years beyond the record retention period for acreage and production evidence. The commenter questioned if this would not be difficult to argue in a court of law. A commenter recommended the provision specifically state the penalties provided are not exclusive of any other penalties that may be provided for by the Basic Provisions. A commenter stated the language contradicts requirements to retain records as stated in section 21(b)(2). The commenter stated it is not clear how yields can be determined to be incorrect if records are not available and are not required to be available. A few commenters suggested changing the end of the sentence to state: "yields in your APH determined to be incorrect * * * or the yield determined to be correct." A commenter stated as proposed, this subsection has a potential inconsistency; it opens with a reference to determinations made by FCIC, but closes with references to yield(s) "we [*i.e.,* the insurance provider] determine" to be either correct or incorrect. The commenter stated their change simply makes the close of this subsection consistent with the fact that FCIC is making the determinations that would result in yield adjustments.

Response: FCIC has revised the language so that either the insurance provider or FCIC, who has evidence that the producer or anyone assisting the producer knowingly misreported any information related to any certified yield, will replace the incorrect yields. The ability to correct or replace the yields should not be restricted as to who will take the action. Section 21(b)(3) is not dependent on the record retention period. At any time FCIC or the insurance provider obtains evidence that yields have been knowingly misreported, the yields will be replaced. FCIC cannot operate the program in an actuarially sound manner and maintain

program integrity if it were to allow the use of yields that it knows are incorrect. Such yields do not only affect a single year, they affect the guarantee, premium, and any indemnity, prevented planting or replant payment for each year the incorrect yield would remain in the database. However, no action can be taken by FCIC or the insurance provider unless it has evidence that shows the yields are incorrect. This evidence can be from third parties (*e.g.,* transportation records, records from a buyer of the insured crop, or other records obtained by the insurance provider, FCIC, or any person acting for the insurance provider or USDA authorized to investigate or review any matter relating to crop insurance). This provision does not hold the producer accountable for not having production records. It holds the producer accountable because other records obtained show that the information was misreported. Because this provision involves only the consequences for knowingly misreported yield information, and there are other provisions that also involve misreported information in general, the provision should specifically state the sanctions provided are not exclusive of any other sanctions that may be provided by the policy provisions or other applicable laws. FCIC has revised the provision accordingly. FCIC has also revised the provision to specify "the yield determined to be correct."

Section 22 Other Insurance

Comment: A commenter recommended section 22(c) be removed because there is no way an insurance provider can accurately appraise a crop before a fire because they do not know when lightning will strike. The commenter believes it is sufficient to have the language in section (b) to deal with fire when there is other insurance against fire.

Response: Section 22(c) provides the explanation of how the value referred to in section 22(b) is determined. Therefore, section 22(c) cannot be removed. However, as stated more fully below, since section 35 contains a methodology for determining the value of the crop, FCIC has revised section 22(c) to cross reference section 35. This eliminates the perceived need for any pre-loss appraisal.

Section 26 Interest Limitations

Comment: A commenter recommended language be added in section 26 to address what date would be used to calculate interest in cases where the insured did not sign the claim form. The commenter recommended the following language be inserted as the second sentence of this provision: "Until you provide all of the information and documents requested or required under paragraph 14, interest will not accrue and the sixty (60) day time period is tolled."

Response: Section 26 states that interest will not be computed until after the 60th day after the claim form is signed by the producer. Therefore, if the claim form is not signed by the producer, the computation of interest does not begin. Further, since no changes to this section were proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Section 28 Transfer of Coverage and Right to Indemnity

Comment: A few comments were received regarding section 28. A commenter stated the proposed change allows a transfer of (right to) coverage if the policyholder's share in the insured crop is transferred to a third party any time after the sales closing date and after which the new entity is unable to apply for his or her own policy. This is an extension to include the time between the sales closing date and when insurance attaches, and should resolve some of the successor-in-interest problems that arise because of that current time period. The need for the Transfer of Right to an Indemnity form previously was to address the situation where insurance had already attached (not just been applied for) so the original entity was responsible for paying the premium but could not collect an indemnity because he or she no longer had an insurable share, while the new entity could not apply for coverage after the sales closing date or report the share since it was not his/hers at the time coverage attached. This proposed change will require a significant rethinking of the reason and purpose for this procedure since it "backs up" the transfer to deal with the problem as one of not being able to apply for coverage rather than one of how to deal with existing coverage that has changed hands. This is not necessarily a bad idea; however, it needs to be thought through very carefully to avoid creating unintended consequences and new problems to replace the old. For example, this proposed change could have an effect on acreage reporting and prevented planting provisions. If the transfer takes place before the crop is planted (insurance attaches) and both the original entity and the new entity have policies for the crop in the county, this would allow the new entity to choose whether to: (a) do a Transfer of Coverage to use the original entity's coverage level, price, APH, *etc.,* for that crop year; or (b) report the "added land" on his or her own policy. Under the current procedure, this is not usually an option because the original entity would have filed an acreage report already. A commenter stated "right to coverage" is used five times in section 28 and is unclear of the full meaning and needs to be defined. A commenter agrees with the provisions, which allow for transfer of coverage after the sales closing date but prior to insurance attaching. A commenter stated that, per the proposed language, a transfer of coverage may be done after the sales closing date if an insured sells or leases all or part of their farming operation and the transfer of coverage may apply prior to acres being planted. The commenter questioned what happens if acres have been planted and coverage attached. The commenter was also concerned the reference to "enter into a relationship with another person to provide a share of the insured crop" could be misinterpreted as a new entity being formed. For example, a new partnership is being formed. The commenter questioned if this would be an entity change after the sales closing date and not be applicable for that year.

Response: The commenter is correct that the proposed provisions could involve the acreage reporting and prevented planting provisions. In addition, in considering the comments, FCIC realized there are numerous administrative and coverage issues that must be addressed prior to allowing transfers when coverage has not yet attached or for prevented planting coverage. Further, as drafted, there may be unintended consequences. Therefore, FCIC has not retained the proposed provisions in the final rule.

Section 29 Assignment of Indemnity

Comment: A few commenters questioned the proposed changes to section 29, which allowed assignments only to be made to legitimate creditors of the insured person. A commenter suggested the need for a clear definition of "legitimate creditor." The commenter did not think insurance providers are capable of making that decision and recommended either clearly defining the term or not referencing it at all. Another commenter stated they are concerned about how the rules for assignment of indemnity may be changed. They believe there are situations other than a normal creditor/grower relationship where this

provision is legitimate and they urged FCIC to be careful how this provision is revised.

Response: As previously stated, FCIC has removed the phrase "any legitimate" in the definition of "assignment of indemnity." FCIC has also revised section 29 to specify the producer may assign his or her right to an indemnity for the crop year only to creditors or other persons to whom the producer has a financial debt or other pecuniary obligation.

Comment: A few comments were received regarding sections 29(a) and (b). The commenters indicated section 29(a), which states: "You may assign your right to an indemnity for the crop year only to one or more of your creditors" was confusing when read in conjunction with subsection (b), which states the insurance provider will accept only "one assignment form for each crop." Some of the commenters stated although it is evident an insured may submit only one assignment form per crop, it is difficult to determine whether that form may include multiple creditors. A commenter stated the inclusion of the term "only" was confusing. An additional commenter stated current situations dictate they have the capability of having multiple lienholders on one crop. If FCIC's intent, as explained in the discussion preceding the Basic Provisions, is to prevent assignments to relatives or persons to whom there is no debt, section 29 should so state. The commenter recommended FCIC amend section 29(a) to state: "You may assign your right to an indemnity for the crop year only to creditors or other persons to whom you have a legitimate financial debt."

Response: FCIC has determined more than one assignment form may be accepted. In this case, the multiple assignees will be treated the same as if multiple assignees are listed on one form. The provisions have been clarified that only one check will be issued in the name of the insured and all assignees. This is being done under the current provisions so this is not a change. It is up to the insured and assignees to divide the indemnity among them. The provisions have also been clarified to indicate more than one creditor may be listed on a single form. As stated above, FCIC has also revised the provisions to indicate an assignment may be made to any creditor or other person to whom the producer has a financial debt or other pecuniary obligation.

Comment: A commenter stated the provisions in section 29 no longer state the assignment "will not be effective until approved in writing by us" but now just states it "* * * must be provided to us." The commenter recommended retaining the previous language but suggested if the previous language is not retained, there needs to be some method to verify an assignment was sent and received by the insurance provider (*i.e.,* certified mail).

Response: The language was removed because it was considered redundant with the definition of "assignment of indemnity." However, as proposed, this definition fails to state the approval must be in writing. Since this is necessary in order to confirm acceptance, FCIC has revised the definition of "assignment of indemnity" to include the phrase "approved in writing."

Comment: A commenter stated they propose changing "* * * a lienholder with a lien * * *" to "* * * a lienholder * * *" in section 29(c) because "with a lien" does not add anything that is not covered by "lienholder."

Response: FCIC has revised the provision accordingly.

Comment: A few comments were received regarding section 29(f). The commenters stated the provision provides if the producer does not file a claim for indemnity within the 60-day period specified in section 14(e) the assignee may submit the claim not later than 45 days after the period for filing a claim has expired. The commenters questioned if this was the intent, and if so, why the assignee should be granted the additional 45 days, which would give an assignee more rights under the policy than the insured. A commenter questioned why the period for an assignee to file a claim has been extended from 15 days after the 60-day period after the end of the insurance period to 45 days ["after the period for filing a claim"]. The commenter stated allowing 45 days seems excessive and suggested 30 days should be sufficient.

Response: It is not a case of giving the assignee more rights than the insured. The insured is in control during the claims process and can ensure that documents are timely filed. However, with respect to an assignee, the assignee may not even know there has been a loss. Further, even if the loss is known, the assignee may not know the insured has failed to file a claim until after the period to file the claim has expired. Forty-five days may be too long because so much time will have passed since the end of the insurance period and it may make loss adjustment difficult. However, this must be balanced with a reasonable time for the assignee to obtain the necessary information to complete the claim. Therefore, FCIC has changed the number of days to 30 in section 29(e).

Section 30 Subrogation (Recovery of Loss From a Third Party)

Comment: A few commenters stated they oppose deletion of the subrogation provisions in section 30. A commenter stated it is important to convey in writing to policyholders their specific obligations to preserve the subrogation rights of insurance providers. Although State common law often recognizes some form of subrogation as an equitable right of an insurance provider, FCIC should not expect insurance providers to rely on potential deficiencies or inconsistencies in State law. Instead, there should be an unequivocal subrogation right established as a matter of Federal law in the Basic Provisions. The commenter stated FCIC's approach, as expressed in the July 14 explanatory text, is unrealistic. Although the proposed revisions exclude third-party negligence as an insured cause of loss, proposing to delete insurance providers' subrogation rights assumes arbitrators and courts will agree with a denial of a claim on that basis. If that is not the result of the dispute resolution process outlined in section 20, deleting section 30 may be viewed as a bar to recovery of losses on a subrogation claim. FCIC should recognize that possibility and not diminish insurance providers' rights to subrogation. The commenter stated the text of section 30 should be restored in its existing form. Another commenter stated the rule proposes to remove the subrogation article from the policy. While the commenter agreed with FCIC's depiction of the scope of coverage, they suggested the language not be deleted to maximize insurance providers' ability to recover potential overpayments when third party liability is established after payment. There could be situations where they have paid a claim, discovered the claim was not due to natural causes and cannot get the money back from the insured, then they should have the right to subrogate from the offending party. For example, fire is believed to be caused by lightning and the claim is paid accordingly, but later found to actually be caused by the railroad. The commenter stated after they pay the claim and their insured declares bankruptcy, they should still have the right to try to recover money from the railroad.

Response: There may be situations where the producer may have received an indemnity payment for what was thought to be an insurable cause of loss. However, it is later discovered that the cause was man-made and the producer

has a right to recover from a third party. The commenters want to have a right to recover against the third party. Subrogation generally involves the situation where a loss is payable under a policy but another party was also responsible to pay all or a portion of the loss. Under that situation, the insurance policy did cover the loss but someone else may have been more properly responsible to pay for the loss. This will never be the situation under the crop insurance policy because if the producer has a right to recover against a third party, that means the producer was never eligible to receive the indemnity under the policy. Therefore, subrogation is not an appropriate remedy. If a loss was caused by the actions of a third party, the insurance provider must collect the overpayment from the producer because the issue is coverage, not subrogation.

Section 31 Applicability of State and Local Statutes

Comment: A few commenters stated FCIC has not suggested any change with respect to section 31. The commenters recommended this section be revised to read as follows: "If the provisions of this policy conflict with or cover the same subjects or matters as the statutes of the State or locality in which this policy is issued, the policy provisions will prevail. State and local laws and regulations either in conflict with Federal statutes, this policy, and the applicable regulations, or covering the same subjects or matters as Federal statutes, this policy, and the applicable Federal regulations, do not apply to this policy, and they are preempted." The commenters stated this suggested revision would strengthen the concept that Federal law, as expressed in a policyholder's MPCI policy, determines all of the parties' contractual rights and obligations.

Response: Since no changes to this section were proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made. However, FCIC's preemptive authority is limited to that contained in section 506(l) of the Act, which states that FCIC's regulations, contracts, and agreements preempt State law to the extent that State law is inconsistent.

Section 34 Units

Comment: A few comments were received regarding proposed section 34(a)(2)(i). A commenter stated the proposed rule would reduce the producer's ability to choose the enterprise unit definition that best suits their farm. They had this ability with the selection of IP, RA or CRC plans of insurance. Another commenter recommended condensing proposed sections 34(a)(2)(i)(A) & (B) into one paragraph instead of two to read "Acreage must be planted and located in two or more separate sections, section equivalents, FSA farm serial numbers or units established by a written unit agreement."

Response: The commenter is correct that the enterprise unit qualifications under the current IP, RA, and CRC plans of insurance are different. However, since these are being combined into a single policy, it is no longer practical to have different meanings to the same term. It would only add confusion and ambiguity to the policy. Further, FCIC has chosen the least restrictive of the qualifications between RA and CRC. The enterprise unit under IP coverage was all of the acreage of the crop in the county. FCIC has revised proposed section 34(a)(2)(i) (redesignated section 34(a)(4)(i)) to condense the provisions in proposed paragraphs (A) and (B) into one paragraph.

Comment: A few comments were received regarding premium discounts for enterprise units. A few commenters stated the proposal for measuring the premium discount on enterprise units is not clear and should be clarified so producers and agents know the basis. The rule states under the current provisions, the enterprise unit discount for CRC is based on acres and for RA it is based on sections. This information is found in the Special Provisions, which are not part of the proposed regulations. The proposed rule reads "FCIC is also proposing that an enterprise unit may be available for certain crops, as designated in the actuarial documents. The revised policy provides a premium discount if the producer elects a basic or enterprise unit." A few commenters strongly supported the provisions to provide premium discounts to producers who aggregate their acreage into the larger basic and enterprise units. A commenter supports using acres to determine the discount for enterprise units. Acres relate directly to total liability, so this is the better measurement to earn a discount. An insured may show several sections on the policy, but end up with minimal total acres. Therefore, the current RA method can provide a disproportionate discount for the actual risk exposure. A commenter stated it appears further adjustments in the current premium discounts are still required to fully reflect the corresponding reduction in risk exposure. Assuming the new provisions do not result in eliminating this disparity, the new provisions are unlikely to increase the number of producers selecting larger units for their policy coverage.

Response: FCIC has elected to use acres as the basis for the enterprise unit discount because, as the commenter correctly states, it is more directly related to the liability. As more experience is gained, FCIC may use a different method to determine enterprise unit discounts in the future. As with all rating information, including all applicable discounts, the enterprise unit discount will be contained in the actuarial documents or the cost estimator. FCIC has a mandate to set premium based on expected losses and a reasonable reserve. This mandate also applies to all discounts. Therefore, FCIC will continue to review the risk exposure for basic, whole-farm and enterprise units to determine the appropriate discount for each.

Comment: A commenter stated the method for processing multiple lines of acreage for the enterprise unit has been different in the past between RA and CRC. It is not clear which method is being adopted in this new combined policy and it warrants some additional discussion prior to implementation.

Response: FCIC assumes that the commenter is asking how the guarantee, premium, liability, and claim payments are determined by the insurance provider when the acreage report has multiple lines of information within the single enterprise unit. How this information is determined has been different between plans of insurance. However, such determinations are addressed in FCIC approved procedures and have not been made a part of the policy. It is the intent of FCIC to treat the multiple lines of acreage the same as is currently done under the APH plan of insurance (*e.g.,* irrigated and nonirrigated acreage within the same unit). The procedures will reflect this intent.

Comment: A commenter recommended clarifying that units by irrigated and non-irrigated acreage cannot be used to qualify for enterprise units or enterprise unit discounts.

Response: As stated above, proposed section 34(a)(2) (redesignated section 34(a)(4)) has been amended and the qualifications for an enterprise unit now require: (1) Coverage for all of the insurable acreage of the same insured crop in the county; and (2) acreage of the insured crop planted in at least two or more sections, section equivalents, FSA farm serial numbers, or units established by a written agreement. Therefore, the practice used is

immaterial. Further, on June 15, 2009, FCIC published an interim rule involving the new premium subsidy available for enterprise and whole farm units. FCIC published the final rule on November 23, 2009. The provisions of that final rule have been incorporated into this final rule. No change has been made in response to this comment.

Comment: A few comments were received regarding the proposed provision in section 34(a)(2)(ii) to allow separate enterprise units for fall and spring types of a crop. A few commenters stated it is as if winter and spring wheat, for example, were separate crops. This seems contrary to the enterprise unit requirement in proposed section 34(a)(2)(i) that "To qualify, an enterprise unit must contain all of the insurable acreage of the same insured crop * * *." It would allow the policyholder to receive the benefit of the enterprise unit discount while still having two units for the crop/county instead of one. This subsection states " * * * you may have an enterprise unit for spring wheat and a separate enterprise unit for winter wheat" but does not indicate whether the policyholder would be allowed to have an enterprise unit on one type and basic or optional units on the other type (which would be logical if these types were truly considered separate "crops" yet this further degrades the enterprise unit concept if allowed for the same crop just because there are winter and spring types. A commenter stated the explanation given in the background section of the proposed rule is that having both winter and spring types in one enterprise unit "* * * would delay the payment of any claim until any losses could also be determined for the spring types. This would make it difficult to establish the revenue protection guarantees or premium until such information is available for the spring variety." Presumably, the same problem would exist for winter and spring wheat types in one basic unit, which is still the default unit structure under section 2 of the Small Grains Crop Provisions. Policyholders may select optional units by winter and spring type. A few commenters stated FCIC also needs to clarify whether a policyholder with two sections of wheat would qualify for two enterprise units by type if one section was planted to winter wheat and the other section to spring wheat. This meets the requirement in proposed section 34(a)(2)(i) of at least two sections for the "insured crop," but probably not the intended requirement since it would result in two enterprise units, each made up of a single section (optional unit). A few commenters stated FCIC needs to consider how this would work with the Fall-Seeded Endorsement. They do not think this would resolve the problem that exists with having to wait to settle the winter wheat claim until the spring acreage can be included.

Response: Currently RA allows for winter wheat to be in an enterprise unit and spring wheat to be in an enterprise unit, but does not allow both winter and spring wheat to be in the same enterprise unit. The provisions for other plans of insurance provided for only one enterprise unit in this case. FCIC has elected to include both winter and spring wheat types in the same enterprise unit or whole-farm unit. Although no current policy provides for including both winter and spring wheat in a whole-farm unit, doing so makes the provisions consistent between unit structures and will result in less confusion in the marketplace. In addition, including all crop types in a single unit is consistent with the whole-farm unit concept, which includes all crops produced that are eligible for a whole-farm unit. Providing separate units results in several administrative problems. For example, if a producer failed to qualify for an enterprise unit for one type, the basic unit structure is assigned for that type. However, since a basic unit consists of both winter or fall and spring types, it made it impossible to retain the enterprise unit structure for the remaining type. The provisions are more consistent when both basic units and enterprise units contain both winter or fall and spring types. Further, the election for an enterprise unit must be made by the fall sales closing date. The provisions in this final rule have been revised accordingly. As stated above, FCIC has also clarified that to qualify for an enterprise unit, there must be at least two sections, section equivalents, FSA farm serial numbers, or units established by written agreement. Further, as incorporated from the final rule published on November 23, 2009, at least two of the sections, section equivalents, FSA farm serial numbers, or units established by written agreement must each have planted acreage that constitutes at least the lesser of 20 acres or 20 percent of the insured crop acreage in the enterprise unit. This will prevent producers from planting a few acres in a separate section simply to qualify for the new premium subsidy. If there is planted acreage in more than two sections, section equivalents, FSA farm serial numbers or units established by written agreement, these can be aggregated to form at least two parcels to meet this requirement. For example, if a producer has 80 planted acres in section one, 10 planted acres in section two, and 10 planted acres in section three, the producer may aggregate sections two and three to meet this requirement.

Comment: A commenter stated that although the term "us" is defined to mean the insurance provider, the commenter recommended that, for improved clarity, FCIC amend proposed section 34(a)(3)(i)(A) to provide: "must be insured under revenue protection and with the same insurance provider."

Response: FCIC has revised the provision in redesignated section 34(a)(5) for clarity. However, since the insurance provider is referred to as "us" throughout the policy, it would not be appropriate to change the reference here and not in all other places where the term is referenced.

Comment: A few comments were received regarding whole-farm units. A few commenters stated proposed section 34(a)(3)(i)(B) requires that "A whole-farm unit must contain all of the insurable acreage planted to at least two crops eligible for revenue protection" but then proposed section 34(a)(3)(iii) states "Winter or fall types of an insured crop * * * cannot be included in a whole-farm unit." As stated above, it is not clear if the excluded winter type must be insured as a separate enterprise unit or if the policyholder may choose basic or optional units for the winter type. Presumably the winter type must be insured under revenue protection (if available) according to the wording in proposed section 34(a)(3)(i)(A), although it is not entirely clear on this since the winter type is in some respects being treated as a separate "crop." [ed.] They suggested combining (iii) with (i) so the winter type exception is included with the general requirement in (i)(B), or add a reference in (i)(B) to that exception. A few commenters stated they believe eliminating winter wheat from the whole-farm unit in proposed section 34(a)(3)(iii) is unjustified. A long wait for indemnity settlement should not impact the FCIC adversely, and the producer can make the decision whether the premium discount is worth the wait. The commenters stated they would also like to have included in the final rule, provisions for a 90 percent coverage level for those who elect the whole-farm unit. A few commenters stated reducing the ability to enroll winter wheat and barley in whole-farm units could dramatically affect a producer's option for indemnifying their crop. They urged FCIC to carefully consider how this change would impact production decisions and make changes

to the regulation to ensure that producers have the most options available to them. Another commenter opposed the exclusion of winter wheat producers from the whole-farm unit premium discount. The commenter stated producers have wheat in their crop mix to spread their yield risk. Additionally, producers currently wait several months for GRIP/GRP indemnity payments, which would be longer than the wait that would be needed until fall harvest. A commenter stated prohibiting winter wheat and winter barley from a whole-farm unit is completely counterproductive to the purpose of whole-farm units reduced risk through crop and land area diversification. Rather than viewing the different growing seasons of fall and spring planted crops as a hindrance, they should be embraced as a perfect example for a whole-farm unit diversification. Granted, FCIC may not be able to establish the guarantee or premium until the information regarding spring planted crops is available, however, fairly accurate estimates should be possible. If producers are willing to wait for the actual guarantee and premium calculations, so should FCIC. Producers applying for only spring planted crops also do not know their exact policy premium and guarantee until they report their actual planted acreage. The commenter recommended FCIC make whole-farm units as attractive as possible for producers. Producers who recognize whole-farm units as a broad, comprehensive risk management tool should be rewarded to the fullest extent possible within actuarial soundness. The commenter believed significantly higher participation in whole-farm units could result in substantial savings from reduced "spot-losses" of optional and basic units. Those savings should be reallocated to reduced premiums and higher coverage level options as incentives for whole-farm unit participation. The commenter urged FCIC to make fall seeded crops available for inclusion in whole-farm units. The commenter also urged FCIC to provide the highest financial and coverage level incentives possible to producers for whole-farm unit selection.

Response: As stated above, FCIC has elected to include both winter or fall and spring types in the same enterprise or whole-farm unit. For plans of insurance based on a producer's individual yield, the Act limits coverage to 85 percent. Therefore, FCIC does not have the discretion to raise coverage levels above that amount.

Comment: A few comments were received regarding proposed section 34(c)(1)(i). A commenter recommended FCIC delete the phrase "in accordance with FCIC approved procedures" in proposed section 34(c)(1)(i)(B). This terminology is not used in conjunction with any other method of optional unit division, and the commenter does not agree with its inclusion in proposed section 34(c)(1)(i)(B) only. A commenter opposed the changes to proposed section 34(c)(1), optional unit definition, for non-sectioned land and to replace it with an ambiguous general statement that provides for deferring the definition to FCIC procedures at a later date. From a practical sense, this removes the requirement to offer units by FSA Farm Serial number and sectional equivalent to such areas of the country. The commenter objected to giving up a known definition in the policy for an unknown one. There is also a fairness issue of specifying a definition for areas with square mile surveys and an unknown for other producers. Publishing a definition in procedures shortchanges affected producers because there is not a due process for procedural changes as there is for policy changes and producers must operate according to policy terms as they do not receive FCIC administrative procedures. The commenter also stated they were deeply concerned "sectional equivalents" were omitted from the proposed optional unit definition. With the very dramatic variation of climate and topography within a county that exists within Pennsylvania and the Northeastern states, this tool is necessary to make crop insurance a responsive risk management tool. Furthermore, "sectional equivalents" are necessary to provide eastern producers equity with the units by section in most of the rest of the U.S. If the objective is to provide such a benefit without the laborious written agreement process, the commenter recommended optional units by FSA tract numbers. This would also better facilitate workable common land units between FSA and FCIC which is a very important and necessary step to permit producers to file one common acreage report for the programs of both agencies. A few commenters stated the new language in proposed section 34(c)(1)(i)(B) about "Parcels of land that are grouped together that only have metes and bounds identifiers * * *" needs further clarification or explanation. The commenter stated it is unclear whether this is supposed to be the equivalent of the current "FCIC-approved procedures" for either the Unit Division Option (allowing policyholders in four states to aggregate contiguous parcels of land that are less than 640 acres in size to create their own optional units), or Written Unit Agreements, or both, or something different altogether. The commenter stated they would be able to provide better comments if they had a better idea of what "FCIC-approved procedures" are involved and/or will be revised or added. The distinction between the "parcels of land" in (A) & (B) is unclear. Based on the wording used, the differences are between parcels "* * * legally identified by other methods of measure * * *" and those "* * * grouped together that only have metes and bounds identifiers, in accordance with FCIC-approved procedures." This could suggest "metes and bounds identifiers" are not considered "legally identified" or that only "metes and bounds" require special procedures, but it could be difficult to know which category applies to certain "other" types of land identification. "Metes and bounds" is a lengthy description identifying the boundaries of a field (as opposed to the brief section-township-range or FSN identifiers) and, as far as the commenter knows, is no longer being created. It would be helpful to know which regions still use metes and bounds instead of other methods of land identification.

Response: The reference to FCIC procedures is needed for most optional unit situations except for optional units established by sections with readily discernable boundaries because the procedures provide instructions and guidance to address the complex and unique circumstances that occur when determining how to group other parcels of land to establish optional units. It is not possible to include all possible situations in the policy provisions. However, the commenter is correct and the reference to procedures should not have only been included in the provisions related to metes and bounds. Therefore, FCIC has added references to the procedures when referring to land legally identified by means other than sections. The provisions in section 34(c) provide the requirements regarding how optional units may be established. Under the current and proposed provisions, optional units may be offered by FSA Farm Serial Number and sectional equivalents (*e.g.,* Spanish grants) in the absence of sections. The proposed changes to subsection 34(c) do not eliminate the use of either Spanish grants or FSA Farm Serial Numbers as viable options, where available, in the absence of sections. However, FCIC agrees the language, as proposed, could lead to a misinterpretation of the intent of the revision. Accordingly, section

34(c) has been reformatted and clarified to clearly provide that section equivalents, such as Spanish grants, may be used to establish optional units, in the absence of sections, and that FSA farm serial numbers may be used when neither sections or section equivalents are available or their boundaries are not discernible. Metes and bounds are legal identifiers, and are still in use today in some parts of the country. However, FCIC has not retained provisions that specifically reference metes and bounds, instead the provisions reference parcels of land legally identified by other methods of measure.

Comment: A few comments were received regarding proposed section 34(c)(1)(ii)(B). The commenters stated, as worded, this means if "section equivalents under proposed section 34(c)(1)(i)" ARE "available," optional units by FSN are not allowed even if the policyholder did not choose to establish section equivalents. The commenters questioned whether that is the intent. If it is, the next question is whether the policyholder would be restricted to basic units, or whether he/she could still have optional units by FSN because the three situations listed are linked with the word "or," so as long as any one of these is the case, optional units can be established by FSN: "(A) The area has not been surveyed using sections; "(B) Section equivalents under section 34(c)(1)(i) are not available; or "(C) In areas where boundaries are not readily discernible."

Response: If sections are available, they must be used to establish optional units. It is only if sections are not available that section equivalents must be used to establish optional units. It is only if sections and section equivalents are not available that farm serial numbers may be used to establish optional units. The only exception to this priority is if the boundaries of the sections or section equivalents, as applicable, are not readily discernible or the availability of units by section or section equivalents, as applicable, is limited by the Crop Provisions or Special Provisions. The provisions have been revised to make this clearer.

Comment: A few comments were received regarding section 34(f). A commenter recommended FCIC add a third sentence to section 34(f) that states: "Prevented planting acreage will not apply to the calculation of any unit discount." Another commenter questioned how to treat the scenario when two optional units have one unit being planted and the other one prevented planting in section 34(b). Would the planted unit receive a basic unit discount based on the proposed language? The commenter stated the current procedure would not allow a basic unit discount on the planted or prevented planting unit. The commenter would not want the basic unit discount to apply in this situation.

Response: Although the proposed rule provided that unit discounts would not apply to prevented planting acreage, FCIC has determined there is no clear rational basis for there to be a difference in the unit discount provided for prevented planting acreage and planted acreage. Further, this conflicted with other provisions in the Basic Provisions that state planted and prevented planted acreage receive the same premium rate. Therefore, the proposed provision and any reference to section 34(f) are not retained in the final rule. However, as stated above, the eligibility for whole-farm and enterprise units is based on planted acreage, and prevented planted acreage will not be considered when establishing the unit structure.

Comment: A commenter stated the proposed rule does not offer an increased incentive for producers to elect basic or enterprise unit structures. Optional unit structures contribute too much confusion for both the agent and producer. Optional units are not only a source for potential errors/oversight by the producer and agent but can also be a source of fraud by the producer with the commingling of grain. The final rule of the Common Crop Insurance Regulations, Basic Provisions; and Various Crop Provisions would be a great opportunity to introduce larger surcharges for the election of optional units or larger rate decreases for the election of basic or enterprise units.

Response: FCIC must set rates based on the expected losses. To the extent that optional units have higher losses, such losses are considered in the premium rates. FCIC does not have the authority to increase premium rates or add a surcharge that was not related to the expected losses. However, subsequent to the publication of the proposed rule, the 2008 Farm Bill provided additional premium subsidy amounts as an incentive for producers to elect enterprise or whole-farm units. No change has been made in response to this comment.

Section 35 Multiple Benefits

Comment: A few comments were received regarding section 35(b). A commenter stated the revised section appears to eliminate collecting crop insurance and some, if not all, ad hoc disaster aid benefits. If producers are prevented or greatly limited from receiving ad hoc disaster payments, they will reduce their purchase of crop insurance. This would seem to be an undesired effect. If a producer pays a premium for a crop insurance benefit, the producer should receive the same ad hoc disaster payment as the producer who chose not to carry crop insurance and the producer should not have the crop insurance indemnity reduced. Congress decides whether to provide the extra benefits. If there is a limitation on benefits, it should be included in the ad hoc disaster aid and not the crop insurance indemnity. The commenter does not think there should be more limiting language in the new policy that will keep producers from collecting crop insurance indemnity payments. If this provision does not apply to GRIP/GRP, it should not be applied to the proposed rule. A commenter stated they are aware in some years Congress approves ad hoc disaster assistance that can provide benefits to producers that exceed the amount of actual loss. Of course this is not good policy, but even worse policy is to create an enormous disincentive for the crop insurance program by reducing a producer's crop insurance indemnity because of a disaster payment. The commenter stated this section provides the basis for determining "actual loss" which is the new benchmark for measuring benefits. However, subsection (c) still discusses the payment of benefits as a function of "any crop insurance indemnity." The commenter recommended subsections (b) and (c) be reconciled to eliminate this apparent inconsistency. A commenter proposed the following language to ensure that crop values are adequately expressed:

(b) The total amount received from all such sources may not exceed the amount of your actual loss. The amount of the actual loss is the difference between the total value of the insured crop before the loss and the total value of the insured crop after the loss.

(1) The total value of the crop before the loss is your expected yield that has been adjusted for technology trends, adjusted for recent local adverse weather events, and adjusted for your adoption of recent new technology times the highest price election, projected price, or harvest price for the crop;

(2) The total value of the crop after the loss is your production to count times the lesser of the projected price, or harvest price, or APH price election for the crop;

(3) If you have an amount of insurance, the total value before the loss is the highest amount of insurance available for the crop that has also been adjusted for increased value for contracted prices or higher prices for quality, adjusted for technology trends, adjusted for recent local adverse weather events, and adjusted for your adoption of recent new technology; and

(4) If you have an amount of insurance, the total value after the loss is the production to count times the price contained in the Crop

Provisions for valuing production to count. A commenter stated the language in the first sentence does not define "all sources" that relate to the revenue produced by the crop insured. Specifically, does the crop insurance policy language of "all sources" in 35(b) support the language in 35(a)? It would appear that language along the lines of "The total amount received from all such sources, excluding payments from other USDA programs, may not exceed the amount of your losses" would be appropriate and would help clarify "all sources."

Response: Section 508(n) of the Act expressly states for additional coverage that the amount received under crop insurance and the amounts received under any other USDA program that provides a benefit for the same loss cannot exceed the amount of the actual loss. FCIC is bound by this provision and, therefore, it must be reflected in the policy. Section 35(b) is only intended to provide a means to calculate the amount of the actual loss specified in section 508(n) of the Act. Only Congress has the authority to provide an exception. Since Congress has provided an exception in the past, FCIC has revised the provision to specify any amount received for the same loss from any USDA agency in addition to the crop insurance payment will not exceed the difference between the crop insurance payment and the actual amount of the loss, unless otherwise provided by law. The suggested revision involving technology trends, local weather events, *etc.,* cannot be incorporated because there are no current procedures or methodologies for such adjustments. This rule does not apply to Group Risk Protection (GRP) or Group Risk Income Protection (GRIP). A different proposed rule will propose changes to those policies. FCIC has revised the provisions to clarify the meaning of "all sources." FCIC has also made other minor clarifications that do not change the meaning of the provisions.

Comment: A commenter recommended removing section 35(d). The commenter feels the Basic Provisions deal with policy and coverage issues and is a contract between an insurance provider and a producer. Although this proposed statement is informative to the producer for other USDA programs, the commenter stated there is no need for this paragraph in the Basic Provisions since it has no bearing or ramifications on the contract between the insurance provider and the producer. If a person did not purchase crop insurance, he/she would not have these Basic Provisions to look up and realize they may be adversely impacted by not purchasing crop insurance. Another commenter considers the use of the term "obtain" in "[f]ailure to obtain crop insurance may impact your ability to obtain benefits under other USDA programs" to be overbroad, misleading and, therefore, inaccurate. The commenter stated there are various situations in which an insured may not obtain an indemnity that does not impact the producer's eligibility or qualifying for other USDA benefits. Instead, it is the failure to comply with the terms and conditions of the Basic Provisions or to qualify for coverage that likely will impact a producer's ability to receive benefits under other USDA programs. The commenter recommended FCIC amend section 35(d) accordingly.

Response: The commenter is correct that the language in section 35(d) has no bearing or ramification on the contract between the insurance provider and the producer. Therefore, the proposed provision is not retained in the final rule.

Section 36 Substitution of Yields

Comment: A commenter recommended that to be consistent with the Crop Insurance Handbook, the term "T-yield" should be changed to "T–Yield" in sections 36(a) and (c).

Response: The reference needs to be consistent within the policy. Therefore, FCIC has removed the phrase "(T-yield)" from section 36(a) and has removed the phrases "T-yield" from section 36(c) and replaced them with the term "transitional yield" in all three places.

Crop Provisions—General Comments Applicable to All

Comment: A commenter stated the "order of priority" statement is not addressed in the proposed rule, but they recommend it be deleted from the Crop Provisions since the order of priority of the policy documents is covered in the Basic Provisions. This deletion is proposed in two subsequently issued proposed rules, for potatoes and for fresh market sweet corn. However, if it is not deleted, it needs to be updated to match the one in the Basic Provisions, which adds the CEPP. Otherwise, given that the order of priority is that the Crop Provisions take priority over the Basic Provisions, the "old" order would continue to apply to the Crop Provisions included in this proposed rule.

Response: FCIC has revised the Crop Provisions included in this final rule to remove the "order of priority" statement to avoid any conflict with the priority statement in the Basic Provisions.

Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

Comment: A few comments were received referencing the section titled Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities in all of the Crop Provisions proposed to be amended in the proposed rule. A commenter stated if sections 2(a) and (b) (of the Cotton Crop Provisions) are kept and not moved to section 3 of the Basic Provisions as recommended in other comments, the phrase "In addition to the requirements of section 3 of the Basic Provisions" currently at the beginning of (b) should be moved to be the introductory statement of this section since it applies to (a) as well as (b). A commenter stated at least two provisions that are essentially the same are included in this section. One or both of these are prefaced by "In addition to the requirements of section 3 of the Basic Provisions * * *" The commenter recommends FCIC consider whether one or both of these statements should be included in section 3(d) of the Basic Provisions instead of having to be repeated in each of the Crop Provisions with revenue protection available. The first of these is: "You must elect to insure your [crop name] with either revenue protection or yield protection by the sales closing date." Additional language is included in section 3(b) of the Small Grains Crop Provisions because only two of the small grain crops have this choice. It would seem logical to have this be section 3(d)(1) in the Basic Provisions, preceding the currently proposed 3(d)(1) that refers to the policyholder being able to change the selection of revenue or yield protection. An alternate location would be section 3(b) of the proposed Basic Provisions, which states that, among other things, the insured "* * * must select the same coverage, * * * the same protection (amount of insurance, yield coverage * * *, or yield protection or revenue protection, if available) * * *" but does not specify the sales closing date as the deadline by which these elections must be made. If this statement is not moved to the Basic Provisions, the commenter suggested a more specific reference in the Crop Provisions to section 3(d) and/or 3(b) of the Basic Provisions. The second statement is: "You must select the same percentage for both the projected price and the harvest price * * *". All but Cotton also include an example to illustrate the price percentage "* * * for each type must have the same percentage relationship to the maximum price offered * * *". For Coarse Grains, the example is specific to grain and

silage corn. For Small Grains, there is equivalent language in section 3(a) regarding the percentage of the price election for those crops for which revenue protection is not available. The commenter requested FCIC to consider moving some or all of this to section 3(d) of the proposed Basic Provisions, either preceding or in combination with 3(d)(3), which states if the policyholder does not select a price percentage in any subsequent year, the insurance provider will assign a percentage that has the same relationship to what was previously selected. The equivalent "price election percentage" language in section 3(a) of the Small Grains Crop Provisions could be moved to section 3(c) of the proposed Basic Provisions as well. A commenter stated the proposed language appears to require a producer to select two price percentages (one for the projected price and one for harvest price). The commenter recommended revising the sentence to "You must select a price percentage which will apply to both the projected price and the harvest price; and" which could avoid the appearance of having to report price percentages twice. A commenter stated the language which states, "You must select the same percentage for both the projected price and the harvest price" could be deleted because this is addressed in the Basic Provisions.

Response: The provisions regarding the selection of the same price percentage for the applicable prices are repetitive. Therefore, FCIC has removed this provision from all of the Crop Provisions contained in this rule and moved them to section 3 of the Basic Provisions. The provisions regarding the availability of revenue protection and yield protection have been retained in the final rule since the availability of revenue protection and yield protection is crop specific. Since the provision regarding the availability of revenue protection or yield protection is being retained in the Crop Provisions, the requirement that such election be made by the sales closing date should also be retained in each of the Crop Provisions. Further, since the provisions that specify the prices for each type must have the same percentage relationship are also repetitive, FCIC has removed the provisions from the Crop Provisions and moved them to the Basic Provisions in section 3(b). In addition, as stated above, redesignated section 3(c) of the Basic Provisions specifies only 100 percent of the projected and harvest prices will be available if revenue protection is elected.

Causes of Loss

Comment: A few comments were received referencing the section titled "Causes of Loss" in all of the Crop Provisions proposed to be amended in the proposed rule. A commenter recommended the reference to fire be revised to state "Fire, due to natural causes." This would clarify when fire is an insured cause of loss and would be consistent with the Federal Crop Insurance Act and the Crop Insurance Handbook. The commenter stated FCIC has proposed to change the tobacco provisions to reference "Fire, if caused by lightning" to help clarify this in the tobacco policy. It needs to be clarified in the other Crop Provisions as well. A commenter recommended the reference to fire be revised to state "Fire which is caused by a naturally occurring event." The commenter stated this wording is buried in the Basic Provisions, and believes that reaffirming the phrase in the Crop Provisions will avoid any confusion for the insured on what part of fire is or is not covered. A commenter also recommended rewording "Adverse weather conditions" to read "Adverse weather events or conditions."

Response: The Basic Provisions contain the requirements that are applicable to all policies and it includes the requirement that all causes of loss be naturally occurring. To repeat this requirement for a single cause of loss in the Crop Provisions will only create confusion regarding whether the other listed causes must be naturally occurring. There is no reason to be repetitive. The Basic Provisions are just as important as the Crop Provisions and are binding on all program participants. In addition, FCIC has clarified provisions contained in section 12(a) of the Basic Provisions by specifying fire, caused by anything other than a naturally occurring event, is not covered. Changing "adverse weather conditions" to read "adverse weather events or conditions" does not improve or clarify the provisions. There are many ways to describe weather.

Replanting Payments

Comment: A few comments were received referencing the section titled "Replanting Payments" in all of the Crop Provisions, except cotton, proposed to be amended in the proposed rule. A commenter stated they suggest revising the replanting sections of the Crop Provisions by deleting (a)(1) and (2) and revising sections (a) and (b) as follows: (a) A replanting payment is allowed if the insured crop is damaged by an insurable cause of loss to the extent * * *" and (b) In lieu of section 13(c) of the Basic Provisions, the maximum amount of the replanting payment per acre will be * * *". A commenter stated according to the preamble language, FCIC currently has a contract out to review the amount that is paid for a replanting payment for the various crops. There has been a concern that some of these amounts have not been changed for a number of years and may not reflect the increased costs of replanting. The commenter assumed this study will determine the correct amounts to be paid and appropriate Crop Provisions will be revised accordingly.

Response: Paragraphs (a)(1) and (2) in the replanting payments section of the Crop Provisions must remain intact as long as section 13 of the Basic Provisions limits the amount of a replanting payment to the actual cost of replanting. As stated in the proposed rule, FCIC is currently in the process of contracting a replant study to determine the appropriate costs of replanting. Replanting payments will be adjusted based on the results of the study. Even though recommendations have been given to increase the amount of the replanting payments, FCIC cannot increase the amounts until the replanting study is completed and determines that the current amounts are incorrect.

Duties in the Event of Damage or Loss

Comment: A commenter stated the proposed revision in the section titled "Duties in the Event of Damage or Loss" in all of the Crop Provisions proposed to be amended in the proposed rule that specifies representative samples are required in accordance with section 14 of the Basic Provisions is good since it simply refers to section 14 of the Basic Provisions without repeating the specifics.

Response: FCIC has retained the provisions in the final rule.

Settlement of Claim

Comment: A commenter stated that, in the settlement of claims sections of the Crop Provisions, the example shows how a claim is calculated for yield protection and revenue protection. In setting up the example, both the projected price and harvest price are used and then they are applied to the type of policy being calculated. The commenter stated it is confusing to have the harvest price before the example of calculating a production policy claim and believes the harvest price should only be at the beginning of the revenue policy claim calculation.

Response: In the claims examples in the Crop Provisions, FCIC usually sets

up the factual scenario and then calculates the possible indemnity payment. These proposed provisions are structured the same. What is important is the manner in which the indemnity is calculated for revenue protection and yield protection and these calculations are not confusing, nor would the calculations be any different if the reference to harvest price was moved. The example for yield protection clearly demonstrates the harvest price is not used for yield protection. No change has been made.

Comment: A commenter stated FCIC has added as defined terms "revenue protection guarantee" and "yield protection guarantee." However, with respect to the methodology for settling claims, FCIC retains the "production guarantee" terminology. More specifically, in subsection (b)(1)(i) for canola, coarse grains, cotton, rice, and small grains, which relates to yield losses, the policy refers to the "production guarantee." By contrast, in subsection (b)(1)(ii) for the crops listed above, which pertains to revenue losses, FCIC employs the new "revenue protection guarantee" language. The commenter stated this inconsistency is pointless and confusing. Accordingly, the commenter recommended FCIC amend subsection (b)(1) in the Crop Provisions for the crops listed above as follows: (1) Multiplying the number of insured acres of each insured crop or type, as applicable by your respective: (i) Yield protection guarantee (per acre) and your applicable * * * (ii) Revenue protection guarantee (per acre) if you elected revenue protection.

Response: FCIC has revised the Crop Provisions so that the claims provisions refer to the yield protection guarantee (per acre) or revenue protection guarantee (per acre) as applicable.

Comment: A few comments were received regarding the section titled "Settlement of Claim" in all of the Crop Provisions proposed to be amended in the proposed rule. A commenter stated a provision states the insurance provider will combine all optional units for which acceptable records of production were not provided. The commenter stated the Crop Insurance Handbook prohibits them from combining databases so the wording is misleading and should be clarified. The databases remain intact and the unit numbering changes from optional to basic. This section also needs to be revised to include how total production to count will be determined for revenue protection similar to the current language in the CRC Crop Provisions. A commenter stated the following comment applies to Small Grains 11(c)(1)(i), Cotton 10(c)(1)(i), Coarse Grains 11(c)(1)(i), and Rice 12(c)(1)(i), which were not amended in the proposed rule. For the crops proposed in the rule that have revenue protection available and revenue protection has been elected, and in the situation where the harvest price is less than the projected price, the provision fails to accurately determine the correct production to count for acreage that is abandoned; put to another use without consent; damaged solely by uninsured causes; or for which the insured failed to provide records of production that are acceptable to the insurance provider. The Crop Provisions as proposed state such acreage will be appraised at "not less than the production guarantee." For example, see Coarse Grains section 11(c)(1)(i) (not included in the Proposed Rule), and compare it to section 11(b), which does spell out the steps for revenue protection as well as for yield protection. The production guarantee (per acre) is a unit of measure determined by multiplying approved yield times the coverage level (no price/revenue consideration). The revenue protection guarantee (per acre) is determined using the greater of the projected price or the harvest price. However, the value of the production to count is determined using the harvest price. As an example, a corn policy with 1.0 acre insured, a production guarantee of 50.0 bu/acre, projected price of $2.00, and harvest price of $1.50 and the acreage is destroyed without consent. Total revenue guarantee = $100 ($1.0 \times 50.0 \times \$2.00$). Total revenue to count = $75 ($1.0 \times 50.0 \times \$1.50$). Even though the insured put the acreage to another use without consent, an indemnity is still due. Another commenter stated the following comment applies to Small Grains 11(d)(3), Coarse Grains 11(d)(2), Rice 12(d)(3), and Canola/Rapeseed 12(d)(3) which is not in the proposed rule. The commenter strongly recommends this subsection be revised to incorporate the current policy language in the Quality Adjustment Amendatory Endorsement. That amendatory language needs to become part of the revised Crop Provisions instead of continuing to require insurance providers and policyholders to read this outdated subsection and then read the revised language in the mandatory endorsement. Incorporating the amendatory language would eliminate the need to provide one more piece of paper to those insuring small grains, coarse grains and/or canola/rapeseed. The commenter stated the endorsement would continue to be required for policyholders insuring sunflowers, safflowers, dry beans and dry peas until those Crop Provisions are updated. Ideally, if these other Crop Provisions cannot be revised through the regulatory process for the same crop year as the ones in the proposed rule, the Quality Adjustment Amendatory Endorsement could be revised to delete the crops that no longer need it, but if that cannot be accomplished, insurance providers probably would prefer to explain to their policyholders which crops no longer needed it than to have to continue to include the endorsement with those policies.

Response: If a producer has optional units but does not keep acceptable records of production, the optional units will be combined into a basic unit for the purposes of determining the loss amount. The APH databases are established based on crop, type, practice, *etc.,* in accordance with 7 CFR part 400, subpart G and FCIC issued procedures. The combining of units for the purpose of the claims does not change how the databases are established or maintained. The Crop Provisions have been amended to clarify how the total production will be determined for both yield protection and revenue protection in section (c) of the Settlement of Claim section. The language in the Quality Adjustment Provisions—Amendatory Endorsement is already codified in the Code of Federal Regulations in each of the Crop Provisions so it is not necessary in the proposed and final rules. When the Basic Provisions and Crop Provisions are typeset for public use, the applicable information will be included in the new typeset policies.

Comment: A commenter recommended additional items be addressed while policies are open for changes and improvements: The inception point at which quality adjustment begins and the amount of discount allowed are out of sync with market requirements in Pennsylvania and the Northeast. This makes crop insurance less appealing to producers because it provides very little quality protection for this risk exposure. It is their belief protection against poor quality, due to an insurable cause, should trigger at the point where the market place begins to discount the price. Crop insurance is the only tool available for producers to manage this risk exposure. Part of this problem may be because Northeastern markets quality specifications are geared to needs for human consumption because increasing amounts of production is for this use, while grains in other parts of the country are grown for animal feed and ethanol where quality requirements may

not be as high. The commenter provided the following discount inception points for wheat, corn and soybeans according to current crop insurance policy provisions versus the market place: (1) Wheat, policy test weight – <50 lbs., market place – <58 lbs.; (2) corn, policy test weight – <49 lbs., market place – <52 lbs.; and 3) soybeans, policy test weight – <49 lbs., market place – <54 lbs. Previous experience with mature flooded corn, quality was so bad that FSA would not make loan deficiency payments, the Pennsylvania Health Department recommended destruction due to contamination and FCIC counted production at near full value. Another part of the problem with the current FCIC quality adjustment is the process used. Currently, FCIC requires quality determination by U.S. grain graders, which is a costly and time delaying process. The crop insurance program would be much more useful and producer friendly if quality adjustments were based on a price comparison between good and actual production from the marketplace. Example: If the commodity is only worth 50 percent of a good quality product, the production to count would be 50 percent of the gross production.

Response: Since no changes to these provisions were proposed, and the public was not provided an opportunity to comment on the recommended changes, the recommendations cannot be incorporated in the final rule. No change has been made.

Prevented Planting

Comment: A few comments were received regarding the section titled "Prevented Planting" in all of the Crop Provisions proposed to be amended in the proposed rule. A commenter recommended FCIC review or contract out for review the percent of the production guarantee provided for prevented planting purposes for all of the Crop Provisions that provide such coverage. The commenter was concerned the amount of prevented planting coverage being provided is too high. Another commenter stated there continues to be concerns about the amount of prevented planting payments that are made on an annual basis. The prevented planting language in the proposed rule does contain some language that will be beneficial (*i.e.,* by limiting the amount of prevented planting that is paid when shifting acres to another crop). The commenter stated it does not address what they consider to be the biggest incentive for producers to report acreage as prevented planting rather than attempt to plant a crop, which is the excessive amount of prevented planting coverage that is provided when the crop is prevented from being planted. The commenter's first recommendation for prevented planting would be to remove the provisions that allow the producer to increase the prevented planting coverage by 5 percent and 10 percent, respectively. The commenter's second recommendation is to reevaluate or contract out a study to examine the percentage of prevented planting coverage provided in the Crop Provisions. For example, the Coarse Grains Crop Provisions provide prevented planting coverage that is 60 percent of the production guarantee for timely planted acreage. It is the commenter's understanding that when prevented planting was originally added to these provisions that the ERS data supported a coverage amount of 50 percent of the production guarantee for timely planted acreage but when the policy was published as a final rule, the FCIC decided to offer actual coverage that was 10 percent higher. The commenter felt that if the prevented planting coverage amounts were more in line with the supporting data, producers would have a reduced incentive to file for prevented planting coverage.

Response: Since no changes to the percent of the producer's production guarantee for prevented planting coverage were proposed in any of the Crop Provisions, and the public was not provided an opportunity to comment on the recommended changes, the recommendations cannot be incorporated in the final rule. No change has been made.

Small Grains Crop Provisions—General

Comment: A commenter stated a short rate for spring crops would be appropriate. The commenter stated there should be a graze off date for spring crops included in the final rule. If the producer ultimately decides to graze off a crop and thereby limit any indemnity, the producer should receive a reduction in premium rate. The commenter urged FCIC to include this change in the final rule.

Response: Since the suggested change was not proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter stated triticale is a small grain crop growing like barley, buckwheat, flax, oats, rye, and wheat. Sometimes insurance companies will insure triticale as wheat. More and more acreage of triticale is being planted for grain. Official United States Standards for triticale are available and all the procedures for triticale could be just like wheat or other small grains. The commenter suggested adding triticale to the list of crops insured under the Small Grains Crop Provisions.

Response: Triticale is not currently insurable under the terms of the Small Grains Crop Provisions. Triticale cannot be considered or insured as wheat or any other small grain crop. Further, if producers report triticale as wheat on any of the crop insurance documents, they are making a false statement and could be subject to administrative, civil, or criminal sanctions. FCIC has contracted for research to determine the feasibility of a crop insurance program for triticale. Based on the outcome of the research and evaluation, it will be determined if an insurance program can be offered. No change can be made until the research and evaluation are completed.

Small Grains Crop Provisions—Section 1—Definitions

Comment: A commenter recommended definitions for "continuous cropping" and "summer fallow" be added either in these Crop Provisions or in the applicable Special Provisions where such practices are denoted.

Response: The terms "summerfallow" and "continuous cropping" are not used in the Small Grains Crop Provisions. If the terms are used in the actuarial documents, the definitions should also be included therein. No change has been made.

Comment: A commenter stated the definition of "prevented planting" which is not in the proposed rule and is "In lieu of the definition contained in the Basic Provisions * * *" but it has not been revised while the Basic Provisions definition has, deleting the reference in the first sentence to "* * * with proper equipment * * *", combining the next two sentences, and adding "Failure to plant because of uninsured causes, such as lack of proper equipment or labor to plant acreage, is not considered prevented planting." Unless it is intended for the Small Grains Crop Provisions to retain the previous wording in addition to adding the references to the "latest" final planting date and "applicable" late planting period needed for counties with both winter and spring types of the insured crop, this needs to be revised accordingly. Please consider if the added information for dual counties could be in addition to the Basic Provisions definition instead of having to replace it totally.

Response: The commenter is correct that the definition of "prevented planting" should be consistent between the Basic Provisions and the Small Grains Crop Provisions with the exception of the reference to the "latest final planting date." FCIC also agrees the definition in the Small Grains Crop Provisions does not have to replace the entire definition in the Basic Provisions. However, rather than include the differences required for small grains in the Basic Provisions as the commenter suggests, the definition in the Small Grains Crop Provisions has been revised so that it refers to the definition in the Basic Provisions, but replaces the phrase "final planting date" with "the latest final planting date." This avoids including provisions specific to small grains in the Basic Provisions.

Comment: A commenter stated the definition of "sales closing date," which was not in the proposed rule, is another unchanged definition that is "In lieu of the definition contained in the Basic Provisions * * *" but provides essentially the same information in the first sentence. Please consider deleting the first sentence and prefacing the second sentence with "In addition to the definition in the Basic Provisions * * *".

Response: FCIC agrees the definition contains repetitive provisions. In addition, information regarding counties with both fall and spring sales closing dates is contained in section 3(b). Therefore, the definition of "sales closing date" is not needed and has been removed in this final rule.

Small Grains Crop Provisions—Section 2—Unit Division

Comment: A few commenters stated separate classes of wheat should be allowed separate unit designations and coverage levels. Hard red winter wheat and hard red spring wheat, for instance, typically have separate sales closing dates but should also be afforded separate coverage levels and policy elections.

Response: Separate units are currently allowed for initially planted winter wheat and initially planted spring wheat. Therefore, hard red winter and hard red spring wheat already qualify for separate units in counties that have both winter and spring wheat final planting dates. In addition, the durum class and club wheat subclass can qualify for separate units in counties where the Special Provisions specify these wheat types. However, since separate units and separate coverage levels for all the various wheat classes were not proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Small Grains Crop Provisions—Section 3—Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

Comment: A commenter stated producers in dual counties should have the ability to take separate plans, levels, or endorsements on their winter and spring wheat. The commenter stated at the very minimum, if a producer does not seed winter wheat he/she should be able to change the plan on his/her spring wheat without having to cancel his/her wheat policy in the fall.

Response: Since separate insurance plans, coverage levels or endorsements for winter and spring wheat were not proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. If a producer does not plant any winter wheat in a county with both fall and spring sales closing dates, they should be able to elect either yield or revenue coverage in the spring. Provisions proposed in section 3(b)(3) (now redesignated section 3(b)(2)) that allow the producer to change their elected coverage until the spring sales closing date were already included and have been retained in the final rule.

Comment: A commenter stated a concern regarding increased planting of winter wheat acres in Northern and Northeastern South Dakota. This concern relates to FCIC's designation of "winter wheat" or "spring wheat" counties. Winter wheat cannot be insured in spring counties until it has proven to have survived the winter. The commenter requested a change in the Small Grains Crop Provisions to insure winter wheat and spring wheat as two separate crops instead of two types of the same crop. This change would allow producers additional flexibility in their planting decisions. Additionally, with the release of new winter hardy varieties and agronomic practices such as no-till, there has been a combined effect of increasing winter wheat survivability in South Dakota.

Response: Since the recommended change was not proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Small Grains Crop Provisions—Section 5—Cancellation and Termination Dates

Comment: A commenter recommends Yankton, Turner, Lincoln, Union and Clay counties in South Dakota be designated as winter wheat-growing counties. The commenter stated this is due to the large increase in winter wheat acres with a need for full coverage insurance.

Response: FCIC has amended the provisions accordingly.

Small Grains Crop Provisions—Section 6—Insured Crop

Comment: A commenter stated the phrase "We may agree, in writing, to insure a crop prohibited under * * *" in section 6(a)(4), which was not in proposed rule, indicates this is handled between the insurance provider and the applicant/insured rather than as a written agreement. If this is not true, please revise the wording.

Response: The current section 6(a)(4) does refer to a "written agreement" as does section 6(a)(2). To reduce confusion and improve consistency between terms used in various policy documents and FCIC issued procedures, section 6(a) has been restructured and the phrase "agree in writing" has been replaced with the phrase "written agreement."

Comment: A commenter stated FCIC is proposing to insure buckwheat in section 6(a)(5). As the insurance provided for buckwheat differs from that applicable to wheat, the commenter assumes FCIC will create a separate crop code for buckwheat. In addition, the commenter asked that FCIC clarify section 6(a)(5)(iii), as it is unclear what is meant by "purchase price." The commenter asked whether FCIC will publish a price election relative to buckwheat.

Response: Buckwheat is a separate crop and a separate crop code will be established for it. The phrase "purchase price" in proposed section 6(a)(5)(iii) (redesignated section 6(b)(3) in this final rule) refers to the amount the buyer will pay the producer for production under contract. FCIC has revised the provision to specify "the price to be paid for the contracted production" for clarity. The price election used to establish the amount of insurance protection will be based on the contract price.

Comment: A commenter stated FCIC should consider changing the reference to "* * * additional coverage is available for wheat or barley damaged * * *" in section 6(c), which was not in the proposed rule, since this does not use "additional coverage" in the way it is defined in the Basic Provisions (a

level higher than CAT) and so could be confusing.

Response: The commenter is correct that using a defined term in another manner may be confusing and has removed the word "additional" in redesignated section 6(d).

Small Grains Crop Provisions—Section 7—Insurance Period

Comment: A commenter stated the opening statement in section 7 reads: "In lieu of the requirements under section 11 of the Basic Provisions * * *" Unless it is intended for 7(a) to supersede the phrase "Except for prevented planting" and the explanation of what is meant by the date of acceptance of the application in the Basic Provisions, we would suggest deleting this opening and revising to state: "In accordance with section 11 of the Basic Provisions, and subject to any provisions provided by the Wheat or Barley Winter Coverage Endorsement (if elected by you): "(a) Insurance attaches * * *:" "(b) The calendar date for the end of the insurance period is the following applicable date * * *" Further, the rest of 7(b) duplicates Basic Provisions section 11(b)(1)–(3) & (5) except for referring to "Insurance ends" instead of "Coverage ends."

Response: FCIC has amended the provisions accordingly.

Comment: A commenter recommended clarifying if acres and share need to be reported by sales closing date in section 7(a)(2)(v). Currently, questions arise regarding the acreage reporting deadline when an insured is requesting winter acres to be added to a spring only county. The insurance provider performs an inspection to see if the stand qualifies for insurance, but does not need to determine acres. The commenter questioned if acres can be revised by the spring acreage reporting date or if they need to be reported by the sales closing date. The insured could experience a loss after the inspection in the spring and then request an increase in the number of acres to be insured. There is no deadline specified when acres must be reported. The commenter recommended adding "unless you request such coverage and amount of acres and share to be insured on or before the spring sales closing date."

Response: While there is no policy requirement to report the number of insured acres or share by the sales closing date (because the number of insured acres and share are determined when insurance attaches) the number of acres of fall planted wheat or barley should be included on the request for coverage. The provisions in section 7(a)(2)(v) have been revised accordingly. Only those acres accepted by the insurance provider should be included on the acreage report as insurable acres. If other than the accepted acres are subsequently reported on the acreage report, any applicable provisions regarding under or over-reporting acreage would then apply.

Small Grains Crop Provisions—Section 9—Replanting Payments

Comment: A commenter stated section 9(a)(1), which is not in the proposed rule, currently states "In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these Crop Provisions." The commenter recommended deleting section 9(a)(1) and adding the following reference to section 13(c) of the Basic Provisions to section 9(c): "In lieu of section 13(c) of the Basic Provisions, the maximum amount of the replanting payment per acre will be * * *." The remaining sections in 9(a) would then be renumbered and section 9(a)(2) could be revised leaving only the reference to complying with the winter coverage endorsement.

Response: Since the recommended changes were not proposed, and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter recommended FCIC add a new section 9(f) to clarify replant provisions apply specifically to spring wheat. Since replant provisions are not applicable to winter wheat, the commenter believes clarification of this provision would be useful.

Response: Section 9(b) excludes replant payments for all winter types if there is only a fall final planting date. Therefore, this exclusion applies to more than just winter wheat. Further, there is a replant payment for fall types if there is both a spring and fall final planting date in the county. No change has been made.

Small Grains Crop Provisions—Section 11—Settlement of Claim

Comment: A commenter stated some livestock operations cannot use the same feed barley as other operations because of their nature. Barley that has a poor test weight and some other problems will not work in a confined operation, whereas this same feed would work in a feed lot. Therefore, it has less value.

Response: It is not clear if the commenter is suggesting different quality provisions dependant upon intended use of the grain. If so, it would be very difficult to develop and administer such provisions. Different quality protection levels would have to be developed based on intended use of grain and reported intentions may change during the crop year. No changes have been made.

Small Grain Crop Provisions—Section 12—Late Planting

Comment: A commenter stated there is a concern the final planting dates for winter crops in some areas are already late, and then when the late planting period is included, it becomes extremely late for the crop to get established prior to the winter months. The commenter recommended RMA's Regional Offices review final planting dates in the Special Provisions to make sure they are not too late.

Response: RMA's Regional Offices review final planting dates on a periodic basis and make changes as necessary. If the commenter or any interested party is concerned about the dates for specific crops or counties, they should advise the RMA Regional Office. Any interested person may find contact information for the applicable regional office on RMA's Web site at *http://www.rma.usda.gov/aboutrma/fields/rsos.html*. No change has been made.

Cotton Crop Provisions—Section 1—Definitions

Comment: A commenter stated the definition of "Production guarantee" which was not in the proposed rule is essentially a reworking of the "production guarantee (per acre)" definition in the Basic Provisions, specifying pounds as the unit of measure and adding "* * * any applicable yield conversion factor for non-irrigated skip-row planting patterns * * *" to the calculation. The commenter suggested changing the defined term to "Production guarantee (per acre)" and beginning the definition with "In lieu of the definition in section 1 of the Basic Provisions, * * *"

Response: FCIC has revised the definition accordingly.

Cotton Crop Provisions—Section 5—Insured Crop

Comment: Several comments were received regarding proposed changes to sections 5(b)(4) and (5). A commenter suggested FCIC clarify what "acreage following a small grain crop" means in section 5(b)(4). The commenter asked whether it refers to a small grain which is planted, planted but not harvested, or

refers to only if the crop is harvested. The commenter recommended replacing "following" with either "planted to a small grain crop" or reference to "harvest." A commenter stated the proposed revision (replacing (4) & (5)) is more restrictive since cotton would not be insured "following a small grain crop" whether or not the small grain crop had reached the heading stage. This probably is a good change because of soil moisture concerns and because it would be easier to administer not having to determine what percentage of the field had reached the heading stage. A few commenters stated they believe this provision would be burdensome on producers, insurance providers and FCIC and should be revised. A few commenters suggest FCIC allow cotton to be insured following a small grain crop if the acreage is irrigated or if planting a small grain or other approved crop as a cover crop is recognized as a good farming practice on non-irrigated acreage and documented in the county's Special Provisions. A commenter stated determining insurability of non-irrigated cotton by the county Special Provisions, rather than individual written agreement, would be less cumbersome to administer, more equitable to producers, and would allow decisions to be made by extension and other experts based on sound agronomic considerations. A commenter stated unless FCIC intends to address this in the Special Provisions for the Southeastern states, there will be a lot of cotton that is no longer insurable. There is a lot of acreage where a small grain crop is planted as a cover crop (never reaches the headed stage) and then cotton is subsequently planted. The commenter felt the previous language whereby the small grain crop must have reached the heading stage is a better indicator of whether or not the subsequent cotton crop should be insured. A commenter stated requiring a written agreement for the coverage of dry-land cotton preceded by a cover crop is an unnecessary attempt to reduce fraud and abuse that will discourage the use of established conservation practices. The commenter stated FCIC's proposed revisions of section 5(b)(4) eliminates a producer's ability to insure non-irrigated cotton following a cover crop or small grain crop planted in the same calendar year, except through the initiation of a written agreement. This provision will introduce inefficiencies and increase cost, forcing some producers to choose between planting a cover crop and purchasing insurance. This deterrent would serve only to increase adverse selection and introduce regional bias since irrigation is not practical in certain production areas. Given the importance of cover crops to the environment, the role of cover crops in established conservation programs and the bias introduced by requiring written agreements, annual written agreements should not be required when dry-land cotton is preceded by a cover crop. A few commenters recommended instead of revising the language, FCIC should create a set of requirements or restrictions on the management of cover crops designed to guard against moral hazard that would be specified within cotton's Special Provisions. For example, if the small grain or other approved crop is permitted in the county Special Provisions, the small grain or other approved crop on non-irrigated acreage must be fully terminated (burned down) a certain number of days (*e.g.,* 45 days) prior to the final planting date for cotton in order for non-irrigated cotton to be insured on the acreage in the same calendar year. However, any requirements or restrictions placed on cover crop management should: (a) Be consistent with guidelines and requirements established by existing conservation programs; (b) be sensitive to agronomic differences between cover crops; and (c) consider regional variations in cultural practices and weather patterns.

Response: FCIC agrees the proposed provisions may be overly restrictive and has removed them. However, soil moisture levels are still a concern in certain regions. Therefore, the Special Provisions in those regions will contain a statement to limit coverage appropriate for the area. This is consistent with the method in which other Crop Provisions address this same issue.

Cotton Crop Provisions—Section 8—Causes of Loss

Comment: A few commenters stated failure of the irrigation water supply provision in section 8(h) needs to more clearly delineate between failures which are not covered versus failures which are covered. Specifically, the commenters were concerned moving from current language ("Failure of the irrigation water supply, if applicable, due to an unavoidable cause of loss occurring within the insurance period.") to proposed language ("Failure of the irrigation water supply due to a cause of loss specified in sections 8(a) through (g) that also occurs during the insurance period.") could preclude coverage of legitimate losses resulting from unavoidable weather-related events. For example, the commenter asked whether the new language would cover losses of a producer whose insurance attached when the producer's well produced 500 gallons of water per minute but afterward only produced 300 gallons per minute due to prolonged periods of hot, dry weather. Similarly, the commenter asked whether the new language would cover losses of a producer whose insurance attached when water supplies from a local water reservoir were expected to be ample but afterward the governing body for the reservoir determines that normal water level deliveries are not possible, again due to weather conditions. In a third example, the commenter asked whether the new language would cover losses due to the breakage of the well casing or lining caused by shifting ground below the surface, which is an unavoidable weather-related event that can only be remedied by drilling a new well. The commenters believed it is vital all losses caused by weather-related events, including those that adversely impact the availability of irrigation water supplies, remain covered under the Federal crop insurance program.

Response: As indicated in the proposed rule, the provisions previously stated failure of the irrigation water supply was an insured cause of loss if the failure was due to an unavoidable cause of loss. FCIC has always considered the provision to limit the cause of the failure of the irrigation supply to be due to one of the insured perils. However, since the unavoidable causes of loss were not clearly referenced in section 8(h), they could have been interpreted to extend beyond the named perils. Now the provision is consistent with other Crop Provisions and ensures only named perils are covered under the policy. The specific situations raised by the commenter may be covered by the new language provided the failure of the irrigation water supply was due to a cause of loss specified in section 8 of the Cotton Crop Provisions (*e.g.,* adverse weather conditions, fire, earthquake, *etc.*) that occurred during the insurance period. However, if there are management decisions involving the allocation of water or other man-made causes also involved, such decisions or causes may not be insurable. Each individual situation must be examined and it is impossible to set a single standard. Further, causes of loss not listed in the applicable Crop Provisions, even if allowed by the Act, have not been included in the premium rates. Rates have been established based on the listed perils, which is consistent with

other Crop Provisions. No change has been made.

Cotton Crop Provisions—Section 10—Settlement of Claim

Comment: A commenter asked FCIC to consider changing unamended section 10(c) by replacing "The total production (pounds) to count * * *" with "The total production to count (in pounds) * * *" so "(pounds)" is not inserted in the middle of the common term "production to count."

Response: FCIC has revised the provisions accordingly.

Comment: A few commenters stated the percentage threshold for quality adjustment has been changed from 75 percent to 85 percent. A commenter suggests it may be good for the producer but it does not give any relief to the loss adjustment procedure. Cotton quality adjustment is long and laborious. Before it was "improved" to its present state, it was considerably simpler for loss adjustment. A large policy now could take days to do quality adjustment. The commenter suggests FCIC simplify the procedure once again. Claims staff could help, perhaps, with input on how to effect the simplification. This will result in increased time and workload to complete cotton losses as well as resulting in additional payments being made for quality losses. The commenter was opposed to this increase and recommended this threshold remain at 75 percent.

Response: FCIC has consulted with the National Cotton Council and they provided data that demonstrated that quality adjustment at the 85 percent level was more appropriate. FCIC is willing to work with the affected parties to determine whether there can be simplification of the loss adjustment process while still maintaining program integrity. No change has been made.

Cotton Crop Provisions—Section 11—Prevented Planting

Comment: A commenter stated clarification is needed to address prevented planting determinations for both the guarantee and acreage in section 11(a). To be most equitable for all producers, they recommended basing both determinations on a solid-plant basis. They suggested adding a reference to "eligible acreage" and changing "based on your approved yield" to "determined on a solid-planted basis" so it reads as follows: "(a) In addition to the provisions contained in section 17 of the Basic Provisions, your prevented planting production guarantee and eligible acreage will be determined on a solid-plant basis without adjustment for skip-row planting patterns."

Response: Since no changes to this section were proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Sunflower Seed Crop Provisions—General

Comment: Many negative comments were received because the proposed rule did not provide revenue protection for sunflowers. The commenters urged FCIC to provide revenue protection for sunflowers in the final rule. They stated that elimination of revenue coverage would unduly diminish the risk management options currently available to sunflower producers and cause serious damage to the entire sunflower industry. Sunflower seed is much in demand because the oil is one of the healthiest. Major companies like Frito Lay have switched to sunflower oil because it is healthier and tastes good. Sunflower producers need to have the same or similar programs as producers of other crops. Planting sunflowers is an option for producers from Texas to North Dakota and is one of the best options in dryer climates. It is more drought tolerant than most crops and fits in limited irrigation areas. Commenters stated that sunflowers are an extremely important crop in North Dakota. In 2005, North Dakota ranked first in the nation's sunflower production, producing 44 percent of the national total. North Dakota also has several sunflower handling/processing facilities. A commenter stated that sunflowers will produce the most oil per acre of any crop including soybeans and canola. Each of these crops will produce about the same pounds of grain but sunflowers have 45 to 50 percent oil, soybeans have 18 to 20 percent oil, and canola has 38 to 40 percent oil. With bio-diesel becoming prevalent, it is very important to support sunflowers as they produce the most oil per acre. Commenters also stated that use of revenue products have grown significantly since the crop insurance reform legislation passed in 2000 and the commenters are concerned preventing these products from being used by sunflower producers will unfairly restrict these producers' risk management options. They understand a proposal has been submitted to the agency to address the agency's concerns on how to determine an appropriate base price for the product absent a futures contract(s) in the commodity. They hope FCIC will seriously consider this proposal or others that would preserve revenue coverage for sunflowers. The commenters stated, because of the very intense and competitive atmosphere for acreage among crops, U.S. sunflower producers need access to the risk management tools that are available to other major crop producers. Crop insurance programs influence what crops get planted. The amendments offered in the new policy would give producers a choice of revenue protection (against loss of revenue caused by low prices, low yields or a combination of both) or yield protection (for production losses only) within the same Basic Provisions and applicable Crop Provisions. Excluding revenue protection for sunflower producers would not allow them to consider and determine the best risk management tool for their operations. A commenter stated that market forces are constantly changing. This is due to farm program adjustments, trans fat labeling requirements, and food crops produced for energy. Health is driving increased demand for sunflower products. Sunflower oil is enjoying strong demand from domestic users due to its healthy and stable profile. An example is the recent announcement from the major U.S. snack food manufacturer, Frito Lay, of their decision to replace cottonseed oil with sunflower oil in two of their major potato chip brands. A release from Frito Lay clearly states this change to sunflower oil eliminates 60 million pounds of saturated fat from the U.S. diet annually. The Food and Drug Administration's requirement that trans fats be listed on all food product labels and the industry decision to produce NuSun® (mid-oleic sunflower oil) changed the historical price relationship between sunflower and soybean oils. Sunflower oil is one of the few naturally stable oils that can be used in food manufacturing without the need for hydrogenation. Because of this development, it is estimated U.S. sunflower acres will need to expand from the present 2 million to 4.5 million by 2010. However, the growth in acres to meet this demand could be restricted if producers are unable to insure sunflowers with revenue protection. The commenters stated the competition for existing acres is intense. Members of the National Sunflower Association (NSA) have identified their inability to buy appropriate crop insurance as the number one serious impediment to taking advantage of these new market opportunities. The commenters stated, the intent of Congress in providing major expansion of the crop insurance program in 2000 was clear: "make crop insurance more widely available." The

intent was not for the program to be administered in a manner that keeps producers from diversifying their operations and limiting the risk associated from growing only a few selected crops. Congress has also crafted farm policy to encourage planting flexibility so producers can respond to market forces. This holds especially true where market forces encourage production of crops like sunflowers. Having revenue protection for sunflowers will give producers additional flexibility and greater security. The commenters stated the **Federal Register** notice states, "Very few crop policies of sunflowers earned premium in 2003. Removal of this crop from eligibility is appropriate because the mechanism for price discovery does not adequately reflect either market value or changes in the market valuation during the period between planting and harvest." The commenters stated they have agreed with that statement for the last three years. They have met and corresponded with RMA and related USDA agencies in an effort to change the pricing mechanism for the RA crop insurance policy. In a letter to former RMA Administrator Ross Davidson in September 2005, the commenter suggested two potential methods of price discovery that would allow the RA policy to more adequately reflect the market value for sunflower seed. The commenters stated they did not receive a response to their proposal. The commenters stated they also agree with the statement in the **Federal Register** that the RA sunflower policy has seldom been used in the last several years. The problem with the present RA policy is that the formula used to obtain a sunflower 'strike' price is outdated. The old formula of taking the Chicago Soybean Oil Futures contract and dividing that number by two and subtracting one simply no longer represents a sunflower seed value. This formula worked reasonably well until the 2000 crop year. Prior to that time the majority of oil-type sunflower acres were of the linoleic fatty acid type. The vast majority of this sunflower oil was exported to countries in North Africa, the Middle East and Mexico. Values for the oil were at par or slightly greater than soybean oil values. However, this changed beginning in 2000 when the U.S. sunflower industry began the switch to NuSun. In the 2005 crop year, it is estimated 90 percent of the sunflower oil-type acres were either NuSun or high oleic, the latter sells at a premium to NuSun oil. The bottom line is the old FCIC formula visa via the Chicago Soybean Oil futures market no longer works. Producers were cautioned not to use the RA policy in the last several years because it did not reflect sunflower seed values. The Multi-Peril price elections better reflected sunflower values. The commenters recommended sunflowers not be eliminated from the Combo policies, however, it will be necessary to change the value. The commenter provided a chart which shows the existing formula and two additional formula modifications. One modification is to take the Chicago Soybean Oil Futures contract (per the RA formula) and simply divide that average number by two. The other choice is to divide by two and add one. The commenters stated the second alternative has the best relationship to the annual average of new crop NuSun prices offered at the Enderlin, North Dakota crushing plant. It is important to point out the NuSun price does not reflect an average 6 percent oil premium. Neither does it reflect high oleic which generally is priced at $1.50 cwt premium to NuSun. Nor does it reflect hulling types which are priced at $1.50 premium to NuSun. Nor does it reflect confection sunflower which is priced from $3 to 4 cwt over NuSun. The commenters stated there is also the factor of bio-diesel in the U.S. vegetable oil market that is changing all of the old pricing rules. The Chicago Soybean Oil futures contract often tracks the petroleum market due to bio-diesel. The commenters stated the point they want to emphasize is market dynamics change and the U.S. vegetable oil market is in a very dynamic time. Sunflowers are part of this dynamic process and producers should not be penalized in the loss of revenue protection due to an out-dated formula. The commenters stated on behalf of sunflower producers throughout the U.S., they strongly encourage FCIC to include revenue protection for sunflowers. They are willing to give any assistance FCIC may need to make this a reality for sunflower producers. If revenue protection is not provided for sunflowers, the loser will be the American farmer and the domestic industries that depend on sunflower production. Commenters stated that agriculture is currently experiencing dynamic changes. Renewable energy, shifts in nutritional and dietary demands, and other alternative uses are impacting the demand for and market prices of several crops including sunflowers. Seed and confectionary sunflower products are shipped worldwide. The commenter stated fifty percent of his company's business is sunflower exports to Europe. To exclude revenue protection for sunflowers will be to the detriment of U.S. farmers, the health of our citizens, and domestic industries.

Response: As stated more fully above, FCIC has reevaluated its decision and determined that there is an appropriate pricing method that would allow revenue protection for sunflowers. Therefore, the Sunflower Seed Crop Provisions have been amended to add revenue protection and to make other clarifications and simplifications similar to other Crop Provisions in the final rule.

Coarse Grains Crop Provisions—General

Comment: A few commenters stated producers of grain type corn, of which a portion of the acreage is harvested for silage, need to be allowed the option to continue to insure such acreage on a grain basis with CRC type protection that includes the harvest price option. A commenter stated this is necessary so grain and silage producers can have the same replacement price protection as grain only producers who choose to hedge in order to buy-out their hedge contract in the event of yield loss. The commenter acknowledged insuring grain type corn acreage cut for silage in a manner that provides producers with the needed risk management protection is challenging. The commenter stated in the Northeast, producing corn silage with very high nutrient value is critical for profitable livestock and dairy production. With all of the emphasis on maximizing the relative feed value (RFV) of the silage, if producers have reduced grain content in the corn silage, they purchase additional feedstuffs to balance the ration. The commenter stated producers need the replacement feed provision currently provided by the CRC program and thus need the market price option under the new policy. The commenter added in the Northeast, grain yields frequently have more yield variability than tonnage yields and insuring on a tonnage basis does not work well because the grain content of the silage could be off considerably but the impact on tonnage yield is still within the insurance deductible. Therefore, there is no indemnity to help to pay for the cost of feed supplements to make up for the reduction of grain content and RFV. Another commenter recommended the availability of revenue protection for corn silage should be retained, because the commenter believes revenue protection should be available to these producers. The commenter stated if market and/or agronomic decisions suggest producers should produce these crops, the Federal crop insurance program should not

create a disincentive. The commenter urged FCIC to provide revenue protection for corn silage in the final rule.

Response: Under the current revenue policies, only corn grown for harvest as grain is insurable. In this proposed rule, producers can insure both corn grown for grain and corn grown for silage under the revenue protection policy but the corn grown for silage will not receive protection against a change in price. The harvest price is the same as the projected price, which is established by FCIC. This is because corn silage is not traded under any commodity exchange and the correlation has not been established between corn silage prices and corn for grain or other crop prices that are established on a commodity exchange. Therefore, FCIC must establish the projected price for corn grown for silage. Since the projected price is not based on a commodity exchange, there is no basis to calculate a harvest price that is different than the projected price. No change has been made.

Comment: A commenter stated when Northeastern producers plant grain type corn, of which some will be harvested as grain and some as silage, they do not determine which acreage will be harvested for silage until harvest time. For this reason, past efforts by FCIC to require producers to designate acreage for grain and acreage for silage have always failed to work at the farm level.

Response: FCIC agrees the number of acres and the location of the acres ultimately harvested for silage and grain will depend on many factors that may change after the acreage has been reported. However, crop insurance guarantees and premiums are established based on the number of acres of each insured type reported on the acreage report. Therefore, producers who plant corn for both silage and grain must report the number of acres planted for each purpose. Provided the acreage is all located in the same unit, it does not matter which particular acreage in the unit was harvested for grain and harvested for silage. No change has been made.

Comment: A commenter supported the inclusion of corn silage to revenue coverage.

Response: FCIC has retained the provision in the final rule. However, the harvest price for corn grown for harvest as silage will be set equal to the projected price for corn silage since corn silage is not traded under any commodity exchange and no correlation has been established between corn silage prices and corn for grain or other crop prices that are established on a commodity exchange.

Coarse Grains Crop Provisions—Section 1—Definitions

Comment: A commenter stated the definition of "planted acreage" in section 1 provides, in part: "(corn must be planted in rows far enough apart to permit mechanical cultivation if the specific farming practice you use requires mechanical cultivation to control weeds) * * *". The commenter stated that, assumedly, the producer has the discretion to determine if a particular practice requires mechanical cultivation. The commenter asked if there is a minimum row width that de facto is too narrow to permit mechanical cultivation, and if so, the policy should so state. Another commenter stated they have some concerns with the added phrase which states, "(corn must be planted in rows far enough apart to permit mechanical cultivation if the specific farming practice you use requires mechanical cultivation to control weeds) * * *". The commenter stated the addition of the phrase depends on the sufficiency of the research completed to date for determining yield variations based on practice differences. The commenter believes if FCIC's research shows no material differences based on practices used, this change may be appropriate. However, if yields differ based on these practices, the proposed change could allow coverage on narrow-row corn even if it was not planted to the hybrid variety needed for that farming practice.

Response: FCIC has determined that the current requirement that corn must be planted in rows far enough apart to permit mechanical cultivation is no longer necessary and has removed it in the final rule. Given the characteristics of the new varieties and available chemicals, mechanical cultivation may not be used in many areas. Further, FCIC cannot establish the necessary row spacing because it depends on many factors. If the practice used to plant the crop is not generally recognized for the area, under section 8(b)(1) of the Basic Provisions, the crop will not be insured.

Coarse Grains Crop Provisions—Section 7—Insurance Period

Comment: A few comments were received regarding the change proposed in section 7(b) to move the calendar date for the end of the insurance period for corn insured as silage in several states from September 30 to October 20. A few commenters suggested Virginia should be included in the list of states with the October 20 calendar date for the end of insurance period for corn grown as silage. One of the commenters stated NASS data should support that Virginia has very similar climatic conditions as the states listed. Another commenter suggested Virginia be added to the list of states (including Maryland, Pennsylvania, and West Virginia) to which the calendar date for the end of insurance period for silage is October 30. The commenter stated the silage planting and harvest dates and growing season in Virginia's western counties are similar to those in West Virginia. The commenter noted there have been several occasions where the September 30 end of insurance period passes before all silage has been harvested. A commenter recommended the calendar date for the end of the insurance period for corn insured as silage be established as September 30 rather than September 20 to assure that protection continues through harvest completion in years when crop maturity is late and can result in crop destruction from hurricanes. A commenter stated the proposed change in section 7(b)(1) extends the calendar date for the end of the insurance period from September 30 to October 20 for corn insured as silage in all Texas counties. The commenter also noted section 7(a)(1) was not changed in the proposed rule. Therefore, the calendar date for corn insured as grain in south Texas remains September 30 (and December 10 in other Texas counties). The commenter noted FCIC's explanation for this change is that the extra time is needed to complete silage harvest, but they question why the grain date in south Texas remains so early by comparison.

Response: FCIC has revised the calendar date for the end of insurance period for corn silage in Virginia to October 20. Additionally, FCIC has determined such change is also appropriate for North Carolina and has revised the provision accordingly. FCIC assumes that the commenter was referring to the October 20 date stated in the proposed rule for the referenced states (including Maryland, Pennsylvania, and West Virginia), not October 30 as a commenter suggested, and has revised the provision accordingly. A commenter recommended that the end of the insurance period be moved from September 20 to September 30 but the proposed rule uses September 30 and it is retained in the final rule. It is not appropriate to move the end of the insurance period for all states to October 20. FCIC proposed the changes for the listed states because of the particular agronomic conditions in those states. Not all states have the same agronomic

conditions. If the commenter has information about a particular State, it can provide such information to FCIC for consideration at a future date. The commenter is correct that, as proposed, there was an inconsistency in the end of the insurance period for corn for grain and silage in Texas. However, since silage is harvested before grain, the end of the insurance period dates should have a similar relationship. Therefore, the calendar date for the end of the insurance period for corn insured as silage in Texas should remain as September 30. Additionally, FCIC has determined the calendar date for the end of the insurance period for corn insured as silage in New Mexico and Oklahoma should also remain as September 30 because the corn silage is normally harvested in those states by September 30. FCIC has revised the provision accordingly.

Coarse Grains Crop Provisions—Section 8—Causes of Loss

Comment: A commenter stated the shift from current language granting coverage for losses caused by a failure of irrigation water supplies resulting from unavoidable weather related events could inadvertently preclude coverage of legitimate losses. The commenter stated it is vital that all losses caused by weather related events, including those that adversely impact the availability of irrigation water supplies, remain covered under the Federal crop insurance program. They recommended the Agency substitute the more inclusive wording of the current provision in place of the proposed language.

Response: Failure of the irrigation water supply that occurs during the insurance period is a covered cause of loss if such failure is due to a cause of loss specified in the Crop Provisions. FCIC has always considered the provision to limit the cause of the failure of the irrigation supply to be due to one of the insured perils. However, the provision previously referred to an unavoidable cause of loss, which could have been interpreted to extend coverage beyond the named perils and beyond those of natural disasters and that would be a violation of the Act. Further, other causes of loss, even if allowed by the Act, have not been included in the premium rates. Rates have been established based on the listed perils, which is consistent with other Crop Provisions. No change has been made.

Coarse Grains Crop Provisions—Section 9—Replanting Payments

Comment: Several commenters suggested revising the proposed provisions in section 9(b) to increase the number of bushels used to compute the replant payment amount. A commenter stated the number of bushels used to compute the replant payment for corn should be increased from 8 to 12 bushels and the number of bushels used for soybeans should be increased from 3 to 5 bushels. A commenter stated the current coarse grains replanting maximums are: corn grain 8 bushel, corn silage 1 ton, grain sorghum 7 bushel, and soybeans 3 bushel. The commenter stated there was a previous proposal to increase the maximum coarse grain replanting payments as follows: corn grain 10 bushel, corn silage 1.25 ton, grain sorghum 8 bushel, and soybeans 4 bushel. Replant increases were justified due to increased input costs, *etc.* The commenter asked why no consideration was given to this recommendation when there was overwhelming support for these increases. A commenter stated the existing level of replant cost reimbursement is considerably outdated. The commenter stated with the ever rising cost of inputs for nitrogen based fertilizer, chemicals, *etc.,* and the fuel cost to replant, the number of bushels used to compute the replant payment should be increased for corn from 8 to 10 bushels and for soybeans from 3 to 4 bushels. Another commenter believes the current replant payment schedule is outdated. The commenter stated with the introduction of Round-Up Ready seed, replant costs have increased and replant payments should more closely reflect these costs. The commenter noted in some areas, the cost to plant an acre of Round-Up Ready corn is about $40 per acre. Therefore, using the current APH price election, a replant payment per acre will only amount to $16 or 40 percent of the cost of seed alone. The commenter stated the cost to plant an acre of Round-Up Ready soybeans is about $42 per acre. However, a replant payment per acre will only amount to $15.45 or 36 percent of the cost of seed alone.

Response: FCIC is aware average costs associated with replanting have increased significantly in recent years. FCIC has contracted for a replant study. Based on the outcome of the study, FCIC will make appropriate revisions to compensate producers for a portion of the replanting costs based on the most current average replanting costs available. No change has been made.

Comment: A commenter stated they understand a study is underway that could change the number of bushels used in the replanting payment calculations for these crops. Since such changes would have to be put in the Special Provisions until the next revision of the Coarse Grains Crop Provisions, it might be worth considering whether to delete the specific numbers in (1)–(4) and revise (b) to read "* * * the number of bushels (tons for corn insured as silage) for the applicable crop as specified in the Special Provisions * * *".

Response: FCIC has revised section 13 of the Basic Provisions to allow the amounts contained in the Crop Provisions to be revised in the Special Provisions. Therefore, there is no need to remove the amounts from the Crop Provisions because such amounts will apply until the study is complete. However, FCIC has added a provision to ensure that the amounts could be adjusted in the Special Provisions. The same change has been made in the other Crop Provisions contained in this rule.

Coarse Grains Crop Provisions—Section 10—Duties in the Event of Damage or Loss

Comment: A few comments were received regarding the provisions proposed in section 10(c). A commenter stated the proposed language begins with, "In lieu of any policy provision providing otherwise * * *", having to do with when acreage will be harvested in a different manner than originally reported, raises the question of how this fits into the order of priority, and whether this is supposed to supersede any provision in the Special Provisions. A commenter recommended the provisions contained in section 10(c) be revised to allow corn, which is ultimately cut for silage, to be insured as grain as long as it is appraised before harvest and thus be allowed revenue coverage with up and down price protection. The commenter stated the major value component of corn silage is how much grain content is in the silage and the value of the grain and if the price of corn is low, the value of the silage is proportionately lower and if corn prices are high, the value of the silage is proportionally higher. The commenter added drought damaged corn with no grain in it makes silage a lot less valuable than silage full of grain. If the producer has to supplement their silage for their dairy or other livestock with grain, they must go out in the market and buy grain, thus they need price protection on corn cut for silage, just like they need it for corn harvested for grain. The commenter stated in the

Midwest (like Illinois) corn cut for silage has been insurable as grain for years. It has been appraised before harvest but eligible for corn revenue coverage. The commenter stated most farmers do not know how many acres they will cut for silage until they are in the midst of silage cutting, so it makes the most sense to insure it as grain and pay claims based on corn grain appraisals. The commenter believes allowing corn cut for silage to be insured as grain as long as proper notice is given to the company so it can be appraised before harvest should also remove the harsh requirements or loss of coverage referred to in section 2(c). A commenter stated section 10(c) requires the producer to provide notice to the insurance provider before harvest if the producer intends to harvest acreage in a manner different than as reported and imposes penalties if the producer fails to provide such notice. The commenter pointed out the critical element of this provision is intent. The commenter asked how an insurance provider should determine the intent of the producer. The commenter stated if the manner in which the producer insures the crop is sufficient manifestation of intent, then the policy should state this clearly. The commenter stated because of the various legal connotations associated with the concept of intent, they question whether "intends" is the appropriate term. To this end, the commenter suggested amending section 10(c) as follows: "In lieu of any policy provision providing otherwise, if you harvest any acreage in a manner other than as you reported * * * you must notify us before harvest begins * * *" The commenter stated the removal of the term "intend" enables the insurance provider to focus on the producer's actions rather than on the producer's mindset. In addition, the commenter recommended an exception to the penalty set forth in the final sentence of section 10(c) stating that if a producer fails to provide timely notice, but leaves representative samples that enable the insurance provider to accurately perform appraisals or adjust a loss, the insured should not be penalized for said failure. The commenter further stated if the insurance provider and the integrity of the loss adjustment process are not prejudiced, imposing such a significant penalty is Draconian. A commenter stated that in the **Federal Register,** FCIC stated "it is too difficult to convert silage production to grain * * * after the crop has been harvested." On this point the commenter agreed; however the commenter believes Section 10 D (3), Appraisals for Acreage that will be Harvested, of the Crop Insurance Handbook effectively addresses this situation in a manner that does not impose undue hardship on the producer or undue loss adjustment expense on the insurance provider. The commenter pointed out this procedure provides for an appraisal when over 50 percent of the unit is harvested in a manner other than reported. The commenter hoped the intention of the proposed rule is to keep the 50 percent rule, and not force adjusters to visit every grain producer who chops some silage, or every silage producer who fills the bunker and shells the small remaining acreage. Another commenter stated section 10 of the Coarse Grains Crop Provisions states if the producer intends to harvest any acreage in a manner other than as reported, the acreage must be appraised in accordance with section 11(c)(1)(i)(E). The commenter asked if this eliminates procedure in the Crop Insurance Handbook that allows harvest of less than 50 percent of a unit without an appraisal. The commenter stated the most common example of this is when a producer insures corn in a grain only county and harvests a portion, usually less than 50 percent of the unit, as silage. The commenter added many farmers in livestock areas do this. The commenter stated if the insurance provider must appraise all crops when harvested in a different manner than insured, the insurance provider's loss adjusting expenses will increase.

Response: The commenter is correct that there may be a conflict between the priority contained in the Basic Provisions and the "in lieu of" language in section 10(c). To eliminate this conflict, FCIC has removed the "in lieu of" provision. Under the current revenue plans of insurance for corn, only corn planted for harvest as grain is insurable. Under the proposed rule, any acreage planted for harvest either as grain or silage is insurable under revenue protection. However, a variety of corn that is adapted for silage use only is only insurable as silage. Further, although insured under revenue protection, as stated above, the harvest price for corn insured as silage will be set equal to the projected price for corn silage since corn silage is not traded under any commodity exchange. The commenter is correct that the use of the word "intent" is not appropriate. Therefore, FCIC has revised the provisions, similar to the suggested language, to require the producer to provide notice if the producer will harvest in another manner. At some point a decision must be made and the provisions obligate the producer to notify the insurance provider before actual harvest begins. Provisions contained in section 14(d)(1)(ii) of the Basic Provisions require the producer to obtain consent before the producer puts the insured crop to an alternative use. Harvesting a crop insured as grain for silage would be considered an alternative use. Therefore, notice is already required. There is nothing to preclude the insurance provider from authorizing the producer to leave representative strips and basing the appraisal on such strips. However, to be consistent with the other notice requirements in the Basic Provisions, the producer must still provide notice that the producer is harvesting the crop in a manner other than it was reported for coverage. Further, section 14(d)(3) of the Basic Provisions states that the sanction for failure to report putting the insured crop to an alternative use is the assignment of an amount of production or value in accordance with the claims provisions in the Crop Provisions. Therefore, FCIC cannot remove the sanction in section 10(c) of the Coarse Grains Crop Provisions without setting up a conflict in the policy provisions. The procedures contained in the Crop Insurance Handbook that specify how corn production will be determined for acreage harvested in a manner other than as reported when such acreage is less than 50 percent of the unit will remain in effect. However, these procedures only apply when there is no loss and there must be a determination of production for APH purposes. The Crop Insurance Handbook provisions regarding the 50 percent are not applicable when determining production to count for claim purposes. If a producer will harvest any acreage in a manner other than as reported, the insurance provider must make the appraisals required in redesignated section 14(d)(2) of the Basic Provisions to determine the production to count for such acreage for claim purposes.

Coarse Grains Crop Provisions—Section 11—Settlement of Claim

Comment: A commenter requested FCIC consider changing section 11(c) "The total production in bushels (tons for corn insured as silage) to count * * *" to "The total production to count (in bushels for grain or tons for corn insured as silage) * * *" similar to the wording in deleted subsection (d).

Response: FCIC has revised the introductory text in section 11(c) to read as follows: "The total production to count (in bushels for corn insured as grain or in tons for corn insured as silage) from all insurable acreage in the unit will include:".

Comment: A commenter stated section 11(e) as revised would allow quality adjustment only for "corn insured as silage", which was changed from "corn insured or harvested as silage." The commenter asked that FCIC refer to their comment to 11(c) above.

Response: Under the changes proposed in section 11, the silage quality adjustment provisions will be contained in redesignated section 11(e). This adjustment, which reduces the silage production to count when the insurance provider's appraisal of grain content is less than 4.5 bushels of grain per ton of silage, is only applicable to corn insured as silage. If corn is insured as grain but harvested as silage, the grain quality adjustment standards will apply. Therefore, FCIC removed the language "or harvest" from the provisions regarding quality adjustment in redesignated section 11(d) to avoid any conflicts.

Comment: A commenter stated quality protection for poor quality silage also needs to be updated because currently, no quality adjustment occurs until the grain content falls below 4.5 bushels per ton. The commenter stated this current standard needs updated since comparing NASS 10-year State average yield data for grain versus silage in Pennsylvania results in a ratio of 7 bushels of grain per ton of silage. The commenter believes the ratio is probably higher in intense livestock operations. Therefore, the commenter recommended that the inception point of quality adjustment for silage should be changed from 4.5 to about 6.5 bushels per ton.

Response: Since no changes to this section were proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter recommended a new section 11(f)(3) be added to address some of the aflatoxin issues that recently occurred in Texas. The commenter recommended the following language: "Any acreage insured as grain or silage that ends up being harvested as silage will not be eligible for quality adjustment for any mycotoxin." The commenter stated this recommended change is supported by the agronomic research indicating these mycotoxins (*i.e.,* aflatoxin) are not present at the stage of growth such acreage is normally chopped for silage. The commenter stated this recommended addition would prohibit the producer being paid a loss for mycotoxins that might develop in representative samples of the insured crop left by the producer for the insurance provider's appraisal, even though the value of the harvested silage crop was not impacted with a reduced value from the mycotoxins.

Response: Since no changes to this section were proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Malting Barley Price and Quality Endorsement—General

Comment: A commenter appreciated the efforts of FSA to educate malting barley producers of the proposed rule changes for malting barley crop insurance. The commenter thought the proposed changes were significant and was pleased to be properly notified. The commenter also appreciated the extended public comment period that enabled additional comments to be submitted.

Response: Education assistance is helpful and FCIC appreciates any efforts made by FSA. FCIC agreed to extend the comment period because of the complexity of the proposed changes and the need for additional time to review them. This additional time allowed commenters to more thoroughly analyze the proposed changes and to provide more meaningful comments.

Comment: A commenter stated the malting barley coverage was not ample because if a producer has a loss there is still a large gap between what the producer is responsible for and what the insurance provider will pay.

Response: The commenter does not identify any specific gap in insurance coverage. Therefore, FCIC is not sure how to respond. If the commenter is referring to the difference between the bushel production guarantee and the average historical yield (the deductible), this amount is mandated by the Act. The Act provides for deductible levels as low as 15 percent (85 percent coverage level) and this coverage level is available in most areas where malting barley coverage is provided.

Comment: A commenter stated the Malt Barley Option is an improvement in the Pacific Northwest for producers to be able to sign a malt barley contract with buyers other than a brewery or maltster. Great Western Malting is the major purchaser of malt barley in Washington State and Great Western Malting uses the private grain companies and co-operative grain companies as a contracting agent with the producers. In essence, with the old rule, malt growers were not eligible to participate in the contract price and option because no brewery or maltster contracted production in the barley growing area of Washington State.

Response: The proposed rule allows the malting barley additional value price to be based on the sale price specified in a production contract with a buyer other than a brewery or maltster and this provision is retained in this final rule.

Comment: Several commenters stated U.S. barley crop acreage has declined by 75 percent in the last 20 years (1987 to 2006). The commenters stated this dramatic decline can be attributed to several factors, but central among them is a lack of cost effective risk management tools. Some of the other factors include increased pressure from imported barley, and increasing production and transportation costs. The commenters stated malting barley has become a specialty crop in the U.S. and, now more than ever, producers need access to affordable and workable crop insurance to maintain a viable production base in the U.S.

Response: It is important to provide cost effective risk management tools for barley producers and FCIC will continue to work with producer organizations and other interested parties to provide an affordable and effective barley crop insurance program.

Comment: Several commenters expressed concern barley producers in multi-year drought or hail situations have suffered yield losses that affect their actual production history and preclude their ability to obtain meaningful and adequate crop coverage. A commenter stated he has farmed for 35 years and has been in a hail belt for seven years on some of his farm and is in an eight-year drought. A few commenters urged FCIC to include a mechanism in the provisions to address this serious APH erosion problem. A commenter stated under the proposed changes to the Malting Barley Price and Quality Endorsement, it appears a producer could be severely punished or even dropped from the program because of a lack of malt production. A commenter stated most times, the reason for barley to not make malt is related entirely to weather conditions. The weather conditions could be hail, drought, rain at harvest, or many other things. Weather related disasters are a part of the business. It becomes a major problem if bad weather conditions occur a few years in a row and it raises premium rates, or worse, causes producers to have their coverage dropped. In the proposed rule, it mentions a producer must provide sales records for at least four crop years to be eligible for coverage. The commenter

asked if this also means FCIC will only use 4 crop years to determine production criteria. A few producers recommended using at least 10 years or every year of a producer's production history to determine the history. This would eliminate a few bad years in a row affecting a producer's production history. Another good example of this would be a few hail years. A commenter also asked if a producer chose a 70 percent level of coverage, would a 70 percent fulfillment rate for that year be enough to prevent a penalty from occurring that particular year. A commenter stated adjusting the premium rates should take into account more than mother nature, and rates could increase but if the rates rise each year, it will make it much more expensive to carry the insurance. A commenter stated FCIC should not reduce APH yields due to a reduction in price caused by a loss in crop quality. Numerous examples exist in which a producer produced an average or above average yield (in bushels per acre), but the quality of the crop was less than optimal, thus resulting in a lower price to the grower. Losses due to quality need to be reflected in the price to prevent reduced approved yields.

Response: There are problems associated with multiple years of poor weather and resulting reductions in APH yields. However, the manner in which APH yields are calculated are set in section 508(g) of the Act and generally require the use of a simple average of actual yields with some exceptions that apply because of loss years. To mitigate the adverse impact of multiple years of disasters, Congress implemented provisions that allow producers to replace low yields in the feed barley APH databases with yields equal to 60 percent of the applicable transitional yield. These provisions have helped stabilize feed barley APH yields and the underlying insurance coverage for malting barley insured under Option B of the Malting Barley Price and Quality Endorsement. With respect to the issue of the reduction in APH due to poor quality, FCIC cannot make any changes at this time because none were proposed and the public was not provided an opportunity to comment. While FCIC is concerned with reduced APH yields, it is also concerned with program integrity and actuarial soundness. The proposed provisions requiring producers to provide malting barley yield history for Option B require producers to prove they have a history of successfully producing barley of sufficient quality for malting purposes were intended to address such issues. However, based on comments received and further review, FCIC has replaced the proposed provisions with alternative provisions that are less complex to administer, yet still address program integrity and actuarial soundness issues. The new provisions permit coverage under Option B only if the producer can prove he or she produced and sold an amount of malting barley equal to 75 percent or more of the amount of contracted bushels in one of the three crop years malting barley was planted immediately preceding the previous crop year. For example, if the producer wishes to insure 2011 crop year malting barley and had a malting barley contract to produce 10,000 bushels in 2009, the producer must have produced and sold at least 7,500 bushels of 2009 crop year malting barley production. Producers may qualify for coverage based on any one of the three crop years in which they planted an approved malting barley variety prior to the previous crop year. If the producer does not meet this requirement, he or she may still insure malting barley under Option A. However, the producer must elect Option A prior to the applicable sales closing date and meet all other requirements for insurance under Option A. Failure to do so will result in no coverage under Option A or Option B. FCIC agrees continued rate increases will impact the affordability of malting barley insurance and believes these changes in Option B may help reduce the need for future rate increases.

Comment: A commenter encouraged FCIC to develop specific underwriting guides for malting barley, as well as feed barley, wheat, and other cereal crops. Underwriting guides assist in developing appropriate administrative mechanisms that are reflective of rating issues while simultaneously ensuring program compliance.

Response: The Crop Insurance Handbook contains specific underwriting requirements for malting barley, feed barley, wheat and other crops. Further, the commenter has not identified any specific area where these underwriting guidelines are deficient. Therefore, it is not necessary to provide separate handbooks for malting barley, wheat, or other crops.

Malting Barley Price and Quality Endorsement—Section 1—Definitions

Comment: A commenter stated adding a specific definition of "additional value price" is appropriate in order to provide greater clarity to producers, buyers, and agents. The commenter stated examples need to be included that describe the methodology by which the additional value price is derived.

Response: FCIC proposed to add a definition of "additional value price" and will retain the definition in the final rule. Additionally, both Option A and Option B provide step-by-step instructions that should be used to calculate the additional value price per bushel. Therefore, an example should not be needed in the definition. No changes have been made.

Comment: A commenter stated moving the definitions to the beginning of the endorsement is good and recommended adding the definition of "malt" since "malt extract" is already defined and both terms are used in the endorsement.

Response: FCIC has revised the endorsement accordingly.

Comment: A commenter encouraged FCIC to explore (in cooperation with the Federal Grain Inspection Service (FGIS)) the validity of parameter tests (*e.g.,* protein, germination, *etc.*) utilized by barley buyers. If barley buyers are utilizing tests based upon defendable scientific parameters, then these tests should be adopted by FCIC for use in insurance product enhancement, thus preventing producers from inadvertent loss due to differences in testing procedures between FGIS and barley buyers. The commenter provided an example in which a buyer rejects malting barley based upon an objective test (*e.g.,* protein) and the producer files a claim for insurance. The insurance adjuster has the barley tested at an FGIS approved facility and it is acceptable according to the FGIS test, but is still unacceptable to the buyer. In this case, the producer sustained a loss for which no indemnity is paid. The commenter further stated testing procedures must be consistent between FGIS and buyers.

Response: FCIC is willing to explore any issues regarding validity of testing procedures with FGIS. However, FCIC cannot insure the decisions of the buyer of whether to purchase the barley. Further, there may be situations where the barley is acceptable to one buyer but not acceptable to another. Therefore, an objective test must be used. The current policy recognizes current tests utilized by barley buyers provided the tests meet the definition of "objective test" contained in the endorsement and requires tests be conducted in accordance with procedures approved by the American Society of Brewing Chemists, FGIS or the Food and Drug Administration, depending on which test is being performed. Problems may occur when both the malting barley buyer and the insurance provider have "objective tests" performed on the same production and the test results are different. In this case, the policy must

provide a priority to determine which test result will be used to settle a claim. The proposed provisions specify the tests used in case of conflict will be those performed at an official grain inspection location established under the U.S. Grain Standards Act except for germination tests, or performed at a laboratory selected by the insurance provider for germination tests. It is FCIC's understanding that grain buyers will generally accept official FGIS tests to determine if grain will be accepted even if their own tests show different results. Therefore, instances in which grain is rejected even though found acceptable through FGIS testing should be minimal. The objective test provisions have been retained in the final rule.

Comment: A commenter questioned why "protein content" was removed from the definition of "objective test" since it is still being used in the policy. Another commenter stated that using the same protein test as the maltsters is a positive change.

Response: "Protein content" was not removed from the definition. While it is not specifically listed, it is included under the procedures approved by FGIS. As stated above, testing for protein content that is performed by buyers of malting barley may be acceptable provided their tests are performed in accordance with FGIS approved procedures.

Malting Barley Price and Quality Endorsement—Section 4

Comment: A commenter stated if the Malting Barley Endorsement is available in any counties with both fall and spring sales closing dates for barley, the references in sections 4 and 4(c) to "sales closing date" as the deadline to elect, cancel or change the Malting Barley Option (A or B) might need to be revised.

Response: The commenter is correct that the proposed provisions did not address situations in which more than one sales closing date may be applicable. FCIC has restructured section 4 and added a new paragraph (d) that specifies that the endorsement can be elected until the spring sales closing date in counties with spring and fall sales closing dates only when the producer has no fall planted acreage of approved malting barley varieties.

Malting Barley Price and Quality Endorsement—Section 6

Comment: Several commenters stated one of the significant constraints for many of their barley producers is the inability to ensure malting barley under optional units that reflect diverse geography, growing conditions and management practices (irrigated versus non-irrigated). The commenters stated a large number of their producers opt to take feed barley coverage only so they can insure their risks under an appropriate unit structure. However, that has resulted in a couple of undesirable results, namely a smaller pool of participants under the malt barley endorsement and a lack of effective coverage for the higher valued malting barley crop. They believe malting barley should be insurable under optional units, like other crops. Another commenter stated it has been a problem having a variety of feed barley (only for feed), which has been "production to count" against those varieties which he grows for malt. The commenter stated there should be two separate units—one for feed varieties and one for malt varieties as they are very different (like apples and oranges).

Response: Since no changes to provisions regarding unit structure were proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made. However, production of a feed barley variety should not be insured under the malting barley endorsement nor should any feed barley production be production to count against the malting barley production guarantee.

Malting Barley Price and Quality Endorsement—Section 7

Comment: A commenter recommended the second sentence in section 7 be amended to provide: "In the event you choose a percentage of the additional value price that is less than 100 percent * * *"

Response: FCIC has revised section 7 accordingly. The provision has also been clarified to indicate the producer cannot select more than 100 percent of the additional value price.

Comment: A commenter recommended adding a reference to the possibility of more than one additional value price from multiple malting barley contracts. Presumably, if there are multiple additional value prices, the same percentage would apply to all, and the premium calculation would be done separately for each, as in section 13(b)–(c) and in the example of reporting different shares in section 6.

Response: If more than one additional value price is applicable, the same percentage would apply to all additional value prices. The provisions in section 7 have been revised accordingly.

Malting Barley Price and Quality Endorsement—Section 8

Comment: A few commenters referenced the following new provisions in section 8 "* * * The premium rate you pay will be adjusted by a factor contained in the actuarial table based on your history of fulfilling the production specified in malting barley contracts in prior years, as applicable." According to the explanation in the Proposed Rule, "* * * This is similar to other insured crops where the premium rate increases as the yield decreases and vice versa * * *". The commenters stated additional clarification is needed because: (1) Similar language to this is not seen in the other Crop Provisions in this proposed rule; (2) rate adjustments already exist and it is not clear what change is proposed; (3) it is not clear if the provision applies only to Option B or if it applies to both options since there is no limiting language; (4) the information to be found in the actuarial table is not available for review; and (5) the explanation refers to yield increases/decreases but makes no mention of quality.

Response: The proposed provision was unique to the Malting Barley Price and Quality Endorsement because it referred to an "option factor" that is applied to the applicable premium rate. However, as stated above, the proposed provisions which would have required producers insuring under Option B to provide records of past malting barley production have been changed. Therefore, the "option factor" will no longer be adjusted based on such records and the provisions that referenced the factor have been removed in this final rule.

Comment: A commenter stated the new provision in section 8 that refers to premium rate adjustment should be further reviewed as it appears it will be difficult to administer.

Response: As stated above, FCIC has replaced the provisions regarding fulfillment rates with alternative provisions that will address FCIC's concerns with program integrity and actuarial soundness. Therefore, the premium rate adjustment based on fulfillment rates is no longer applicable.

Malting Barley Price and Quality Endorsement—Section 10

Comment: A few commenters stated section 10 is dealing with losses not settled by May 31 of the following year. One commenter is not sure what the problem is with the existing process. They have some maltsters that do not take delivery by that time frame, so producers are not certain if their barley

is malt quality, or not. Under the current system, the loss can be left open until final disposition of the barley. Under the proposed change it appears the producer must verify the barley won't be sold (even for feed?) or the loss will just be closed and the barley will be assumed to be malt quality. This will not work for those maltsters who take late delivery of barley. Another commenter recommended clarifying references to "* * * not be sold * * *" in sections 10(b)(2)(i) and (iii).

Response: The commenter is correct that the provisions do not adequately address when buyers take late delivery. Therefore, FCIC agrees claims could be deferred if the producer agrees to defer settlement until the production is sold and the provisions have been revised accordingly. However, there may be cases in which the production to count is below the production guarantee and the producer may want to settle the claim even though the quality and sale price have not been determined by the buyer. In this case, the producer may agree to settle the claim at any time prior to disposition of the grain, but no quality adjustment can be allowed because there is no selling price upon which to base quality adjustment.

Comment: A commenter stated in section 10(a)(1)–(3) as written "It" in (a)(2) & (3) refers to "your claim" in (a), but perhaps is meant to refer to "All insured production" at the beginning of (a)(1). If so, move "all insured production" to the end of (a) and delete the opening word(s) in (a)(1)–(3).

Response: The word "it" is intended to refer to the production. The provisions have been revised as recommended.

Comment: A commenter stated section 10(b) refers to when "any production fails" to meet the criteria in (a)(2) but does not mention (a)(3). The wording of (a)(1)–(3) indicates that (a)(2) "and" (3) must be considered together and separately from (a)(1), which is separated from the others by the word "or".

Response: Section 10(b) refers to the quality criteria in section 14(a)(2), not the criteria in 10(a)(2) and (3). Therefore, no change is necessary.

Malting Barley Price and Quality Endorsement—Section 11

Comment: Several commenters stated a producer who has enrolled in the Malt Barley Quality Endorsement and has a valid malting contract should be indemnified for prevented planting at the malt barley additional value rather than feed barley value.

Response: Since the recommended change was not proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Malting Barley Price and Quality Endorsement—Section 14(a)(2)

Comment: A few commenters stated the beverage and food products produced from malting barley are numerous and quality factors can vary from year to year, depending on market needs. The rulemaking process does not allow for timely responses to the needs of the end-user and malting barley producer. This is a particular concern with the established malting barley quality factors. The commenters strongly urged malting barley quality factors be determined annually under the Special Provisions, and not specified under this rule. Another commenter stated quality factors should be subjected to re-rating on an annual basis.

Response: The quality standards of the industry may require revision from time to time to reflect changes in standards. However, rather than repeating all of the quality standards in the Special Provisions for all applicable counties, the provisions in section 14(a)(2) have been revised to allow the Special Provisions to contain different or additional standards, as may be applicable. Those standards can only be changed if done prior on or before the contract change date.

Comment: A few commenters supported the proposed change to replace "sprout damage" with "injured by sprout." Some of the commenters stated that "injured by sprout" is the official USDA/FGIS term used for the test. One commenter stated the proposed rule contains a different term—"sprout injury" and if these terms are considered equivalent by FCIC, they have no problem with the current wording, but if they are not equivalent then the proper term would be "injured by sprout." Another commenter stated section 14(a)(2) for both Option A and B changed "Sprout damaged" to "Injured by sprout" in the quality standards chart. However, additional clarification was not provided as to the difference between "Sprout damaged" and "Injured by sprout." The malting barley companies and breweries are using the "Pearling" method and the State grain labs literally use a razor blade to cut the kernel to determine sprout. This was supposed to be addressed by FCIC, or at least according to the State Grain Lab personnel in Montana, it was supposed to be clarified. The State Grain Lab is using pearling but not for malt barley.

Response: "Injured by sprout" is the proper term and the provision has been revised accordingly. FCIC has also revised the names of other quality factors listed in section 14(a)(2) so they match the terms in the chart at the end of the same section. This will make the terms consistent throughout the section. The only test acceptable for determining "injured by sprout" is that done in accordance with FGIS standards and these standards require the grain to be pearled. Tests not performed in accordance with FGIS standards are not considered "objective tests" as defined in the endorsement and cannot be used. The State grain labs in Montana will still perform standard tests on malting barley, which may include cutting kernels to determine damage. However, they will also perform tests for "injured by sprout," which includes pearling, when a request is made for such test.

Comment: Several commenters supported the proposed change that lowers the protein requirement to match the maltsters standards as well as redefining sprout damage. One of the commenters stated these are very positive moves within the malt barley endorsement, and that it has been a financial hardship in the past having a product which could not be delivered as malt barley and yet the producer could not collect insurance for it. Another commenter asked why the quality standard for six-row barley is not lowered from 14.0 percent to 13.5 percent as well, thus providing consistency between the two types.

Response: The changes in protein and sprout quality standards improve insurance coverage for malting barley and have been retained in the final rule. Malting barley buyers generally have different protein standards for six and two rowed malting barley. Fourteen percent is generally acceptable for six rowed barley while 13.5 percent is generally acceptable for two rowed barley. No change has been made.

Comment: Many commenters oppose the change for the mycotoxin maximum under Option B (MPCI) from contract specifications to 2 parts per million (ppm). A few commenters said such a change is unacceptable without the existence of a mycotoxin (DON) rider covering the producer from losses occurring in the gap between contract specifications and 2 ppm. A commenter stated FCIC should also narrow the gap with mycotoxins and vomitoxins to match the malt industry standard. A commenter said adding a level for mycotoxin creates another window of discrepancy, as most malt contracts have NO tolerance for toxins. A producer could have barley a maltster

will not accept, and yet get no insurance indemnity. A commenter stated mycotoxins should follow the contract specifications of the malt buyer, not the mycotoxin limit of 2.0 ppm proposed in the endorsement.

Response: FCIC understands some contracts contain a standard stricter than the proposed 2.0 ppm. However, FCIC has found production contracts vary depending on individual buyer requirements. For example, some production contracts deduct 5 cents per bushel for 1.1 to 2.0 ppm, some have no discount for 2.0 ppm, some require non-detectable levels (less than 0.5 ppm), and some accept higher levels but pay the market price for such production. Current RA and IP plans of insurance provide insurance against levels greater than 2.0 ppm. The 2.0 ppm standard represents a quality level generally acceptable in the marketplace and provides adequate insurance protection against mycotoxins in most situations. To accommodate those situations where the production contract requires levels lower than 2.0 ppm, FCIC has revised the provisions to allow additional coverage if the Special Provisions allow the additional coverage. Although the provisions have been revised, such coverage will not be provided until a premium rate is developed for such coverage and provided in the cost estimator or actuarial documents.

Comment: A commenter stated there is a considerable percentage difference between the standards for "injured by mold" and "mold damage" (5.0 percent for injured by mold vs. 0.4 percent for mold damage). The current nomenclature is confusing and appears to be redundant when viewed by growers. Efforts should be made to combine these constituents into a single category (similar to injured by sprout). The same comment was made regarding "injured by frost" and "frost damage."

Response: "Injured by mold" and "mold damaged" are not the same and denote different levels of harm. The lower the level of harm, the higher the tolerance generally is for such harm. Further, each term is individually defined by FGIS. FCIC is willing to discuss removing one or the other with any interested parties. However, since both the injury and damage categories are currently covered for mold and frost, there was no proposal to eliminate one or the other, and the public was not provided an opportunity to comment on the recommended changes, the recommendations cannot be incorporated in the final rule.

Malting Barley Price and Quality Endorsement—Section 14(b)

Comment: Several comments were received regarding the quality adjustment provisions in section 14(b), including those provisions that make an allowance for reconditioning costs. One commenter stated counting production sold for any use at a price greater than the projected price is reasonable and assists in more closely achieving actuarial soundness while simultaneously minimizing fraud, waste, and abuse. Other commenters supported changes in calculating conditioning incentives in the proposed rule. The commenters stated such incentives can provide growers with additional income, reduce insurance indemnities, and provide the end-user with additional product. They further stated many producers are capable of on-farm conditioning and strongly encouraged that producers be allowed to condition their own production at established regional rates.

Response: FCIC has retained the proposed provisions. However, FCIC is not aware of any established regional rates for conditioning. Costs for conditioning may vary based on the level of damage, energy and labor costs, *etc.* Therefore, the cost of reconditioning will be based on the actual cost of reconditioning. No changes have been made.

Comment: A commenter stated the provisions dealing with barley sold for less than the contracted price need to be revised. The provisions seem to anticipate the price received will always be higher than the feed barley projected price, which may not be the case. It seems if the price is lower than the feed barley projected price, the formula would yield a negative production to count number, which is not what is wanted. The commenter stated he understands the concept, and the problem. A farmer has a $3 malt contract, and delivers barley to the maltster that is of marginal quality. The maltster offers to give him $2.50, and take the barley as "feed" barley. If the feed barley projected price is $2, under the current system, the farmer receives the entire amount of the malt barley endorsement equaling $1. Under the proposed change he would only receive the $.50 difference between his sale price and his contract price. Under the current system, the farmer would get $2.50 for his barley plus $1 for his insurance payment. The $3.50 total is more than his contract price was, so he is money ahead by selling for a lower price. The proposed change would eliminate that possibility, but it creates some new issues. The farmer has no incentive to seek the best price for his barley, because his insurance payment is going to make him whole. Instead of conditioning barley, to deliver some that is of malt quality, he could just sell it all for feed. He could also seek to deliver the barley as close to home as possible, even at a lower price, because again, the insurance will make him whole. The commenter stated he knows it is possible under the current system to have some strange pricing/delivery/conditioning issues, but he is not certain the proposed changes would do anything to make the situation better. In his experience, almost all the malt barley growers try very hard to deliver on their contracts, and to do whatever they have to do to condition/size their barley to make that happen, and the current insurance program does not seem to deter them from that goal.

Response: The damaged barley may be sold for an amount lower than the projected price and the calculation would result in a negative number. In this instance the quality adjustment factor would be zero and no production should be counted (provided failure to meet applicable quality standards and the reduction in value is due to an insured cause of loss). The provision in proposed section 14(b)(4) has been revised accordingly. FCIC also agrees the previous provisions could have resulted in some instances in which a producer could receive more per bushel for production than they could have if there were no loss. However, these instances should have been very limited because the price received for feed barley would generally be close to the price election for feed barley. Further, it is unlikely producers will want to sell production for a price lower than the market price of the damaged production. Insurance providers are monitoring the market to ensure that producers are not creating losses by accepting less than the market price for their barley. If the producer sells for less than a reasonable market price, the insurance provider should not allow adjustment associated with the price reduction below the market price. In addition, producers have an incentive to produce and sell good quality malting barley to reduce negative impacts on their malting barley APH yield if insured under Option A, or eligibility for malting barley insurance under Option B.

Malting Barley Price and Quality Endorsement—Option A

Comment: Several commenters supported the proposed change in Option A to use the sales price

established in the contract or price agreement minus the projected price for feed barley or the price designated in actuarial documents.

Response: The proposed changes have been retained in this final rule.

Comment: A commenter stated a producer is not only required to have a malting barley price agreement, the producer must also provide the insurance provider with a copy of the agreement before the acreage reporting date. The commenter suggested FCIC modify section 4(a)(1)(vi) of Option A to state, "Provided by the acreage reporting date, a malting barley price agreement for the sale of 5,720 bushels at $2.72 per bushel."

Response: FCIC has revised the provision to include the reference to providing the malting barley price agreement by the acreage reporting date.

Malting Barley Price and Quality Endorsement—Option B

Comment: Many commenters had concerns regarding the addition of provisions in section 1(a) of Option B that require producers to prove their "malting barley contract fulfillment rates." The provisions will be used to impact eligibility and the premium rate. Without knowing more of the specifics of this proposal, it is impossible to deem it worthy, or not. If the proposal is to have a 10 percent premium increase for a very low fulfillment rate, that is very manageable. If the proposal is to eliminate eligibility for anyone who has less than a 90 percent fulfillment rate, that is totally unacceptable. This entire section creates a lot more work for producers and their agents. Compiling information about barley delivered, and comparing it to contracts that were in place takes a huge amount of time, for producers, agents, and company adjusters and auditors. The 4-year window is too short, if having 2 bad years out of 4 could make someone ineligible for coverage. Producers should be able to consider all the years in their databases if that kind of eligibility penalty is proposed. For most producers, this would be the entire 10 years. Fulfillment rates for 10 years would better depict the success of a malt barley crop, as it would reflect years of natural disaster as well as years of good conditions. Rather than require 4 years of consecutive records, an alternative should be considered (*e.g.*, the producer must provide production records and malting barley contracts for 4 of the previous 6 years). If a producer has been successfully producing malt barley for 20 years then has 4 years of hail or drought, the producer's eligibility or rate should not be challenged. The producer has no control over these external forces. Going back to retrieve that information requires keeping records longer than the required retention period. This whole section is very troubling because of all the possible implications and complications it could impose. The current policy already contains many of these features. A producer's coverage is based on their proven history, and if their history is below "normal" they pay a higher premium rate, and have lower coverage levels. A simple, manageable, understandable program is needed to gain the producer's trust and to keep them insured. Contracts for malting barley purchases reflect the demand for this specialty crop with the current acreage trends and contracting is conducted with a realistic expectation of producers fulfilling the contracts. It is not sensible for a contracting entity to risk over purchasing, nor to contract with producers having little prospect of success. The recent loss ratio experiences of the malting barley endorsement are the result of multiple years of adverse weather and environmental conditions that have resulted in a loss of yield, malting quality or a combination of both, and are not the result of fraud, poor crop management or inappropriate contracting practices. The contract fulfillment provision should not be implemented because it will amount to an elimination of effective insurance coverage for the majority of malting barley production under contract with the U.S. malting and brewing industry. Contract fulfillment rates, if implemented, should only be used to calculate premiums and not be used to determine program eligibility.

Response: There have been issues with respect to whether producers seeking insurance have the experience to produce malting barley or are producing it on land suitable for the production of malting barley. Malting barley receives an additional price and producers must demonstrate that they can produce malting barley to be eligible to receive the higher price. Nothing in the malting barley price and quality endorsement affects the producer's ability to insure their barley under the Small Grains Crop Provisions. However, the commenters are correct that the use of the fulfillment rates as proposed may be too restrictive. Therefore, as stated above, as a condition of eligibility, FCIC has changed the provisions to require that producers have produced and sold at least 75 percent of their contracted amount in at least one of the three most recent crop years they produced malting barley before the previous crop year.

Comment: A commenter stated the new language in section 1(a) of Option B can be interpreted to mean the producer must have planted malting barley in each year for the four years preceding the current crop year (*i.e.*, the producer must have planted barley in 2004, 2005, 2006, and 2007 in order to obtain coverage). This seems rigid, and if the producer missed one of those years, they would not be eligible to obtain coverage.

Response: As stated above, the proposed provisions have not been retained in the final rule.

Comment: A commenter stated in Option B, FCIC introduces the concept of an "average malting barley contract fulfillment rate" however, FCIC has not defined this term, and FCIC's description of its purpose is unclear. The commenter recommended FCIC define "average malting barley contract fulfillment rate" and clarify the related provisions.

Response: As stated above, the proposed provisions have not been retained in the final rule.

Comment: A commenter recommended clarifying the provisions by redesignating the second sentence of proposed section 1(a)(2) in Option B as section 1(a)(3).

Response: As stated above, the proposed provisions have not been retained in the final rule.

Comment: Several commenters had the following recommendations regarding the contract fulfillment rate amounts: (1) A fulfillment rate over 100 percent should be able to be counted; (2) A contract fulfillment rate of 75 percent should be used in years when the covered crop is produced in a county that has been declared a Federal crop disaster county, if the producer so elects; and (3) Losses not covered under the endorsement (*i.e.*, losses not related to quality per se such as prevented planting, hail damage, *etc.*) should not be used to calculate the fulfillment rates or should be treated as missing years with the same 75 percent default fulfillment rate.

Response: As stated above, the proposed provisions have not been retained in the final rule.

Comment: A commenter stated using contract fulfillment rates to determine eligibility is an underwriting issue as well as a rating issue. Using fulfillment rates in determining premiums is reasonable, but the fulfillment rates (and the reasons why contracts are not fulfilled) should also be documented. Producers who are successfully fulfilling contracts should be rewarded

through lower premiums. What FCIC ultimately needs is an underwriting guide for malt barley insurance.

Response: As stated above, the proposed provisions have not been retained in the final rule.

Comment: Many comments were received regarding the additional value price. Many commenters stated the proposed rule caps the "additional value price" under option B at $1.25 instead of the current $2.00. The commenters strongly oppose this change, as it does not offer malting barley growers needed protection and runs counter to current price trends in U.S. malting barley markets. A few commenters stated according to NASS, the price differential producers receive for malting and feed barley has risen steadily over the past ten years (1995–2004) and should this continue at the same pace it would reach $1.53 by the time the rule is implemented (2009). Contract premiums of more than $1.25 for malting barley over feed barley prices are being offered in every region of the country. Some commenters stated for example, NASS figures indicate that producers in Montana received an average premium for malting barley of $1.22 over the last ten years and exceeded the proposed cap in four of those years. Some commenters stated it should be noted that the NASS reported prices paid to producers are a combination of contracted and open market purchases and may significantly under represent contract prices. Some commenters stated it could be argued that the current "additional value price" cap of $2.00 offers insufficient coverage for malting barley producers and therefore, lowering the cap at all is unacceptable. A commenter stated FCIC needs to utilize historical barley price data and related derivation methods to document how the $1.25 cap was determined. The commenter stated transparency is necessary in the calculation process. If historical price data and forecasted trends indicate that the value of $1.25 per bushel is not reflective of price relationships, then the $1.25 per bushel value (cap) would be deemed inappropriate and thus must be replaced with the appropriate derived value. A commenter stated they now have wheat prices near $5, and barley producers are considering growing wheat for the first time. Maltsters may have to come to the table with higher contract prices to guarantee their supply, but if that higher price is capped by an artificial insurance limit, that could discourage producers from raising barley. The difference between the value of feed barley and the value of malt barley could vary greatly, as they are really two entirely different products.

Response: The maximum additional value price under Option B should remain at $2.00 per bushel and FCIC has revised the provisions accordingly.

Rice Crop Provisions—Section 1—Definitions

Comment: A commenter asked if the definition of "planted" which was not in the proposed rule should be "planted acreage" and begin "In lieu of the definition in the Basic Provisions * * *" Otherwise, rice has separate definitions of "planted" and "planted acreage."

Response: FCIC has removed the definition of "planted" and replaced it with a definition of "planted acreage" and specified it is in addition to the definition contained in section 1 of the Basic Provisions. This should eliminate any potential conflicts.

Rice Crop Provisions—Section 12—Settlement of Claim

Comment: A commenter stated in regards to section 12(d)(1), which is not in the proposed rule, the moisture adjustment percentage is changed in the Special Provisions for California. Consider adding a reference here to the possibility of such regional variations in the Special Provisions.

Response: Since no changes to this section were proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Canola and Rapeseed Crop Provisions—Section 1—Definitions

Comment: A commenter stated FCIC should consider if the definition of "Planted acreage" which is not in the proposed rule should be "In lieu of the definition in the Basic Provisions * * *" instead of "In addition to * * *" It is unclear what is left in the BP definition that would still apply in addition to this definition.

Response: Since no changes to this section were proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Canola and Rapeseed Crop Provisions—Section 6—Insured Crop

Comment: A commenter stated the provisions proposed in section 6(b) concerning counties with both fall and spring final planting dates is essentially the same as section 7(a)(2)(iii) of Small Grains Crop Provisions. In the Canola and Rapeseed Crop Provisions, this issue is proposed to be addressed in section 6, entitled "Insured Crop." However, in the Small Grains Crop Provisions, the language appears in section 7, entitled "Insurance Period." The commenter recommends that proposed section 6(b) of the Canola and Rapeseed Crop Provisions be incorporated into section 7 (Insurable Acreage). Another commenter suggested rearranging section 6(b) for better clarity. The commenter stated FCIC should compare this to Small Grains section 7(a)(2)(iii)(A) & (B), and note that is under "Insurance Period" rather than under "Insured Crop."

Response: FCIC agrees section 6(b) of the Canola and Rapeseed Crop Provisions may not be an appropriate location. FCIC has placed these provisions in the "Insurable Acreage" section of the Crop Provisions to be consistent with references to the requirement to replant in the "Insurable Acreage" section of the Basic Provisions. FCIC agrees the provisions should be clarified and has revised them accordingly.

Canola and Rapeseed Crop Provisions—Section 8—Insurance Period

Comment: A commenter recommended the unamended provision in section 8 be revised to read "* * * the calendar date for the end of the insurance period is * * *", as it is in the other Crop Provisions.

Response: FCIC has revised the provisions accordingly.

Canola and Rapeseed Crop Provisions—Section 10—Replanting Payment

Comment: A commenter stated section 10(a)(4) indicates the replanted crop must be planted at a sufficient rate to achieve at least the yield used to determine the production guarantee. This becomes problematic when the crop is replanted after the final planting date. If the crop is initially planted after the final planting date, it is insurable with reduced coverage to recognize the reduced crop potential from planting the crop so late. Therefore, assuming it is still practical to replant after the final planting date, and if the producer does so, the replanted crop would not meet the requirements of this section of the policy since the crop potential for the replanted crop would be expected to be less than the yield used to determine the production guarantee. This language needs to be modified as has been done in previous versions of the Basic Provisions definition of "Replanting" (2001 version of the Basic Provisions

was revised for 2004 to make this change).

Response: The commenter is correct that the language should be clarified. The provisions proposed in section 10(a)(4) have been revised to indicate seeding must be at a rate considered appropriate by agricultural experts for the crop, type and practice. A conforming change has been made in the Small Grains Crop Provisions.

In addition to the changes described above, FCIC has made editorial changes, corrected references to specific policy sections, and made revisions necessary to conform to changes in provisions previously made due to the Food, Conservation, and Energy Act of 2008 as follows:

Basic Provisions

1. Added a definition of "verifiable records" in section 1. Since this term is used in the Basic Provisions, the definition is added to refer the reader to the definition contained in 7 CFR part 400, subpart G.

2. Revised the provisions in redesignated section 2(b)(9) to clarify if information regarding persons with a substantial beneficial interest changes after the sales closing date for the previous crop year, the new information must be provided by the sales closing date for the current crop year. In addition, an allowance has been added for cases where the information changed less than 30 days before the sales closing date for the current crop year. In this case, the new information does not have to be provided until the sales closing date for the next crop year.

3. Revised redesignated section 2(b)(10)(i) to remove reference to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). This reference was removed because there are reasons other than PRWORA that may result in denial of a request for assignment of a number.

4. Revised section 2(f)(2)(i)(D) to clarify the crop year a policy will be terminated for failure to make a payment under any written payment agreement. Under the current provisions questions were asked regarding the meaning of "crop year prior to the crop year in which you failed to make the scheduled payment." FCIC is clarifying the applicable crop year and providing an example.

5. Revised section 3 to specify a producer may change the plan of insurance (*e.g.*, yield protection or revenue protection) not later than the sales closing date because the Basic Provisions now cover more than just the APH plan and there is no need to require producers to cancel and reapply. Changing plans of insurance is no different than changing coverage levels, *etc.*, since the same policy documents apply.

6. Revised redesignated section 3(f) to clarify producers must report all production of the crop, including production from both insured and uninsured acreage. There were questions regarding whether uninsured acreage had to be reported and FCIC is clarifying that all production for the crop means from all acreage, whether insured or not.

7. Removed current sections 7(e)(5) and (6), which are reserved, and redesignated section 7(e)(7) as section 7(e)(5).

8. Revised section 9(a) to allow the Special Provisions to provide coverage for acreage otherwise excluded under the provisions. Coverage was already allowed in the Crop Provisions or written agreement so this change is not substantive. Also added a provision to allow insurance on acreage that has not been planted or harvested in one of the three previous crop years because it was in a hay or forage crop rotation. There was a potential for a conflict because the proposed rule stated that acreage is not insurable if the only crop planted and harvested was a cover crop, hay or forage crop. However, the existing provisions also state that the acreage is insurable if the acreage was not planted and harvested because of a crop rotation. Since hay and forage crops can be used in crop rotations, the provision had to be clarified that if these crops are used in a crop rotation, the acreage is insurable.

9. Clarified provisions in proposed sections 17(e)(1)(i) and (ii) regarding the determination of eligible acres for prevented planting. Questions have been raised regarding the ability to submit an intended acreage report when a producer has not planted a crop for which prevented planting insurance was available or has not received a prevented planting insurance guarantee. The proposed rule stated the intended acreage report could be used if the producer did not plant a crop in any of the four most recent crop years. There are some who interpreted this to mean that if the producer did not plant a crop for which prevented planting insurance was available or has not received a prevented planting insurance guarantee in any one of the four most recent crop years, the producer could file an intended acreage report and this is not correct. The provision was intended to only allow an intended acreage report if the producer never planted a crop or had a prevented planting guarantee in the previous four crop years. The requirement has been clarified accordingly. FCIC also added the parenthetical that was contained in proposed section 17(e)(1)(i) to (ii) so that the provisions are consistent.

10. Revised section 18(i)(2) to specify the signed written agreement must be postmarked or delivered to the insurance provider not later than the expiration date for the producer to accept the offer. The proposed provision did not recognize that the document could also be hand delivered.

11. Revised section 20(a)(1)(iii) [For Reinsured Policies] to clarify an interpretation by FCIC of a policy provision is considered a determination that is a matter of general applicability, and to remove provisions regarding appealability and a Director's review from the National Appeals Division. Including the Director's Review in section 20(a)(1)(iii) mistakenly created the impression that an interpretation of a policy provision could be appealed to the National Appeals Division. However, the National Appeals Division is precluded by statute (7 U.S.C. 6992(d)) and 7 CFR part 11 from hearing appeals regarding matters of general applicability. The only appeal right is to have the Director of the National Appeals Division determine whether the decision was adverse to the producer and appealable, or a matter of general applicability and not appealable.

12. Added new sections 20(b)(3) [For FCIC Policies] and 20(k) [For Reinsured Policies] to clarify that if a determination made by FCIC is a matter of general applicability is not subject to administrative review under 7 CFR part 400, subpart J or appeal under 7 CFR part 11. If the producer wants to seek judicial review of any FCIC determination that is a matter of general applicability, the producer must request a determination of non-appealability from the Director of the National Appeals Division in accordance with 7 CFR 11.6 before seeking judicial review. This clearly distinguishes between matters that are appealable to the National Appeals Division and specified in section 20(e) from those that are not appealable.

13. Revised section 24(a) [For reinsured policies] to clarify that after the termination date, FCIC will collect any unpaid administrative fees and any interest owed thereon for any catastrophic risk protection policy. Previous provisions were not clear that FCIC would collect these amounts for only catastrophic risk protection policies. Insurance providers will collect these unpaid amounts for additional coverage policies.

14. Revised section 34(a) to specify a producer can elect an enterprise unit for any crop for which revenue protection is available, or for crops for which revenue protection is not available only if allowed by the Special Provisions. The revised provisions also specify a whole-farm unit can be elected only for crops for which revenue protection is elected and is provided unless limited by the Special Provisions, or for crops for which revenue protection is not available and for yield protection only if allowed by the Special Provisions. These revisions were made because, after publication of the proposed rule, FCIC determined that whole-farm and enterprise units would automatically be available for all crops for which revenue protection is available and it was not necessary to repeat this information on every Special Provisions. Additionally, the provisions have been revised to allow changes in unit structure until the spring sales closing date in counties with both fall and spring sales closing dates, if the producer does not have any insured fall planted acreage of the insured crop. This change is made to be consistent with provisions in the Canola and Rapeseed and Small Grains Crop Provisions that allow a producer to change their coverage level, percentage of price, *etc.*, when there is no fall-planted acreage of the insured crop. FCIC has also revised redesignated sections 34(a)(4)(vii) and 34(a)(5)(v) to specify what unit structure would be in effect if the producer failed to qualify for an enterprise or whole-farm unit. These revisions were made to be consistent with other provisions in the policy that allow until the acreage reporting date to elect basic or optional units.

Small Grains Crop Provisions

15. Revised section 5 to allow cancellation and termination dates to be shown in the Special Provisions. There have been cases in which cropping patterns have changed in counties (*e.g.*, winter wheat is now grown where only spring wheat was grown in the past) and it is reasonable to change program dates accordingly. Allowing these dates to be modified in the Special Provisions will allow program dates to be changed when necessary without the delays associated with the regulatory process.

16. Revised section 7(b) to remove provisions that specify the different events that end the insurance period. This language was duplicative of the provisions contained in section 11 of the Basic Provisions.

Cotton Crop Provisions

17. Amended section 4 by revising the January 15 cancellation and termination date for Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof to January 31. The Consolidated Appropriations Act (H.R. 3194) for 2000 mandated the earliest sales closing date for any spring planted crop would be January 31. Cancellation and termination dates generally correspond to the sales closing dates in order to avoid the potential for coverage attaching before the policy is terminated or canceled. Therefore, the termination and cancellation dates needed to be revised. Previously, FCIC implemented the revision to the applicable crops in the Special Provisions. This change will eliminate any potential conflict between the regulations and the Special Provisions.

Coarse Grains Crop Provisions

18. Revise section 10(b) to remove provisions regarding the submission of a claim when there is more than one calendar date for the end of the insurance period for the unit (*e.g.*, when there is grain and silage in the same unit). These provisions are duplicative of the new provisions contained in section 14 of the Basic Provisions.

Malting Barley Price and Quality Endorsement

19. Revised the definition of "malt extract." The revisions clarify that malt extract may, in some cases, be condensed or evaporated to a syrup or powder. The proposed definition indicated the extract was always condensed to a powder and this is not always the case.

Rice Crop Provisions

20. Amended section 5 by revising the January 15 cancellation and termination date for Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas; and all Texas Counties south thereof to January 31. The Consolidated Appropriations Act (H.R. 3194) for 2000 mandated the earliest sales closing date for any spring planted crop would be January 31. Cancellation and termination dates generally correspond to the sales closing dates in order to avoid the potential for coverage attaching before the policy is terminated or canceled. Therefore, the termination and cancellation dates needed to be revised. Previously, FCIC implemented the revision to the applicable crops in the Special Provisions. This change will eliminate any potential conflict between the regulations and the Special Provisions.

Canola and Rapeseed Crop Provisions

21. Changed the cancellation and termination dates for Alabama from August 31 to September 30. This change makes these dates in Alabama consistent with the dates used in Georgia. This change is made because the agronomic conditions in these two states are similar and the program dates should be the same.

Other Crop Provisions

22. After it had published the proposed rule, FCIC discovered there will be other crop policies that are affected because references have been changed in this final rule and no longer match those referenced in certain Crop Provisions. As a result, FCIC has revised the Texas Citrus Tree Crop Insurance Provisions, Pear Crop Insurance Provisions, Sugarcane Crop Insurance Provisions, Macadamia Tree Crop Insurance Provisions, Macadamia Nut Crop Insurance Provisions, Onion Crop Insurance Provisions, Dry Pea Crop Insurance Provisions, Plum Crop Insurance Provisions, and Cabbage Crop Insurance Provisions to correct specific references to the revised Common Crop Insurance Regulations, Basic Provisions.

List of Subjects in 7 CFR Part 457

Crop insurance, Reporting and recordkeeping requirements.

Final Rule

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

PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

■ 2. Amend § 457.8 as follows:
■ A. Throughout § 457.8, where they appear:
■ i. Remove the word "cancelled" and add the word "canceled" in its place,
■ ii. Remove the phrase "high risk" and add the phrase "high-risk" in its place,
■ iii. Remove the phrase "the organic agricultural industry" and add the phrase "organic agricultural experts" in its place,
■ iv. Remove the phrase "whole farm" and add the phrase "whole-farm" in its place, and
■ v. Remove the phrase "the RMA Web site" and add the phrase "RMA's Web site" in its place;
■ B. Revise paragraph (b) and add new paragraphs (c) through (f), immediately

before the Common Crop Insurance Policy, to read as follows:

§ 457.8 The application and policy.

* * * * *

(b) FCIC or the reinsured company may reject or discontinue the acceptance of applications in any county or of any individual application upon FCIC's determination that the insurance risk is excessive.

(c) If the producer had a Crop Revenue Coverage, Revenue Assurance, Income Protection, or Indexed Income Protection crop insurance policy in effect for the 2010 crop year and has not canceled or changed such coverage in accordance with such policy, revenue protection will continue in effect under the Common Crop Insurance Policy Basic Provisions and no new application is required. Revenue protection will be at the same coverage level, 100 percent of price, with any applicable options, endorsements, and enterprise or whole-farm unit structures that were in effect the previous year still in effect, as long as all qualifications are met and such coverage remains available.

(1) If the producer had revenue coverage under the Revenue Assurance crop insurance policy for the 2010 crop year and:

(i) The producer had the fall harvest price option, for the 2011 crop year the producer will have revenue protection under the Common Crop Insurance Policy Basic Provisions based on the greater of the projected price or the harvest price; or

(ii) The producer did not have the fall harvest price option, for the 2011 crop year the producer will have revenue protection under the Common Crop Insurance Policy Basic Provisions and the harvest price exclusion.

(2) If the producer had revenue coverage under the Income Protection or Indexed Income Protection crop insurance policy for the 2010 crop year, for the 2011 crop year the producer will have revenue protection under the Common Crop Insurance Policy Basic Provisions and the harvest price exclusion.

(3) If the producer has revenue protection under paragraph (c) of this section, the producer may exclude coverage for hail and fire if the requirements are met.

(d) If the producer had coverage under an Actual Production History crop insurance policy for a crop under the Common Crop Insurance Policy Basic Provisions for the 2010 crop year, and that crop now has revenue protection available, the producer will have yield protection for the crop under the Common Crop Insurance Policy Basic Provisions in effect for the 2011 crop year at the same coverage level, and percentage of price, any applicable options or endorsements, and enterprise unit structures that were in effect the previous year continue in effect, as long as all qualifications are met and such coverage remains available.

(e) If the producer had coverage under Actual Production History or another crop insurance policy for a crop under the Common Crop Insurance Policy Basic Provisions for the 2010 crop year and that crop does not have revenue protection available for the 2011 crop year, the producer will continue with the same crop insurance policy (*e.g.*, Actual Production History or amount of insurance) until canceled or terminated.

(f) With respect to any crop insurance policy specified in paragraphs (c) through (e) of this section:

(1) The producer may change their coverage (coverage level, percent of price, *etc.*) in accordance with section 3 of the Common Crop Insurance Policy Basic Provisions or the producer may cancel such coverage in accordance with section 2 of the Common Crop Insurance Policy Basic Provisions. If the producer changes their crop insurance policy (*e.g.*, Actual Production History, yield protection, revenue protection, amount of insurance, *etc.*) for any crop year, the producer must elect the coverage level, percentage of price, any applicable options, endorsements, and unit structure (enterprise or whole-farm) that will be in effect under the new crop insurance policy.

(2) If a producer has a properly executed Power of Attorney on file with the insurance provider, such Power of Attorney will remain in effect under the Common Crop Insurance Policy Basic Provisions until it is terminated.

(3) If the producer has a current written agreement in effect for the crop for multiple crop years, such written agreement will remain in effect if the terms of the written agreement are still applicable, the conditions under which the written agreement was provided have not changed, and the crop insurance policy remains with the same insurance provider.

* * * * *

§ 457.8 [Amended]

■ 3. Further amend § 457.8 by revising the"Agreement to Insure" sections after the second paragraph of both the "FCIC Policies" and "Reinsured Policies" sections that precede "Terms and Conditions Basic Provisions" as follows:

FCIC Policies

* * * * *

AGREEMENT TO INSURE: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures issued by us, the order of priority is: (1) The Act; (2) the regulations; and (3) the procedures issued by us, with (1) controlling (2), *etc.* If there is a conflict between the policy provisions published at 7 CFR part 457 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 457 control. If a conflict exists among the policy provisions, the order of priority is: (1) The Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Commodity Exchange Price Provisions, as applicable; (4) the Crop Provisions; and (5) these Basic Provisions, with (1) controlling (2), *etc.*

Reinsured Policies

* * * * *

AGREEMENT TO INSURE: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures as issued by FCIC, the order of priority is: (1) The Act; (2) the regulations; and (3) the procedures as issued by FCIC, with (1) controlling (2), *etc.* If there is a conflict between the policy provisions published at 7 CFR part 457 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 457 control. If a conflict exists among the policy provisions, the order of priority is: (1) The Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Commodity Exchange Price Provisions, as applicable; (4) the Crop Provisions; and (5) these Basic Provisions, with (1) controlling (2), *etc.*

§ 457.8 [Amended]

■ 4. Further amend § 457.8 in section 1 as follows:

■ A. Add definitions of "Commodity Exchange Price Provisions (CEPP)," "Cooperative Extension System," "harvest price," "harvest price exclusion," "insurable interest," "intended acreage report," "organic agricultural experts," "projected price," "revenue protection," "revenue protection guarantee (per acre)," "RMA's Web site," "verifiable records," "yield

protection," and "yield protection guarantee (per acre)."

■ B. Revise the definitions of "actuarial documents," "agricultural experts," "assignment of indemnity," "average yield," "catastrophic risk protection," "claim for indemnity," "conventional farming practice," "delinquent debt," "enterprise unit," "liability," "limited resource farmer," "policy," "prevented planting," "price election," "production report," "section," "share," "substantial beneficial interest," "void," and "whole-farm unit."

■ C. Remove the definition of "organic agricultural industry."

■ D. Redesignate the definitions of "Code of Federal Regulations (CFR)," "consent," "second crop," and "section" in alphabetical order.

The revised and added text reads as follows:

1. Definitions.

* * * * *

Actuarial documents. The information for the crop year which is available for public inspection in your agent's office and published on RMA's Web site and which shows available crop insurance policies, coverage levels, information needed to determine amounts of insurance, prices, premium rates, premium adjustment percentages, practices, particular types or varieties of the insurable crop, insurable acreage, and other related information regarding crop insurance in the county.

* * * * *

Agricultural experts. Persons who are employed by the Cooperative Extension System or the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific crop or practice for which such expertise is sought.

* * * * *

Assignment of indemnity. A transfer of policy rights, made on our form, and effective when approved by us in writing, whereby you assign your right to an indemnity payment for the crop year only to creditors or other persons to whom you have a financial debt or other pecuniary obligation.

Average yield. The yield calculated by totaling the yearly actual yields, assigned yields in accordance with sections 3(f)(1) (failure to provide production report), 3(h)(1) (excessive yields), and 3(i) (second crop planted without double cropping history on prevented planting acreage), and adjusted or unadjusted transitional yields, and dividing the total by the number of yields contained in the database.

* * * * *

Catastrophic risk protection. The minimum level of coverage offered by FCIC. Catastrophic risk protection is not available with revenue protection.

* * * * *

Claim for indemnity. A claim made on our form that contains the information necessary to pay the indemnity, as specified in the applicable FCIC issued procedures, and complies with the requirements in section 14.

* * * * *

Commodity Exchange Price Provisions (CEPP). A part of the policy that is used for all crops for which revenue protection is available, regardless of whether you elect revenue protection or yield protection for such crops. This document includes the information necessary to derive the projected price and the harvest price for the insured crop, as applicable.

* * * * *

Conventional farming practice. A system or process that is necessary to produce an agricultural commodity, excluding organic farming practices.

Cooperative Extension System. A nationwide network consisting of a State office located at each State's land-grant university, and local or regional offices. These offices are staffed by one or more agricultural experts, who work in cooperation with the Cooperative State Research, Education and Extension Service, and who provide information to agricultural producers and others.

* * * * *

Delinquent debt. Has the same meaning as the term defined in 7 CFR part 400, subpart U.

* * * * *

Enterprise unit. All insurable acreage of the same insured crop in the county in which you have a share on the date coverage begins for the crop year, provided the requirements of section 34 are met.

* * * * *

Harvest price. A price determined in accordance with the Commodity Exchange Price Provisions and used to value production to count for revenue protection.

Harvest price exclusion. Revenue protection with the use of the harvest price excluded when determining your revenue protection guarantee. This election is continuous unless canceled by the cancellation date.

* * * * *

Insurable interest. Your percentage of the insured crop that is at financial risk.

* * * * *

Intended acreage report. A report of the acreage you intend to plant, by crop, for the current crop year and used solely for the purpose of establishing eligible prevented planting acreage, as required in section 17.

* * * * *

Liability. Your total amount of insurance, value of your production guarantee, or revenue protection guarantee for the unit determined in accordance with the Settlement of Claim provisions of the applicable Crop Provisions.

Limited resource farmer. Has the same meaning as the term defined by USDA at *http://www.lrftool.sc.egov.usda.gov/LRP-D.htm.*

* * * * *

Organic agricultural experts. Persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education or the Cooperative Extension System, the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific organic crop or practice for which such expertise is sought.

* * * * *

Policy. The agreement between you and us to insure an agricultural commodity and consisting of the accepted application, these Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Insurance for each agricultural commodity in each county will constitute a separate policy.

* * * * *

Prevented planting. Failure to plant the insured crop by the final planting date designated in the Special Provisions for the insured crop in the county, or within any applicable late planting period, due to an insured cause of loss that is general to the surrounding area and that prevents other producers from planting acreage with similar characteristics. Failure to plant because of uninsured causes such as lack of proper equipment or labor to plant the acreage, or use of a particular production method, is not considered prevented planting.

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

election is not applicable for crops for which revenue protection is available.

* * * * *

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

* * * * *

Projected price. The price for each crop determined in accordance with the Commodity Exchange Price Provisions. The applicable projected price is used for each crop for which revenue protection is available, regardless of whether you elect to obtain revenue protection or yield protection for such crop.

* * * * *

Revenue protection. A plan of insurance that provides protection against loss of revenue due to a production loss, price decline or increase, or a combination of both. If the harvest price exclusion is elected, the insurance coverage provides protection only against loss of revenue due to a production loss, price decline, or a combination of both.

Revenue protection guarantee (per acre). For revenue protection only, the amount determined by multiplying the production guarantee (per acre) by the greater of your projected price or your harvest price. If the harvest price exclusion is elected, the production guarantee (per acre) is only multiplied by your projected price.

RMA's Web site. A Web site hosted by RMA and located at *http://www.rma.usda.gov/or* a successor Web site.

* * * * *

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

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

* * * * *

Substantial beneficial interest. An interest held by any person of at least 10 percent in you (*e.g.,* there are two partnerships that each have a 50 percent interest in you and each partnership is made up of two individuals, each with a 50 percent share in the partnership. In this case, each individual would be considered to have a 25 percent interest in you, and both the partnerships and the individuals would have a substantial beneficial interest in you. The spouses of the individuals would not be considered to have a substantial beneficial interest unless the spouse was one of the individuals that made up the partnership. However, if each partnership is made up of six individuals with equal interests, then each would only have an 8.33 percent interest in you and although the partnership would still have a substantial beneficial interest in you, the individuals would not for the purposes of reporting in section 2). The spouse of any individual applicant or individual insured will be presumed to have a substantial beneficial interest in the applicant or insured unless the spouses can prove they are legally separated or otherwise legally separate under the applicable State dissolution of marriage laws. Any child of an individual applicant or individual insured will not be considered to have a substantial beneficial interest in the applicant or insured unless the child has a separate legal interest in such person.

* * * * *

Verifiable records. Has the same meaning as the term defined in 7 CFR part 400, subpart G.

Void. When the policy is considered not to have existed for a crop year.

Whole-farm unit. All insurable acreage of all the insured crops planted in the county in which you have a share on the date coverage begins for each crop for the crop year and for which the whole-farm unit structure is available in accordance with section 34.

* * * * *

Yield protection. A plan of insurance that only provides protection against a production loss and is available only for crops for which revenue protection is available.

Yield protection guarantee (per acre). When yield protection is selected for a crop that has revenue protection available, the amount determined by multiplying the production guarantee by your projected price.

§ 457.8 [Amended]

■ 5. Further amend § 457.8 in section 2 as follows:

■ a. Amend paragraph (a) by adding at the end of the paragraph the following sentence "In accordance with section 4, FCIC may change the coverage provided from year to year.";

■ b. Revise paragraph (b);

■ c. Amend paragraph (e)(2) by removing "14(c)" and adding "14(e)" in its place;

■ d. Amend paragraph (f)(1)(i)(C) by adding the word "written" before the phrase "payment agreement";

■ e. Amend paragraph (f)(1)(ii) by removing the phrase "2(f)(2)(i)(D) or (E)" and adding the phrase "2(f)(2)(i)(A), (B), (D), or (E)" in its place;

■ f. Revise paragraphs (f)(2)(i)(A), (B), (C), and (D);

■ g. Amend paragraph (f)(2)(ii) by removing the phrase "2(f)(2)(i)(D) and (E)" and adding the phrase "2(f)(2)(i)(A), (B), (D), or (E)" in its place;

■ h. Revise paragraph (f)(3)(ii);

■ i. Amend paragraph (f)(3)(iii) by removing the semicolon at the end of the text and adding a period in its place;

■ j. Amend paragraph (f)(4) by removing the semicolon at the end of the text and adding a period in its place;

■ k. Revise paragraph (f)(5);

■ l. Revise paragraph (g); and

■ m. Amend paragraph (k) by adding the word "other" between the words "any" and "applicable".

The revised text reads as follows:

2. Life of Policy, Cancellation, and Termination.

* * * * *

(b) With respect to your application for insurance:

(1) You must include your social security number (SSN) if you are an individual (if you are an individual applicant operating as a business, you may provide an employer identification number (EIN) but you must also provide your SSN); or

(2) You must include your EIN if you are a person other than an individual;

(3) In addition to the requirements of section 2(b)(1) or (2), you must include the following for all persons who have a substantial beneficial interest in you:

(i) The SSN for individuals; or

(ii) The EIN for persons other than individuals and the SSNs for all individuals that comprise the person with the EIN if such individuals also have a substantial beneficial interest in you;

(4) You must include:

(i) Your election of revenue protection, yield protection, or other available plan of insurance; coverage level; percentage of price election or percentage of projected price, as applicable; crop, type, variety, or class; and any other material information

required on the application to insure the crop; and

(ii) All the information required in section 2(b)(4)(i) or your application will not be accepted and no coverage will be provided;

(5) Your application will not be accepted and no insurance will be provided for the year of application if the application does not contain your SSN or EIN. If your application contains an incorrect SSN or EIN for you, your application will be considered not to have been accepted, no insurance will be provided for the year of application and for any subsequent crop years, as applicable, and such policies will be void if:

(i) Such number is not corrected by you; or

(ii) You correct the SSN or EIN but:

(A) You cannot prove that any error was inadvertent (Simply stating the error was inadvertent is not sufficient to prove the error was inadvertent); or

(B) It is determined that the incorrect number would have allowed you to obtain disproportionate benefits under the crop insurance program, you are determined to be ineligible for insurance or you could avoid an obligation or requirement under any State or Federal law;

(6) With respect to persons with a substantial beneficial interest in you:

(i) The insurance coverage for all crops included on your application will be reduced proportionately by the percentage interest in you of persons with a substantial beneficial interest in you (presumed to be 50 percent for spouses of individuals) if the SSNs or EINs of such persons are included on your application, the SSNs or EINs are correct, and the persons with a substantial beneficial interest in you are ineligible for insurance;

(ii) Your policies for all crops included on your application, and for all applicable crop years, will be void if the SSN or EIN of any person with a substantial beneficial interest in you is incorrect or is not included on your application and:

(A) Such number is not corrected or provided by you, as applicable;

(B) You cannot prove that any error or omission was inadvertent (Simply stating the error or omission was inadvertent is not sufficient to prove the error or omission was inadvertent); or

(C) Even after the correct SSN or EIN is provided by you, it is determined that the incorrect or omitted SSN or EIN would have allowed you to obtain disproportionate benefits under the crop insurance program, the person with a substantial beneficial interest in you is determined to be ineligible for insurance, or you or the person with a substantial beneficial interest in you could avoid an obligation or requirement under any State or Federal law; or

(iii) Except as provided in sections 2(b)(6)(ii)(B) and (C), your policies will not be voided if you subsequently provide the correct SSN or EIN for persons with a substantial beneficial interest in you and the persons are eligible for insurance;

(7) When any of your policies are void under sections 2(b)(5) or (6):

(i) You must repay any indemnity, prevented planting payment or replant payment that may have been paid for all applicable crops and crop years;

(ii) Even though the policies are void, you will still be required to pay an amount equal to 20 percent of the premium that you would otherwise be required to pay; and

(iii) If you previously paid premium or administrative fees, any amount in excess of the amount required in section 2(b)(7)(ii) will be returned to you;

(8) Notwithstanding any of the provisions in this section, if you certify to an incorrect SSN or EIN, or receive an indemnity, prevented planting payment or replant payment and the SSN or EIN was not correct, you may be subject to civil, criminal or administrative sanctions;

(9) If any of the information regarding persons with a substantial beneficial interest in you changes after the sales closing date for the previous crop year, you must revise your application by the sales closing date for the current crop year to reflect the correct information. However, if such information changed less than 30 days before the sales closing date for the current crop year, you must revise your application by the sales closing date for the next crop year. If you fail to provide the required revisions, the provisions in section 2(b)(6) will apply; and

(10) If you are, or a person with a substantial beneficial interest in you is, not eligible to obtain a SSN or EIN, whichever is required, you must request an assigned number for the purposes of this policy from us:

(i) A number will be provided only if you can demonstrate you are, or a person with a substantial beneficial interest in you is, eligible to receive Federal benefits;

(ii) If a number cannot be provided for you in accordance with section 2(b)(10)(i), your application will not be accepted; or

(iii) If a number cannot be provided for any person with a substantial beneficial interest in you in accordance with section 2(b)(10)(i), the amount of coverage for all crops on the application will be reduced proportionately by the percentage interest of such person in you.

* * * * *

(f) * * *

(2) * * *

(i) * * *

(A) For a policy with unpaid administrative fees or premiums, the termination date immediately subsequent to the billing date for the crop year (For policies for which the sales closing date is prior to the termination date, such policies will terminate for the current crop year even if insurance attached prior to the termination date. Such termination will be considered effective as of the sales closing date and no insurance will be considered to have attached for the crop year and no indemnity, prevented planting or replant payment will be owed);

(B) For a policy with other amounts due, the termination date immediately following the date you have a delinquent debt (For policies for which the sales closing date is prior to the termination date, such policies will terminate for the current crop year even if insurance attached prior to the termination date. Such termination will be considered effective as of the sales closing date and no insurance will be considered to have attached for the crop year and no indemnity, prevented planting or replant payment will be owed);

(C) For all other policies that are issued by us under the authority of the Act, the termination date that coincides with the termination date for the policy with the delinquent debt or, if there is no coincidental termination date, the termination date immediately following the date you become ineligible;

(D) For execution of a written payment agreement and failure to make any scheduled payment, the termination date for the crop year prior to the crop year in which you failed to make the scheduled payment (for this purpose only, the crop year will start the day after the termination date and end on the next termination date, *e.g.,* if the termination date is November 30 and you fail to make a payment on November 15, 2011, your policy will terminate on November 30, 2010, for the 2011 crop year); or

* * * * *

(3) * * *

(ii) Execute a written payment agreement and make payments in accordance with the agreement (We will not enter into a written payment agreement with you if you have

previously failed to make a scheduled payment under the terms of any other payment agreement with us or any other insurance provider); or

* * * * *

(5) For example, for the 2011 crop year, if crop A, with a termination date of October 31, 2010, and crop B, with a termination date of March 15, 2011, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 2010, and crop A's policy is terminated as of that date. Crop B's policy does not terminate until March 15, 2011, and an indemnity for the 2010 crop year may still be owed. If you enter into a written payment agreement on September 25, 2011, the earliest date by which you can obtain crop insurance for crop A is to apply for crop insurance by the October 31, 2011, sales closing date and for crop B is to apply for crop insurance by the March 15, 2012, sales closing date. If you fail to make a payment that was scheduled to be made on April 1, 2012, your policy will terminate as of October 31, 2011, for crop A, and March 15, 2012, for crop B, and no indemnity, prevented planting payment or replant payment will be due for that crop year for either crop. You will not be eligible to apply for crop insurance for any crop until after the amounts owed are paid in full or you file a petition to discharge the debt in bankruptcy.

* * * * *

(g) In cases where there has been a death, disappearance, judicially declared incompetence, or dissolution of any insured person:

(1) If any married individual insured dies, disappears, or is judicially declared incompetent, the named insured on the policy will automatically convert to the name of the spouse if:

(i) The spouse was included on the policy as having a substantial beneficial interest in the named insured; and

(ii) The spouse has a share of the crop.

(2) The provisions in section 2(g)(3) will be applicable if:

(i) Any partner, member, shareholder, *etc.,* of an insured entity dies, disappears, or is judicially declared incompetent, and such event automatically dissolves the entity; or

(ii) An individual, whose estate is left to a beneficiary other than a spouse or left to the spouse and the criteria in section 2(g)(1) are not met, dies, disappears, or is judicially declared incompetent.

(3) If section 2(g)(2) applies and the death, disappearance, or judicially declared incompetence occurred:

(i) More than 30 days before the cancellation date, the policy is automatically canceled as of the cancellation date and a new application must be submitted; or

(ii) Thirty days or less before the cancellation date, or after the cancellation date, the policy will continue in effect through the crop year immediately following the cancellation date and be automatically canceled as of the cancellation date immediately following the end of the insurance period for the crop year, unless canceled by the cancellation date prior to the start of the insurance period:

(A) A new application for insurance must be submitted prior to the sales closing date for coverage for the subsequent crop year; and

(B) Any indemnity, replant payment or prevented planting payment will be paid to the person or persons determined to be beneficially entitled to the payment and such person or persons must comply with all policy provisions and pay the premium.

(4) If any insured entity is dissolved for reasons other than death, disappearance, or judicially declared incompetence:

(i) Before the cancellation date, the policy is automatically canceled as of the cancellation date and a new application must be submitted; or

(ii) On or after the cancellation date, the policy will continue in effect through the crop year immediately following the cancellation date and be automatically canceled as of the cancellation date immediately following the end of the insurance period for the crop year, unless canceled by the cancellation date prior to the start of the insurance period:

(A) A new application for insurance must be submitted prior to the sales closing date for coverage for the subsequent crop year; and

(B) Any indemnity, replant payment or prevented planting payment will be paid to the person or persons determined to be beneficially entitled to the payment and such person or persons must comply with all policy provisions and pay the premium.

(5) If section 2(g)(2) or (4) applies, a remaining member of the insured person or the beneficiary is required to report to us the death, disappearance, judicial incompetence, or other event that causes dissolution not later than the next cancellation date, except if section 2(g)(3)(ii) applies, notice must be provided by the cancellation date for the next crop year. If notice is not provided timely, the provisions of section 2(g)(2) or (4) will apply retroactive to the date such notice should have been provided and any payments made after the date the policy should have been canceled must be returned.

* * * * *

§ 457.8 [Amended]

■ 6. Further amend § 457.8 in section 3 as follows:

■ a. Revise paragraphs (b), (c), (d);

■ b. Redesignate paragraphs (e) through (j) as paragraphs (f) through (k), respectively, and add a new paragraph (e);

■ c. Amend redesignated paragraph (f) by revising the introductory text;

■ d. Revise redesignated paragraph (g);

■ e. Amend the introductory text of redesignated paragraph (h) by removing the phrase "3(f)" and adding the phrase "3(g)" in its place;

■ f. Amend redesignated paragraph (h)(1) by removing the phrase "3(e)(1)" and adding the phrase "3(f)(1)" in its place and by removing the phrase ", and you may be subject to provisions of section 27";

■ g. Amend redesignated paragraph (h)(2)(i) by removing the word "and" after the semicolon at the end;

■ h. Amend redesignated paragraph (h)(2)(ii) by removing the word "insured" and adding the word "insurable" in its place and removing the word "or" at the end and adding the word "and" in its place;

■ i. Add a new paragraph (h)(2)(iii);

■ j. Amend redesignated paragraph (i)(2) by removing the phrase "3(h)(1)" and adding the phrase "3(i)(1)" in its place;

■ k. Amend redesignated paragraph (i)(3) by removing the phrase "3(h)(2)" and adding the phrase "3(i)(2)" in its place; and

■ l. Amend redesignated paragraph (j) by adding at the end of the paragraph the following sentence, "If you elected a whole-farm unit, you may exclude hail and fire coverage only if allowed by the Special Provisions."

The revised and added text reads as follows:

3. Insurance Guarantees, Coverage Levels, and Prices.

* * * * *

(b) With respect to the insurance choices:

(1) For all acreage of the insured crop in the county, unless one of the conditions in section 3(b)(2) exists, you must select the same:

(i) Plan of insurance (*e.g.,* yield protection, revenue protection, actual production history, amount of insurance, *etc.*);

(ii) Level of coverage (all catastrophic risk protection or the same level of additional coverage); and

(iii) Percentage of the available price election, or projected price for yield

protection. For revenue protection, the percentage of price is specified in section 3(c)(2). If different prices are provided by type or variety, insurance will be based on the price provided for each type or variety and the same price percentage will apply to all types or varieties.

(2) You do not have to select the same plan of insurance, level of coverage or percentage of available price election or projected price if:

(i) The applicable Crop Provisions allow you the option to separately insure individual crop types or varieties. In this case, each individual type or variety insured by you will be subject to separate administrative fees. For example, if two grape varieties in California are insured under the Catastrophic Risk Protection Endorsement and two varieties are insured under an additional coverage policy, a separate administrative fee will be charged for each of the four varieties; or

(ii) You have additional coverage for the crop in the county and the acreage has been designated as "high-risk" by FCIC. In such case, you will be able to exclude coverage for the high-risk land under the additional coverage policy and insure such acreage under a separate Catastrophic Risk Protection Endorsement, provided the Catastrophic Risk Protection Endorsement is obtained from the same insurance provider from which the additional coverage was obtained. If you have revenue protection and exclude high-risk land, the catastrophic risk protection coverage will be yield protection only for the excluded high-risk land.

(c) With respect to revenue protection, if available for the crop:

(1) You may change to another plan of insurance and change your coverage level or elect the harvest price exclusion by giving written notice to us not later than the sales closing date for the insured crop;

(2) Your projected price and harvest price will be 100 percent of the projected price and harvest price issued by FCIC;

(3) If the harvest price exclusion is:

(i) Not elected, your projected price is used to initially determine the revenue protection guarantee (per acre), and if the harvest price is greater than the projected price, the revenue protection guarantee (per acre) will be recomputed using your harvest price; or

(ii) Elected, your projected price is used to compute your revenue protection guarantee (per acre);

(4) Your projected price is used to calculate your premium, any replant payment, and any prevented planting payment; and

(5) If the projected price or harvest price cannot be calculated for the current crop year under the provisions contained in the Commodity Exchange Price Provisions:

(i) For the projected price:

(A) Revenue protection will not be provided and you will automatically be covered under the yield protection plan of insurance for the current crop year unless you cancel your coverage by the cancellation date or change your plan of insurance by the sales closing date;

(B) Notice will be provided on RMA's Web site by the date specified in the applicable projected price definition contained in the Commodity Exchange Price Provisions;

(C) The projected price will be determined by FCIC and will be released by the date specified in the applicable projected price definition contained in the Commodity Exchange Price Provisions; and

(D) Your coverage will automatically revert to revenue protection for the next crop year that revenue protection is available unless you cancel your coverage by the cancellation date or change your coverage by the sales closing date; or

(ii) For the harvest price:

(A) Revenue protection will continue to be available; and

(B) The harvest price will be determined and announced by FCIC.

(d) With respect to yield protection, if available for the crop:

(1) You may change to another plan of insurance and change your percentage of price and your coverage level by giving written notice to us not later than the sales closing date for the insured crop;

(2) The percentage of the projected price selected by you multiplied by the projected price issued by FCIC is your projected price that is used to compute the value of your production guarantee (per acre) and the value of the production to count; and

(3) Since the projected price may change each year, if you do not select a new percentage of the projected price on or before the sales closing date, we will assign a percentage which bears the same relationship to the percentage that was in effect for the preceding year (*e.g.,* if you selected 100 percent of the projected price for the previous crop year and you do not select a new percentage for the current crop year, we will assign 100 percent for the current crop year).

(e) With respect to all plans of insurance other than revenue protection and yield protection (*e.g.,* APH, dollar amount plans of insurance, *etc.*):

(1) In addition to the price election or amount of insurance available on the contract change date, we may provide an additional price election or amount of insurance no later than 15 days prior to the sales closing date.

(i) You must select the additional price election or amount of insurance on or before the sales closing date for the insured crop.

(ii) These additional price elections or amounts of insurance will not be less than those available on the contract change date.

(iii) If you elect the additional price election or amount of insurance, any claim settlement and amount of premium will be based on your additional price election or amount of insurance.

(2) You may change to another plan of insurance or change your coverage level, amount of insurance or percentage of the price election, as applicable, for the following crop year by giving written notice to us not later than the sales closing date for the insured crop.

(3) Your amount of insurance will be the amount of insurance issued by FCIC multiplied by the coverage level percentage you elected. Your price election will be the price election issued by FCIC multiplied by the percentage of price you elected.

(4) Since the amount of insurance or price election may change each year, if you do not select a new amount of insurance or percentage of the price election on or before the sales closing date, we will assign an amount of insurance or percentage of the price election which bears the same relationship to the amount of insurance or percentage of the price election that was in effect for the preceding year (*e.g.,* if you selected 100 percent of the price election for the previous crop year and you do not select a new percentage of the price election for the current crop year, we will assign 100 percent of the price election for the current crop year).

(f) You must report all production of the crop (insured and uninsured) to us for the previous crop year by the earlier of the acreage reporting date or 45 days after the cancellation date, unless otherwise stated in the Special Provisions or as specified in section 18:

* * * * *

(g) It is your responsibility to accurately report all information that is used to determine your approved yield.

(1) You must certify to the accuracy of this information on your production report.

(2) If you fail to accurately report any information or if you do not provide any

required records, you will be subject to the provisions regarding misreporting contained in section 6(g), unless the information is corrected:

(i) On or before the production reporting date; or

(ii) Because the incorrect information was the result of our error or the error of someone from USDA.

(3) If you do not have written verifiable records to support the information on your production report, you will receive an assigned yield in accordance with section 3(f)(1) and 7 CFR part 400, subpart G for those crop years for which you do not have such records.

(4) At any time we discover you have misreported any material information used to determine your approved yield or your approved yield is not correct, the following actions will be taken, as applicable:

(i) We will correct your approved yield for the crop year such information is not correct, and all subsequent crop years;

(ii) We will correct the unit structure, if necessary;

(iii) Any overpaid or underpaid indemnity or premium must be repaid; and

(iv) You will be subject to the provisions regarding misreporting contained in section 6(g)(1), unless the incorrect information was the result of our error or the error of someone from USDA.

(h) * * *

(2) * * *

(iii) We determine there is no valid agronomic basis to support the approved yield; or

* * * * *

§ 457.8 [Amended]

■ 7. Further amend § 457.8 in section 4 by revising paragraphs (b) and (c) to read as follows:

4. Contract Changes.

* * * * *

(b) Any changes in policy provisions, amounts of insurance, premium rates, program dates, price elections or the Commodity Exchange Price Provisions, if applicable, can be viewed on RMA's Web site not later than the contract change date contained in the Crop Provisions (except as allowed herein or as specified in section 3). We may only revise this information after the contract change date to correct clear errors (*e.g.,* the price for oats was announced at $25.00 per bushel instead of $2.50 per bushel or the final planting date should be May 10 but the final planting date in the Special Provisions states August 10).

(c) After the contract change date, all changes specified in section 4(b) will also be available upon request from your crop insurance agent. You will be provided, in writing, a copy of the changes to the Basic Provisions, Crop Provisions, Commodity Exchange Price Provisions, if applicable, and Special Provisions not later than 30 days prior to the cancellation date for the insured crop. If available from us, you may elect to receive these documents and changes electronically. Acceptance of the changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

* * * * *

§ 457.8 [Amended]

■ 8. Further amend § 457.8 in section 6 as follows:

■ a. Revise paragraph (c);

■ b. Revise paragraph (d)(2);

■ c. Remove paragraph (d)(3) and redesignate paragraphs (d)(4), (5) and (6) as paragraphs (d)(3), (4) and (5), respectively;

■ d. Revise redesignated paragraph (d)(3);

■ e. Amend redesignated paragraph (d)(5) by removing the phrase "section 6(d)(1), (2), (4), or (5)" and adding the phrase "section 6(d)(1), (2), or (3)" in its place;

■ f. Revise the introductory text of paragraph (g)(1); and

■ g. Revise paragraph (g)(2).

The revised text reads as follows:

6. Report of Acreage.

* * * * *

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

(1) The amount of acreage of the crop in the county (insurable and not insurable) in which you have a share and the date the insured crop was planted on the unit as follows:

(i) The last date any timely planted acreage was planted and the number of acres planted by such date; and

(ii) The date of planting and the number of acres planted per day for acreage planted during the late planting period (If you fail to report the number of acres planted on a daily basis, all acreage planted in the late planting period will be presumed to have been planted on the last day planting took place in the late planting period for the purposes of section 16);

(2) Your share at the time coverage begins;

(3) The practice;

(4) The type; and

(5) The land identifier for the crop acreage (*e.g.,* legal description, FSA farm serial number or common land unit number if provided to you by FSA, *etc.*) as required on our form.

(d) * * *

(2) For prevented planting acreage:

(i) On or before the acreage reporting date, you can change any information on any initially submitted acreage report, except as provided in section 6(d)(2)(iii) (*e.g.,* you can correct the reported share, add acreage of the insured crop that was prevented from being planted, *etc.*);

(ii) After the acreage reporting date, you cannot revise any information on the acreage report (*e.g.,* if you have failed to report prevented planting acreage on or before the acreage reporting date, you cannot revise it after the acreage reporting date to include prevented planting acreage) but we will revise information that is clearly transposed or if you provide adequate evidence that we or someone from USDA have committed an error regarding the information on your acreage report; and

(iii) You cannot revise your initially submitted acreage report at any time to change the insured crop, or type, that was reported as prevented from being planted;

(3) You may request an acreage measurement from FSA or a business that provides such measurement service prior to the acreage reporting date, submit documentation of such request and an acreage report with estimated acreage by the acreage reporting date, and if the acreage measurement shows the estimated acreage was incorrect, we will revise your acreage report to reflect the correct acreage:

(i) If an acreage measurement is only requested for a portion of the acreage within a unit, you must separately designate the acreage for which an acreage measurement has been requested;

(ii) If an acreage measurement is not provided to us by the time we receive a notice of loss, we may:

(A) Defer finalization of the claim until the measurement is completed, and:

(*1*) Make all necessary loss determinations, except the acreage measurement; and

(*2*) Finalize the claim in accordance with applicable policy provisions after you provide the acreage measurement to us (If you fail to provide the measurement, your claim will not be paid); or

(B) Elect to measure the acreage, and:

(*1*) Finalize your claim in accordance with applicable policy provisions; and

(*2*) Estimated acreage under this section will not be accepted from you for any subsequent acreage report; and

(iii) Premium will still be due in accordance with sections 2(e) and 7. If

the acreage is not measured as specified in section 6(d)(3)(ii) and the acreage measurement is not provided to us at least 15 days prior to the premium billing date, your premium will be based on the estimated acreage and will be revised, if necessary, when the acreage measurement is provided. If the acreage measurement is not provided by the termination date, you will be precluded from providing any estimated acreage for all subsequent crop years.

* * * * *

(g) * * *

(1) Except as provided in section 6(g)(2), if you submit information on any report that is different than what is determined to be correct and such information results in:

* * * * *

(2) If your share is misreported and the share is:

(i) Under-reported, any claim will be determined using the share you reported; or

(ii) Over-reported, any claim will be determined using the share we determine to be correct.

* * * * *

§ 457.8 [Amended]

■ 9. Further amend § 457.8 in section 7 as follows:

■ a. Amend paragraph (c)(1) by removing the phrase "the price election" and adding the phrase "your price election or your projected price, as applicable," in its place;

■ b. Amend paragraph (c)(2) by removing the phrase "the amount of insurance" and adding the phrase "your amount of insurance" in its place;

■ c. Amend paragraph (d) by removing the first sentence;

■ d. Amend paragraph (e) by removing reserved paragraphs (e)(5) and (e)(6); and

■ e. Amend paragraph (e) by redesignating paragraph (e)(7) as (e)(5).

§ 457.8 [Amended]

■ 10. Further amend § 457.8 in section 8 by revising paragraph (b)(2) to read as follows:

8. Insured Crop.

* * * * *

(b) * * *

(2) For which the information necessary for insurance (price election, amount of insurance, projected price and harvest price, as applicable, premium rate, *etc.*) is not included in the actuarial documents, unless such information is provided by a written agreement in accordance with section 18;

* * * * *

§ 457.8 [Amended]

■ 11. Further amend § 457.8 in section 9 by revising paragraphs (a) and (c) to read as follows:

9. Insurable Acreage.

(a) All acreage planted to the insured crop in the county in which you have a share:

(1) Except as provided in section 9(a)(2), is insurable if the acreage has been planted and harvested or insured (including insured acreage that was prevented from being planted) in any one of the three previous crop years. Acreage that has not been planted and harvested (grazing is not considered harvested for the purposes of section 9(a)(1)) or insured in at least one of the three previous crop years may still be insurable if:

(i) Such acreage was not planted:

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

(B) Due to the crop rotation, the acreage would not have been planted in the previous three years (*e.g.,* a crop rotation of corn, soybeans, and alfalfa; and the alfalfa remained for four years before the acreage was planted to corn again); or

(C) Because a perennial tree, vine, or bush crop was on the acreage in at least two of the previous three crop years;

(ii) Such acreage constitutes five percent or less of the insured planted acreage in the unit;

(iii) Such acreage was not planted or harvested because it was pasture or rangeland, the crop to be insured is also pasture or rangeland, and the Crop Provisions, Special Provisions, or a written agreement specifically allow insurance for such acreage; or

(iv) The Crop Provisions, Special Provisions, or a written agreement specifically allow insurance for such acreage; or

(2) Is not insurable if:

(i) The only crop that has been planted and harvested on the acreage in the three previous crop years is a cover, hay (except wheat harvested for hay) or forage crop (except insurable silage). However, such acreage may be insurable only if:

(A) The crop to be insured is a hay or forage crop and the Crop Provisions, Special Provisions, or a written agreement specifically allow insurance for such acreage; or

(B) The hay or forage crop was part of a crop rotation;

(ii) The acreage has been strip-mined. However, such acreage may be insurable only if:

(A) An agricultural commodity, other than a cover, hay (except wheat harvested for hay), or forage crop (except insurable silage) has been harvested from the acreage for at least five crop years after the strip-mined land was reclaimed; or

(B) A written agreement specifically allows insurance for such acreage;

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

(iv) The insured crop is damaged and it is practical to replant the insured crop, but the insured crop is not replanted;

(v) The acreage is interplanted, unless insurance is allowed by the Crop Provisions;

(vi) The acreage is otherwise restricted by the Crop Provisions or Special Provisions;

(vii) The acreage is planted in any manner other than as specified in the policy provisions for the crop unless a written agreement specifically allows insurance for such planting;

(viii) The acreage is of a second crop, if you elect not to insure such acreage when an indemnity for a first insured crop may be subject to reduction in accordance with the provisions of section 15 and you intend to collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop acreage. This election must be made on a first insured crop unit basis (*e.g.,* if the first insured crop unit contains 40 planted acres that may be subject to an indemnity reduction, then no second crop can be insured on any of the 40 acres). In this case:

(A) If the first insured crop is insured under this policy, you must provide written notice to us of your election not to insure acreage of a second crop at the time the first insured crop acreage is released by us (if no acreage in the first insured crop unit is released, this election must be made by the earlier of the acreage reporting date for the second crop or when you sign the claim for indemnity for the first insured crop) or, if the first insured crop is insured under the Group Risk Protection Plan of Insurance or successor provisions (7 CFR part 407), this election must be made before the second crop insured under this policy is planted, and if you fail to provide such notice, the second crop acreage will be insured in accordance with the applicable policy provisions and you must repay any overpaid indemnity for the first insured crop;

(B) In the event a second crop is planted and insured with a different insurance provider, or planted and insured by a different person, you must

provide written notice to each insurance provider that a second crop was planted on acreage on which you had a first insured crop; and

(C) You must report the crop acreage that will not be insured on the applicable acreage report; or

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

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

(*1*) You have produced and harvested the insured crop following two other crops harvested on the same acreage in the same crop year in at least two of the last four years in which you produced the insured crop; or

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

(B) The amount of insurable acreage will not exceed 100 percent of the greatest number of acres for which you provide the records required in section 9(a)(2)(ix)(A).

* * * * *

(c) Notwithstanding the provisions in section 8(b)(2), if acreage is irrigated and a premium rate is not provided for an irrigated practice, you may either report and insure the irrigated acreage as "non-irrigated," or report the irrigated acreage as not insured (If you elect to insure such acreage under a non-irrigated practice, your irrigated yield will only be used to determine your approved yield if you continue to use a good irrigation practice. If you do not use a good irrigation practice, you will receive a yield determined in accordance with section 3(h)(3)).

* * * * *

§ 457.8 [Amended]

■ 12. Further amend § 457.8 in section 10 by revising paragraphs (a) and (b) to read as follows:

10. Share Insured.

(a) Insurance will attach:

(1) Only if the person completing the application has a share in the insured crop; and

(2) Only to that person's share, except that insurance may attach to another person's share of the insured crop if the other person has a share of the crop and:

(i) The application clearly states the insurance is requested for a person other than an individual (*e.g.,* a partnership or a joint venture); or

(ii) The application clearly states you as a landlord will insure your tenant's share, or you as a tenant will insure your landlord's share. If you as a landlord will insure your tenant's share, or you as a tenant will insure your landlord's share, you must provide evidence of the other party's approval (lease, power of attorney, *etc.*) and such evidence will be retained by us:

(A) You also must clearly set forth the percentage shares of each person on the acreage report; and

(B) For each landlord or tenant, you must report the landlord's or tenant's social security number, employer identification number, or other identification number we assigned for the purposes of this policy, as applicable.

(b) With respect to your share:

(1) We will consider to be included in your share under your policy, any acreage or interest reported by or for:

(i) Your spouse, unless such spouse can prove he/she has a separate farming operation, which includes, but is not limited to, separate land (transfers of acreage from one spouse to another is not considered separate land), separate capital, separate inputs, separate accounting, and separate maintenance of proceeds; or

(ii) Your child who resides in your household or any other member of your household, unless such child or other member of the household can demonstrate such person has a separate share in the crop (Children who do not reside in your household are not included in your share); and

(2) If it is determined that the spouse, child or other member of the household has a separate policy but does not have a separate farming operation or share of the crop, as applicable:

(i) The policy for one spouse or child or other member of the household will be void and the policy remaining in effect will be determined in accordance with section 22(a)(1) and (2);

(ii) The acreage or share reported under the policy that is voided will be included under the remaining policy; and

(iii) No premium will be due and no indemnity will be paid for the voided policy.

* * * * *

§ 457.8 [Amended]

■ 13. Further amend § 457.8 in section 11 as follows:

■ a. Revise paragraph (b); and

■ b. Add a new paragraph (c).

The revised and added text reads as follows:

11. Insurance Period.

* * * * *

(b) Coverage ends on each unit or part of a unit at the earliest of:

(1) Total destruction of the insured crop;

(2) Harvest of the insured crop;

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

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

(5) Abandonment of the insured crop; or

(6) As otherwise specified in the Crop Provisions.

(c) Except as provided in the Crop Provisions or applicable endorsement, in addition to the requirements of section 11(b), coverage ends on any acreage within a unit once any event specified in section 11(b) occurs on that acreage. Coverage only remains in effect on acreage that has not been affected by an event specified in section 11(b).

§ 457.8 [Amended]

■ 14. Further amend § 457.8 in section 12 as follows:

■ a. Revise the introductory paragraph; and

■ b. Revise paragraphs (a) and (d).

The revised text reads as follows:

12. Causes of Loss.

Insurance is provided only to protect against unavoidable, naturally occurring events. A list of the covered naturally occurring events is contained in the applicable Crop Provisions. All other causes of loss, including but not limited to the following, are not covered:

(a) Any act by any person that affects the yield, quality or price of the insured crop (*e.g.,* chemical drift, fire, terrorism, *etc.*);

* * * * *

(d) Failure or breakdown of the irrigation equipment or facilities, or the inability to prepare the land for irrigation using your established irrigation method (*e.g.,* furrow irrigation), unless the failure, breakdown or inability is due to a cause of loss specified in the Crop Provisions.

(1) You must make all reasonable efforts to restore the equipment or facilities to proper working order within a reasonable amount of time unless we determine it is not practical to do so.

(2) Cost will not be considered when determining whether it is practical to restore the equipment or facilities;

* * * * *

§ 457.8 [Amended]

■ 15. Further amend § 457.8 in section 13 by revising paragraphs (a) and (c) to read as follows:

13. Replanting Payment.

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

* * * * *

(c) The replanting payment per acre will be:

(1) The lesser of your actual cost for replanting or the amount specified in the Crop Provisions or Special Provisions; or

(2) If the Crop Provisions or Special Provisions specify that your actual cost will not be used to determine your replant payment, the amount determined in accordance with the Crop Provisions or Special Provisions.

* * * * *

§ 457.8 [Amended]

■ 16. Further amend § 457.8 in section 14 as follows:

■ a. Revise the text under "Your Duties";

■ b. Amend the paragraphs under "Our Duties" by redesignating paragraphs (a) through (d) as paragraphs (f) through (i); and

■ c. Add a new paragraph (j) to the text under "Our Duties".

The revised and added text reads as follows:

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

Your Duties:

(a) In the case of damage or loss of production or revenue to any insured crop, you must protect the crop from further damage by providing sufficient care.

(b) Notice provisions:

(1) For a planted crop, when there is damage or loss of production, you must give us notice, by unit, within 72 hours of your initial discovery of damage or loss of production (but not later than 15 days after the end of the insurance period, even if you have not harvested the crop).

(2) For crops for which revenue protection is elected, if there is no damage or loss of production, you must give us notice not later than 45 days after the latest date the harvest price is released for any crop in the unit where there is a revenue loss.

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

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

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

(4) All notices required in this section that must be received by us within 72 hours may be made by telephone or in person to your crop insurance agent but must be confirmed in writing within 15 days.

(5) If you fail to comply with these notice requirements, any loss or prevented planting claim will be considered solely due to an uninsured cause of loss for the acreage for which such failure occurred, unless we determine that we have the ability to accurately adjust the loss. If we determine that we do not have the ability to accurately adjust the loss:

(i) For any prevented planting claim, no prevented planting coverage will be provided and no premium will be owed or prevented planting payment will be paid; or

(ii) For any claim for indemnity, no indemnity will be paid but you will still be required to pay all premiums owed.

(c) Representative samples:

(1) If representative samples are required by the Crop Provisions, you must leave representative samples of the unharvested crop intact:

(i) If you report damage less than 15 days before the time you will begin harvest or during harvest of the damaged unit; or

(ii) At any time when required by us.

(2) The samples must be left intact until we inspect them or until 15 days after completion of harvest on the remainder of the unit, whichever is earlier.

(3) Unless otherwise specified in the Crop Provisions or Special Provisions, the samples of the crop in each field in the unit must be 10 feet wide and extend the entire length of the rows, if the crop is planted in rows, or if the crop is not planted in rows, the longest dimension of the field.

(4) The period to retain representative samples may be extended if it is necessary to accurately determine the loss. You will be notified in writing of any such extension.

(d) Consent:

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

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

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

(iii) Put the acreage to another use; or

(iv) Abandon any portion of the insured crop.

(2) We will not give consent for any of the actions in section 14(d)(1)(i) through (iv) if it is practical to replant the crop or until we have made an appraisal of the potential production of the crop.

(3) Failure to obtain our consent will result in the assignment of an amount of production or value to count in accordance with the Settlement of Claim provisions of the applicable Crop Provisions.

(e) Claims:

(1) Except as otherwise provided in your policy, you must submit a claim declaring the amount of your loss by the dates shown in section 14(e)(3), unless you:

(i) Request an extension in writing by such date and we agree to such request (Extensions will only be granted if the amount of the loss can not be determined within such time period because the information needed to determine the amount of the loss is not available); or

(ii) Have harvested farm-stored grain production and elect, in writing, to delay measurement of your farm-stored production and settlement of any potential associated claim for indemnity (Extensions will be granted for this purpose up to 180 days after the end of the insurance period).

(A) For policies that require APH, if such extension continues beyond the date you are required to submit your production report, you will be assigned the previous year's approved yield as a temporary yield in accordance with applicable procedures.

(B) Any extension does not extend any date specified in the policy by which premiums, administrative fees, or other debts owed must be paid.

(C) Damage that occurs after the end of the insurance period (for example, while the harvested crop production is in storage) is not covered; and

(2) Failure to timely submit a claim or provide the required information necessary to determine the amount of the claim will result in no indemnity, prevented planting payment or replant payment:

(i) Even though no indemnity or replant payment is due, you will still be

required to pay the premium due under the policy for the unit; or

(ii) Failure to timely submit a prevented planting claim will result in no prevented planting coverage and no premium will be due.

(3) You must submit a claim not later than:

(i) For policies other than revenue protection, 60 days after the date the insurance period ends for all acreage in the unit (When there is acreage in the unit where the insurance period ended on different dates, it is the last date the insurance period ends on the unit. For example, if a unit has corn acreage that was put to another use on July 15 and corn acreage where harvest was completed on September 30, the claim must be submitted not later than 60 days after September 30); or

(ii) For revenue protection, the later of:

(A) 60 days after the last date the harvest price is released for any crop in the unit; or

(B) The date determined in accordance with section 14(e)(3)(i).

(4) To receive any indemnity (or receive the rest of an indemnity in the case of acreage that is planted to a second crop), prevented planting payment or replant payment, you must, if applicable:

(i) Provide:

(A) A complete harvesting, production, and marketing record of each insured crop by unit including separate records showing the same information for production from any acreage not insured.

(B) Records as indicated below if you insure any acreage that may be subject to an indemnity reduction as specified in section 15(e)(2):

(*1*) Separate records of production from such acreage for all insured crops planted on the acreage (*e.g.,* if you have an insurable loss on 10 acres of wheat and subsequently plant cotton on the same 10 acres, you must provide records of the wheat and cotton production on the 10 acres separate from any other wheat and cotton production that may be planted in the same unit). If you fail to provide separate records for such acreage, we will allocate the production of each crop to the acreage in proportion to our liability for the acreage; or

(*2*) If there is no loss on the unit that includes acreage of the second crop, no separate records need to be submitted for the second crop and you can receive the rest of the indemnity for the first insured crop.

(C) Any other information we may require to settle the claim.

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

(A) Show us the damaged crop;

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

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

(iii) Establish:

(A) The total production or value received for the insured crop on the unit;

(B) That any loss occurred during the insurance period;

(C) That the loss was caused by one or more of the insured causes specified in the Crop Provisions; and

(D) That you have complied with all provisions of this policy.

(iv) Upon our request, or that of any USDA employee authorized to conduct investigations of the crop insurance program, submit to an examination under oath.

(5) Failure to comply with any requirement contained in section 14(e)(4) will result in denial of the claim and any premium will still be owed, unless the claim denied is for prevented planting.

Our Duties:

* * * * *

(j) For revenue protection, we may make preliminary indemnity payments for crop production losses prior to the release of the harvest price if you have not elected the harvest price exclusion.

(1) First, we may pay an initial indemnity based upon your projected price, in accordance with the applicable Crop Provisions provided that your production to count and share have been established; and

(2) Second, after the harvest price is released, and if it is not equal to the projected price, we will recalculate the indemnity payment and pay any additional indemnity that may be due.

* * * * *

§ 457.8 [Amended]

■ 17. Further amend § 457.8 in section 15 as follows:

■ a. Revise paragraph (b)(1);

■ b. Revise paragraph (c); and

■ c. Add new paragraphs (i)(1) and (2).

The added and revised text reads as follows:

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

* * * * *

(b) * * *

(1) You must provide us with the amount of harvested production (If you fail to provide verifiable records of harvested production, no indemnity will be paid and you will be required to return any previously paid indemnity for the unit that was based on an appraised amount of production); and

* * * * *

(c) If you elect to exclude hail and fire as insured causes of loss and the insured crop is damaged by hail or fire, appraisals will be made as described in our form used to exclude hail and fire.

* * * * *

(i) * * *

(1) If the records you provided are from acreage you double cropped in at least two of the last four crop years, you may apply your history of double cropping to any acreage of the insured crop in the county (*e.g.,* if you have double cropped 100 acres of wheat and soybeans in the county and you acquire an additional 100 acres in the county, you can apply that history of double cropped acreage to any of the 200 acres in the county as long as it does not exceed 100 acres); or

(2) If the records you provided are from acreage that another producer double cropped in at least two of the last four crop years, you may only use the history of double cropping for the same physical acres from which double cropping records were provided (*e.g.,* if a neighbor has double cropped 100 acres of wheat and soybeans in the county and you acquire your neighbor's 100 double cropped acres and an additional 100 acres in the county, you can only apply your neighbor's history of double cropped acreage to the same 100 acres that your neighbor double cropped).

* * * * *

§ 457.8 [Amended]

■ 18. Further amend § 457.8 in section 17 as follows:

■ a. Revise the introductory text of paragraph (a)(1);

■ b. Revise paragraphs (a)(2) and (3);

■ c. Revise paragraph (b)(4);

■ d. Revise paragraphs (c), (d), and (e);

■ e. Revise paragraphs (f) and (h); and

■ f. Revise paragraph (i)(1).

The revised text reads as follows:

17. Prevented Planting

(a) * * *

(1) You are prevented from planting the insured crop on insurable acreage by an insured cause of loss that occurs:

* * * * *

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

(3) You did not plant the insured crop during or after the late planting period. Acreage planted to the insured crop during or after the late planting period

is covered under the late planting provisions.

(b) * * *

(4) You cannot increase your elected or assigned prevented planting coverage level for any crop year if a cause of loss that could prevent planting (even though it is not known whether such cause will actually prevent planting) has occurred during the prevented planting insurance period specified in section 17(a)(1)(i) or (ii) and prior to your request to change your prevented planting coverage level.

(c) The premium amount for acreage that is prevented from being planted will be the same as that for timely planted acreage except as specified in section 15(f). If the amount of premium you are required to pay (gross premium less the subsidy) for acreage that is prevented from being planted exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage).

(d) Prevented planting coverage will be provided against:

(1) Drought, failure of the irrigation water supply, failure or breakdown of irrigation equipment or facilities, or the inability to prepare the land for irrigation using your established irrigation method, due to an insured cause of loss only if, on the final planting date (or within the late planting period if you elect to try to plant the crop), you provide documentation acceptable to us to establish:

(i) For non-irrigated acreage, the area that is prevented from being planted has insufficient soil moisture for germination of seed or progress toward crop maturity due to a prolonged period of dry weather. The documentation for prolonged period of dry weather must be verifiable using information collected by sources whose business it is to record and study the weather, including, but not limited to, local weather reporting stations of the National Weather Service; or

(ii) For irrigated acreage:

(A) Due to an insured cause of loss, there is not a reasonable expectation of having adequate water to carry out an irrigated practice or you are unable to prepare the land for irrigation using your established irrigation method:

(*1*) If you knew or had reason to know on the final planting date or during the late planting period that your water will be reduced, no reasonable expectation exists; and

(*2*) Available water resources will be verified using information from State Departments of Water Resources, U.S. Bureau of Reclamation, Natural Resources Conservation Service or other sources whose business includes collection of water data or regulation of water resources; or

(B) The irrigation equipment or facilities have failed or broken down if such failure or breakdown is due to an insured cause of loss specified in section 12(d).

(2) Causes other than drought, failure of the irrigation water supply, failure or breakdown of the irrigation equipment or facilities, or your inability to prepare the land for irrigation using your established irrigation method, provided the cause of loss is specified in the Crop Provisions. However, if it is possible for you to plant on or prior to the final planting date when other producers in the area are planting and you fail to plant, no prevented planting payment will be made.

(e) The maximum number of acres that may be eligible for a prevented planting payment for any crop will be determined as follows:

(1) The total number of acres eligible for prevented planting coverage for all crops cannot exceed the number of acres of cropland in your farming operation for the crop year, unless you are eligible for prevented planting coverage on double cropped acreage in accordance with section 17(f)(4). The eligible acres for each insured crop will be determined as follows:

(i) If you have planted any crop in the county for which prevented planting insurance was available (you will be considered to have planted if your APH database contains actual planted acres) or have received a prevented planting insurance guarantee in any one or more of the four most recent crop years, and the insured crop is not required to be contracted with a processor to be insured:

(A) The number of eligible acres will be the maximum number of acres certified for APH purposes, or insured acres reported, for the crop in any one of the four most recent crop years (not including reported prevented planting acreage that was planted to a second crop unless you meet the double cropping requirements in section 17(f)(4)).

(B) If you acquire additional land for the current crop year, the number of eligible acres determined in section 17(e)(1)(i)(A) for a crop may be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the total cropland acres that you farmed in the previous year, provided that:

(*1*) You submit proof to us that you acquired additional acreage for the current crop year by any of the methods specified in section 17(f)(12);

(*2*) The additional acreage was acquired in time to plant it for the current crop year using good farming practices; and

(*3*) No cause of loss has occurred at the time you acquire the acreage that may prevent planting (except acreage you lease the previous year and continue to lease in the current crop year).

(C) If you add adequate irrigation facilities to your existing non-irrigated acreage or if you acquire additional land for the current crop year that has adequate irrigation facilities, the number of eligible acres determined in section 17(e)(1)(i)(A) for irrigated acreage of a crop may be increased by multiplying it by the ratio of the total irrigated acres that you are farming this year (if greater) to the total irrigated acres that you farmed in the previous year, provided the conditions in sections 17(e)(1)(i)(B)(*1*), (*2*) and (*3*) are met. If there were no irrigated acres in the previous year, the eligible irrigated acres for a crop will be limited to the lesser of the number of eligible non-irrigated acres of the crop or the number of acres on which adequate irrigation facilities were added.

(ii) If you have not planted any crop in the county for which prevented planting insurance was available (you will be considered to have planted if your APH database contains actual planted acres) or have not received a prevented planting insurance guarantee in all of the four most recent crop years, and the insured crop is not required to be contracted with a processor to be insured:

(A) The number of eligible acres will be:

(*1*) The number of acres specified on your intended acreage report, which must be submitted to us by the sales closing date for all crops you insure for the crop year and that is accepted by us; or

(*2*) The number of acres specified on your intended acreage report, which must be submitted to us within 10 days of the time you acquire the acreage and that is accepted by us, if, on the sales closing date, you do not have any acreage in a county and you subsequently acquire acreage through a method described in section 17(f)(12) in time to plant it using good farming practices.

(B) The total number of acres listed on the intended acreage report may not exceed the number of acres of cropland in your farming operation at the time you submit the intended acreage report.

(C) If you acquire additional acreage after we accept your intended acreage report, the number of acres determined in section 17(e)(1)(ii)(A) may be increased in accordance with section 17(e)(1)(i)(B) and (C).

(D) Prevented planting coverage will not be provided for any acreage included on the intended acreage report or any increased amount of acreage determined in accordance with section 17(e)(1)(ii)(C) if a cause of loss that may prevent planting occurred before the acreage was acquired, as determined by us.

(iii) For any crop that must be contracted with a processor to be insured:

(A) The number of eligible acres will be:

(*1*) The number of acres of the crop specified in the processor contract, if the contract specifies a number of acres contracted for the crop year;

(*2*) The result of dividing the quantity of production stated in the processor contract by your approved yield, if the processor contract specifies a quantity of production that will be accepted (for the purposes of establishing the number of prevented planting acres, any reductions applied to the transitional yield for failure to certify acreage and production for four prior years will not be used); or

(*3*) Notwithstanding sections 17(e)(1)(iii)(A)(*1*) and (*2*), if a minimum number of acres or amount of production is specified in the processor contract, this amount will be used to determine the eligible acres.

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

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

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

(1) That does not constitute at least 20 acres or 20 percent of the insurable crop acreage in the unit, whichever is less (If the crop is in a whole-farm unit, the 20 acre or 20 percent requirement will be applied separately to each crop in the whole-farm unit). Any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop, type, and practice that is planted in the field unless:

(i) The acreage that was prevented from being planted constitutes at least 20 acres or 20 percent of the total insurable acreage in the field and you produced both crops, crop types, or followed both practices in the same field in the same crop year within any one of the four most recent crop years;

(ii) You were prevented from planting a first insured crop and you planted a second crop in the field (There can only be one first insured crop in a field unless the requirements in section 17(f)(1)(i) or (iii) are met); or

(iii) The insured crop planted in the field would not have been planted on the remaining prevented planting acreage (*e.g.,* where rotation requirements would not be met or you already planted the total number of acres specified in the processor contact);

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

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

(4) On which the insured crop is prevented from being planted, if you or any other person receives a prevented planting payment for any crop for the same acreage in the same crop year, excluding share arrangements, unless:

(i) It is a practice that is generally recognized by agricultural experts or organic agricultural experts in the area to plant the insured crop for harvest following harvest of the first insured crop, and additional coverage insurance offered under the authority of the Act is available in the county for both crops in the same crop year;

(ii) For the insured crop that is prevented from being planted, you provide records acceptable to us of acreage and production that show, in at least two of the last four crop years:

(A) You have double cropped acreage on which the insured crop that is prevented from being planted in the current crop year was grown (You may apply your history of double cropping to any acreage of the insured crop in the county (*e.g.,* if you have double cropped 100 acres of wheat and soybeans in the county and you acquire an additional 100 acres in the county, you can apply that history of double cropped acreage to any of the 200 acres in the county as long as it does not exceed 100 acres)); or

(B) The acreage you are prevented from planting in the current crop year was double cropped with the insured crop that is prevented from being planted (You may only use the history of double cropping for the same physical acres from which double cropping records were provided (*e.g.,* if a neighbor has double cropped 100 acres of wheat and soybeans in the county and you acquire your neighbor's 100 double cropped acres and an additional 100 acres in the county, you can only apply your neighbor's history of double cropped acreage to the same 100 acres that your neighbor double cropped)); and

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

(5) On which the insured crop is prevented from being planted, if:

(i) Any crop is planted within or prior to the late planting period or on or prior to the final planting date if no late planting period is applicable, unless:

(A) You meet the double cropping requirements in section 17(f)(4);

(B) The crop planted was a cover crop; or

(C) No benefit, including any benefit under any USDA program, was derived from the crop; or

(ii) Any volunteer or cover crop is hayed, grazed or otherwise harvested within or prior to the late planting period or on or prior to the final planting date if no late planting period is applicable;

(6) For which planting history or conservation plans indicate the acreage would have remained fallow for crop rotation purposes or on which any pasture or forage crop is in place on the

acreage during the time planting of the insured crop generally occurs in the area. Cover plants that are seeded, transplanted, or that volunteer:

(i) More than 12 months prior to the final planting date for the insured crop that was prevented from being planted will be considered pasture or a forage crop that is in place (*e.g.,* the cover crop is planted 15 months prior to the final planting date and remains in place during the time the insured crop would normally be planted); or

(ii) Less than 12 months prior to the final planting date for the insured crop that was prevented from being planted will not be considered pasture or a forage crop that is in place;

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

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

(9) For which you cannot provide proof that you had the inputs (including, but not limited to, sufficient equipment and manpower) available to plant and produce a crop with the expectation of producing at least the yield used to determine your production guarantee or amount of insurance. Evidence that you previously had planted the crop on the unit will be considered adequate proof unless:

(i) There has been a change in the availability of inputs since the crop was last planted that could affect your ability to plant and produce the insured crop;

(ii) We determine you have insufficient inputs to plant the total number of insured crop acres (*e.g.,* you will not receive a prevented planting payment if you have sufficient inputs to plant only 80 acres but you have already planted 80 acres and are claiming prevented planting on an additional 100 acres); or

(iii) Your planting practices or rotational requirements show the acreage would have remained fallow or been planted to another crop;

(10) Based on an irrigated practice production guarantee or amount of insurance unless adequate irrigation facilities were in place to carry out an irrigated practice on the acreage prior to the insured cause of loss that prevented you from planting. Acreage with an irrigated practice production guarantee will be limited to the number of acres allowed for that practice under sections 17(e) and (f);

(11) Based on a crop type that you did not plant, or did not receive a prevented planting insurance guarantee for, in at least one of the four most recent crop years:

(i) Types for which separate projected prices or price elections, as applicable, amounts of insurance, or production guarantees are available must be included in your APH database in at least one of the four most recent crop years (Crops for which the insurance guarantee is not based on APH must be reported on your acreage report in at least one of the four most recent crop years) except as allowed in section 17(e)(1)(ii) or (iii); and

(ii) We will limit prevented planting payments based on a specific crop type to the number of acres allowed for that crop type as specified in sections 17(e) and (f); or

(12) If a cause of loss has occurred that may prevent planting at the time:

(i) You lease the acreage (except acreage you leased the previous crop year and continue to lease in the current crop year);

(ii) You buy the acreage;

(iii) The acreage is released from a USDA program which prohibits harvest of a crop;

(iv) You request a written agreement to insure the acreage; or

(v) You acquire the acreage through means other than lease or purchase (such as inherited or gifted acreage).

* * * * *

(h) If you are prevented from planting a crop for which you do not have an adequate base of eligible prevented planting acreage, as determined in accordance with section 17(e)(1), we will use acreage from another crop insured for the current crop year for which you have remaining eligible prevented planting acreage.

(1) The crop first used for this purpose will be the insured crop that would have a prevented planting payment most similar to the payment for the crop that was prevented from being planted.

(i) If there are still insufficient eligible prevented planting acres, the next crop used will be the insured crop that would have the next closest prevented planting payment.

(ii) In the event payment amounts based on other crops are an equal amount above and below the payment amount for the crop that was prevented from being planted, eligible acres for the crop with the higher payment amount will be used first.

(2) The prevented planting payment and premium will be based on:

(i) The crop that was prevented from being planted if the insured crop with remaining eligible acreage would have resulted in a higher prevented planting payment than would have been paid for the crop that was prevented from being planted; or

(ii) The crop from which eligible acres are being used if the insured crop with remaining eligible acreage will result in a lower prevented planting payment than would have been paid for the crop that was prevented from being planted.

(3) For example, assume you were prevented from planting 200 acres of corn and you have 100 acres eligible for a corn prevented planting guarantee that would result in a payment of $40 per acre. You also had 50 acres of potato eligibility that would result in a $100 per acre payment and 90 acres of grain sorghum eligibility that would result in a $30 per acre payment. Your prevented planting coverage will be based on 100 acres of corn ($40 per acre), 90 acres of grain sorghum ($30 per acre), and an additional 10 acres of corn (using potato eligible acres and paid as corn at $40 per acre). Your prevented planting payment would be $7,100 ($4,000 + $2,700 + $400).

(4) Prevented planting coverage will be allowed as specified in section 17(h) only if the crop that was prevented from being planted meets all the policy provisions, except for having an adequate base of eligible prevented planting acreage. Payment may be made based on crops other than those that were prevented from being planted even though other policy provisions, including but not limited to, processor contract and rotation requirements, have not been met for the crop whose eligible acres are being used.

(5) An additional administrative fee will not be due as a result of using eligible prevented planting acreage as specified in section 17(h).

(i) * * *

(1) Multiplying the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage, by:

(i) Your amount of insurance per acre; or

(ii) The amount determined by multiplying the production guarantee (per acre) for timely planted acreage of the insured crop (or type, if applicable) by your price election or your projected price, whichever is applicable;

* * * * *

§ 457.8 [Amended]

■ 19. Further amend § 457.8 in section 18 as follows:

■ a. Revise paragraphs (a), (c) and (e);

■ b. Amend paragraph (f)(1)(ii) by adding the phrase "in which the crop was planted" between the phrases "crop year" and "during the base period";

■ c. Revise paragraph (f)(1)(iv);

■ d. Revise paragraphs (f)(2)(i)(A) and (f)(2)(ii)(A);
■ e. Revise paragraph (g);
■ f. Amend paragraph (h)(5) by removing the word "determines" and adding the word "determine" in its place;
■ g. Revise paragraph (i);
■ h. Amend paragraph (j) by removing the word "Multiyear" and adding the word "Multi-year" in its place;
■ i. Amend paragraph (m) by removing "(e)" and adding "(a)" in its place and removing the word "and" after the semicolon;
■ j. Amend paragraph (n) by removing the period at the end of the text and adding the phrase "; and" in its place; and
■ k. Add a new paragraph (o).

The revised and added text reads as follows:

18. Written Agreements.

* * * * *

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

* * * * *

(c) If approved by FCIC, the written agreement will include all variable terms of the contract, including, but not limited to, the crop; practice, type or variety; guarantee; premium rate; and projected price, harvest price, price election or amount of insurance, as applicable, or the information needed to determine such variable terms. If the written agreement is for a county:

(1) That has a price election or amount of insurance stated in the Special Provisions, or an addendum thereto, for the crop, practice, type or variety, the written agreement will contain the price election or amount of insurance stated in the Special Provisions, or an addendum thereto, for the crop, practice, type or variety;

(2) That does not have price elections or amounts of insurance stated in the Special Provisions, or an addendum thereto, for the crop, practice, type or variety, the written agreement will contain a price election or amount of insurance that does not exceed the price election or amount of insurance contained in the Special Provisions, or an addendum thereto, for the county that is used to establish the other terms of the written agreement, unless otherwise authorized by the Crop Provisions;

(3) For which revenue protection is not available for the crop, but revenue protection is available in the State for the crop, the written agreement will contain the information used to establish the projected price and harvest price, as applicable, for that State; or

(4) In a State for which revenue protection is not available for the crop, but revenue protection is available for the crop in another State, the written agreement is available for yield protection only, and will contain the information needed to determine the projected price for the crop from another State as determined by FCIC;

* * * * *

(e) A request for a written agreement may be submitted:

(1) After the sales closing date, but on or before the acreage reporting date, if you demonstrate your physical inability to submit the request on or before the sales closing date (*e.g.,* you have been hospitalized or a blizzard has made it impossible to submit the written agreement request in person or by mail);

(2) For the first year the written agreement is requested:

(i) On or before the acreage reporting date to:

(A) Insure unrated land, or an unrated practice, type or variety of a crop; although, if required by FCIC, such written agreements may be approved only after appraisal of the acreage by us and:

(*1*) The crop's potential is equal to or exceeds 90 percent of the yield used to determine your production guarantee or amount of insurance; and

(*2*) You sign the written agreement no later than the date the first field is appraised or by the expiration date for you to accept the offer, whichever comes first; or

(B) Establish optional units in accordance with FCIC procedures that otherwise would not be allowed, change the premium rate or transitional yield for designated high-risk land, or insure acreage that is greater than five percent of the planted acreage in the unit where the acreage has not been planted and harvested or insured in any of the three previous crop years;

(ii) On or before the cancellation date to insure a crop in a county that does not have actuarial documents for the crop (If the Crop Provisions do not provide a cancellation date for the county, the cancellation date for other insurable crops in the same State that have similar final planting and harvesting dates will be applicable); or

(iii) On or before the date specified in the Crop Provisions or Special Provisions; or

(3) For adding land or a crop to either an existing written agreement or a request for a written agreement, provided the request is submitted by the applicable deadline specified in section 18;

(f) * * *

(1) * * *

(iv) The legal description of the land (in areas where legal descriptions are available) and the FSA farm serial number including tract and field numbers, if available. The submission must also include an FSA aerial photograph, or field boundaries derived by a Geographic Information System or Global Positioning System, or other legible maps delineating field boundaries where you intend to plant the crop for which insurance is requested;

* * * * *

(2) * * *

(i) * * *

(A) A completed APH form signed by you (only for crop policies that require APH) based on verifiable production records for at least the three most recent crop years in which the crop was planted; and

* * * * *

(ii) * * *

(A) A completed APH form signed by you (only for crop policies that require APH) based on verifiable production records for at least the three most recent crop years for a similar crop from acreage:

* * * * *

(g) A request for a written agreement will not be accepted if:

(1) The request is submitted to us after the applicable deadline contained in sections 18(a) or (e);

(2) All the information required in section 18(f) is not submitted to us with the request for a written agreement (The request for a written agreement may be accepted if any missing information is available from other acceptable sources);

(3) The request is to add land to an existing written agreement or to add land to a request for a written agreement and the request to add the land is not submitted by the applicable deadline specified in sections 18(a) or (e); or

(4) The request is not authorized by the policy;

* * * * *

(i) A written agreement will be denied unless:

(1) FCIC approves the written agreement;

(2) The original written agreement is signed by you and delivered to us, or postmarked, not later than the expiration date for you to accept the offer;

(3) We accept the written agreement offer; and

(4) The crop meets the minimum appraisal amount specified in section 18(e)(2)(i)(A)(*1*), if applicable;

* * * * *

(o) If you disagree with any determination made by FCIC under section 18, you may obtain administrative review in accordance with 7 CFR part 400, subpart J or appeal in accordance with 7 CFR part 11, unless you have failed to comply with the provisions contained in section 18(g) or section 18(i)(2) or (4).

* * * * *

§ 457.8 [Amended]

■ 20. Further amend § 457.8 in section 20 (for FCIC policies) as follows:
■ a. Revise paragraph (b);
■ b. Revise paragraph (c); and
■ c. Redesignate paragraphs (d) and (e) as paragraphs (e) and (f), respectively, and add a new paragraph (d).

The revised and added text reads as follows:

[For FCIC Policies]

20. Appeal, Reconsideration, Administrative and Judicial Review.

* * * * *

(b) If you disagree with our determinations:

(1) Except for determinations specified in section 18(g), section 18(i)(2) or section 20(b)(2) or (3), you may obtain an administrative review in accordance with 7 CFR part 400, subpart J (administrative review) or appeal in accordance with 7 CFR part 11 (appeal);

(2) Regarding whether you have used good farming practices (excluding determinations of the amount of assigned production for uninsured causes for your failure to use good farming practices), you may request reconsideration in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J (reconsideration). To appeal or request administrative review of determinations of the amount of assigned production, you must use the appeal or administration review process; or

(3) Any determination made by us that is a matter of general applicability is not subject to administrative review under 7 CFR part 400, subpart J or appeal under 7 CFR part 11. If you want to seek judicial review of any determination that is a matter of general applicability, you must request a determination of non-appealability from the Director of the National Appeals Division in accordance with 7 CFR part 11.6 prior to seeking judicial review.

(c) If you fail to exhaust your right to appeal, you will not be able to resolve the dispute through judicial review.

(d) You are not required to exhaust your right to reconsideration prior to seeking judicial review. If you do not request reconsideration and you elect to file suit, such suit must be brought in accordance with section 20(e)(2) and must be filed not later than one year after the date the determination regarding whether you used good farming practices was made.

* * * * *

§ 457.8 [Amended]

■ 21. Further amend § 457.8 in section 20 (For reinsured policies) as follows:
■ a. Revise paragraph (a)(1)(iii);
■ b. Revise paragraph (d) and the introductory text of paragraph (e); and
■ c. Add a new paragraph (k).

The revised and added text reads as follows:

[For Reinsured Policies]

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review.

(a) * * *

(1) * * *

(iii) An interpretation by FCIC of a policy provision is considered a determination that is a matter of general applicability.

* * * * *

(d) With respect to good farming practices:

(1) We will make decisions regarding what constitutes a good farming practice and determinations of assigned production for uninsured causes for your failure to use good farming practices.

(i) If you disagree with our decision of what constitutes a good farming practice, you must request a determination from FCIC of what constitutes a good farming practice before filing any suit against FCIC.

(ii) If you disagree with our determination of the amount of assigned production, you must use the arbitration or mediation process contained in this section.

(iii) You may not sue us for our decisions regarding whether good farming practices were used by you.

(2) FCIC will make determinations regarding what constitutes a good farming practice. If you do not agree with any determination made by FCIC:

(i) You may request reconsideration by FCIC of this determination in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J; or

(ii) You may file suit against FCIC.

(A) You are not required to request reconsideration from FCIC before filing suit.

(B) Any suit must be brought against FCIC in the United States district court for the district in which the insured acreage is located.

(C) Suit must be filed against FCIC not later than one year after the date:

(*1*) Of the determination; or

(*2*) Reconsideration is completed, if reconsideration was requested under section 20(d)(2)(i).

(e) Except as provided in sections 18(n) or (o), or 20(d) or (k), if you disagree with any other determination made by FCIC or any claim where FCIC is directly involved in the claims process or directs us in the resolution of the claim, you may obtain an administrative review in accordance with 7 CFR part 400, subpart J (administrative review) or appeal in accordance with 7 CFR part 11 (appeal).

* * * * *

(k) Any determination made by FCIC that is a matter of general applicability is not subject to administrative review under 7 CFR part 400, subpart J or appeal under 7 CFR part 11. If you want to seek judicial review of any FCIC determination that is a matter of general applicability, you must request a determination of non-appealability from the Director of the National Appeals Division in accordance with 7 CFR 11.6 before seeking judicial review.

§ 457.8 [Amended]

■ 22. Further amend § 457.8 in section 21 as follows:
■ a. Revise paragraph (b); and
■ b. Amend paragraph (f)(1) by removing the phrase "3(e)(1)" and adding the phrase "3(f)(1)" in its place.

The revised text reads as follows:

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

* * * * *

(b) You must retain, and provide upon our request, or the request of any employee of USDA authorized to investigate or review any matter relating to crop insurance:

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

(2) All records used to establish the amount of production you certified on your production reports used to compute your approved yield for three years after the calendar date for the end of the insurance period for the crop year for which you initially certified such records, unless such records have already been provided to us (*e.g.,* if you are a new insured and you certify 2007 through 2010 crop year production records in 2011 to determine your approved yield for the 2011 crop year, you must retain all records from the

2007 through 2010 crop years through the 2014 crop year. If you subsequently certify records of the 2011 crop year in 2012 to determine your approved yield for the 2012 crop year, you must retain the 2011 crop year records through the 2015 crop year and so forth for each subsequent year of production records certified); and

(3) While you are not required to maintain records beyond the record retention period specified in section 21(b)(2), at any time, if we or FCIC have evidence that you, or anyone assisting you, knowingly misreported any information related to any yield you have certified, we or FCIC will replace all yields in your APH database determined to be incorrect with the lesser of an assigned yield determined in accordance with section 3 or the yield determined to be correct:

(i) If an overpayment has been made to you, you will be required to repay the overpaid amount; and

(ii) Replacement of yields in accordance with section 21(b)(3) does not exempt you from other sanctions applicable under the terms of the policy or any applicable law.

* * * * *

§ 457.8 [Amended]

■ 23. Further amend § 457.8 in section 22 by revising paragraph (c) to read as follows:

22. Other Insurance.

* * * * *

(c) For the purpose of section 22(b), the amount of loss from fire will be the difference between the total value of the insured crop before the fire and the total value of the insured crop after the fire. This amount will be determined in accordance with the provisions in section 35.

§ 457.8 [Amended]

■ 24. Further amend § 457.8 in section 23 by revising the last sentence to read as follows:

23. Conformity to Food Security Act.

* * * We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less an amount for expenses and handling equal to 20 percent of the premium paid or to be paid by you.

* * * * *

§ 457.8 [Amended]

■ 25. Further amend § 457.8 in section 24 (For reinsured policies) by revising the last sentence of paragraph (a) to read as follows:

[For reinsured policies]

24. Amounts Due Us.

(a) * * * After the termination date, FCIC will collect any unpaid administrative fees and any interest owed thereon for any catastrophic risk protection policy and we will collect any unpaid administrative fees and any interest owed thereon for additional coverage policies.

* * * * *

§ 457.8 [Amended]

■ 26. Further amend § 457.8 in section 27 by revising paragraph (b) to read as follows:

27. Concealment, Misrepresentation or Fraud.

* * * * *

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

* * * * *

§ 457.8 [Amended]

■ 27. Further amend § 457.8 by revising section 29 to read as follows:

29. Assignment of Indemnity.

(a) You may assign your right to an indemnity for the crop year only to creditors or other persons to whom you have a financial debt or other pecuniary obligation. You may be required to provide proof of the debt or other pecuniary obligation before we will accept the assignment of indemnity.

(b) All assignments must be on our form and must be provided to us. Each assignment form may contain more than one creditor or other person to whom you have a financial debt or other pecuniary obligation.

(c) Unless you have provided us with a properly executed assignment of indemnity, we will not make any payment to a lienholder or other person to whom you have a financial debt or other pecuniary obligation even if you may have a lien or other assignment recorded elsewhere. Under no circumstances will we be liable:

(1) To any lienholder or other person to whom you have a financial debt or other pecuniary obligation where you have failed to include such lienholder or person on a properly executed assignment of indemnity provided to us; or

(2) To pay to all lienholders or other persons to whom you have a financial debt or other pecuniary obligation any amount greater than the total amount of indemnity owed under the policy.

(d) If we have received the properly executed assignment of indemnity form:

(1) Only one payment will be issued jointly in the names of all assignees and you; and

(2) Any assignee will have the right to submit all loss notices and forms as required by the policy.

(e) If you have suffered a loss from an insurable cause and fail to file a claim for indemnity within the period specified in section 14(e), the assignee may submit the claim for indemnity not later than 30 days after the period for filing a claim has expired. We will honor the terms of the assignment only if we can accurately determine the amount of the claim. However, no action will lie against us for failure to do so.

§ 457.8 [Amended]

■ 28. Further amend § 457.8 by removing and reserving section 30.

§ 457.8 [Amended]

■ 29. Further amend § 457.8 in section 34 as follows:

■ a. Revise the heading;

■ b. Revise paragraph (a);

■ c. Amend paragraph (b)(3) by adding the word "and" after the semicolon at the end;

■ d. Amend paragraph (b)(4) by removing the phrase "; and" and adding a period in its place; and

■ e. Revise paragraph (c)(1).

The revised and added text reads as follows:

34. Units.

(a) You may elect an enterprise unit or whole-farm unit in accordance with the following:

(1) For crops for which revenue protection is available, you may elect:

(i) An enterprise unit if you elected revenue protection or yield protection; or

(ii) A whole-farm unit if you elected:

(A) Revenue protection and revenue protection is provided unless limited by the Special Provisions; or

(B) Yield protection only if whole-farm units are allowed by the Special Provisions;

(2) For crops for which revenue protection is not available, enterprise units or whole-farm units are available only if allowed by the Special Provisions;

(3) You must make such election on or before the earliest sales closing date for the insured crops in the unit and report such unit structure on your acreage report:

(i) For counties in which the actuarial documents specify a fall or winter sales closing date and a spring sales closing date, you may change your unit election on or before the spring sales closing date (earliest spring sales closing date for

crops in the unit if electing a whole-farm unit) if you do not have any insured fall planted acreage of the insured crop;

(ii) Your unit selection will remain in effect from year to year unless you notify us in writing by the earliest sales closing date for the crop year for which you wish to change this election; and

(iii) These units may not be further divided except as specified herein;

(4) For an enterprise unit:

(i) To qualify, an enterprise unit must contain all of the insurable acreage of the same insured crop in:

(A) Two or more sections, if sections are the basis for optional units where the insured acreage is located;

(B) Two or more section equivalents determined in accordance with FCIC issued procedures, if section equivalents are the basis for optional units where the insured acreage is located or are applicable to the insured acreage;

(C) Two or more FSA farm serial numbers, if FSA farm serial numbers are the basis for optional units where the insured acreage is located;

(D) Any combination of two or more sections, section equivalents, or FSA farm serial numbers, if more than one of these are the basis for optional units where the acreage is located or are applicable to the insured acreage (*e.g.,* if a portion of your acreage is located where sections are the basis for optional units and another portion of your acreage is located where FSA farm serial numbers are the basis for optional units, you may qualify for an enterprise unit based on a combination of these two parcels);

(E) One section, section equivalent, or FSA farm serial number that contains at least 660 planted acres of the insured crop. You may qualify under this paragraph based only on the type of parcel that is utilized to establish optional units where your insured acreage is located (*e.g.,* if having two or more sections is the basis for optional units where the insured acreage is located, you may qualify for an enterprise unit if you have at least 660 planted acres of the insured crop in one section); or

(F) Two or more units established by written agreement; and

(ii) At least two of the sections, section equivalents, FSA farm serial numbers, or units established by written agreement in section 34(a)(4)(i)(A), (B), (C), (D), or (F) must each have planted acreage that constitutes at least the lesser of 20 acres or 20 percent of the insured crop acreage in the enterprise unit. If there is planted acreage in more than two sections, section equivalents, FSA farm serial numbers or units established by written agreement in section 34(a)(4)(i)(A), (B), (C), (D), or (F), these can be aggregated to form at least two parcels to meet this requirement. For example, if sections are the basis for optional units where the insured acreage is located and you have 80 planted acres in section one, 10 planted acres in section two, and 10 planted acres in section three, you may aggregate sections two and three to meet this requirement.

(iii) The crop must be insured under revenue protection or yield protection, unless otherwise specified in the Special Provisions;

(iv) If you want to change your unit structure from enterprise units to basic or optional units in any subsequent crop year, you must maintain separate records of acreage and production:

(A) For each basic unit, to be eligible to use records to establish the production guarantee for the basic unit; or

(B) For optional units, to qualify for optional units and to be eligible to use such records to establish the production guarantee for the optional units;

(v) If you do not comply with the production reporting provisions in section 3(f) for the enterprise unit, your yield for the enterprise unit will be determined in accordance with section 3(f)(1);

(vi) You must separately designate on the acreage report each section or other basis in section 34(a)(4)(i) you used to qualify for an enterprise unit; and

(vii) If we discover you do not qualify for an enterprise unit and such discovery is made:

(A) On or before the acreage reporting date, your unit division will be based on the basic or optional units, whichever you report on your acreage report and qualify for; or

(B) At any time after the acreage reporting date, we will assign the basic unit structure; and

(5) For a whole-farm unit:

(i) To qualify:

(A) All crops in the whole-farm unit must be insured:

(*1*) Under revenue protection (if you elected the harvest price exclusion for any crop, you must elect it for all crops in the whole-farm unit), unless the Special Provisions allow whole-farm units for another plan of insurance and you insure all crops in the whole-farm unit under such plan (*e.g.,* if you plant corn and soybeans for which you have elected revenue protection and you plant canola for which you have elected yield protection, the corn, soybeans and canola would be assigned the unit structure in accordance with section 34(a)(5)(v));

(*2*) With us (*e.g.,* if you insure your corn and canola with us and your soybeans with a different insurance provider, the corn, soybeans and canola would be assigned the unit structure in accordance with section 34(a)(5)(v)); and

(*3*) At the same coverage level (*e.g.,* if you elect to insure your corn and canola at the 65 percent coverage level and your soybeans at the 75 percent coverage level, the corn, soybeans and canola would be assigned the unit structure in accordance with section 34(a)(5)(v));

(B) A whole-farm unit must contain all of the insurable acreage of at least two crops; and

(C) At least two of the insured crops must each have planted acreage that constitutes 10 percent or more of the total planted acreage liability of all insured crops in the whole-farm unit (For crops for which revenue protection is available, liability will be based on the applicable projected price only for the purpose of section 34(a)(5)(i)(C));

(ii) You will be required to pay separate administrative fees for each crop included in the whole-farm unit;

(iii) You must separately designate on the acreage report each basic unit for each crop in the whole-farm unit;

(iv) If you want to change your unit structure from a whole-farm unit to basic or optional units in any subsequent crop year, you must maintain separate records of acreage and production:

(A) For each basic unit, to be eligible to use such records to establish the production guarantee for the basic units; or

(B) For optional units, to qualify for optional units and to be eligible to use such records to establish the production guarantee for the optional units; and

(v) If we discover you do not qualify for a whole-farm unit for at least one insured crop because, even though you elected revenue protection for all your crops:

(A) You do not meet all of the other requirements in section 34(a)(5)(i), and such discovery is made:

(*1*) On or before the acreage reporting date, your unit division for all crops for which you elected a whole-farm unit will be based on basic or optional units, whichever you report on your acreage report and qualify for; or

(*2*) At any time after the acreage reporting date, we will assign the basic unit structure for all crops for which you elected a whole-farm unit; or

(B) It was not possible to establish a projected price for at least one of your crops, your unit division will be based on the unit structure you report on your

acreage report and qualify for only for the crop for which a projected price could not be established, unless the remaining crops in the unit would no longer qualify for a whole-farm unit, in such case your unit division for the remaining crops will be based on the unit structure you report on your acreage report and qualify for.

* * * * *

(c) * * *

(1) Optional units may be established if each optional unit is located in a separate section where the boundaries are readily discernible:

(i) In the absence of sections, we may consider parcels of land legally identified by other methods of measure, such as Spanish grants, provided the boundaries are readily discernible, if such parcels can be considered as the equivalent of sections for unit purposes in accordance with FCIC issued procedures; or

(ii) In the absence of sections as described in section 34(c)(1) or other methods of measure used to establish section equivalents as described in section 34(c)(1)(i), optional units may be established if each optional unit is located in a separate FSA farm serial number in accordance with FCIC issued procedure;

* * * * *

§ 457.8 [Amended]

■ 30. Further amend § 457.8 by revising section 35 to read as follows:

35. Multiple Benefits.

(a) If you are eligible to receive an indemnity and are also eligible to receive benefits for the same loss under any other USDA program, you may receive benefits under both programs, unless specifically limited by the crop insurance contract or by law.

(b) Any amount received for the same loss from any USDA program, in addition to the crop insurance payment, will not exceed the difference between the crop insurance payment and the actual amount of the loss, unless otherwise provided by law. The amount of the actual loss is the difference between the total value of the insured crop before the loss and the total value of the insured crop after the loss.

(1) For crops for which revenue protection is not available:

(i) If you have an approved yield, the total value of the crop before the loss is your approved yield times the highest price election for the crop; and

(ii) If you have an approved yield, the total value of the crop after the loss is your production to count times the highest price election for the crop; or

(iii) If you have an amount of insurance, the total value of the crop before the loss is the highest amount of insurance available for the crop; and

(iv) If you have an amount of insurance, the total value of the crop after the loss is your production to count times the price contained in the Crop Provisions for valuing production to count.

(2) For crops for which revenue protection is available and:

(i) You elect yield protection:

(A) The total value of the crop before the loss is your approved yield times the applicable projected price (at the 100 percent price level) for the crop; and

(B) The total value of the crop after the loss is your production to count times the applicable projected price (at the 100 percent price level) for the crop; or

(ii) You elect revenue protection:

(A) The total value of the crop before the loss is your approved yield times the higher of the applicable projected price or harvest price for the crop (If you have elected the harvest price exclusion, the applicable projected price for the crop will be used); and

(B) The total value of the crop after the loss is your production to count times the harvest price for the crop.

(c) FSA or another USDA agency, as applicable, will determine and pay the additional amount due you for any applicable USDA program, after first considering the amount of any crop insurance indemnity.

§ 457.8 [Amended]

■ 31. Further amend § 457.8 in section 36 as follows:

■ a. Amend paragraph (a) by removing the phrase "(T-yield)"; and

■ b. Amend paragraph (c) by removing the phrase "T-yield" and adding the phrase "transitional yield" in its place in all three instances that it appears.

■ 32. Amend § 457.101 by revising the introductory text to read as follows:

§ 457.101 Small grains crop insurance

The small grains crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

§ 457.101 [Amended]

■ 33. Further amend § 457.101 by removing the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict.

§ 457.101 [Amended]

■ 34. Further amend § 457.101 in section 1 as follows:

■ a. Remove the definition of "sales closing date"; and

■ b. Revise the definition of "prevented planting" to read as follows:

1. Definitions.

* * * * *

Prevented planting. As defined in the Basic Provisions, except that the references to "final planting date" contained in the definition in the Basic Provisions are replaced with the "latest final planting date."

* * * * *

§ 457.101 [Amended]

■ 35. Further amend § 457.101 by revising section 3 to read as follows:

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

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

(a) Revenue protection is not available for your oats, rye, flax, or buckwheat. Therefore, if you elect to insure such crops by the sales closing date, they will only be protected against a loss in yield;

(b) Revenue protection is available for wheat and barley. Therefore, if you elect to insure your wheat or barley:

(1) You must elect to insure your wheat or barley with either revenue protection or yield protection by the sales closing date; and

(2) In counties with both fall and spring sales closing dates for the insured crop:

(i) If you do not have any insured fall planted acreage of the insured crop, you may change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, until the spring sales closing date; or

(ii) If you have any insured fall planted acreage of the insured crop, you may not change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, after the fall sales closing date.

* * * * *

§ 457.101 [Amended]

■ 36. Further amend § 457.101 in section 5 by revising the introductory text and all the information under the heading "WHEAT" in the table to read as follows:

5. Cancellation and Termination Dates.

The cancellation and termination dates are as follows, unless otherwise specified in the Special Provisions:

Crop, State and county	Cancellation date	Termination date
Wheat:		
All Colorado counties except Alamosa, Archuleta, Conejos, Costilla, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Rio Grande, Routt, Saguache, and San Miguel; all Iowa counties except Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, Dubuque and all Iowa counties north thereof; all Nebraska counties except Box Butte, Dawes, and Sheridan; all Wisconsin counties except Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, Kewaunee and all Wisconsin counties north thereof; all other States except Alaska, Arizona, California, Connecticut, Idaho, Maine, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, and Wyoming.	September 30	September 30.
Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity Counties, California; Archuleta, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, and San Miguel Counties, Colorado; Connecticut; Idaho; Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, and Dubuque Counties, Iowa, and all Iowa counties north thereof; Massachusetts; all Montana counties except Daniels, Roosevelt, Sheridan, and Valley; Box Butte, Dawes, and Sheridan Counties, Nebraska; New York; Oregon; Rhode Island; all South Dakota counties except Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Minnehaha and all South Dakota counties north and east thereof; Washington; Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown and Kewaunee Counties, Wisconsin, and all Wisconsin counties north thereof; and all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie.	September 30	November 30.
Arizona; all California counties except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity; Nevada; and Utah.	October 31	November 30.
Alaska; Alamosa, Conejos, Costilla, Rio Grande, and Saguache Counties, Colorado; Maine; Minnesota; Daniels, Roosevelt, Sheridan, and Valley Counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, and Minnehaha Counties, South Dakota, and all South Dakota counties north and east thereof; Vermont; and Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.	March 15	March 15.

* * * * *

§ 457.101 [Amended]

■ 37. Further amend § 457.101 in section 6 as follows:

■ a. Revise paragraphs (a)(2) and (3);

■ b. Remove paragraph (a)(4);

■ c. Redesignate paragraphs (b) through (d) as (c) through (e) and add a new paragraph (b); and

■ d. Amend redesignated paragraph (d) by removing the word "additional".

The revised and added text reads as follows:

6. Insured Crop.

(a) * * *

(2) That is planted for harvest as grain (a grain mixture in which barley or oats is the predominate grain may also be insured if allowed by the Barley or Oat Special Provisions, or if a written agreement allows insurance for such mixture. The production from such mixture will be considered as the predominate grain on a weight basis); and

(3) That is not, unless insurance is allowed by a written agreement:

(i) Interplanted with another crop except as allowed in section 6(a)(2);

(ii) Planted into an established grass or legume; or

(iii) Planted as a nurse crop, unless planted as a nurse crop for new forage seeding, but only if seeded at a normal rate and intended for harvest as grain.

(b) Buckwheat will be insured only if it is produced under a contract with a business enterprise equipped with facilities appropriate to handle and store buckwheat production. The contract must be executed by you and the business enterprise, in effect for the crop year, and a copy provided to us no later than the acreage reporting date. To be considered a contract, the executed document must contain:

(1) A requirement that you plant, grow and deliver buckwheat to the business enterprise;

(2) The amount of production that will be accepted or a statement that all production from a specified number of acres will be accepted;

(3) The price to be paid for the contracted production or a method to determine such price; and

(4) Other such terms that establish the obligations of each party to the contract.

* * * * *

§ 457.101 [Amended]

■ 38. Further amend § 457.101 in section 7 as follows:

■ a. Revise the introductory text;

■ b. Revise paragraphs (a)(2)(iii) and (v); and

■ c. Revise paragraph (b).

The revised text reads as follows:

7. Insurance Period.

In accordance with section 11 of the Basic Provisions, and subject to any provisions provided by the Wheat or Barley Winter Coverage Endorsement (if elected by you):

(a) * * *

(2) * * *

(iii) Whenever the Special Provisions designate both fall and spring final planting dates:

(A) Any winter barley or winter wheat that is damaged before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop to maintain insurance based on the winter type unless we agree that replanting is not practical. If it is not practical to replant to the winter type of wheat or barley but is practical to replant to a spring type, you must replant to a spring type to keep your insurance based on the winter type in force.

(B) Any winter barley or winter wheat acreage that is replanted to a spring type of the same crop when it was practical to replant the winter type will be insured as the spring type and the production guarantee, premium, projected price, and harvest price applicable to the spring type will be used. In this case, the acreage will be considered to be initially planted to the spring type.

(C) Notwithstanding sections 7(a)(2)(iii)(A) and (B), if you have elected coverage under a barley or

wheat winter coverage endorsement (if available in the county), insurance will be in accordance with the endorsement.

* * * * *

(v) Whenever the Special Provisions designate only a spring final planting date, any acreage of fall planted barley or fall planted wheat is not insured unless you request such coverage on or before the spring sales closing date, and we determine, in writing, that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. However, if we fail to inspect the acreage by the spring final planting date, insurance will attach as specified in section 7(a)(2)(v)(C).

(A) Your request for coverage must include the location and number of acres of fall planted barley or wheat.

(B) The fall planted barley or fall planted wheat will be insured as a spring type for the purpose of the production guarantee, premium, projected price, and harvest price, if applicable.

(C) Insurance will attach to such acreage on the date we determine an adequate stand exists or on the spring final planting date if we do not determine adequacy of the stand by the spring final planting date.

(D) Any acreage of such fall planted barley or fall planted wheat that is damaged after it is accepted for insurance but before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree it is not practical to replant.

(E) If fall planted acreage is not to be insured it must be recorded on the acreage report as uninsured fall planted acreage.

(b) The calendar date for the end of the insurance period is the following applicable date:

(1) September 25 in Alaska;

(2) July 31 in Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, North Carolina, South Carolina and Tennessee; or

(3) October 31 in all other states.

■ 39. Further amend § 457.101 in section 8 as follows:

■ a. Amend the introductory text by removing the phrase "(Causes of Loss)";

■ b. Amend paragraph (g) by removing the word "or" at the end;

■ c. Revise paragraph (h); and

■ d. Add a new paragraph (i).

The revised and added text reads as follows:

8. Causes of Loss.

* * * * *

(h) Failure of the irrigation water supply due to a cause of loss specified in sections 8(a) through (g) that also occurs during the insurance period; or

(i) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.

§ 457.101 [Amended]

■ 40. Further amend § 457.101 in section 9 as follows:

■ a. Revise paragraph (a)(6);

■ b. Revise paragraph (c); and

■ c. Revise paragraph (e).

The revised text reads as follows:

9. Replanting Payments.

(a) * * *

(6) The replanted crop must be seeded at a rate sufficient to achieve a total (undamaged and new seeding) plant population that is considered appropriate by agricultural experts for the insured crop, type and practice.

* * * * *

(c) Unless otherwise specified in the Special Provisions, the amount of the replanting payment per acre will be:

(1) The lesser of 20 percent of the production guarantee or the number of bushels for the applicable crop specified below:

(i) Two bushels for flax or buckwheat;

(ii) Four bushels for wheat; or

(iii) Five bushels for barley or oats;

(2) Multiplied by:

(i) Your price election for oats, flax or buckwheat; or

(ii) Your projected price for wheat or barley; and

(3) Multiplied by your share.

* * * * *

(e) Replanting payments will be calculated using your price election or your projected price, as applicable, and your production guarantee for the crop type that is replanted and insured. For example, if damaged spring wheat is replanted to durum wheat, your projected price applicable to durum wheat will be used to calculate any replanting payment that may be due. A revised acreage report will be required to reflect the replanted type. Notwithstanding the previous two sentences, the following will have a replanting payment based on your production guarantee and your price election or your projected price, as applicable, for the crop type initially planted:

(1) Any damaged winter crop type that is replanted to a spring crop type, but that retains insurance based on the winter crop type; and

(2) Any acreage replanted at a reduced seeding rate into a partially damaged stand of the insured crop.

§ 457.101 [Amended]

■ 41. Further amend § 457.101 by revising section 10 to read as follows:

10. Duties in the Event of Damage or Loss

Representative samples are required in accordance with section 14 of the Basic Provisions.

§ 457.101 [Amended]

■ 42. Further amend § 457.101 in section 11 as follows:

■ a. Revise paragraph (b);

■ b. Amend the introductory text of paragraph (c) by removing the phrase "(bushels)" and adding the phrase "(in bushels)" after the word "count";

■ c. Revise the introductory text of paragraph (c)(1)(i); and

■ d. Add a new paragraph (c)(2).

The revised and added text reads as follows:

11. Settlement of Claim.

* * * * *

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

(1) Multiplying the number of insured acres of each insured crop or type, as applicable by your respective:

(i) Yield protection guarantee (per acre) if you elected yield protection for barley or wheat;

(ii) Production guarantee (per acre) and your price election for oats, rye, flax, or buckwheat; or

(iii) Revenue protection guarantee (per acre) if you elected revenue protection for barley or wheat;

(2) Totaling the results of section 11(b)(1)(i), (ii), or (iii), whichever is applicable;

(3) Multiplying the production to count of each insured crop or type, as applicable, by your respective:

(i) Projected price for wheat or barley if you elected yield protection;

(ii) Price election for oats, rye, flax, or buckwheat; or

(iii) Harvest price if you elected revenue protection;

(4) Totaling the results of section 11(b)(3)(i), (ii), or (iii), whichever is applicable;

(5) Subtracting the result of section 11(b)(4) from the result of section 11(b)(2); and

(6) Multiplying the result of section 11(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of wheat in the unit with a production guarantee (per acre) of 45 bushels, your projected price is $3.40,

your harvest price is $3.45, and your production to count is 2,000 bushels.

If you elected yield protection:

(1) 50 acres × (45 bushel production guarantee × $3.40 projected price) = $7,650.00 value of the production guarantee

(3) 2,000 bushel production to count × $3.40 projected price = $6,800.00 value of the production to count

(5) $7,650.00 − $6,800.00 = $850.00

(6) $850.00 × 1.000 share = $850.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (45 bushel production guarantee × $3.45 harvest price) = $7,762.50 revenue protection guarantee

(3) 2,000 bushel production to count × $3.45 harvest price = $6,900.00 value of the production to count

(5) $7,762.50 − $6,900.00 = $862.50

(6) $862.50 × 1.000 share = $863.00 indemnity.

(c) * * *

(1) * * *

(i) For oats, rye, flax, or buckwheat, and barley or wheat under yield protection, not less than the production guarantee (per acre), and for barley or wheat under revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (per acre) for acreage:

* * * * *

(2) All harvested production from the insurable acreage.

* * * * *

§ 457.101 [Amended]

■ 43. Further amend § 457.101 in section 13 by revising paragraph (b) to read as follows:

13. Prevented Planting.

* * * * *

(b) Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have additional coverage and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

■ 44. Amend § 457.104 by revising the introductory text to read as follows:

§ 457.104 Cotton crop insurance provisions.

The cotton crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

§ 457.104 [Amended]

■ 45. Further amend § 457.104 by removing the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict.

§ 457.104 [Amended]

■ 46. Further amend § 457.104 in section 1 by removing the definition of "production guarantee" and adding the definition of "production guarantee (per acre)" to read as follows:

1. Definitions.

* * * * *

Production guarantee (per acre). In lieu of the definition contained in the Basic Provisions, the number of pounds determined by multiplying the approved yield per acre by any applicable yield conversion factor for non-irrigated skip-row planting patterns, and multiplying the result by the coverage level percentage you elect.

* * * * *

§ 457.104 [Amended]

■ 47. Further amend § 457.104 by revising section 2 to read as follows:

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

In addition to the requirements of section 3 of the Basic Provisions, you must elect to insure your cotton with either revenue protection or yield protection by the sales closing date.

§ 457.104 [Amended]

■ 48. Further amend § 457.104 by revising section 3 to read as follows:

3. Contract Changes.

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

§ 457.104 [Amended]

■ 49. Further amend § 457.104 in section 4 as follows:

■ a. Amend the introductory text by removing the phrases "(Life of Policy, Cancellation and Termination)"and "(§ 457.8)"; and

■ b. Amend the table by removing the phrase "January 15" and adding the phrase "January 31" in its place and removing the word "Reagon" and adding the word "Reagan" in its place.

§ 457.104 [Amended]

■ 50. Further amend § 457.104 by revising section 5 to read as follows:

5. Insured Crop.

In accordance with section 8 of the Basic Provisions, the crop insured will be all the cotton lint, in the county for which premium rates are provided by the actuarial documents:

(a) In which you have a share; and

(b) That is not (unless allowed by the Special Provisions or by written agreement):

(1) Colored cotton lint;

(2) Planted into an established grass or legume; or

(3) Interplanted with another spring planted crop.

§ 457.104 [Amended]

■ 51. Further amend § 457.104 in section 6 by removing the phrases "(Insurable Acreage)" and "(§ 457.8)" in the introductory text;

§ 457.104 [Amended]

■ 52. Further amend § 457.104 in section 7 by removing the phrases "(Insurance Period)" and "(§ 457.8)" in the introductory text of paragraph (b);

§ 457.104 [Amended]

■ 53. Further amend § 457.104 in section 8 as follows:

■ a. Remove the phrases "(Causes of Loss)" and "(§ 457.8)" in the introductory text;

■ b. Remove the word "or" at the end of paragraph (g);

■ c. Revise paragraph (h); and

■ d. Add a new paragraph (i).

The revised and added text reads as follows:

8. Causes of Loss.

* * * * *

(h) Failure of the irrigation water supply due to a cause of loss specified in sections 8(a) through (g) that also occurs during the insurance period; or

(i) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.

§ 457.104 [Amended]

■ 54. Further amend § 457.104 by revising section 9 to read as follows:

9. Duties in the Event of Damage or Loss.

(a) In addition to your duties under section 14 of the Basic Provisions, in the event of damage or loss, the cotton stalks must remain intact for our inspection. The stalks must not be destroyed, and required samples must not be harvested, until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed and written notice of probable loss given to us.

(b) Representative samples are required in accordance with section 14 of the Basic Provisions.

§ 457.104 [Amended]

■ 55. Further amend § 457.104 in section 10 as follows:

■ a. Revise paragraphs (a) and (b);

■ b. Amend the introductory text in paragraph (c) by removing the phrase "(pounds)" and adding the phrase "(in pounds)" after the phrase "to count";

■ c. Revise the introductory text of paragraph (c)(1)(i);
■ d. Amend paragraph (c)(1)(iv)(A) by removing the word "of" after the phrase "harvested production" and adding the word "or" in its place; and
■ e. Revise paragraph (d).

The revised text reads as follows:

10. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

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

(1) Multiplying the number of insured acres by your respective:

(i) Yield protection guarantee (per acre) if you elected yield protection; or

(ii) Revenue protection guarantee (per acre) if you elected revenue protection;

(2) Totaling the results of section 10(b)(1)(i) or 10(b)(1)(ii), whichever is applicable;

(3) Multiplying the production to count by your:

(i) Projected price if you elected yield protection; or

(ii) Harvest price if you elected revenue protection;

(4) Totaling the results of section 10(b)(3)(i) or 10(b)(3)(ii), whichever is applicable;

(5) Subtracting the result of section 10(b)(4) from the result of section 10(b)(2); and

(6) Multiplying the result of section 10(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of cotton in the unit with a production guarantee (per acre) of 525 pounds, your projected price is $.65, your harvest price is $.70, and your production to count is 25,000 pounds.

If you elected yield protection:

(1) 50 acres × (525 pound production guarantee × $.65 projected price) = $17,062.50 value of the production guarantee

(3) 25,000 pound production to count × $.65 projected price = $16,250.00 value of production to count

(5) $17,062.50 − $16,250.00 = $812.50

(6) $812.50 × 1.000 share = $813.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (525 pound production guarantee × $.70 harvest price) = $18,375.00 revenue protection guarantee

(3) 25,000 pound production to count × $.70 harvest price = $17,500.00 value of the production to count

(5) $18,375.00 − $17,500.00 = $875.00

(6) $875.00 × 1.000 share = $875.00 indemnity.

(c) * * *

(1) * * *

(i) For yield protection, not less than the production guarantee and for revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (per acre) for acreage:

* * * * *

(d) Mature white cotton may be adjusted for quality when production has been damaged by insured causes. Such production to count will be reduced if the price quotation for cotton of like quality (price quotation "A") for the applicable growth area is less than 85 percent of price quotation "B."

(1) Price quotation "B" is defined as the price quotation for the applicable growth area for cotton of the color and leaf grade, staple length, and micronaire reading designated in the Special Provisions for this purpose.

(2) Price quotations "A" and "B" will be the price quotations for the Upland Cotton Warehouse Loan Rate published by FSA on the date the last bale from the unit is classed. If the date the last bale classed is not available, the price quotations will be determined on the date the last bale from the unit is delivered to the warehouse, as shown on the producer's account summary obtained from the gin.

(3) If eligible for adjustment, the amount of production to count will be determined by multiplying the number of pounds of such production by the factor derived from dividing price quotation "A" by 85 percent of price quotation "B."

* * * * *

§ 457.104 [Amended]

■ 56. Further amend § 457.104 by revising section 11(b) to read as follows:

11. Prevented Planting.

* * * * *

(b) Your prevented planting coverage will be 50 percent of your production guarantee for timely planted acreage. If you have additional coverage and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

■ 57. Amend § 457.106 as follows:
■ A. Revise the introductory text to read as set forth below;
■ B. Remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict;
■ C. Amend section 2(b) by removing the phrase "34(a) (1), (3), and (4)" and adding the phrase "34(b)(1), (3), and (4)" in its place; and
■ D. Amend section 6 by removing the phrase "section 5 (Annual Premium)" and adding the phrase "section 7" in its place.

The revised text reads as follows:

§ 457.106 Texas citrus tree crop insurance provisions.

The Texas Citrus Tree Crop Insurance Provisions for the 2011 and succeeding crop years are as follows:

* * * * *

■ 58. Revise the introductory text of § 457.108 to read as follows:

§ 457.108 Sunflower seed crop insurance provisions.

The sunflower seed crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

§ 457.108 [Amended]

■ 59. Further amend § 457.108 by removing the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict.

* * * * *

§ 457.108 [Amended]

■ 60. Further amend § 457.108 by revising section 2 to read as follows:

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

In addition to the requirements of section 3 of the Basic Provisions, you must elect to insure your sunflowers with either revenue protection or yield protection by the sales closing date.

§ 457.108 [Amended]

■ 61. Further amend § 457.108 by revising section 3 to read as follows:

3. Contract Changes.

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

§ 457.108 [Amended]

■ 62. Further amend § 457.108 in section 4 by removing the term "(§ 457.8)";

§ 457.108 [Amended]

■ 63. Further amend § 457.108 in section 5 by removing the phrases "(Insured Crop)" and "(§ 457.8)";

§ 457.108 [Amended]

64. Further amend § 457.108 in section 6 by removing the phrases "(Insurable Acreage)" and "(§ 457.8)";

§ 457.108 [Amended]

■ 65. Further amend § 457.108 in section 7 by removing the phrases "(Insurance Period)" and "(§ 457.8)";

§ 457.108 [Amended]

■ 66. Further amend § 457.108 in section 8 as follows:
■ a. Amend the introductory text by removing the phrases "(Causes of Loss)" and "(§ 457.8)";
■ b. Amend paragraph (g) by removing the word "or" at the end;
■ c. Revise paragraph (h); and
■ d. Add a new paragraph (i).

The revised and added text reads as follows:

8. Causes of Loss.

* * * * *

(h) Failure of the irrigation water supply due to a cause of loss specified in sections 8(a) through (g) that also occurs during the insurance period; or

(i) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.

§ 457.108 [Amended]

■ 67. Further amend § 457.108 by revising section 9 to read as follows:

9. Replanting Payments.

(a) A replanting payment is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these Crop Provisions;

(2) Except as specified in section 9(a)(1), you must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions; and

(3) The insured crop must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage.

(b) Unless otherwise specified in the Special Provisions, the amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 175 pounds, multiplied by your projected price, multiplied by your share.

(c) When the crop is replanted using a practice that is uninsurable for an original planting, the liability for the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

(d) If the acreage is replanted to an insured crop type that is different than the insured crop type originally planted on the acreage:

(1) The production guarantee, premium, and projected price and harvest price, as applicable, will be adjusted based on the replanted type;

(2) Replanting payments will be calculated using your projected price and production guarantee for the crop type that is replanted and insured; and

(3) A revised acreage report will be required to reflect the replanted type, as applicable.

§ 457.108 [Amended]

■ 68. Further amend § 457.108 by revising section 10 to read as follows:

10. Duties in the Event of Damage or Loss.

Representative samples are required in accordance with section 14 of the Basic Provisions.

§ 457.108 [Amended]

■ 69. Further amend § 457.108 in section 11 as follows:
■ a. Revise paragraphs (a) and (b);
■ b. Amend the introductory text of paragraph (c) by removing the phrase "(pounds)" and adding the phrase "(in pounds)" after the phrase "to count";
■ c. Revise the introductory text of paragraph (c)(1)(i); and
■ d. Revise paragraph (d)(4).

The revised text reads as follows:

11. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

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

(1) Multiplying the number of insured acres by your respective:

(i) Yield protection guarantee (per acre) if you elected yield protection; or

(ii) Revenue protection guarantee (per acre) if you elected revenue protection;

(2) Totaling the results of section 11(b)(1)(i) or 11(b)(1)(ii), whichever is applicable;

(3) Multiplying the production to count by your:

(i) Projected price if you elected yield protection; or

(ii) Harvest price if you elected revenue protection;

(4) Totaling the results of section 11(b)(3)(i) or 11(b)(3)(ii), whichever is applicable;

(5) Subtracting the result of section 11(b)(4) from the result of section 11(b)(2); and

(6) Multiplying the result of section 11(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of sunflowers in the unit with a production guarantee (per acre) of 1,250 pounds, your projected price is $.11, your harvest price is $.12, and your production to count is 54,000 pounds.

If you elected yield protection:

(1) 50 acres × (1,250 pound production guarantee × $.11 projected price) = $6,875.00 value of the production guarantee

(3) 54,000 pound production to count × $.11 projected price = $5,940.00 value of production to count

(5) $6,875.00 − $5,940.00 = $935.00

(6) $935.00 × 1.000 share = $935.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (1,250 pound production guarantee × $.12 harvest price) = $7,500.00 revenue protection guarantee

(3) 54,000 pound production to count × $.12 harvest price = $6,480.00 value of the production to count

(5) $7,500.00 − $6,480.00 = $1,020.00

(6) $1,020.00 × 1.000 share = $1,020.00 indemnity.

(c) * * *

(1) * * *

(i) For yield protection, not less than the production guarantee, and for revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (per acre) for acreage:

* * * * *

(d) * * *

(4) Sunflower seed production that is eligible for quality adjustment, as specified in sections 11(d)(2) and (3), will be reduced in accordance with quality adjustment factor provisions contained in the Special Provisions.

* * * * *

§ 457.108 [Amended]

■ 70. Further amend § 457.108 by revising section 12 to read as follows:

12. Prevented Planting.

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have additional coverage and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

■ 71. Amend § 457.111 as follows:
■ A. Revise the introductory text to read as set forth below;

■ B. Remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict; and
■ C. Amend section 2(c) by removing the phrase "34(a) (1)" and adding the phrase "34(b)(1)" in its place.

The revised text reads as follows:

§ 457.111 Pear crop insurance provisions.

The Pear Crop Insurance Provisions for the 2011 and succeeding crop years are as follows:

* * * * *

■ 72. Revise the introductory text of § 457.113 to read as follows:

§ 457.113 Coarse grains crop insurance provisions.

The coarse grains crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

§ 457.113 [Amended]

■ 73. Further amend § 457.113 by removing the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict.

§ 457.113 [Amended]

■ 74. Further amend § 457.113 in section 1 by revising the definitions of "planted acreage" and "production guarantee (per acre)" to read as follows:

1. Definitions.

* * * * *

Planted acreage. In addition to the definition contained in the Basic Provisions, coarse grains must initially be planted in rows, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Production guarantee (per acre). In lieu of the definition contained in the Basic Provisions, the number of bushels (tons for corn insured as silage) determined by multiplying the approved yield per acre by the coverage level percentage you elect.

* * * * *

§ 457.113 [Amended]

■ 75. Further amend § 457.113 by revising section 2 to read as follows:

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

In addition to the requirements of section 3 of the Basic Provisions, you must elect to insure your corn, grain sorghum, or soybeans with either revenue protection or yield protection by the sales closing date.

§ 457.113 [Amended]

■ 76. Further amend § 457.113 by revising section 3 to read as follows:

3. Contract Changes.

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

§ 457.113 [Amended]

■ 77. Further amend § 457.113 in section 4 as follows:
■ a. Amend the introductory text by removing the term "(§ 457.8)";
■ b. Amend paragraph (a) by removing the date of "January 15" and adding "January 31" in its place; and
■ c. Amend paragraph (b) by removing the date of "February 15" and adding "January 31" in its place.

§ 457.113 [Amended]

■ 78. Further amend § 457.113 in section 5 as follows:
■ a. Amend the introductory text of paragraph (a) by removing the phrases "(Insured Crop)" and "(§ 457.8)";
■ b. Amend paragraph (a)(3)(i) by removing the word "paragraph" and adding the word "section" in its place;
■ c. Amend the introductory text of paragraph (b) and paragraph (b)(1) by removing the word "subsection" and adding the word "section" in its place in both places;
■ d. Revise the introductory text of paragraph (b)(2);
■ e. Amend paragraph (b)(2)(i) by removing the phrase "high-oil, high-protein," and adding the phrase "high-oil or high-protein (except as authorized in section 5(b)(2))," in its place; and
■ f. Amend the introductory text of paragraph (d) and paragraph (e) by removing the word "subsection" and adding the word "section" in its place in both places.

The revised text reads as follows:

5. Insured Crop.

* * * * *

(b) * * *

(2) Yellow dent or white corn, including mixed yellow and white, waxy or high-lysine corn, high-oil corn blends containing mixtures of at least 90 percent high yielding yellow dent female plants with high-oil male pollinator plants, or commercial varieties of high-protein hybrids, and excluding:

* * * * *

§ 457.113 [Amended]

■ 79. Further amend § 457.113 in section 7 as follows:
■ a. Amend the introductory text by removing the word "under" and adding the word "of" in its place and removing the phrases "(Insurance Period)" and "(§ 457.8)"; and
■ b. Revise paragraph (b) to read as follows:

7. Insurance Period.

* * * * *

(b) For corn insured as silage:	
(1) Connecticut, Delaware, Idaho, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and West Virginia.	October 20.
(2) All other states	September 30.

* * * * *

§ 457.113 [Amended]

■ 80. Further amend § 457.113 in section 8 as follows:
■ a. Amend the introductory text by removing the phrases "(Causes of Loss)" and "(§ 457.8)";
■ b. Amend paragraph (g) by removing the word "or" at the end of the paragraph;
■ c. Revise paragraph (h); and
■ d. Add a new paragraph (i).

The revised and added text reads as follows:

8. Causes of Loss.

* * * * *

(h) Failure of the irrigation water supply due to a cause of loss specified in sections 8(a) through (g) that also occurs during the insurance period; or

(i) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.

§ 457.113 [Amended]

■ 81. Further amend § 457.113 by revising section 9 to read as follows:

9. Replanting Payments.

(a) A replanting payment is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these Crop Provisions;

(2) Except as specified in section 9(a)(1), you must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions; and

(3) The insured crop must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage.

(b) Unless otherwise specified in the Special Provisions, the amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or the number of bushels (tons for corn insured as silage) for the applicable crop specified below, multiplied by your projected price, multiplied by your share:

(1) 8 bushels for corn grain;

(2) 1 ton for corn silage;

(3) 7 bushels for grain sorghum; and

(4) 3 bushels for soybeans.

(c) When the crop is replanted using a practice that is uninsurable for an original planting, the liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

(d) If the acreage is replanted to an insured crop type that is different than the insured crop type originally planted on the acreage:

(1) The production guarantee, premium, and projected price and harvest price, as applicable, will be adjusted based on the replanted type;

(2) Replanting payments will be calculated using your projected price and production guarantee for the crop type that is replanted and insured; and

(3) A revised acreage report will be required to reflect the replanted type, as applicable.

§ 457.113 [Amended]

■ 82. Further amend § 457.113 by revising section 10 to read as follows:

10. Duties in the Event of Damage or Loss.

(a) Representative samples are required in accordance with section 14 of the Basic Provisions.

(b) For any corn unit that has separate dates for the end of the insurance period (grain and silage), in lieu of the requirement contained in section 14 of the Basic Provisions to provide notice within 72 hours of your initial discovery of damage (but not later than 15 days after the end of the insurance period), you must provide notice within 72 hours of your initial discovery of damage (but not later than 15 days after the latest end of the insurance period applicable to the unit).

(c) If you will harvest any acreage in a manner other than as you reported it for coverage (*e.g.*, you reported planting it to harvest as grain but will harvest the acreage for silage, or you reported planting it to harvest as silage but will harvest the acreage for grain), you must notify us before harvest begins. Failure to timely provide notice will result in production to count determined in accordance with section 11(c)(1)(i)(E).

§ 457.113 [Amended]

■ 83. Further amend § 457.113 in section 11 as follows:

■ a. Revise paragraphs (a) and (b);

■ b. Amend the introductory text in paragraph (c) by removing the phrase "in bushels (tons for corn silage) (see subsection 11(d))" and adding the phrase "(in bushels for corn insured as grain or in tons for corn insured as silage)" after the phrase "to count";

■ c. Revise the introductory text of paragraph (c)(1)(i);

■ d. Amend paragraph (c)(1)(i)(C) by removing the word "or" at the end of the paragraph;

■ e. Amend paragraph (c)(1)(i)(D) by adding the word "or" at the end of the paragraph;

■ f. Add a new paragraph (c)(1)(i)(E);

■ g. Amend paragraph (c)(1)(iii) by removing the phrase "subsection 11(e)" and adding the phrase "section 11(d)" in its place;

■ h. Amend paragraph (c)(1)(iv) by removing the first sentence and adding the phrase "Potential production on insured acreage you will put to another use or abandon, if you and we agree on the appraised amount of production." in its place and removing the word "if" in the second sentence and adding the word "when" in its place;

■ i. Remove paragraph (d) and redesignate paragraphs (e) through (g) as paragraphs (d) through (f), respectively;

■ j. Amend the introductory text of redesignated paragraph (d) by removing the phrase "or harvested" in both places and removing the phrase "subsection 11(f)" and adding the phrase "section 11(e)" in its place;

■ k. Amend redesignated paragraph (d)(4) by removing the phrase "paragraphs 11(e)" and adding the phrase "sections 11(d)" in its place;

■ l. Amend the introductory text of redesignated paragraph (e) by removing the phrase "or harvested"; and

■ m. Revise redesignated paragraph (e)(2).

The revised and added text reads as follows:

11. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

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

(1) Multiplying the number of insured acres of each insured crop or type, as applicable, by your respective:

(i) Yield protection guarantee (per acre) if you elected yield protection; or

(ii) Revenue protection guarantee (per acre) if you elected revenue protection;

(2) Totaling the results of section 11(b)(1)(i) or 11(b)(1)(ii), whichever is applicable;

(3) Multiplying the production to count of each insured crop or type, as applicable, by your respective:

(i) Projected price if you elected yield protection; or

(ii) Harvest price if you elected revenue protection;

(4) Totaling the results of section 11(b)(3)(i) or 11(b)(3)(ii), whichever is applicable;

(5) Subtracting the result of section 11(b)(4) from the result of section 11(b)(2); and

(6) Multiplying the result of section 11(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of corn in the unit with a production guarantee (per acre) of 115 bushels, your projected price is $2.25, your harvest price is $2.20, and your production to count is 5,000 bushels.

If you elected yield protection:

(1) 50 acres × (115 bushel production guarantee × $2.25 projected price) = $12,937.50 value of the production guarantee

(3) 5,000 bushel production to count × $2.25 projected price = $11,250.00 value of the production to count

(5) $12,937.50 − $11,250.00 = $1,687.50

(6) $1,687.50 × 1.000 share = $1,688.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (115 bushel production guarantee × $2.25 projected price) = $12,937.50 revenue protection guarantee

(3) 5,000 bushel production to count × $2.20 harvest price = $11,000.00 value of the production to count

(5) $12,937.50 − $11,000.00 = $1,937.50

(6) $1,937.50 × 1.000 share = $1,938.00 indemnity.

(c) * * *

(1) * * *

(i) For yield protection, not less than the production guarantee, or for revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (per acre) for acreage:

* * * * *

(E) For which you fail to give us notice before harvest begins if you report planting the corn to harvest as

grain but harvest it as silage or you report planting the corn to harvest as silage but harvest it as grain.

* * * * *

(e) * * *

(2) If the normal silage harvesting period has ended, or for any acreage harvested as silage or appraised as silage after the calendar date for the end of the insurance period as specified in section 7(b), we may increase the silage production to count to a 65 percent moisture equivalent to reflect the normal moisture content of silage harvested during the normal silage harvesting period.

* * * * *

§ 457.113 [Amended]

■ 84. Further amend § 457.113 by revising section 12 to read as follows:

12. Prevented Planting.

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have additional coverage and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

■ 85. Amend § 457.116 as follows:

■ A. Revise the introductory text to read as set forth below;

■ B. Remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict;

■ C. Amend section 2(b) by removing the phrase "3.(c)" and adding the phrase "3(f)" in its place; and

■ D. Amend section 6 by removing the phrase "9(a)(3)" and adding the phrase "9(a)(2)(iv)" in its place.

The revised text reads as follows:

§ 457.116 Sugarcane crop insurance provisions.

The Sugarcane Crop Insurance Provisions for the 2011 and succeeding crop years are as follows:

* * * * *

■ 86. Revise § 457.118 to read as follows:

§ 457.118 Malting barley price and quality endorsement.

The malting barley price and quality endorsement provisions for the 2011 and succeeding crop years are as follows:

FCIC policies: United States Department of Agriculture, Federal Crop Insurance Corporation.

Reinsured policies: (Appropriate title for insurance provider).

Both FCIC and reinsured policies:

Small Grains Crop Insurance Malting Barley Price and Quality Endorsement

(This is a continuous endorsement. Refer to section 2 of the Basic Provisions.)

In return for your payment of premium for the coverage contained herein, this endorsement will be attached to and made part of the Basic Provisions and Small Grains Crop Provisions, subject to the terms and conditions described herein.

1. Definitions.

Additional value price. The value per bushel determined in accordance with section 3 of Option A or section 3 of Option B, as applicable.

Approved malting variety. A variety of barley specified in the Special Provisions.

Brewery. A facility where malt beverages are commercially produced for human consumption.

Contracted production. A quantity of barley the producer agrees to grow and deliver, and the buyer agrees to accept, under the terms of the malting barley contract.

Crop year. In addition to the definition in the Basic Provisions and only for APH purposes under the terms of this endorsement, the period within which the crop is actually grown and designated by the calendar year in which the insured crop is normally harvested.

Licensed grain grader. A person authorized by the U.S. Department of Agriculture to inspect and grade barley in accordance with the U.S. Standards for malt barley.

Malt. A substance produced by germinating barley under controlled conditions and then drying it.

Malt extract. A substance made by adding warm water to ground malt and separating the liquid from the solid. In some cases, the liquid extract may be condensed or evaporated to a syrup or powder.

Malting barley contract. An agreement in writing:

(a) Between the producer and a brewery or a business enterprise that produces or sells malt or malt extract to a brewery, or a business enterprise owned by such brewery or business;

(b) That specifies the amount of contracted production, the purchase price or a method to determine such price; and

(c) That establishes the obligations of each party to the agreement.

Malting barley price agreement. An agreement that meets all conditions required for a malting barley contract except that it is executed with a business enterprise that is not described in the definition of a malting barley contract, but that normally contracts to purchase malting barley production and has facilities appropriate to handle and store malting barley production.

Objective test. A determination made by a qualified person using standardized equipment that is widely used in the malting industry that follows a procedure approved by the:

(a) American Society of Brewing Chemists when determining percent germination;

(b) Federal Grain Inspection Service when determining quality factors other than percent germination; or

(c) Food and Drug Administration (FDA) when determining concentrations of mycotoxins or other substances or conditions identified by the FDA as being injurious to human or animal health.

Subjective test. A determination:

(a) Made by a person using olfactory, visual, touch or feel, masticatory, or other senses unless performed by a licensed grain grader;

(b) That uses non-standardized equipment; or

(c) That does not follow a procedure approved by the American Society of Brewing Chemists, the Federal Grain Inspection Service, or the Food and Drug Administration.

2. This endorsement provides coverage for malting barley production and quality losses at a price per bushel greater than that offered under the Small Grains Crop Provisions.

3. You must have the Basic Provisions and the Small Grains Crop Provisions in force to elect to insure malting barley under this endorsement.

4. You must elect either Option A or Option B on or before the sales closing date:

(a) No coverage will be provided under:

(1) Either Option A or Option B of this endorsement if you fail to elect either Option A or Option B, or if you elect Option B but fail to have a malting barley contract in effect by the acreage reporting date; or

(2) Option B of this endorsement if you have not met the production requirements specified in section 1(a) of Option B (in such case, you will only have coverage under the Small Grains Crop Provisions unless you elect coverage under Option A on or before the sales closing date);

(b) If you elect coverage under Option A, and subsequently enter into a malting barley contract, your coverage will continue under the terms of Option A;

(c) Your election (Option A or Option B) will continue from year to year unless you cancel or change your election on or before the sales closing date, or your coverage is otherwise

canceled or terminated under the terms of your policy; and

(d) In counties with both fall and spring sales closing dates, you may elect this endorsement until the spring sales closing date only if you do not have any fall planted acreage of approved malting barley varieties.

5. All acreage in the county planted to approved malting varieties that is insurable under the Small Grains Crop Provisions for feed barley and your elected Option will be insured under this endorsement, except any acreage on which you produce seed under the terms of the seed contract.

6. In lieu of the definitions and provisions regarding units and unit division in the Basic Provisions and the Small Grains Crop Provisions, all malting barley acreage in the county insured under this endorsement will be considered as one basic unit regardless of whether such acreage is owned, rented for cash, or rented for a share of the crop. Your shares in the malting barley acreage insured under this endorsement must be designated separately on the acreage report. For example, if you have 100 percent share in 50 acres and 75 percent share in 10 acres you must list the 50 acres separately from the 10 acres on your acreage report and include the percent share for each.

7. You must select a percentage of the additional value price on or before the sales closing date (you can select only one percentage even if more than one additional value price is applicable, and this percentage must be 100 percent or less). In the event you choose a percentage less than 100 percent of the additional value price, we will multiply that percentage by the additional value price specified in Option A or Option B, as applicable, to determine the additional value price applicable to this endorsement.

8. The additional premium amount for this coverage will be determined by multiplying your malting barley production guarantee (per acre) by your additional value price, by the premium rate, by the acreage planted to approved malting barley varieties, by your share at the time coverage begins. The premium rate you pay will be adjusted by a malting barley factor contained in the actuarial documents, as applicable.

9. In addition to the reporting requirements contained in section 6 of the Basic Provisions, you must provide all the information required by the Option you elect.

10. In accordance with section 14 of the Basic Provisions:

(a) We will settle your claim within 30 days if all production:

(1) Meets the quality criteria specified in section 14(a)(2) of this endorsement; or

(2) Grades U.S. No. 4 or worse in accordance with the grades and grade requirements for the subclasses six-rowed and two-rowed barley, or for the class barley in accordance with the Official United States Standards for Grain; and

(3) Is not accepted by a buyer for malting purposes; or

(b) Whenever any production fails one or more of the quality criteria specified in section 14(a)(2) of this endorsement and grades U.S. No. 3 or better, we will not agree upon the amount of loss until the earlier of:

(1) The date you sell, feed, donate, or otherwise utilize such production for any purpose; or

(2) May 31 of the calendar year immediately following the calendar year in which the insured malting barley is normally harvested. If you still retain any insured production on or after this date, we will:

(i) Defer completion of your claim if you agree to such deferment; or

(ii) If you do not agree to defer your claim, we will complete your claim; however, no adjustment for quality deficiencies will be made and all remaining unsold insured production will be considered to have met the quality standards specified in this endorsement.

11. This endorsement for malting barley does not provide prevented planting coverage. Such coverage is only provided in accordance with the provisions of the Small Grains Crop Provisions for feed barley.

12. Production from all acreage insured under this endorsement and any production of feed barley varieties must not be commingled prior to our making all determinations under section 14. Failure to keep production separate as required herein will result in denial of your claim for indemnity.

13. In the event of loss or damage covered by this endorsement, we will settle your claim by:

(a) Multiplying the insured acreage by your malting barley production guarantee (per acre) determined in accordance with section 2 of Option A or Option B, as applicable;

(b) Multiplying the result in section 13(a) by your respective additional value price per bushel;

(c) Multiplying the number of bushels of production to count determined in accordance with section 14 by your additional value price per bushel (If more than one additional value price is applicable, the highest additional value price will be used until the number of bushels covered at the higher additional value price is reached and the remainder of the production will be multiplied by the lower additional value price. For example, if variety A is grown under a malting barley price agreement and 1000 bushels of variety A are insured using an additional value price of $0.68 per bushel but only 500 bushels of variety A are produced, the 500 bushels would be valued at $0.68 per bushel and all other production of other varieties will be valued at the lower additional value price unless such production is acceptable under the terms of the malting barley price agreement, in which case 500 bushels of the other varieties would also be valued at $0.68 per bushel);

(d) Subtracting the result of section 13(c) from the result in section 13(b); and

(e) Multiplying the result of section 13(d) by your share.

14. The amount of production to be counted against your malting barley production guarantee will be determined as follows:

(a) Production to count will include all:

(1) Appraised production determined in accordance with sections 11(c)(1)(i), (ii) and (iv) of the Small Grains Crop Provisions;

(2) Harvested production and unharvested production that meets, or would meet if properly handled, either the acceptable percentage or parts per million standard contained in any applicable malting barley contract or malting barley price agreement for protein, plump kernels, thin kernels, germination, blight damaged, injured by mold, mold damaged, injured by sprout, injured by frost, frost damaged, and mycotoxins or other substances or conditions identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human health, or the following quality standards (additional or different quality standards may be specified or made available in the Special Provisions), whichever is less stringent:

	Six-rowed Malting Barley	Two-rowed Malting Barley
Protein (dry basis)	14.0% maximum	13.5% maximum.

	Six-rowed Malting Barley	Two-rowed Malting Barley
Plump kernels	65.0% minimum	75.0% minimum.
Thin kernels	10.0% maximum	10.0% maximum.
Germination	95.0% minimum	95.0% minimum.
Blight damaged	4.0% maximum	4.0% maximum.
Injured by mold	5.0% maximum	5.0% maximum.
Mold damaged	0.4% maximum	0.4% maximum.
Injured by sprout	1.0% maximum	1.0% maximum.
Injured by frost	5.0% maximum	5.0% maximum.
Frost damaged	0.4% maximum	0.4% maximum.
Mycotoxins	2.0 ppm maximum	2.0 ppm maximum.

(3) Harvested production that does not meet the quality standards contained in section 14(a)(2), but is accepted by a buyer. If the price received is less than the total of the additional value price and the feed barley projected price announced by FCIC, the production to count may be reduced or the values used to settle the claim may be adjusted in accordance with sections 14(b), (c), and (d).

(b) For the quantity of production that qualifies under section 14(a)(3), the amount of production to count will be determined by:

(1) Subtracting the projected price for feed barley from the sale price per bushel of the damaged production (If the sale price is less than the market value of the damaged production, the sale price will be the market value);

(2) Subtracting the weighted average cost per bushel for conditioning the production, if any, (not to exceed the discount you would have received had you sold the barley without conditioning, for example, if the price per bushel of the production without conditioning is $2.80 and the price for such production after conditioning is $2.90, the discount is $0.10 and the cost of conditioning can not exceed $0.10 per bushel) from the result of section 14(b)(1);

(3) Dividing the result of section 14(b)(1) or (2), as applicable, by 100 percent of the additional value price (The weighted average additional value price will be used in the event more than one additional value price is applicable, for example, if 1000 bushels of variety A are insured with an additional value price of $0.68 and 500 bushels are insured with an additional value price of $0.40, the weighted average additional value price would be $0.59); and

(4) Multiplying the result of section 14(b)(3) (if less than zero, no production will be counted; or, if more than 1.000, no adjustment will be made) by the number of bushels of damaged production.

(c) No reduction in the amount of production to count will be allowed for:

(1) Moisture content;

(2) Damage due to uninsured causes;

(3) Costs or reduced value associated with drying, handling, processing, or quality factors other than those contained in section 14(a)(2); or

(4) Any other costs associated with normal handling and marketing of malting barley.

(d) All grade and quality determinations must be based on the results of objective tests. No indemnity will be paid for any loss established by subjective tests. We may obtain one or more samples of the insured crop and have tests performed at an official grain inspection location established under the U.S. Grain Standards Act or laboratory of our choice to verify the results of any test. In the event of a conflict in the test results, our results will determine the amount of production to count.

OPTION A (FOR MALTING BARLEY PRODUCTION, REGARDLESS OF WHETHER GROWN UNDER A MALTING BARLEY CONTRACT OR PRICE AGREEMENT)

1. To be eligible for coverage under this option:

(a) You must provide us with acceptable records of your sales of malting barley and the number of acres planted to malting varieties for at least the four crop years in your APH database prior to the crop year immediately preceding the current crop year (for example, to determine your production guarantee for the 2011 crop year, records must be provided for the 2006 through the 2009 crop years, if malting barley varieties were planted in each of those crop years);

(1) Failure to provide acceptable records or reports as required herein will make you ineligible for coverage under this endorsement; and

(2) You must provide these records to us no later than the production reporting date specified in the Basic Provisions; and

(b) If you produce malting barley under a malting barley contract or malting barley price agreement, you must provide us with a copy of your current crop year contract or agreement on or before the acreage reporting date if you want the additional value price based on such contract or price agreement. All terms and conditions of the contract or agreement, including the contract price or future contract price, must be specified in the contract or agreement and be effective on or before the acreage reporting date.

2. Your malting barley production guarantee (per acre) will be the lesser of:

(a) The production guarantee (per acre) for feed barley for acreage planted to approved malting varieties calculated in accordance with the Basic Provisions; or

(b) A yield per acre calculated by:

(1) Dividing the number of bushels of malting barley sold each year by the number of acres planted to approved malting barley varieties in each respective year;

(2) Adding the results of section 2(b)(1);

(3) Dividing the result of section 2(b)(2) by the number of years approved malting barley varieties were planted; and

(4) Multiplying the result of section 2(b)(3) by your coverage level.

3. The additional value price per bushel will be determined as follows:

(a) For production grown under a malting barley contract or a malting barley price agreement, the additional value price per bushel will be the following amount, as applicable:

(1) The sale price per bushel established in the malting barley contract or malting barley price agreement (not including discounts or incentives that may apply) minus the projected price for barley;

(2) The amount per bushel for malting barley (not including discounts or incentives that may apply) above a feed barley price that is determined at a later date, provided the method of determining the price is specified in the malting barley contract or malting barley price agreement; or

(3) If your malting barley contract or malting barley price agreement has a

variable price option, you must select a price or a method of determining a price that will be treated as the sale price and your additional value price per bushel will be calculated under section 3(a)(1) or (2), as applicable.

(b) The additional value price per bushel designated in the actuarial documents will be used if:

(1) Production is not grown under a malting barley contract or malting barley price agreement; or

(2) The malting barley contract or malting barley price agreement is not provided to us by the acreage reporting date.

(c) Under no circumstances will the additional value price exceed $1.25 per bushel.

(d) The number of bushels eligible for coverage using an additional value price determined in section 3(a) will be the lesser of:

(1) The amount determined by multiplying the number of acres planted to an approved malting barley variety by your malting barley production guarantee (per acre) determined in accordance with section 2; or

(2) The amount determined by multiplying the number of bushels specified in the malting barley contract or malting barley price agreement by your coverage level.

(e) Under no circumstances will the number of bushels determined in section 3(d) that will receive an additional value price determined in accordance with section 3(a) exceed the amount determined by multiplying 125 percent of the greatest number of acres that you certified for malting barley APH purposes in any crop year contained in your malting barley APH database by your malting barley production guarantee (per acre) determined in accordance with section 2. Any bushels in excess of this amount will be insured using the additional value price designated in the actuarial documents.

4. Loss Example.

In accordance with section 13, your loss will be calculated as follows:

(a) Assume the following:

(1) A producer has:

(i) 400 acres of barley insured under the Small Grains Crop Provisions, of which 200 acres are planted to feed barley and 200 acres are planted to an approved malting barley variety;

(ii) 100 percent share;

(iii) A feed barley approved yield of 55 bushels per acre;

(iv) A malting barley approved yield, based on malting barley sales records and the number of acres planted to approved malting barley varieties, of 52 bushels per acre;

(v) Selected the 75 percent coverage level; and

(vi) Provided a malting barley price agreement by the acreage reporting date for the sale of 5,720 bushels at $2.72 per bushel;

(2) The projected price for feed barley is $1.92 per bushel;

(3) The additional value price per bushel from the actuarial documents is $0.40;

(4) In accordance with section 3(a)(1), the additional value price per bushel for production grown under a malting barley price agreement is $0.80 ($2.72 malting barley price agreement price minus $1.92 projected price); and

(5) The total production from the 200 acres of malting barley is 7,250 bushels, all of which fails to meet the quality standards specified in section 14(a) and in the malting barley price agreement:

(i) 4,750 bushels are sold for $2.31 per bushel; and

(ii) After conditioning at a cost of $0.05 per bushel, an additional 2,500 bushels are sold for $2.20 per bushel;

(b) The amount of insurance protection is determined as follows:

(1) 4,290 bushels eligible for coverage using the additional value price from the malting barley price agreement [the lesser of 4,290 bushels (5,720 bushels grown under a malting barley price agreement × .75 coverage level) or 7,800 bushels (200 acres planted to approved malting barley varieties × 39.0 bushel per acre (52 bushels per acre malting barley approved yield × .75 coverage level) malting barley production guarantee)] × $0.80 additional value price = $3,432.00 amount of insurance protection for the bushels grown under the malting barley price agreement;

(2) 3,510 bushels eligible for coverage using the additional value price from the actuarial documents (7,800 bushel total malting barley production guarantee − 4,290 bushels covered using the additional value price from the malting barley price agreement) × $0.40 additional value price = $1,404.00 amount of insurance protection for the bushels not grown under a malting barley price agreement; and

(3) $3,432.00 + $1,404.00 = $4,836.00 total amount of insurance protection for the unit;

(c) In accordance with section 14, the total amount of production to count is determined as follows:

(1) Damaged production that is not reconditioned:

(i) $2.31 price per bushel − $1.92 projected price for feed barley = $0.39;

(ii) $0.39 ÷ $0.62 weighted average additional value price ($4,836.00 total insurance protection ÷ 7,800 bushel production guarantee = $0.62 weighted average additional value price) = 0.63; and

(iii) 0.63 × 4,750 bushels of damaged production sold at $2.31 = 2,993 bushels of production to count;

(2) Damaged production that is reconditioned:

(i) $2.20 price per bushel − $1.92 projected price for feed barley = $0.28;

(ii) $0.28 − $0.05 reconditioning cost = $0.23;

(iii) $0.23 ÷ $0.62 weighted average additional value price = 0.37; and

(iv) 0.37 × 2,500 bushels of damaged production sold at $2.20 = 925 bushels of production to count; and

(3) Total production to count is 3,918 bushels (2,993 + 925);

(d) The value of production to count is $3,134.00 (3,918 bushels × $0.80 additional value price (all production to count is valued at the higher additional value price since the amount of production to count did not exceed the number of bushels covered at the higher additional value price)); and

(e) The indemnity amount is $1,702.00 ($4,836.00 total amount of insurance protection for the unit − $3,134.00 value of production to count).

OPTION B (FOR PRODUCTION GROWN UNDER MALTING BARLEY CONTRACTS ONLY)

1. To be eligible for coverage under this option:

(a) On or before the sales closing date, for at least one of the three crop years you planted malting barley immediately preceding the previous crop year:

(1) You must have had a malting barley contract and produced and sold at least 75 percent of the contracted amount for the crop year such contract was applicable, or such other amount specified in the Special Provisions (*e.g.,* if you wish to insure 2011 crop year malting barley and you had a malting barley contract to produce 10,000 bushels in 2009, you must have produced and sold at least 7,500 bushels of 2009 crop year malting barley production); and

(2) You must provide us a copy of your prior malting barley contract and acceptable records of sales of malting barley required to establish compliance with section 1(a)(1) of Option B;

(b) The maximum amount of production that may be insured under Option B will be limited to the lesser of the amount of malting barley contained in the current crop year's malting barley contract or 200 percent of the amount contracted for the crop year used to demonstrate compliance with section 1(a)(1) of Option B; and

(c) On or before the acreage reporting date, you must provide us with a copy of your malting barley contract for the current crop year:

(1) All terms and conditions of the contract, including the contract price or method to determine the price, must be specified in the contract and be effective on or before the acreage reporting date;

(2) If you fail to timely provide the contract, or any terms are omitted, we may elect to determine the relevant information necessary for insurance under Option B, or deny liability; and

(3) Only contracted production or acreage is covered by Option B.

2. Your malting barley production guarantee (per acre) will be the lesser of:

(a) The production guarantee (per acre) for feed barley for acreage planted to approved malting barley varieties calculated in accordance with the Basic Provisions; or

(b) A yield per acre calculated by:

(1) Dividing the number of bushels of contracted production by the number of acres planted to approved malting varieties in the current crop year; and

(2) Multiplying the result of section 2(b)(1) by the coverage level percentage you elected under the Small Grains Crop Provisions.

3. The additional value price per bushel will be the following amount, as applicable:

(a) The sale price per bushel established in the malting barley contract (without regard to discounts or incentives that may apply) minus the projected price for feed barley;

(b) The amount per bushel for malting barley (not including discounts or incentives that may apply) above a feed barley price that is determined at a later date, provided the method of determining the price is specified in the malting barley contract; or

(c) If your malting barley contract has a variable premium price option, you must select a price or a method of determining a price that will be treated as the sale price and your additional value price per bushel will be calculated under section 3(a) or (b), as applicable; and

(d) Under no circumstances will the additional value price per bushel exceed $2.00 per bushel.

4. Loss Example.

In accordance with section 13, your loss will be calculated as follows:

(a) Assume the following:

(1) A producer has:

(i) 400 acres of barley insured under the Small Grains Crop Provisions, of which 200 acres are planted to feed barley and 200 acres are planted to an approved malting barley variety;

(ii) 100 percent share;

(iii) A feed barley approved yield of 55 bushels per acre;

(iv) A malting barley approved yield, based on contracted production and the number of acres planted to approved malting barley varieties of 52 bushels per acre;

(v) Selected the 75 percent coverage level; and

(vi) A malting barley contract for the sale of 10,000 bushels of malting barley at $2.60 per bushel;

(2) The projected price for feed barley is $1.92 per bushel;

(3) In accordance with section 3, the additional value price per bushel for production grown under the malting barley contract is $0.68 ($2.60 malting barley contract price minus $1.92 projected price); and

(4) The total production from the 200 acres of malting barley is 7,250 bushels, all of which fails to meet the quality standards specified in section 14(a) and in the malting barley contract:

(i) 4,750 bushels are sold for $2.31 per bushel; and

(ii) After conditioning at a cost of $0.05 per bushel, an additional 2,500 bushels are sold for $2.20 per bushel;

(b) In accordance with section 2, the amount of insurance protection is determined as follows:

(1) The lesser of 41.3 bushels per acre production guarantee (55 bushels × 75 percent coverage level) for feed barley or 37.5 bushels per acre (10,000 bushels contracted ÷ 200 acres = 50.0 bushels per acre and 50.0 × 75 percent coverage level = 37.5);

(2) 37.5 bushels per acre × 200 acres = 7,500 bushels total malting barley production guarantee; and

(3) 7,500 bushels × $0.68 additional value price = $5,100.00 total amount of insurance for the unit;

(c) In accordance with section 14, the total amount of production to count is determined as follows:

(1) Damaged production that is not reconditioned:

(i) $2.31 price per bushel − $1.92 projected price for feed barley = $0.39;

(ii) $0.39 ÷ $0.68 additional value price = 0.57; and

(iii) 0.57 × 4,750 bushels of damaged production sold at $2.31 = 2,708 bushels of production to count;

(2) Damaged production that is reconditioned:

(i) $2.20 price per bushel − $1.92 projected price for feed barley = $0.28;

(ii) $0.28 − $0.05 reconditioning cost = $0.23;

(iii) $0.23 ÷ $0.68 additional value price = 0.34; and

(iv) 0.34 × 2,500 bushels of damaged production sold at $2.20 = 850 bushels of production to count; and

(3) Total production to count is 3,558 bushels (2,708 + 850);

(d) The value of production to count is $2,419.00 (3,558 bushels × $0.68 additional value price); and

(e) The indemnity amount is $2,681.00 ($5,100.00 total amount of insurance protection for the unit − $2,419.00 value of production to count).

■ 87. Amend § 457.130 as follows:

■ A. Revise the introductory text to read as set forth below;

■ B. Remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict; and

■ C. Amend section 2(a) by removing the phrase "34(a) (1), (3), and (4)" and adding the phrase "34(b)(1), (3), and (4)" in its place.

The revised text reads as follows:

§ 457.130 Macadamia tree crop insurance provisions.

The macadamia tree crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

■ 88. Amend § 457.131 as follows:

■ A. Revise the introductory text to read as set forth below;

■ B. Remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict; and

■ C. Amend section 2(a) by removing the phrase "34(a)(1)" and adding the phrase "34(b)(1)" in its place.

The revised text reads as follows:

§ 457.131 Macadamia nut crop insurance provisions.

The macadamia nut crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

■ 89. Amend § 457.135 as follows:

■ A. Revise the introductory text to read as set forth below;

■ B. Remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict; and

■ C. Amend section 9(a) by removing the phrase "14(c)" and adding the phrase "16 of the Basic Provisions" in its place.

The revised text reads as follows:

§ 457.135 Onion crop insurance provisions.

The onion crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

■ 90. Amend § 457.140 as follows:

■ A. Revise the introductory text of § 457.140 to read as set forth below; and

■ B. Amend section 3(a) by removing the phrase "3(b)(1)" and adding the phrase "3(b)" in its place.

The revised text reads as follows:

§ 457.140 Dry pea crop insurance provisions.

The dry pea crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

■ 91. Revise the introductory text of § 457.141 to read as follows:

§ 457.141 Rice crop insurance provisions.

The rice crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

§ 457.141 [Amended]

■ 92. Further amend § 457.141 by removing the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict.

§ 457.141 [Amended]

■ 93. Further amend § 457.141 in section 1 by removing the definition of "planted" and adding the definition of "planted acreage" to read as follows:

1. Definitions.

* * * * *

Planted acreage. In addition to the definition in section 1 of the Basic Provisions, land on which there is uniform placement of an adequate amount of rice seed into a prepared seedbed by one of the following methods (Acreage seeded in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement):

(a) Drill seeding—Using a grain drill to incorporate the seed to a proper soil depth;

(b) Broadcast seeding—Distributing seed evenly onto the surface of an un-flooded seedbed followed by either timely mechanical incorporation of the seed to a proper soil depth in the seedbed or flushing the seedbed with water; or

(c) Broadcast seeding into a controlled flood—Distributing the rice seed onto a prepared seedbed that has been intentionally covered to a proper depth by water. The water must be free of movement and be completely contained on the acreage by properly constructed levees and gates.

* * * * *

§ 457.141 [Amended]

■ 94. Further amend § 457.141 by revising section 3 to read as follows:

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

In addition to the requirements of section 3 of the Basic Provisions, you must elect to insure your rice with either revenue protection or yield protection by the sales closing date.

§ 457.141 [Amended]

■ 95. Further amend § 457.141 in section 4 by removing the phrases "(Contract Changes)" and "(§ 457.8)";

§ 457.141 [Amended]

■ 96. Further amend § 457.141 in section 5 as follows:

■ a. Amend the introductory text by removing the phrases "(Life of Policy, Cancellation and Termination)" and "(§ 457.8)"; and

■ b. Amend the table by removing the date of "January 15" and adding "January 31" in its place.

§ 457.141 [Amended]

■ 97. Further amend § 457.141 in the introductory text of section 6 by removing the phrases "(Insured Crop)" and "(§ 457.8)" and adding the phrase "or by written agreement" at the end of the text;

§ 457.141 [Amended]

■ 98. Further amend § 457.141 in the introductory text of section 7 by removing the phrases "(Insurable Acreage)" and "(§ 457.8)";

§ 457.141 [Amended]

■ 99. Further amend § 457.141 in section 8 by removing the phrases "(Insurance Period)" and "(§ 457.8)";

§ 457.141 [Amended]

■ 100. Further amend § 457.141 in section 9 as follows:

■ a. Amend the introductory text of paragraph (a) by removing the phrases "(Causes of Loss)" and "(§ 457.8)";

■ b. Amend paragraph (a)(7) by removing the word "or" at the end;

■ c. Amend paragraph (a)(8) by removing the period at the end and adding "; or" in its place; and

■ d. Add a new paragraph (a)(9) to read as follows:

9. Causes of Loss.

(a) * * *

(9) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.

* * * * *

§ 457.141 [Amended]

■ 101. Further amend § 457.141 by revising section 10 to read as follows:

10. Replanting Payment.

(a) A replanting payment is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these Crop Provisions;

(2) Except as specified in section 10(a)(1), you must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions;

(3) The insured crop must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage; and

(4) The replanted crop must be seeded at a rate that is normal for initially planted rice (if new seed is planted at a reduced seeding rate into a partially damaged stand of rice, the acreage will not be eligible for a replanting payment).

(b) Unless otherwise specified in the Special Provisions, the amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 400 pounds, multiplied by your projected price, multiplied by your share.

(c) When the crop is replanted using a practice that is uninsurable for an original planting, the liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

§ 457.141 [Amended]

■ 102. Further amend § 457.141 by revising section 11 to read as follows:

11. Duties in the Event of Damage or Loss.

Representative samples are required in accordance with section 14 of the Basic Provisions.

§ 457.141 [Amended]

■ 103. Further amend § 457.141 in section 12 as follows:

■ a. Revise paragraphs (a) and (b); and

■ b. Revise the introductory text of paragraph (c)(1)(i).

The revised text reads as follows:

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

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

(1) Multiplying the number of insured acres by your respective:

(i) Yield protection guarantee (per acre) if you elected yield protection; or

(ii) Revenue protection guarantee (per acre) if you elected revenue protection;

(2) Totaling the results of section 12(b)(1)(i) or 12(b)(1)(ii), whichever is applicable;

(3) Multiplying the production to count by your:

(i) Projected price if you elected yield protection; or

(ii) Harvest price if you elected revenue protection;

(4) Totaling the results of section 12(b)(3)(i) or 12(b)(3)(ii), whichever is applicable;

(5) Subtracting the result of section 12(b)(4) from the result of section 12(b)(2); and

(6) Multiplying the result of section 12(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of rice in the unit with a production guarantee (per acre) of 3,750 pounds, your projected price is $.0750, your harvest price is $.0700, and your production to count is 150,000 pounds.

If you elected yield protection:

(1) 50 acres × (3,750 pound production guarantee × $.0750 projected price) = $14,062.50 value of the production guarantee

(3) 150,000 pound production to count × $.0750 projected price = $11,250.00 value of the production to count

(5) $14,062.50 − $11,250.00 = $2,812.50

(6) $2,812.50 × 1.000 share = $2,813.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (3,750 pound production guarantee × $.0750 projected price) = $14,062.50 revenue protection guarantee

(3) 150,000 pound production to count × $.0700 harvest price = $10,500.00 value of the production to count

(5) $14,062.50 − $10,500.00 = $3,562.50

(6) $3,562.50 × 1.000 share = $3,563.00 indemnity.

(c) * * *

(1) * * *

(i) For yield protection, not less than the production guarantee and for revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (per acre) for acreage:

* * * * *

§ 457.141 [Amended]

■ 104. Further amend § 457.141 by revising section 13 to read as follows:

13. Prevented Planting.

Your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. If you have additional coverage and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

■ 105. Amend § 457.157 as follows:

■ A. Revise the introductory text of § 457.157 to read as set forth below;

■ B. Remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict; and

■ C. Amend section 2(b) by removing the phrase "34(a)(1)" and adding the phrase "34(b)(1)" in its place.

The revised text reads as follows:

§ 457.157 Plum crop insurance provisions.

The Plum Crop Insurance Provisions for the 2011 and succeeding crop years are as follows:

* * * * *

■ 106. Revise the introductory text of § 457.161 to read as follows:

§ 457.161 Canola and rapeseed crop insurance provisions.

The canola and rapeseed crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

§ 457.161 [Amended]

■ 107. Further amend § 457.161 by removing the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict.

§ 457.161 [Amended]

■ 108. Further amend § 457.161 by revising section 3 to read as follows:

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

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

(a) You must elect to insure your canola and rapeseed with either revenue protection or yield protection by the sales closing date; and

(b) In counties with both fall and spring sales closing dates for the insured crop:

(1) If you do not have any insured fall planted acreage of the insured crop, you may change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, until the spring sales closing date; or

(2) If you have any insured fall planted acreage of the insured crop, you may not change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, after the fall sales closing date.

* * * * *

§ 457.161 [Amended]

■ 109. Further amend § 457.161 in section 5 by adding the phrase "Alabama and" before the word "Georgia".

§ 457.161 [Amended]

■ 110. Further amend § 457.161 by revising section 7 to read as follows:

7. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions:

(a) We will not insure any acreage that does not meet the rotation requirements contained in the Special Provisions;

(b) Whenever the Special Provisions designate only a fall final planting date, any acreage of canola or rapeseed damaged before such final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a fall type of the insured crop unless we agree that replanting is not practical;

(c) Whenever the Special Provisions designate both fall and spring final planting dates:

(1) Any fall canola or rapeseed that is damaged before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a fall type of the insured crop to maintain insurance based on the fall type unless we agree that replanting is not practical. If it is not practical to replant to the fall type of canola or rapeseed but is practical to replant to a spring type, you must replant to a spring type to keep your insurance based on the fall type in force; and

(2) Any fall canola or rapeseed acreage that is replanted to a spring type of the same crop when it was practical to replant the fall type will be insured as the spring type and the production guarantee, premium, projected price, and harvest price applicable to the spring type will be used. In this case, the acreage will be considered to be initially planted to the spring type; and

(d) Whenever the Special Provisions designate a spring final planting date, any acreage of spring canola or rapeseed damaged before such final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree that replanting is not practical; or

(e) Whenever the Special Provisions designate only a spring final planting

date, any acreage of fall planted canola or rapeseed is not insured unless you request such coverage on or before the spring sales closing date, and we determine in writing that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. However, if we fail to inspect the acreage by the spring final planting date, insurance will attach as specified in section 7(e)(3):

(1) Your request for coverage must include the location and number of acres of fall planted canola or rapeseed;

(2) The fall planted canola or rapeseed will be insured as a spring type for the purpose of the production guarantee, premium, projected price, and harvest price, if applicable;

(3) Insurance will attach to such acreage on the date we determine an adequate stand exists or on the spring final planting date if we do not determine adequacy of the stand by the spring final planting date;

(4) Any acreage of such fall planted canola or rapeseed that is damaged after it is accepted for insurance but before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree it is not practical to replant; and

(5) If fall planted acreage is not to be insured it must be recorded on the acreage report as uninsured fall planted acreage.

§ 457.161 [Amended]

■ 111. Further amend § 457.161 by revising section 8 to read as follows:

8. Insurance Period.

In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is October 31 of the calendar year in which the crop is normally harvested.

§ 457.161 [Amended]

■ 112. Further amend § 457.161 in section 9 as follows:

■ a. Amend paragraph (g) by removing the word "or" at the end;

■ b. Revise paragraph (h); and

■ c. Add a new paragraph (i).

The revised and added text reads as follows:

9. Causes of Loss.

* * * * *

(h) Failure of the irrigation water supply due to a cause of loss specified in sections 9(a) through (g) that also occurs during the insurance period; or

(i) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.

§ 457.161 [Amended]

■ 113. Further amend § 457.161 by revising section 10 to read as follows:

10. Replanting Payment.

(a) A replanting payment is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these Crop Provisions;

(2) Except as specified in section 10(a)(1), you must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions;

(3) The insured crop must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage; and

(4) The replanted crop must be seeded at a rate sufficient to achieve a total (undamaged and new seeding) plant population that is considered appropriate by agricultural experts for the insured crop, type and practice.

(b) Unless otherwise specified in the Special Provisions, the amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 175 pounds, multiplied by your projected price, multiplied by your share.

(c) When the crop is replanted using a practice that is uninsurable for an original planting, the liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

(d) If the acreage is replanted to an insured crop type that is different than the insured crop type originally planted on the acreage:

(1) The production guarantee, premium, and projected price and harvest price, as applicable, will be adjusted based on the replanted type;

(2) Replanting payments will be calculated using your projected price and production guarantee for the crop type that is replanted and insured; and

(3) A revised acreage report will be required to reflect the replanted type, as applicable.

§ 457.161 [Amended]

■ 114. Further amend § 457.161 by revising section 11 to read as follows:

11. Duties in the Event of Damage or Loss.

Representative samples are required in accordance with section 14 of the Basic Provisions.

§ 457.161 [Amended]

■ 115. Further amend § 457.161 in section 12 as follows:

■ a. Revise paragraphs (a) and (b);

■ b. Revise the introductory text of paragraph (c)(1)(i);

■ c. Revise paragraph (d)(4);

■ d. Remove paragraph (d)(5); and

■ e. Revise paragraph (e), including removing the example.

The revised text reads as follows:

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

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

(1) Multiplying the number of insured acres of each type, as applicable, by your respective:

(i) Yield protection guarantee (per acre) if you elected yield protection; or

(ii) Revenue protection guarantee (per acre) if you elected revenue protection;

(2) Totaling the results of section 12(b)(1)(i) or 12(b)(1)(ii), whichever is applicable;

(3) Multiplying the production to count of each type, as applicable, by your respective:

(i) Projected price if you elected yield protection; or

(ii) Harvest price if you elected revenue protection;

(4) Totaling the results of section 12(b)(3)(i) or 12(b)(3)(ii), whichever is applicable;

(5) Subtracting the result of section 12(b)(4) from the result of section 12(b)(2); and

(6) Multiplying the result of section 12(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of canola in the unit with a production guarantee (per acre) of 650 pounds, your projected price is $.1220, your harvest price is $.1110, and your production to count is 31,000 pounds.

If you elected yield protection:

(1) 50 acres × (650 pound production guarantee × $.1220 projected price) = $3,965.00 value of the production guarantee

(3) 31,000 pound production to count × $.1220 projected price = $3,782.00 value of the production to count

(5) $3,965.00 − $3,782.00 = $183.00

(6) $183.00 × 1.000 share = $183.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (650 pound production guarantee × $.1220 projected price) = $3,965.00 revenue protection guarantee

(3) 31,000 pound production to count × $.1110 harvest price = $3,441.00 value of the production to count

(5) $3,965.00 − $3,441.00 = $524.00

(6) $524.00 × 1.000 share = $524.00 indemnity.

(c) * * *

(1) * * *

(i) For yield protection, not less than the production guarantee and for revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (per acre) for acreage:

* * * * *

(d) * * *

(4) Canola production that is eligible for quality adjustment, as specified in sections 12(d)(2) and (3), will be reduced in accordance with the quality adjustment factors contained in the Special Provisions.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on an unadjusted weight basis.

* * * * *

§ 457.161 [Amended]

■ 116. Further amend § 457.161 by revising section 14 to read as follows:

14. Prevented Planting.

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have additional coverage and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

* * * * *

■ 117. Amend § 457.171 as follows:

■ A. Revise the introductory text to read as set forth below;

■ B. Amend section 12(b) by removing the phrase "14(a)(2)(Your Duties)" and adding the phrase "14(b)(1)" in its place; and

■ C. Amend section 12(e) by removing the phrase "14(a)(3)(Your Duties)" and adding the phrase "14(c)" in its place.

The revised text reads as follows:

§ 457.171 Cabbage crop insurance provisions.

The Cabbage Crop Insurance Provisions for the 2011 and succeeding crop years are as follows:

* * * * *

Signed in Washington, DC, on March 17, 2010.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2010–6432 Filed 3–29–10; 8:45 am]

BILLING CODE 3410–08–P