

## Federal Crop Insurance Corporation, USDA

## § 400.52

percent of the premium paid, and no indemnity will be paid unless the multi-peril company expressly agrees to continue such policy in effect without FCIC reinsurance. However, if the reinsured company follows the procedure of the Corporation and the requirements of the regulations, reinsurance will continue to be provided under the reinsurance agreement on the policy unless it is shown that the agent or company had knowledge of facts which would indicate ineligibility on the part of the insured and failed to act on that knowledge.

(c) FCIC employees or contractors are required to report all suspected cases of violation of the Act or the regulations to the appropriate agency for a determination of violation. Benefits shall not be paid in such cases pending a determination from the appropriate agency.

(d) Notwithstanding any other provision of this subpart, any crop insurance policy where insurance attached to a crop prior to August 15, 1986, will continue in effect for that crop until the next termination date following August 15, 1986.

[52 FR 19128, May 21, 1987, as amended at 58 FR 17945, Apr. 7, 1993; 61 FR 38058, July 23, 1996; 65 FR 29942, May 10, 2000]

### § 400.48 Protection of interests of tenants, landlords or producers.

Any tenant, landlord or producer on the farm separate from the person declared ineligible for crop insurance under the provisions of § 400.47 of this part, will remain eligible for crop insurance on their insurable share in the crop, unless such tenant, landlord, or producer on the farm is:

(a) Also convicted of planting, cultivating, growing, producing, or storing a controlled substance;

(b) Otherwise determined by FCIC to be ineligible for crop insurance.

[52 FR 19128, May 21, 1987, as amended at 61 FR 38058, July 23, 1996]

### §§ 400.49–400.50 [Reserved]

## Subpart G—Actual Production History

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 59 FR 47787, Sept. 19, 1994, unless otherwise noted.

### § 400.51 Availability of actual production history program.

An Actual Production History (APH) Coverage Program is offered under the provisions contained in the following regulations:

- 7 CFR 401.110—Almond Endorsement
- 7 CFR part 405—Apple Crop Insurance
- 7 CFR 401.118—Canning and Processing Bean Endorsement
- 7 CFR part 409—Arizona-California Citrus Crop Insurance
- 7 CFR 401.127—Cranberry Endorsement
- 7 CFR part 433—Dry Beans Crop Insurance
- 7 CFR 401.116—Flaxseed Endorsement
- 7 CFR part 415—Forage Production Corp Insurance
- 7 CFR 401.130—Grape Endorsement
- 7 CFR part 455—Macadamia Nut Crop Insurance
- 7 CFR 401.126—Onion Endorsement
- 7 CFR part 447—Popcorn Crop Insurance
- 7 CFR part 403—Peach Crop Insurance
- 7 CFR 401.140—Pear Endorsement
- 7 CFR part 416—Pea Crop Insurance
- 7 CFR 401.146—Fresh Plum Endorsement
- 7 CFR part 422—Potato Crop Insurance
- 7 CFR part 450—Prune Crop Insurance
- 7 CFR 401.123—Safflower Seed Endorsement
- 7 CFR 401.133—Sugarcane Endorsement
- 7 CFR part 430—Sugar Beet Crop Insurance
- 7 CFR 401.124—Sunflower Seed Endorsement
- 7 CFR part 437—Sweet Corn Crop Insurance
- 7 CFR part 441—Table Grape Crop Insurance
- 7 CFR 401.129—Guaranteed Tobacco Endorsement
- 7 CFR 401.114—Canning and Processing Tomato Endorsement
- 7 CFR part 454—Guaranteed Production Plan of Fresh Market Tomato
- 7 CFR part 446—Walnut Crop Insurance
- 7 CFR part 457—Common Crop Insurance Regulations; and all special provisions thereto unless specifically excluded by the special provisions.

The APH program operates within limits prescribed by, and in accordance with, the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), only on those crops identified in this section in those areas where the Actuarial Table provides coverage. Except when in conflict with this subpart, all provisions of the applicable crop insurance contract for these crops apply.

### § 400.52 Definitions.

In addition to the definitions contained in the crop insurance contract,

the following definitions apply for the purposes of the APH Coverage Program:

(a) *APH*—Actual Production History.

(b) *Actual yield*—The yield per acre for a crop year calculated from the production records or claims for indemnities. The actual yield is determined by dividing total production (which includes harvested and appraised production) by planted acres for annual crops or by insurable acres for perennial crops.

(c) *Adjusted yield*—The transitional or determined yield reduced by the applicable percentage for lack of records. The adjusted yield will equal 65 percent of the transitional or determined yield, if no producer records are submitted; 80 percent, if records for one year are submitted; and 90 percent, if two years of records are submitted.

(d) *Appraised production*—Production determined by the Agricultural Stabilization and Conservation Service (ASCS), the FCIC, or a company reinsured by the FCIC, that was unharvested but which reflected the crop's yield potential at the time of the appraisal. For the purpose of APH "appraised production" specifically excludes production lost due to uninsurable causes.

(e) *Approved APH yield*—A yield, calculated and approved by the verifier, used to determine the production guarantee and determined by the sum of the yearly actual, assigned, and adjusted or unadjusted transitional or determined yields divided by the number of yields contained in the database. The database may contain up to 10 consecutive crop years of actual and or assigned yields. At least four yields will always exist in the database.

(f) *Assigned yield*—A yield assigned by FCIC in accordance with the crop insurance contract, if the insured does not file production reports as required by the crop insurance contract. Assigned yields are used in the same manner as actual yields when calculating APH yields except for purposes of the Nonstandard Classification System (NCS).

(g) *Base period*—Ten consecutive crop years (except peaches, which have a five-year base period) immediately preceding the crop year defined in the in-

surance contract for which the approved APH yield is being established (except for sugarcane, which begins the calendar year preceding the immediate previous crop year defined in the insurance contract).

(h) *Continuous production reports*—Reports submitted by a producer for each crop year that the unit was planted to the crop and for the most recent crop year in the base period.

(i) *Crop year*—Defined in the crop insurance contract, however, for APH purposes the term does not include any year when the crop was not planted or when the crop was prevented from being planted by an insurable cause. For example, if an insured plants acreage in a county to wheat one year, that year is a crop year in accordance with the policy definition. If the land is summerfallowed the next calendar year, that calendar year is not a crop year for the purpose of APH.

(j) *Database*—A minimum of four years up to a maximum of ten crop years of production data used to calculate the approved APH yield.

(k) *Determined yield (D-yield)*—An estimated year for certain crops, which can be determined by multiplying an average yield for the crop (attained by using data available from The National Agricultural Statistics Service (NASS) or comparable sources) by a percentage established by the FCIC for each county.

(l) *Master yields*—Approved APH yields, for certain crops and counties as initially designated by the FCIC, based on a minimum of four crop years of production records for a crop within a county.

(m) *New producer*—A person who has not been actively engaged in farming for a share of the production of the insured crop for more than two crop years.

(n) *Production report*—A written record showing the insured crop's annual production and used to determine the insured's yield for insurance purposes. The report contains yield history by unit, if applicable, including planted acreage for annual crops, insurable acreage for perennial crops, and harvested and appraised production for the previous crop years. This report must be supported by written

verifiable records, measurement of farm stored production, or by other records of production approved by FCIC on an individual basis. Information contained in a claim for indemnity is considered a production report for the crop year for which the claim was filed.

(o) *Production Reporting Date (PRD)*—The PRD is contained in the crop insurance contract and is the last date production reports will be accepted for inclusion in the database for the current crop year.

(p) *Transitional yield (T-Yield)*—An estimated yield, for certain crops, generally determined by multiplying the ASCS program yield by a percentage determined by the FCIC for each county and provided on the actuarial table to be used in the APH yield calculation process when less than four consecutive crop years of actual or assigned yields are available.

(q) *Verifiable records*—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.

(r) *Verifier*—A person authorized by the FCIC to calculate approved APH yields.

(s) *Yield variance tables*—Tables for certain crops that indicate unacceptable yield variations and yield trends which will require determination of the APH yield by the FCIC.

**§ 400.53 Yield certification and acceptability.**

(a) Production reports must be provided to the crop insurance agent no later than the production reporting date for the crop insured.

(1) Production reports must provide an accurate account of planted acreage for annual crops or insurable acres for perennial crops, as well as harvested and appraised production by unit.

(2) The insured must certify the accuracy of the information.

(3) Production reported for more than one crop year must be continuous. A year in which no acreage was planted to the crop on a unit or no acreage was planted to a practice, type, or variety requiring an APH yield will not be con-

sidered a break in continuity. Assigned yields, at the discretion of the FCIC, may be used to maintain continuity of yield data of file. Production on uninsured (for those years a crop insurance policy under the Federal Crop Insurance Act is in effect) or uninsurable acreage (for other years of the period) will not be used to determine APH yield unless production from such acreage is commingled with production from insured or insurable acreage.

(b) Production reports and supporting records are subject to audit or review to verify the accuracy of the information certified. Production and supporting records may be reviewed and verified if a claim for indemnity is submitted on the insured crop. The reported yield is subject to revision, if needed, so that the claim conforms to the records submitted at that time.

(1) Inaccurate production reports or failure to retain acceptable records shall result in the verifier combining optional farm units and recomputing the approved APH yield. These actions shall be taken at any time after reporting or record discrepancies are identified and may result in reduction of the approved APH yield for any calendar year.

(2) Records must be provided by the insured at the time of an audit, review, or as otherwise requested, to verify that the acreage and production certified are accurate. Records of any other person having shares in the insured crop, which are used by the insured to establish the approved APH yield, must also be provided upon request.

(3) In the event acreage or production data certified by two or more persons sharing in the crop on the same acreage is different, the verifier shall, at the verifier's discretion, determine which acreage and production data, if any, will be used to determine the approved APH yield. If the correct acreage and production cannot be determined, the data submitted will be considered unacceptable by the verifier for APH purposes.

(4) Failure of the producer to report acreage and production completely and accurately may result in avoidance of the crop insurance contract, as well as criminal or civil false claims penalties