



DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400, 407, and 457

[Docket ID FCIC-23-0004]

RIN 0563-AC83

Actual Production History (APH) and Other Crop Insurance Transparency

AGENCY: Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is amending its regulations to incorporate existing actual production history (APH) requirements into the policy to enhance and improve accessibility, clarity, and transparency for the producer. FCIC is also incorporating existing same year production reporting (SYPR) rules into the policy, clarifying prevented planting rules, incorporating the High-Risk Alternate Coverage Endorsement (HR-ACE) into the policy, clarifying double cropping requirements when another plan of insurance does not require records of acreage and production, and updating organic provisions. In this rule, FCIC is authorizing the availability of enterprise units (EU) and whole farm units (WFU) to be designated in the actuarial documents. The changes to the crop insurance policies resulting from the amendments in this rule are applicable for the 2024 and succeeding crop years for crops with a contract change date on or after June 30, 2023. For all other crops, the changes to the policies made in this rule are applicable for the 2025 and succeeding crop years.

DATES: *Effective date:* This final rule is effective June 30, 2023.

Comment date: We will consider comments that we receive by the close of business [Insert date 60 days after date of publication in the *FEDERAL REGISTER*].

FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: We invite you to submit comments on this rule. You may submit comments by going through the Federal eRulemaking Portal as follows:

- Federal eRulemaking Portal: Go to <https://www.regulations.gov> and search for Docket ID FCIC-23-0004. Follow the instructions for submitting comments.

All comments will be posted without change and will be publicly available on www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926-7829; or email francie.tolle@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice) or (844) 433-2774 (toll-free nationwide).

SUPPLEMENTARY INFORMATION:

Background

FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIPs) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

Federal crop insurance policies typically consist of the 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. Throughout this rule, the terms “Crop Provisions,” “Special Provisions,” and “policy” are used as defined in the Common Crop Insurance Policy (CCIP) Basic Provisions in 7 CFR 457.8. Additional information and definitions related to Federal crop insurance policies are in 7 CFR 457.8.

In this rule, FCIC amends the Area Risk Protection Insurance (ARPI) Basic Provisions (7 CFR part 407), CCIP Basic Provisions (7 CFR 457.8), and the General Administrative Regulations in subpart G of part 400 (Actual Production History) (7 CFR 400.51 through 400.56). The changes made in this rule are applicable for the 2024 and succeeding crop years for crops with a contract change date on or after June 30, 2023. For all other crops, the changes to the policy made in this rule are applicable for the 2025 and succeeding crop years.

Actual Production History (APH)

FCIC will add guidelines for establishing a producer’s approved yield to section 5 of the CCIP Basic Provisions. The approved yield is the basis for establishing liability, premium, guarantee, and indemnity for yield-based crop insurance plans. The intended effect of this action is to incorporate existing regulatory language, located at 7 CFR part 400 (subpart G) and procedural language, located in the FCIC-18010 Crop Insurance Handbook (CIH), regarding the APH requirements, into the policy to enhance and improve accessibility, clarity, and transparency for the producer. Subpart G is revised to indicate its applicability expires as this rule becomes effective in the CCIP Basic Provisions. Specifically, as each crop’s contract change date passes, the APH rules in subpart G expire at the same time the APH rules in the CCIP Basic Provisions become effective. Subpart G will be removed and reserved at a future date, once all applicable contract change dates have lapsed, and the language is obsolete.

FCIC is adding several new definitions to section 1 of the CCIP Basic Provisions that were previously defined in subpart G or the CIH related to APH rules: “annual yield,” “APH base period,” “APH crop year,” “APH database,” “applicable T-Yield,” “appraised production,” “approved yield,” “assigned yield,” “average yield,” “continuous production reports,” “determined yield,” “insurable acres,” “master yield,” “new insured,” “new producer,” “production reporting date,” “temporary yield,” “transitional yield (T-Yield),” and “variable T-Yield.”

FCIC is inserting the APH provisions into section 5 of the CCIP Basic Provisions and renamed the section “APH Database and Approved Yield Calculation.” This section had previously been reserved without a heading.

The new definitions in section 1 and new provisions in section 5 are intended to ensure clarity with the APH rules and do not change any APH calculations or determinations in the policy.

FCIC is incorporating changes into section 5(b)(1)(ii) of the CCIP Basic Provisions, previously incorporated in 2017 through procedures, to exclude acreage and the actual production from acreage that is damaged by an unavoidable uninsured fire and/or a third party when calculating the approved APH yield and production guarantee that does not penalize a producer’s future insurance coverage due to a loss through no fault of their own. FCIC is adding a definition for “unavoidable uninsured fire” to section 1 of the CCIP Basic Provisions that was previously contained in procedures.

Prevented Planting

FCIC is revising the prevented planting provisions in section 17 of the CCIP Basic Provisions. Prevented planting is a feature of many crop insurance plans that provides a partial payment to cover certain pre-plant costs for a crop that was prevented from being planted due to an insurable cause of loss.

FCIC is clarifying that the added land ratio for prevented planting in section

17(e)(1)(i)(B), uses cropland acres available for planting only. The number of prevented planting eligible acres for a crop may be increased by multiplying that number by the ratio of the total cropland acres available for planting that the producer is farming in the current crop year (if greater) to the total cropland acres available for planting that the producer farmed in the previous year. Previously, the policy did not specify, as originally intended, that only cropland acres available for planting are included in the calculation to create the added land ratio. For example, if a producer had 500 acres of cropland available for planting in 2021, then added 200 acres in 2022, but only 100 of those were available for planting, then only 100 could be used in the calculation for the added land ratio in 2022 (added land ratio = $600 \div 500 = 1.2$).

FCIC is clarifying the eligible criteria for prevented planting coverage in sections 17(d)(1), 17(d)(1)(ii)(B), and 17(d)(2) to include destruction of a producer's irrigation system from an insured cause of loss. Previously, prevented planting coverage was only available when an insured cause of loss occurred resulting in failure or breakdown of a producer's irrigation system. There have been cases where a naturally occurring weather event caused the irrigation system to be destroyed rather than failed or broken down. Adding "destruction" clarifies the intent of the provision so that producers do not lose valuable prevented planting coverage.

FCIC is incorporating Final Agency Determinations (FAD), FAD-244, FAD-248, and FAD-309, and Manager's Bulletin MGR-20-003 into section 17(f)(12) of the CCIP Basic Provisions. These FADs and Manager's Bulletin collectively clarified the intent of the policy, with respect to the factors AIPs may consider when determining whether a cause of loss that may prevent planting existed at the time the insured took possession of the added land. Incorporating the FADs and Manager's Bulletin will ensure transparency and consistent administration of the prevented planting rules by AIPs. The revisions do not change any prevented planting requirements in the policy.

Same Year Production Reporting (SYPR)

FCIC is incorporating existing production reporting guidelines in sections 3(f) and 3(g) of the CCIP Basic Provisions to reflect same year production reporting guidelines that were previously spread across Special Provisions statements, applicable Crop Provisions language, and procedural language, located in the FCIC-18010 CIH. This change will enhance and improve accessibility, clarity, and transparency for the producer.

FCIC is adding several new definitions to section 1 of the CCIP Basic Provisions that were previously defined in the Special Provisions, Crop Provisions, or procedures regarding production reporting: “insured’s production reporting date,” and “lag year.” FCIC is also clarifying the definition of “production report” in the CCIP Basic Provisions to refer to reporting rules in section 3 and add consistency with the new definitions and provisions added for same year production reporting. Consistent with these changes, FCIC is also adding a new definition of “actual production” and clarifying the definition of “production report” in section 1 of the ARPI Basic Provisions.

The new and revised definitions in section 1 and added provisions in section 3(f) are intended to ensure clarity and transparency on production reporting and do not change any production reporting requirements in the policy.

Double Cropping

FCIC is clarifying the double cropping requirements in section 15(h) of the CCIP Basic Provisions and section 13(c) of the ARPI Basic Provisions when another plan of insurance (i.e., under a different Basic Provisions) does not require records of acreage and production to determine if a producer can receive a full indemnity on both crops. This change incorporates FAD-301 which explains if a producer double cropped acreage for which one of the crops double cropped is insured under a different plan of insurance and the Crop Provisions do not require double crop history that includes records of acreage and production, the less restrictive requirements may be followed to satisfy

double cropping requirements for both crops. For example, a producer has 20 acres of annual forage wheat for grazing. On the same acreage the producer plants and insures cotton, the annual forage double cropping requirements must be met. If those Crop Provisions are met, the producer is eligible for a full indemnity payment on both the annual forage wheat and the cotton.

Incorporating FAD-301 will ensure transparency and consistent administration of double cropping rules by AIPs. The revisions do not change double cropping rules in the policy.

High-Risk Alternate Coverage

FCIC is incorporating the HR-ACE into section 3(b) of the CCIP Basic Provisions. On May 19, 2022, the FCIC Board of Directors approved converting HR-ACE from pilot to permanent status. To streamline the policy the producer receives, HR-ACE, and all other high-risk coverage options, will be consolidated and incorporated into section 3(b)(2)(ii) of the CCIP Basic Provisions. The HR-ACE document will be obsoleted from the Risk Management Agency's (RMA's) website upon publication of this rule. References to high-risk options will be revised throughout the CCIP Basic Provisions to refer to section 3(b)(2)(ii).

Enterprise units and whole farm units:

FCIC is authorizing enterprise units (EU) and whole farm units (WFU) to be expanded to other crops through the actuarial documents, in section 34(a) of the CCIP Basic Provisions. Previously, EUs and WFUs were allowed for the revenue protection plan of insurance or authorized through the Special Provisions. FCIC is allowing the actuarial documents to authorize the availability of EUs and WFUs for administrative efficiency, eliminating the need to add a Special Provision statement every time EUs or WFUs are added to a new crop not under a revenue protection plan of insurance. FCIC is simplifying section 34(a) by removing paragraphs that previously referred to revenue

protection, renumbering subsequent paragraphs, and updating internal citations corresponding to the new paragraph numbers.

Organic and Transitioning to Organic

The Agriculture Marketing Service (AMS) National Organic Program (NOP) published a final rule on January 19, 2023, National Organic Program (NOP); Strengthening Organic Enforcement (88 FR 3548), announcing certain changes to the Organic Integrity Database. In accordance with those changes, FCIC is updating corresponding provisions in section 37(c) of the CCIP Basic Provisions and section 14(d) of the ARPI Basic Provisions. For example, in this rule, operations listed in the Organic Integrity Database as transitioning to organic will be eligible for organic transitional crop insurance programs. The database is operated by the NOP and is a registry of certified organic operations that holds data provided by USDA-accredited organic certifiers. The NOP is modifying the system to allow certifiers to upload listings of operations that are transitioning to organic (or transitional operations) if they meet certain criteria. FCIC is enhancing organic crop insurance programs by adding ease of program administration for AIPs to verify if an operation is transitioning to organic based on the NOP database.

FCIC is also revising the term “organic plan” to “organic system plan” throughout the CCIP Basic Provisions to match the AMS NOP regulation.

Clarifications and Corrections

In addition to the changes above, the rule will:

- Add “Space Force” to the definition of “Veteran farmer and rancher” in the ARPI Basic Provisions and CCIP Basic Provisions;
- Make the term “attorney’s fees” possessive when applicable in the ARPI Basic Provisions and CCIP Basic Provisions;
- Correct the term “entity” to the defined term “person” when applicable in the ARPI Basic Provisions and CCIP Basic Provisions;

- Correct the reference to 4 CFR part 102 in section 24(c)(4) of the CCIP Basic Provisions (FCIC Policies) and section 22(c)(4) of the ARPI Basic Provisions (FCIC Policies) to refer to 31 CFR part 901;
- Correct the term “Actuarial Tables” to the defined term “actuarial documents” in subpart G;
- Correct the location of certain dates from the “actuarial documents” to the “Special Provisions” where applicable, throughout the ARPI Basic Provisions; and
- Incorporate editorial changes. For example, change all instances of the term “database” (where applicable) to “APH database” for consistency and remove unnecessary words from parenthetical phrases e.g., remove “the” from (see the definition of “second crop”).

Effective Date, Notice and Comment, and Exemptions

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to contracts. This rule governs contracts for crop insurance policies and therefore falls within that exemption. Although not required by APA or any other law, FCIC has chosen to request comments on this rule.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

For major rules, the Congressional Review Act requires a delay of the effective date of 60 days after publication to allow for Congressional review. This rule is not a major rule under the Congressional Review Act, as defined by 5 U.S.C. 804(2).

Therefore, this final rule is effective on June 30, 2023.

Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant or economically significant.

The Office of Management and Budget (OMB) has designated this rule as not significant under Executive Order 12866. Therefore, OMB has not reviewed this rule and analysis of the costs and benefits is not required under either Executive Order 12866 or Executive Order 13563.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?

- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Environmental Review

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347) and the regulations of the Council on Environmental Quality (40 CFR parts 1500 through 1508). FCIC conducts programs and activities that have been determined to have no individual or cumulative effect on the human environment. As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes

on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

RMA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under EO 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, RMA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified in this rule are not expressly mandated by Congress.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments, or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of 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.

Federal Assistance Program

The title and number of the Assistance Listing,¹ to which this rule applies is No. 10.450 – Crop Insurance.

Paperwork Reduction Act of 1995

The purpose of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), among other things, are to minimize the paperwork burden on individuals, and to require Federal agencies to request and receive approval from the Office of Management and Budget (OMB) prior to collecting information from ten or more persons. This rule does not change the information collection approved by OMB under control numbers 0563-0053.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

¹See <https://sam.gov/content/assistance-listings>.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410 or email: OAC@usda.gov.

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List of Subjects

7 CFR Part 400

Acreage allotments, Administrative practice and procedure, Claims, Crop insurance, Drug traffic control, Fraud, Government employees, Income taxes, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Wages.

7 CFR Part 407

Acreage allotments, Administrative practice and procedure, Barley, Corn, Cotton, Crop insurance, Peanuts, Reporting and recordkeeping requirements, Sorghum, Soybeans, Wheat.

7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

Final Rule

For the reasons discussed in the **SUPPLEMENTARY INFORMATION**, FCIC amends 7 CFR parts 400, 407, and 457, effective for the 2024 and succeeding crop years for crops with a contract change date on or after June 30, 2023, and for the 2025 and succeeding crop years for all other crops, as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart G—Actual Production History

1. The authority citation for part 400, subpart G, continues to read as follows:

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

2. Revise § 400.51 to read as follows:

§ 400.51 Availability of Actual Production History program.

(a) This subpart is obsolete for the 2024 and succeeding crop years for crops with a contract change date on or after June 30, 2023, and for the 2025 and succeeding crop years for all crops with a contract change date prior to June 30, 2023.

(b) An Actual Production History (APH) Coverage Program is offered under the provisions contained in 7 CFR part 457 and all Special Provisions (as defined in 7 CFR 457.8) thereto unless specifically excluded by the Special Provisions.

(c) 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 documents provide coverage. Except when in conflict with this subpart, all provisions of the applicable crop insurance contract for these crops apply.

PART 407—AREA RISK PROTECTION INSURANCE REGULATIONS

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

Authority: 7 U.S.C. 1506(l) and 1506(o).

4. Amend § 407.9 by:

a. In section 1:

i. Add a definition of “Actual production” in alphabetical order;

ii. In the definition of “Application”, remove the words “will commence” and add “commences” in their place;

iii. In the definition of “Buffer zone”, remove the words “organic plan” and add

“organic system plan” in their place;

iv. Revise the definition of “Contract”;

v. In the definition of “Cover crop”, remove the words “see the definition” and add “see definition” in their place;

vi. In the definition of “Final planting date”, remove the words “actuarial documents” and add “Special Provisions” in their place;

vii. Revise the definition of “Liability”;

viii. Remove the definition of “Organic plan”;

ix. Add a definition of “Organic system plan” in alphabetical order;

x. In the definition of “Premium billing date”, remove the words “actuarial documents” and add “Special Provisions” in their place;

xi. Revise the definition of “Production report”;

xii. In the definition of “Sales closing date”, remove the words “actuarial documents” and add “Special Provisions” in their place;

xiii. In the definition of “Tenant”, remove the text “(see the definition of “share” above)” and add “(see definition of “share”)” in its place; and

xiv. Revise the definition of “Veteran farmer or rancher”;

b. In section 2:

i. In paragraphs (c)(1)(ii)(A) and (c)(2)(ii)(B), remove the word “Simply” and add “simply” in its place;

ii. In paragraphs (k)(2)(i)(A) and (B), remove the text “owed)” and add “owed.)” in its place;

iii. In paragraph (k)(2)(iii)(C)(I)(ii), remove the words “For example” and add “for example” in their place;

iv. In paragraph (l)(2)(i), remove the word “entity” and add “person” in its place wherever it appears; and

- v. In paragraphs (l)(4) introductory text and (5), remove the word “entity” and add “person” in its place;
- c. In section 4, in paragraph (b)(5), remove the words “For example” and add “for example” in their place;
- d. In section 5, in paragraph (b), remove the words “actuarial documents” and add “Special Provisions” in their place;
- e. In section 7:
 - i. In paragraph (d)(2), remove the words “This is” and add “this is” in their place;
 - ii. In paragraph (e), remove the words “actuarial documents” and add “Special Provisions” in their place;
 - iii. In paragraph (f), remove the words “No premium” and add “no premium” in their place;
 - iv. In paragraph (i)(2)(i)(A), remove the word “entity” and add “person” in its place; and
 - v. In paragraphs (i)(2)(ii)(A) and (B), remove the words “of this section”;
- f. In section 8:
 - i. In paragraph (a), remove the words “actuarial documents” and add “Special Provisions” in their place;
 - ii. In paragraph (c)(1), remove the words “Acreage initially” and add “acreage initially” in their place;
 - iii. In paragraph (j)(3), remove the words “If the” and add “if the” in their place; and
 - iv. In paragraph (n)(1), remove the words “production reporting date” and add “applicable production reporting date” in their place;
- g. In section 9, in paragraph (b)(1)(ii), remove the word “Children” and add “children” in its place;

- h. In section 10, in paragraph (a), remove the words “For the purposes” and add “for the purposes” in their place;
- i. In section 13:
 - i. In paragraph (c)(5), remove the text “section 13(h)(4)” and add “section 13(c)(4)” in its place;
 - ii. Revise paragraph (c)(6); and
 - iii. In paragraph (d)(1), add a comma after the words “for example”;
- j. In section 14:
 - i. In paragraph (c)(2), remove the words “organic plan” and add “organic system plan” in their place; and
 - ii. Revise paragraphs (d)(1) and (2);
- k. In section 18, in paragraph (c) introductory text, remove the words “For example” and add “for example” in their place;
- l. In the first instance of section 22:
 - i. In paragraph (b), remove the words “actuarial documents” and add “Special Provisions” in their place;
 - ii. In paragraph (c)(4), remove the text “4 CFR part 102” and add “31 CFR part 901” in its place; and
 - iii. In paragraph (d), remove the word “federal” and add “Federal” in its place;
- m. In the second instance of section 22:
 - i. In paragraph (a)(1), remove the words “actuarial documents” and add “Special Provisions” in their place; and
 - ii. In paragraph (c), remove the text “(see subsection (d) of this section)” and add “(see section 22(d))” in its place;
- n. In the first instance of section 23, in paragraph (e):
 - i. Remove the word “attorney” and add “attorney’s” in its place; and

- ii. Add a comma after the word “appeal”;
- o. In the second instance of section 23, in paragraph (g), remove the word “attorney” and add “attorney’s” in its place;
- p. In sections 26, introductory text, and 27, remove the word “federal” and add “Federal” in its place; and
- q. In section 28:
 - i. In paragraph (d), remove the words “of this section” and add “of section 28” in their place; and
 - ii. In paragraph (e)(2)(viii), remove the word “federal” and add “Federal” in its place.

The revisions and additions read as follows:

§ 407.9 Area risk protection insurance policy.

* * * * *

1. Definitions

* * * * *

Actual production. The harvested and/or appraised amount of an agricultural commodity in number of pounds, bushels, tons, cartons, or other units of measure as provided in the applicable Crop Provisions.

* * * * *

Contract. (See definition of “policy.”)

* * * * *

Liability. (See definition of “policy protection.”)

* * * * *

Organic system plan. A written plan, in accordance with the National Organic Program published in 7 CFR part 205, that describes the organic farming practices that you and a certifying agent agree upon annually or at such other times as prescribed by the

certifying agent.

* * * * *

Production report. A written report provided by you in accordance with section 8 showing your annual production. The report contains yield information for the current year, including planted acreage and production. This report must be supported by acceptable production records.

* * * * *

Veteran farmer or rancher.

(1) An individual who has served active duty in the United States Armed Forces, including the Air Force, Army, Coast Guard, Marine Corps, Navy, or Space Force, and their reserve components; was discharged or released under conditions other than dishonorable; and:

- (i) Has not operated a farm or ranch;
- (ii) Has operated a farm or ranch for not more than 5 years; or
- (iii) First obtained status as a veteran during the most recent 5-year period.

(2) A person, other than an individual, may be eligible for veteran farmer or rancher benefits if all substantial beneficial interest holders qualify individually as a veteran farmer or rancher in accordance with paragraph (1) of this definition; except in cases in which there is only a married couple, then a veteran and non-veteran spouse are considered a veteran farmer or rancher.

* * * * *

13. Indemnity and Premium Limitations

* * * * *

(c) * * *

(6) With respect to double cropped acreage, if the two crops you have double cropped are insured under policies with different double crop history records

requirements (e.g., records of acreage and production), the less restrictive requirements may be followed to satisfy double cropping requirements for both crops. For example, you have 20 acres of annual forage wheat for grazing. On the same acreage you plant and insure cotton. The annual forage double cropping provisions do not include double cropping record history requirements. If the annual forage double cropping provisions are met, you are eligible for a full indemnity payment on both the annual forage wheat and the cotton.

* * * * *

14. Organic Farming Practices

* * * * *

(d) * * *

(1) For certified organic acreage, a written certification in effect directly from a certifying agent indicating the name of the person certified, effective date of certification, certificate number, types of commodities certified, and name and address of the certifying agent (a certificate issued to a tenant may be used to qualify a landlord or other similar arrangement). A certificate issued from the National Organic Program's Organic Integrity Database (or successor certificate reporting tool) is acceptable;

(2) For transitional acreage, an organic system plan documenting the use of practices that would result in certified organic status that includes the record information as described in section 14(d)(1), or written documentation from a certifying agent indicating an organic system plan is in effect for the acreage; and

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PART 457–COMMON CROP INSURANCE REGULATIONS

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

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

6. Amend § 457.8, in the Common Crop Insurance Policy, by:

- a. Removing the words “the database” and adding “the APH database” in their place wherever they appear;
- b. Under the headings “FCIC Policies” and “Reinsured Policies”, in the first paragraph, remove the words “including the adjustment of” and add “including establishing your approved yield and the adjustment of” in their place;
- c. In section 1:
 - i. Add a definition of “Actual production” in alphabetical order;
 - ii. Revise the definitions of “Actual Production History (APH)” and “Actual yield”;
 - iii. Add definitions for “Annual yield”, “APH base period”, “APH crop year”, “APH database”, and “Applicable T-Yield” in alphabetical order;
 - iv. In the definition of “Application”, remove the words “will commence” and add “commences” in their place;
 - v. Add a definition of “Appraised production” in alphabetical order;
 - vi. Revise the definition of “Approved yield”;
 - vii. Add a definition of “Assigned yield” in alphabetical order;
 - viii. Revise the definition of “Average yield”;
 - ix. In the definition of “Buffer zone”, remove the words “organic plan” and add “organic system plan” in their place;
 - x. Add a definition of “Continuous production reports” in alphabetical order;
 - xi. Revise the definition of “Contract”;
 - xii. In the definition of “Cover crop”, remove the words “see the definition” and add “see definition” in their place;
 - xiii. Add a definition of “Determined yield” in alphabetical order;
 - xiv. In the definition of “Direct marketing”, remove the words “the policyholder” and add “you” in their place;

xv. Add definitions of “Insurable acres”, “Insured’s production reporting date”, “Lag year”, “Master yield”, “New insured”, and “New producer” in alphabetical order;

xvi. Remove the definition of “Organic plan”;

xvii. Add the definition of “Organic system plan” in alphabetical order;

xviii. Revise the definition of “Production report”;

xix. Add definitions of “Production reporting date” and “Temporary yield” in alphabetical order;

xx. In the definition of “Tenant”, remove the text “(see the definition of “share” above)” and add “(see definition of “share”)” in its place;

xxi. Add definitions of “Transitional yield (T-Yield)”, “Unavoidable uninsured fire”, and “Variable T-Yield” in alphabetical order; and

xxii. Revise the definition of “Veteran farmer or rancher”;

d. In section 2:

i. In paragraphs (b)(5)(ii)(A) and (b)(6)(ii)(B), remove the word “Simply” and add “simply” in its place;

ii. In paragraphs (f)(2)(i)(A) and (B), remove the text “owed)” and add “owed.)” in its place;

iii. In paragraph (f)(2)(iii)(C)(I)(ii), remove the words “For example” and add “for example” in their place;

iv. In paragraph (f)(4), remove the words “Since applications” and add “since applications” in their place;

v. In paragraph (g)(2)(i), remove the word “entity” and add “person” in its place wherever it appears; and

vi. In paragraph (g)(4) introductory text, remove the word “entity” and add “person” in its place;

e. In section 3:

- i. Revise paragraphs (b)(2)(ii) and (f);
 - ii. In paragraph (g)(2)(i), remove the words “production reporting date” and add “applicable production reporting date” in their place;
 - iii. In paragraph (g)(2)(ii), remove the word “Simply” and add “simply” in its place;
 - iv. Redesignate paragraphs (g)(3) and (4) as paragraphs (g)(9) and (10);
 - v. Add new paragraphs (g)(3) and (4) and paragraphs (g)(5) through (8);
 - vi. Revise newly redesignated paragraphs (g)(9) and (g)(10)(iii) and paragraphs (h)(1), (h)(2) introductory text, and (h)(2)(i); and
 - vii. In paragraph (i) introductory text, remove the words “Not applicable” and add “not applicable” in their place;
- f. Add section 5;
 - g. In section 6:
 - i. In paragraphs (c)(1)(ii) and (d)(3)(ii)(A)(2), remove the words “If you fail” and add “if you fail” in their place; and
 - ii. In paragraph (g)(1)(i), remove the words “In the event” and add “in the event” in their place;
 - h. In section 7:
 - i. In paragraph (h)(2)(i)(A), remove the word “entity” and add “person” in its place; and
 - ii. In paragraphs (h)(2)(ii)(A) and (B), remove the words “of this section”;
 - i. In section 8, in paragraphs (b)(1) and (4), remove the words “For example” and add “for example” in their place;
 - j. In section 9, revise paragraph (c);
 - k. In section 10, in paragraph (b)(1)(ii), remove the word “Children” and add “children” in its place;

- l. In section 11, in paragraph (a)(1), remove the words “For the purposes” and add “for the purposes” in their place;
- m. In section 12, in paragraph (c), remove the text “insurable cause of loss)” and add “insurable cause of loss.)” in its place;
- n. In section 14:
 - i. In paragraph (e)(1)(i) and paragraph (e)(1)(ii) introductory text, remove the words “Extensions will” and add “extensions will” in their place;
 - ii. In paragraph (e)(3)(i), remove the text “60 days after September 30)” and add “60 days after September 30.)” in its place; and
 - iii. In paragraph (f)(3), remove the words “If any evidence” and add “if any evidence” in their place;
- o. In section 15:
 - i. In paragraph (b)(1), remove the words “If you fail” and add “if you fail” in their place; and
 - ii. Revise paragraph (h)(7) introductory text;
- p. In section 17:
 - i. Revise paragraphs (d)(1) introductory text, (d)(1)(ii)(B), (d)(2), and (e)(1)(i)(B) introductory text;
 - ii. In paragraph (f)(1) introductory text, remove the words “If the crop” and add “if the crop” in their place;
 - iii. In paragraph (f)(1)(ii), remove the words “There can” and add “there can” in their place;
 - iv. In paragraph (f)(3), remove the words “The number” and add “the number” in their place;
 - v. In paragraph (f)(11)(i), remove the words “Crops for which” and add “crops for which” in their place; and

vi. Revise paragraphs (f)(12), (g), and (h) introductory text;

q. In section 18:

i. In paragraph (d)(1), remove the words “If conditions” and add “if conditions” in their place;

ii. In paragraph (e)(2)(ii), remove the words “If the” and add “if the” in their place;

iii. In paragraph (g)(2), remove the words “The request” and add “the request” in their place; and

iv. In paragraph (n), remove the words “If the” and add “if the” in their place;

r. In the first instance of section 20, in paragraph (f), remove the word “attorney” and add “attorney’s” in its place;

s. In the second instance of section 20:

i. In paragraph (e)(3), remove the word “attorney” and add “attorney’s” in its place; and

ii. In paragraph (i), remove the word “attorneys” and add “attorney’s” in its place;

t. In section 21, in paragraph (b)(1), remove the words “This requirement” and add “this requirement” in their place;

u. In section 23, remove the word “federal” and add “Federal” in its place;

v. In the first instance of section 24:

i. In paragraph (c)(4), remove the text “4 CFR part 102” and add “31 CFR part 901” in its place;

ii. Revise paragraph (d); and

iii. Designate the undesignated paragraph following paragraph (d) as paragraph (e);

w. In the second instance of section 24, in paragraph (c), remove the text “(see subsection (d) of this section)” and add “(see section 24(d))” in its place;

- x. In section 25, remove the period at the end of the section heading;
- y. In section 27, in paragraph (e)(2)(viii), remove the word “federal” and add “Federal” in its place;
- z. In section 31, remove the word “federal” and add “Federal” in its place;
- aa. In section 34:
 - i. Revise paragraph (a) introductory text;
 - ii. Remove paragraphs (a)(1) and (2);
 - iii. Redesignate paragraphs (a)(3) through (5) as paragraphs (a)(1) through (3);
 - iv. In newly redesignated paragraph (a)(2)(ii), remove the text “section 34(a)(4)(i)(A)” and add “section 34(a)(2)(i)(A)” in its place wherever it appears;
 - v. In newly redesignated paragraph (a)(2)(vi), remove the text “section 34(a)(4)(i)” and add “section 34(a)(2)(i)” in its place;
 - vi. In newly redesignated paragraphs (a)(2)(viii)(B), (a)(2)(viii)(C)(1)(i) and (ii), and (a)(2)(viii)(C)(2), remove the text “section 34(a)(4)” and add “section 34(a)(2)” in its place;
 - vii. In newly redesignated paragraphs (a)(3)(i)(A)(1), (2), and (3), remove the text “section 34(a)(5)(v)” and add “section 34(a)(3)(v)” in its place;
 - viii. Revise paragraph (a)(3)(i)(C);
 - ix. In newly redesignated paragraph (a)(3)(v)(A) introductory text, remove the text “section 34(a)(5)(i)” and add “section 34(a)(3)(i)” in its place;
 - x. In paragraph (b)(2), remove the text “for any reason)” and add “for any reason.)” in its place;
 - xi. In paragraph (b)(3), remove the words “You may” and add “you may” in their place; and
 - xii. Revise paragraph (c)(3);
- bb. In section 35, in paragraph (b)(2)(ii)(A), remove the words “If you” and add

“if you” in their place;

cc. In section 36:

i. In paragraph (a) introductory text, remove the words “within a database” and add “within an APH database” in their place;

ii. In paragraph (a)(1)(i), remove the text “your database” and add “your APH database” in its place; and

iii. In paragraph (a)(1)(ii), remove the text “will be used.” and add “will be used.)” in its place; and

dd. In section 37:

i. Revise the section heading;

ii. In paragraph (b)(2), remove the words “organic plan” and add “organic system plan”;

iii. Revise paragraphs (c)(1)(i) and (ii);

iv. In paragraph (c)(2) introductory text, remove the words “organic plan” and add “organic system plan” in their place;

v. In paragraph (c)(2)(i), remove the words “or plan” and add “or organic system plan” in their place;

vi. In paragraph (f), add a comma after the word “transitional”; and

vii. In paragraph (h), remove the words “organic plan” and add “organic system plan”.

The revisions and additions read as follows:

§ 457.8 The application and policy.

* * * * *

Common Crop Insurance Policy

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1. Definitions

* * * * *

Actual production. The harvested and/or appraised amount of an agricultural commodity in number of pounds, bushels, tons, cartons, or other units of measure as provided in the applicable Crop Provisions.

Actual Production History (APH). A determination of the production guarantee using your historical actual production for the crop, as applicable.

Actual yield. The yield per acre based on actual production from the planted or grown acreage, in accordance with section 5(b).

* * * * *

Annual yield. A yield per acre for a crop year, used to complete the APH base period in an APH database. An annual yield may be any of the following: actual yield, assigned yield, transitional yield (T-Yield), or other yield calculated according to FCIC approved procedures.

APH base period. A minimum of four, up to a maximum of ten, most recent consecutive APH crop years for which continuous production reports are available, or as otherwise specified in the Crop Provisions or Special Provisions. The APH base period includes the most recent APH crop year's annual yield unless a lag year(s) applies to the crop, in which case, the most recent annual yield will be the crop year prior to the current crop year as specified in FCIC approved procedures.

APH crop year. The year the crop was planted or grown, and insurable in accordance with the applicable Crop Provisions, whether insured or not, and identified by the year it is normally intended to be harvested.

APH database. A series of consecutive, annual yields that include the respective acreage and actual production, when applicable, used to determine each annual yield, for each APH crop year in the APH base period.

Applicable T-Yield. The T-Yield in effect, as specified in FCIC approved

procedures, for an APH database.

* * * * *

Appraised production. Unharvested potential crop production determined by us, or any other person authorized by FCIC, that includes both total production and any adjustments as provided in the applicable Crop Provisions or FCIC approved procedures used in calculating actual yields.

Approved yield. The yield calculated by us, or any other person authorized by FCIC, based on annual yields contained in the APH database to establish the production guarantee calculated in accordance with section 5(c).

* * * * *

Assigned yield. An annual yield assigned according to FCIC approved procedures for an APH crop year when you do not file an acceptable production report, or upon request by us, or any other person authorized by FCIC, you do not provide acceptable evidence of acreage and production records to support your production report. The assigned yield will not be more than 75 percent of the prior year's approved yield or 65 percent of the applicable T-Yield if a prior year's approved yield is not available.

* * * * *

Average yield. The average of the annual yields for all APH crop years within the APH database calculated by us, or any other person authorized by FCIC, in accordance with section 5(c).

* * * * *

Continuous production reports. Each APH crop year within an APH database must be consecutive starting from the most recent APH crop year for any production report submitted by you and determined to be acceptable by us, or any other person authorized by FCIC. Continuity is not considered to be interrupted for any crop year the crop was not planted, was prevented from being planted, was not insurable in accordance

with the Crop Provisions, or was not produced in compliance with any other applicable USDA program. If production report(s) are not provided for such consecutive history, continuity will be considered to have been broken unless you can provide documentation that the conditions listed herein existed for any crop year.

Contract. (See definition of “policy.”)

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Determined yield. An annual yield designated by FCIC, or calculated and assigned by us, in specific situations authorized by FCIC approved procedures.

* * * * *

Insurable acres. Acreage that meets all policy insurability requirements, whether insured or not.

* * * * *

Insured’s production reporting date. The date, provided in the actuarial documents, by which you are required to submit a production report for the current crop year, unless otherwise specified in the policy or FCIC approved procedures.

* * * * *

Lag year. A delay of reporting of a crop year(s) in the APH base period, authorized by FCIC approved procedures when production records are generally not available for the crop by the production reporting date.

* * * * *

Master yield. An optional approved yield calculation you may elect for certain crops and counties, as designated by FCIC approved procedures.

* * * * *

New insured. A person who was not insured the previous crop year without respect to an insurance provider or plan of insurance.

New producer. A person, including anyone with a substantial beneficial interest

in the person, who has not produced the insured crop in the county, whether or not such crop was insured, for more than two APH crop years prior to the current crop year.

* * * * *

Organic system plan. A written plan, in accordance with the National Organic Program published in 7 CFR part 205, that describes the organic farming practices that you and a certifying agent agree upon annually or at such other times as prescribed by the certifying agent.

* * * * *

Production report. A written report provided by you in accordance with section 3 showing your annual production that will be used by us to determine your approved yield for insurance purposes. The report contains yield information for the current and previous APH crop year(s), when applicable, including planted acreage and production. This report must be supported by acceptable production records.

Production reporting date. The date, provided in the actuarial documents, by which you are required to provide a production report at the beginning of a crop year if you meet the requirements in sections 3(f)(1)(i) through (iv).

* * * * *

Temporary yield. An annual yield used in place of an actual yield when you are unable to finish harvest due to an insurable cause of loss, a delayed claim for indemnity, or your production records are unavailable from the processor, marketing outlet, or similar point of crop distribution by the production reporting date.

* * * * *

Transitional yield (T-Yield). An annual yield established within the county, or homogeneous area of land, for a crop, type, practice, map area, or other actuarial basis, as provided in the actuarial documents or calculated in accordance with FCIC approved procedures.

Unavoidable uninsured fire. Fire caused by an uninsured and unavoidable cause of loss resulting from actions outside the control of the insured. For example, fire caused by a passing train which sparks a fire that spreads to and destroys a grain crop is clearly caused by a third party and is unavoidable; fire caused by you setting a fire to burn brush that spreads and burns your crop is within your control.

* * * * *

Variable T-Yield. The applicable T-Yield multiplied by a percentage factor and used as an annual yield in the APH database according to FCIC approved procedures, or as otherwise provided in the policy. The percent of the applicable T-Yield is determined by the number of years of acceptable actual, assigned, or temporary yields available for the crop in the county.

* * * * *

Veteran farmer or rancher. (1) An individual who has served active duty in the United States Armed Forces, including the Air Force, Army, Coast Guard, Marine Corps, Navy, or Space Force, and their reserve components; was discharged or released under conditions other than dishonorable; and:

- (i) Has not operated a farm or ranch;
- (ii) Has operated a farm or ranch for not more than 5 years; or
- (iii) First obtained status as a veteran during the most recent 5-year period.

(2) A person, other than an individual, may be eligible for veteran farmer or rancher benefits if all substantial beneficial interest holders qualify individually as a veteran farmer or rancher in accordance with paragraph (1) of this definition; except in cases in which there is only a married couple, then a veteran and non-veteran spouse are considered a veteran farmer or rancher.

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3. Insurance Guarantees, Coverage Levels, and Prices

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(b) * * *

(2) * * *

(ii) You have additional coverage for the crop in the county with acreage designated as high-risk by FCIC and you execute a High-Risk Land Exclusion Option on or before the applicable sales closing date with the same insurance provider from which your additional coverage was obtained. The High-Risk Land Exclusion Option allows you the following choices for your high-risk land:

(A) You may exclude coverage for high-risk land under the additional coverage policy and not insure it;

(B) You may insure high-risk land under a separate Catastrophic Risk Protection Endorsement; or

(C) If available in the actuarial documents, you may insure high-risk land on a separate additional coverage policy with coverage greater than provided by the Catastrophic Risk Protection Endorsement but less than the coverage elected on the additional coverage policy insuring your non-high-risk land.

* * * * *

(f) A production report(s) is required for all crops with a yield-based plan of insurance, and the information contained within the production report is used to establish your approved yield(s).

(1) You must report your current year's crop production on the same basis used to establish your approved yield(s), by the insured's production reporting date contained in the actuarial documents, or as otherwise specified in the Special Provisions. This production report will be used to establish approved yield(s) for the following APH crop year. Failure to timely provide this production report will result in assigned yields being used to determine your approved yield(s) for the following APH crop year. In addition to

this production report, you may have to provide an additional production report at the beginning of the crop year by the production reporting date contained in the actuarial documents, as follows:

(i) If you are a new insured who grew the crop the year prior to the current crop year, you may report actual production for that crop year and include additional crop years, if continuous production reports are provided. Failure to provide this production report will result in variable T-Yields being used to determine your approved yield(s) for the current crop year.

(ii) If you are an insured who transferred your policy to us for the current crop year, you may provide us with a copy of the completed and signed production report you submitted to your previous insurance provider for the prior APH crop year. This production report will be used to establish your approved yield(s) for the current crop year.

(iii) If we cannot establish your approved yield for any APH database for the current crop year as required by FCIC approved procedures, you must provide us a new production report containing the prior year's production on the basis of the current crop year's unit structure and by type, practice, map area, and other characteristics, if applicable, you are requesting.

(iv) You may certify actual production for any prior APH crop year if your certification meets the requirements of section 3(f)(3) to be used in an APH database(s) for the current crop year when:

- (A) Reporting actual production for an APH crop year not previously certified;
- (B) Replacing a yield determined in accordance with section 5(b); or
- (C) Making a change or revision as authorized in FCIC approved procedures.

(2) Production must be reported by county, crop, type, practice, map area, other characteristics, unit structure elected (or level lower than unit structure elected), and land

location in accordance with FCIC approved procedures. To be acceptable for an APH crop year, a production report must:

- (i) Be provided annually by you;
- (ii) Be certified as accurate by you;
- (iii) Be submitted by the applicable production reporting date; and
- (iv) Be supported by production records meeting the requirements in section

3(g)(3). Production records must substantiate all information provided on the production report.

(3) Your production report must contain all actual production of the insured crop, from all acreage of the insured crop, which includes insurable, uninsurable and uninsured acreage, for the APH crop year being reported and certified identifying:

(i) Gross and net actual production, with net actual production being gross actual production adjusted for standard deductions that apply under the terms of the policy including test weight, moisture, foreign material, or any other specified deduction, when such deductions are available in the production records;

- (ii) Type of acceptable production records;
- (iii) Disposition of the crop, e.g., harvested or unharvested; and
- (iv) Any other information required on the production report form in accordance

with FCIC approved procedures.

(4) If you do not file an acceptable production report by the applicable production reporting date, the annual yield for the applicable APH crop year will be the assigned yield. The assigned yield will be used to calculate your approved yield for the purpose of determining your coverage for the current or following crop year, as applicable. Optional units will not be available the following crop year unless the reason for not filing an acceptable production report is one of the following:

- (i) You are a new insured;

(ii) You are unable to provide an acceptable production report by the production reporting date due to the inability to finish harvest because of an insurable cause of loss; or

(iii) Production records are not yet available from a processor, marketing outlet, or similar point of crop distribution or production records are not yet available due to a delayed claim for indemnity.

(5) In the event certified acreage or actual production from two or more persons sharing in the crop on the same acreage for the same APH crop year is different, we or any other person authorized by FCIC shall, at our discretion, determine the acreage and actual production to be used to determine the approved yield. Upon determining the correct acreage and actual production, we will correct your, and any other insured's, production report and APH database, and notify any other insurance provider who may have an insured with a share in the crop for the same acreage. If the correct acreage and actual production cannot be determined, the production report will be considered unacceptable, and you will receive an assigned yield in accordance with section 3(f)(4).

(6) If you have filed a claim for any crop year, the documents signed by you which state the amount of production used to complete the claim for indemnity will be the production report for that year unless otherwise specified by FCIC.

(7) Appraisals obtained from only a portion of the acreage in a field that remains unharvested after the remainder of the crop within the field has been destroyed or put to another use will not be used to establish your actual yield unless representative samples are required to be left by you in accordance with the Crop Provisions.

(8) If no insurable acreage of the insured crop is planted for a year, a production report indicating zero planted acreage will maintain the continuity of production reports for APH record purposes and that calendar year will not be included in the approved yield calculations.

* * * * *

(g) * * *

(3) Records must be available to substantiate production reports, within the tolerances provided in FCIC approved procedures, that document and verify the actual production between types, practices, map areas, unit structures and land locations as certified on the production report.

(4) Acceptable production record requirements for a crop are provided in FCIC approved procedures and identify crops requiring verifiable records or farm management records. These requirements must be met for production records to be acceptable.

(i) Verifiable records include, but are not limited to:

(A) Records of production commercially sold to, or stored by, a disinterested third party;

(B) Claim for indemnity determinations made by an insurance provider, or any other person authorized by FCIC, as applicable;

(C) Documents with actual production verified by another USDA agency;

(D) Appraisal of unharvested acreage performed by an insurance provider or any other person authorized by FCIC;

(E) Measurement of farm-stored production performed by an insurance provider, another USDA agency, or any other person authorized by FCIC;

(F) Pick records identifying the amount of actual production harvested daily by individuals;

(G) Contemporaneous daily sales records; and

(H) Records from recognized or approved precision farming technology systems.

(ii) Farm management records include, but are not limited to:

(A) Measurement of farm stored production performed by you;

(B) Automated yield monitoring systems;

(C) Contemporaneous livestock feeding records;

(D) Field harvest records; and

(E) Seed records.

(5) Acceptable production records must be adjusted for standard deductions that apply under the terms of the policy, including test weight, moisture, foreign material, and any other deductions in accordance with the applicable Crop Provisions or FCIC approved procedures when such deductions are available in the production records.

(6) Acceptable production records must be maintained for the record retention period as provided in section 21(b)(2).

(7) You are not required to maintain production records beyond the record retention period specified in section 21(b)(2); however, we or any other person authorized by FCIC may review any production records that are available from you, or any other sources who may have records of actual production applicable to an APH database, at any time.

(8) You must provide acceptable production records, as specified in section 3(g)(3) through (5):

(i) Upon request by us or any other person authorized by FCIC during the completion of a claim for indemnity; or

(ii) During any audit, review, or when otherwise requested by us or any other person authorized by FCIC to verify acreage, actual production, and all other information certified on the production report.

(9) If you do not have acceptable production records to support the information you certified on your production report you will receive an assigned yield in accordance with section 3(f)(4), for the applicable units, for any APH crop year that does not have such production records in accordance with FCIC approved procedures. If the conditions of section 34(b)(3) are not met, you will receive an assigned yield for the applicable basic

unit.

(10) * * *

(iii) Any overpaid indemnity must be repaid or any additional premium we determine to be owed must be paid; and

* * * * *

(h) * * *

(1) By including an assigned yield determined in accordance with section 3(f)(4), if the actual yield reported in the APH database is excessive for any crop year, as determined by FCIC under its approved procedures, and you do not provide verifiable records to support the yield in the APH database. If there are verifiable records for the yield in your APH database, but the yield is significantly different from other yields in the county or your other yields for the crop and you cannot prove there is a valid agronomic basis to support the differences in the yields, the yield will be the average of the yields for the crop or the applicable county transitional yield if you have no other yields for the crop;

(2) By reducing it to an amount consistent with the average of the approved yields for other APH databases for your farming operation with the same crop, type, and practice or the county transitional yield, as applicable, if:

(i) The approved APH yield is greater than 115 percent of the average of the approved yields of all applicable APH databases for your farming operation that have actual yields in them or it is greater than 115 percent of the county transitional yield if no applicable APH databases exist for comparison;

* * * * *

5. APH Database and Approved Yield Calculation

(a) With respect to your APH database:

(1) An APH database must be established to determine the approved yield and the

average yield, established on the basis of:

- (i) Crop;
- (ii) Type;
- (iii) Practice;
- (iv) T-Yield map area;
- (v) Unit, as applicable; and
- (vi) Other requirements as specified by FCIC approved procedures.

(2) The APH database is established using consecutive annual yields, as determined in section 5(b), for each APH crop year in the APH database.

(b) Annual yields are determined by us, or any other person authorized by FCIC, in accordance with FCIC approved procedures. Annual yields are used in establishment of the APH database, and include the following types of yields:

(1) An actual yield, calculated by dividing the actual production by insurable acres from acceptable production reports, except as follows:

(i) For perennial crop acreage that was previously uninsurable due to underage requirements specified in the Crop Provisions, the actual yield may be calculated using production from the acreage prior to it becoming insurable, in accordance with FCIC approved procedures, when elected by you and you provide acceptable production reports;

(ii) For crop acreage that is damaged by unavoidable uninsured fire or a third party, insurable acreage and actual production from such acreage will not be included in the calculation of the actual yield when elected by you, and approved by us or any person authorized by FCIC, in accordance with FCIC approved procedures; and

(iii) For uninsurable crop acreage, acres and actual production from such acreage may be included in the calculation of the actual yield when actual production from such acreage is commingled with harvested production from insurable acreage;

(2) A temporary yield that is equal to the prior year's approved yield. In subsequent crop years, the temporary yield is replaced by an actual yield from an acceptable production report submitted by you or, in the absence of an acceptable production report, an assigned yield;

(3) An assigned yield if you:

(i) Did not provide an acceptable production report for the previous APH crop year in the APH database; or

(ii) Do not provide acceptable production records for any APH crop year within the record retention period specified in section 21(b)(2) to support, within tolerances established by FCIC approved procedures, information provided on the production report, when requested by us or any other person authorized by FCIC;

(4) A determined yield, designated by FCIC, or calculated and assigned by us, or any other person authorized by FCIC, in situations when the available actual production information and the approved yield is not reflective of the expected actual production for the area, in accordance with section 5(c) and FCIC approved procedures; or

(5) A T-Yield for any APH crop year when there is not a minimum of four years of annual yields in the APH database as outlined in section 5(b)(1) through (4).

(i) A variable percentage will apply to the T-Yield published in the actuarial documents, based on the number of years of actual yields provided for the crop, as follows:

(A) For three years or more, use 100 percent of the applicable T-Yield;

(B) For two years, use 90 percent of the applicable T-Yield;

(C) For one year, use 80 percent of the applicable T-Yield;

(D) For no years, use 65 percent of the applicable T-Yield; or

(E) For qualifying new producers, use 100 percent of the T-Yield published in the actuarial documents.

(ii) A T-Yield may be calculated in accordance with FCIC approved procedures when you add land or new types and practices to your farming operations.

(c) The average yield and approved yield are used to establish the insurance guarantee.

(1) Calculate the average yield and approved yield as follows:

(i) Establish the APH database using annual yields by APH crop year in accordance with section 5(b), prior to any adjustments authorized for annual yields from section 36(a);

(ii) Sum all the annual yields from section 5(c)(1)(i);

(iii) Divide the sum of section 5(c)(1)(ii) by the number of annual yields in the APH database. The result is the average yield;

(iv) Using the annual yields determined from section 5(c)(1)(i), apply any applicable adjustments authorized from section 36(a);

(v) Sum all the annual yields from section 5(c)(1)(iv); and

(vi) Divide the sum of section 5(c)(1)(v) by the number of annual yields in the APH database and apply any applicable adjustments from section 5(c)(2) or (3), section 9(e), or section 36(b). The result is the approved yield.

(2) Adjustment to the approved yield by us or any other person authorized by FCIC, in accordance with FCIC approved procedures, may be made in limited situations when the approved yield is not reflective of the expected actual production for the current crop year.

(3) Master yields may be established whenever crop rotation requirements and land leasing practices limit the yield history available. FCIC will establish crops and locations for which master yields are available. To qualify, you must have at least four most recent continuous crop years' annual production reports of the insured crop. Master yields are based on acreage and production history from all acreage of the insured crop in

the county in which you have/had a share in the crop's production on the same basis as your approved yield. When applicable, your master yield will be your approved yield as authorized by approved FCIC procedures.

(4) For perennial crops, excluding forage, an approved yield may be adjusted if:

(i) A significant upward or downward yield trend over consecutive APH crop years is evident;

(ii) Tree or vine damage, or cultural practices performed will reduce the expected actual production for the current crop year from previous crop years' actual production; or

(iii) Other situations are determined to exist, in accordance with FCIC approved procedures, when the approved yield is not reflective of the expected actual production for the current crop year.

(5) An approved yield may be adjusted to reflect the degree of success of a systematic area-wide effort to detect, eradicate, suppress, control, or at a minimum prevent or retard, the spread of plant disease or plant pests, and which increases the yield of the insured crop on your farm when allowed under the terms of the policy.

* * * * *

9. Insurable Acreage

* * * * *

(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).)

* * * * *

15. Production Included in Determining an Indemnity and Payment Reductions

* * * * *

(h) * * *

(7) With respect to double cropped acreage, if the two crops you have double cropped are insured under policies with different double crop history records requirements (e.g., records of acreage and production), the less restrictive requirements may be followed to satisfy double cropping requirements for both crops. For example, you have 20 acres of annual forage wheat for grazing. On the same acreage you plant and insure cotton. The annual forage double cropping provisions do not include double cropping record history requirements. If the annual forage double cropping provisions are met, you are eligible for a full indemnity payment on both the annual forage wheat and the cotton.

* * * * *

17. Prevented Planting

* * * * *

(d) * * *

(1) Drought, failure of the irrigation water supply; failure, breakdown, or destruction 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:

* * * * *

(ii) * * *

(B) The irrigation equipment or facilities have failed, broken down, or been destroyed if such failure, breakdown, or destruction 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, breakdown, or destruction 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) * * *

(1) * * *

(i) * * *

(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 available for planting that you are farming this year (if greater) to the total cropland acres available for planting that you farmed in the previous year, provided that:

* * * * *

(f) * * *

(12) If after considerations of historical weather patterns, timing of the final planting date, your planting history, and other factors, we determine a cause of loss has occurred that may prevent planting at the time:

(i) You take possession of the leased acreage (except acreage you leased the previous crop year and continue to lease in the current crop year);

(ii) You take possession of the purchased 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).

(g) If you purchased an additional coverage policy for a crop, and you executed a High-Risk Land Exclusion Option and separately insured acreage which has been designated as high-risk land by FCIC in accordance with section 3(b)(2)(ii)(B) and (C), the maximum number of acres eligible for a prevented planting payment will be limited for each policy as specified in section 17(e) and (f).

(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 by us for the current crop year for which you have remaining eligible prevented planting acreage.

* * * * *

[For FCIC policies]

24. Amounts Due Us

* * * * *

(d) Interest on any amount due us found to have been received by you because of fraud, misrepresentation or presentation by you of a false claim will start on the date you received the amount with the additional 6 percent penalty beginning on the 31st day after the notice of amount due is issued to you. This interest is in addition to any other amount found to be due under any other Federal criminal or civil statute.

* * * * *

34. Units

(a) You may elect an enterprise unit or whole-farm unit as allowed by the actuarial documents.

* * * * *

(3) * * *

(i) * * *

(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)(3)(i)(C));

* * * * *

(c) * * *

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

* * * * *

37. Organic Farming Practices

* * * * *

(c) * * *

(1) * * *

(i) For certified organic acreage, a written certification in effect directly from a certifying agent indicating the name of the person certified, effective date of certification, certificate number, types of commodities certified, and name and address of the certifying agent (a certificate issued to a tenant may be used to qualify a landlord or other similar arrangement). A certificate issued from the National Organic Program's Organic Integrity Database (or successor certificate reporting tool) is acceptable.

(ii) For transitional acreage, an organic system plan documenting the use of practices that would result in certified organic status that includes the record information

as described in section 37(c)(1)(i), or written documentation from a certifying agent
indicating an organic system plan is in effect for the acreage.

* * * * *

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