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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 353

[Docket No. APHIS–2006–0122]

RIN 0579–AC43

Export Certification for Wood Packaging Material

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the export certification regulations to clarify that an International Standards for Phytosanitary Measures No. 15 (ISPM 15) quality/treatment mark is an industry-issued certificate and thus may be issued only when the organization applying the mark has entered into an agreement with the Animal and Plant Health Inspection Service. The interim rule also removed all references to a certificate of heat treatment from the regulations because such certificates have been replaced by the ISPM 15 quality/treatment mark. The interim rule was necessary to ensure the appropriate issuance of the ISPM 15 quality/treatment mark.

DATES: Effective on October 30, 2007, we are adopting as a final rule the interim rule published at 72 FR 35915–35917 on July 2, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. John Tyrone Jones II, Forestry Trade Director, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–8860.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule [1] effective and published in the **Federal Register** on July 2, 2007 (72 FR 35915–35917, Docket No. APHIS–2006–0122), we amended the export certification regulations in 7 CFR part 353 by clarifying that an International Standards for Phytosanitary Measures No. 15 (ISPM 15) quality/treatment mark is an industry-issued certificate and thus may be issued only when the organization applying the mark has entered into an agreement with the Animal and Plant Health Inspection Service.

Comments on the interim rule were required to be received on or before August 31, 2007. We received one comment by that date. The comment was from a State department of natural resources and supported the interim rule. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act. Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 353

Exports, Plant diseases and pests, Reporting and recordkeeping requirements.

PART 353—EXPORT CERTIFICATION

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 353 and that was published at 72 FR 35915–35917 on July 2, 2007.

Done in Washington, DC, this 24th day of October 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–21316 Filed 10–29–07; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the interim rule and the comment we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0122.*

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC05

Common Crop Insurance Regulations; Potato Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes amendments to the Common Crop Insurance Regulations; Northern Potato Crop Insurance Provisions, Northern Potato Crop Insurance Quality Endorsement, Northern Potato Crop Insurance Processing Quality Endorsement, Potato Crop Insurance Certified Seed Endorsement, Northern Potato Crop Insurance Storage Coverage Endorsement, and the Central and Southern Potato Crop Insurance Provisions. The intended effect of this action is to provide policy changes and clarify existing policy provisions to better meet the needs of the insureds, and to reduce vulnerability to fraud, waste, and abuse. The changes will apply for the 2008 and succeeding crop years for the Northern Potato Crop Insurance Provisions, Northern Potato Crop Insurance Quality Endorsement, Northern Potato Crop Insurance Processing Quality Endorsement, Potato Crop Insurance Certified Seed Endorsement, and the Northern Potato Crop Insurance Storage Coverage Endorsement. The Central and Southern Potato Crop Insurance Provisions changes will apply for the 2009 and succeeding crop years.

EFFECTIVE DATE: This rule is effective November 29, 2007.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lopez, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This Office of Management and Budget (OMB) has determined that this rule is non significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through November 30, 2007.

E-Government Act Compliance

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

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

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

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1,000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination or action by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On July 28, 2006, FCIC published a notice of proposed rulemaking in the **Federal Register** at 71 FR 42761–42770 to revise 7 CFR 457.142 Northern Potato Crop Insurance Provisions, 457.143 Northern Potato Crop Insurance Quality Endorsement, 457.144 Northern Potato Crop Insurance Processing Quality Endorsement, 457.145 Potato Crop Insurance Certified Seed Endorsement, 457.146 Northern Potato Crop Insurance Storage Coverage Endorsement, and 457.147 Central and Southern Potato Crop Insurance Provisions. Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions.

A total of 91 comments were received from 5 commenters. The commenters were reinsured companies, an agent, a trade association, an insurance service organization, and other interested parties. The comments received and FCIC's responses are as follows:

Northern Potato Crop Insurance Provisions

Comment: A few commenters stated that the proposed addition of Kansas, San Juan county, NM; and ''* * * any other states or counties if allowed by the Special Provisions'' to the list of counties/states that use the Northern Potato Insurance Crop Provisions appears to be an incorporation of present policy rather than an actual change since the 2006 Special Provisions for Kansas and San Juan County already refers to coverage under the Northern Potato Crop Insurance Provisions. The commenters stated that with the addition of the text ''and any other states or counties if allowed by the Special Provisions'', it will need to be made clear in the Special Provisions whether the specific state and county is covered under the Northern Potato Crop Insurance Provisions or the Central and Southern Provisions.

Response: The commenters are correct that insurance in Kansas and San Juan County, New Mexico was previously allowed by the Special Provisions and this merely codifies their inclusion. Since Kansas is now included under these provisions, a calendar date for the end of the insurance period must be added. After additional review, it was determined that due to the agronomic conditions in the state, the end of the insurance period date needed to be changed from the date published in proposed rule. Once this final rule is published, any additional states or counties to be included under the Northern Potato Crop Insurance Provisions will be specified in the Special Provisions of the applicable state and counties.

Comment: A few commenters stated that the new language in the proposed definition of ''grade inspection,'' that states ''produced or sold for'' should be

revised to ''produced for''. The commenters stated that in the Pacific Northwest, some growers grow potatoes for the open market and the potatoes may be produced for a different purpose for which they are sold. For example, they may be intending to grow for fresh, but they may change their minds if the processor is paying a better price. Other growers may be intending to go processing, but they do not have a processor contract, and they divert their potatoes to the fresh market if the quality and price is good. The commenters stated that this language does not have a big impact on the basic policy, since the basic policy only covers soft rot damage and freeze damage, which is the same for fresh or processing potatoes. However, it does have a big impact on the Quality Endorsement. The producer must select their quality option based on the intended use of the crop. The commenters stated that their intended use should be the basis for grading the crop, not the use for which they are sold. If the fresh potatoes are damaged, they will most likely be sold for processing. The commenters stated that to prevent abuse, the Quality Endorsement should state that producers who are intending to grow for the processing market as of the acreage reporting date are not allowed to purchase the fresh grades under the Quality Endorsement. The commenters agreed with the proposal to distinguish between the different grading standards, but recommend that, instead of explaining what the U.S. Standards are in this definition, a separate definition for ''U.S. Standards'' or ''U.S. Standards for Grades of Potatoes'' be created. Within this definition, it also would appear appropriate to include ''intended to be produced * * *'' This is because the producer is now required to inform the insurance provider of the insured's intention prior to any grade inspection that would include one made for an appraisal.

Response: The commenter is correct that the definition of ''grade inspection'' should state, ''produced for'' and has made this change. Producers should not be penalized for attempting to mitigate their losses by selling their damaged potatoes in the processing market. However, the commenter is also correct that something needs to be done to prevent producers who intend to sell their crop for processing from purchasing the fresh market option in order to increase their indemnity. Therefore, producers who are growing potatoes for processing or chipping should not be allowed to purchase protection under the fresh market standards and FCIC has revised section 10 of the Northern Potato Crop Insurance Quality Endorsement accordingly. There is no need to provide a separate definition of ''U.S. Standards'' or ''U.S. Standards for Grades of Potatoes''. The term ''grade inspection'' does not contain a definition of U.S. Standards or U.S. Standards for Grades of potatoes. It only provides a reference so the reader will know which standard is applicable. Because those standards may change, it would not be appropriate to include them in this rule.

Comment: A few commenters recommended optional units to be allowed by type as well as by the divisions allowed in the Basic Provisions in the Unit Division section. A commenter stated that since the production for each potato type (red, white, etc.) is stored and sold separately, the proposed rule would apply quality adjustment according to the final use of the potato production. The commenter stated that this proposal might require further study before implementation because of the effect it might have on the premium rates (if optional units are added by type but are not elected by the insured, the basic unit discount would apply). A commenter stated that currently production for each type is stored and sold separately. Each type has a separate end use, for example, reds are used for table stock and whites are used for chipping, and production records for each type are being kept separate. The commenter stated that the new proposed rule is also adding language for quality adjustments being made on final use of the potato. It only seems appropriate to allow the insured to have separate units based on each type that is listed in their respective Special Provisions.

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

Comment: A few commenters had concerns regarding the increasing of the percentage of the price election from 80 percent to 90 percent for unharvested acreage in proposed section 2(b). The commenters stated that FCIC originally included cost percentages for only 5 states. As most of the 5 states insure potatoes grown under irrigation, which would result in harvest costs being a lesser percentage of the total, due to the increased costs for irrigation, the commenters questioned whether these percentages reflect all areas of potato insurability. The commenters recommended the percentage remain at 80 percent.

Response: This program change recognizes reduced input costs for unharvested production. Costs of production budgets represent the best available method for determining input costs. FCIC reviewed all data available including irrigated and non-irrigated cost of production budgets. The harvest costs were calculated as a percent of total costs and 10 percent represents the average cost for harvesting. No change has been made.

Comment: A few commenters to proposed section 2(b) referenced the RMA Informational Memorandum issued 1–13–00, which clarified situations where the insured would not qualify for 100 percent of the price election even though the potato acreage met the definition of harvested, and recommended adding clarification to the policy provisions.

Response: Although the informational memorandum has expired, FCIC agrees with the commenter and has included information provided in the memorandum into section 2(c). The provision is revised to state that potatoes that are lifted to the soil surface but are not removed from the field for will still receive the reduced price election for unharvested acreage. The provision also clarifies cases in which potatoes are damaged to the extent producers in the area would not normally further care for the production by clearly stating the reduced price election will apply even if the producer elects to continue to care for the crop.

Comment: A comment was also received regarding section 2(c), expressing concern with the text ''will be deemed to have been destroyed''. The commenter stated that in addition to the Northern Potato Crop Insurance Provisions, this same phrase is found in the Crop Provisions for: Central and Southern Potatoes; Onions; Sugar Beets; Sweet Corn (Fresh Market); Tomatoes (Fresh Market); Tomatoes (Fresh Market—GPP); and Tomatoes (Processing). The commenter stated that currently FCIC has advised this means, ''No production will be counted against such acreage'' and that this would hold true even if such acreage was later harvested. The commenter stated that this is contrary to section 11(e) of these Crop Provisions, which states: ''All harvested production from the insurable acreage * * *'' is included as the total production to count for the unit. This should apply equally as well to the

amount of the appraised production determined during an appraisal for unharvested acreage. The commenter asked that this text be revised and clarified so all parties understand this provision with the same meaning and apply it equitably.

Response: While FCIC has not proposed any changes to section 2(c), revisions are necessary to conform to the changes made in section 2(b). FCIC has revised section 2(c) to clarify that the reduced price election for unharvested acreage applies when producers in the area would not normally continue to care for the crop, even if the producer elects to continue such care and has deleted the phrase ''deemed to be destroyed''. FCIC will clarify other Crop Provisions containing the ''deemed to be destroyed'' language when proposed revisions are made. When appraisals are required or when there is harvested production, any appraised or harvested production must be counted, regardless of whether the reduced price election is applicable.

Comment: A commenter recommended removing section 2(c) and allowing section 11 to take order of precedence. If a loss is paid on acreage and the insured later harvests those acres, the loss should be reworked to include the production sold from those acres.

Response: Section 2(c) is necessary to clarify situations in which the reduced price election applies. As stated in the response above, FCIC has removed the provision relating to the crop having been deemed destroyed and any production to count must be determined in accordance with applicable policy provisions.

Comment: A few commenters recommended that section 9 be clarified to indicate, ''Fire due to lightning'' (as in the draft Tobacco Crop Provisions Proposed Rule) or ''Fire due to natural causes'' is covered (at least until the ''Combo'' Basic Provisions are issued with the clarification that all insured perils must be naturally occurring).

Response: FCIC has not proposed any changes to section 9. Further, section 12 of the Basic Provisions already clearly states all causes of loss listed in the Crop Provisions must be due to a naturally occurring event. No change has been made.

Comment: A few commenters requested that proposed section 11(d)(1)(iv) be revised to read as follows: ''Unharvested production, including unharvested production on insured acreage that you intend to put to another use or abandon, or acreage damaged by insurable causes * * *''. This ties the intended use of both ''put to another'' and ''abandon'' together.

Response: FCIC has revised section 11(d)(1)(iv) accordingly.

Comment: A few commenters stated that under proposed section 11(e)(2), they fully agree potatoes should be sampled for quality at the end of the insurance period if the Storage Coverage Endorsement is not in effect. If the Storage Coverage Endorsement is in effect, the samples must be obtained within 60 days of the end of the insurance period. However, insurance providers often have little control over when the actual grading is completed because state/federal graders do the actual grading of the samples. The commenters stated that it is possible with a wide spread loss situation, the state/federal graders would not be able to complete the grading within 21 days of sampling, and the growers should not be penalized if this is the case. The commenters stated that there should be some flexibility built into this 21-day grading period.

Response: The proposed policy for 1998 included a 7-day grading period. The comments received for that proposed rule requested a longer time-period. FCIC granted a 21-day time-period in final rule. The longer time-period was provided to give flexibility to complete the grading process. In addition, since the provision added to the policy in 1998, FCIC is not aware of any instances where the 21-day grading period has proven to be inadequate as a result of wide-spread losses. No change has been made.

Comment: A few commenters stated that under proposed section 11(e)(3) it does not make sense for the basic policy to state, ''Prior to any quality adjustment, you notify us of the intended use of the potatoes so the applicable United States Standards will be applied.'' The standards that apply should be based on the quality option the grower purchased.

Response: In some cases, it may not be evident which standards should apply based on the options a producer purchased. A producer who purchased the Northern Potato Crop Insurance Quality Option may grow for the processing french fry market, and another producer who elected the same endorsement may grow for the chipping market. In order to apply the proper standard, a producer must notify the insurance provider of the intended use. No change has been made.

Comment: A few commenters stated the phrase, ''Prior to any quality adjustment, you must notify us of the intended use * * *'' in proposed section 11(e)(3) makes it sound as though the insured is the one doing the quality adjustment. The commenters also recommended changing ''* * * the applicable United States Standards will be applied'' to ''* * * the appropriate United States Standards will be applied'' to avoid having ''applicable'' and ''applied'' in the same phrase, or alternatively, ''* * * the United States Standards will be applied according to the definition of ''grade inspection''.

Response: The commenter is correct that the term ''applicable'' should be changed to ''appropriate'' and has revised the provision accordingly. FCIC is not sure how the provision indicates the producer is performing quality adjustment. The provision only specifies the time frame by which the producer must provide notice of the intended use of the potatoes so the appropriate grading standards can be used. The definition of ''grade inspection'' makes it clear who will be conducting the quality adjustment.

Comment: A few commenters requested section 11(f) be revised to state: ''Potato production to count that is eligible for quality adjustment * * *'' The change should be made in section 11(f) since the first two phrases in proposed section 11(g) and section 11(f) are identical otherwise.

Response: FCIC agrees with the commenters. Although not in proposed rule, this is simply a conforming amendment required for section 11(f) to be consistent with the changes in proposed section 11(g) since both provisions were otherwise identical.

Comment: A few commenters requested that, under proposed sections 11(g)(1) and (2), FCIC consider if the various references in these subsections to ''(60 days after the end of insurance period if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable)'' and two references to ''(61 or more days * * *)'' could be moved to the Storage Coverage Endorsement. That endorsement has the different deadline and is of interest only to those who take that endorsement. The commenters stated that the remaining provisions in the Northern Potato Crop Insurance Provisions would be easier to read without these parenthetical interjections. Also, it would help to be consistent in referring either to ''the end of insurance period'' or ''the end of the insurance period'' throughout.

Response: Proposed section 11(g) provides the manner in which quality adjustment will be conducted under the policy. The Northern Potato Crop Insurance Storage Coverage Endorsement does not change this calculation. It only adjusts the time frame. Therefore, if FCIC were to

remove the parentheticals, it would have to repeat the calculations in each of the applicable endorsements which would increase their complexity and could result in potential conflicts. FCIC agrees that the references to the end of the insurance period should be the same and has changed the references throughout the Crop Provisions and Endorsements to specify the ''end of the insurance period.''

Comment: A few commenters asked what is meant by the statement ''* * * Dividing the price that is received, or will be received * * *'' in proposed section 11(g)(2)(i)(A). Oftentimes the crop is put into storage and it will be up to ten months before the crop is sold. The commenters asked whether this means the insurance provider should hold the claim open until the crop is actually sold. The commenters stated that, with the volatility inherent in potato pricing, insurance providers cannot be expected to know what price will be received 10 months after harvest, and they cannot use a local market price because that price will not reflect the damage of the specific insured's crop. If insurance providers wait until the potatoes are pulled out of storage and sold, it will be almost impossible to correlate production in the cellar with sold production as there will be shrinkage and rot showing up in storage and the packing shed or processor will likely blend between units before providing price and production information. The commenters stated that the language that states the amount of production will be the greater of the amount determined off the charts or the salvage value based on the price that will be received will be impossible to administer.

Response: There have been problems in the past where the actual amount of production sold exceeded the amount of production used to determine the claim. FCIC has a responsibility to ensure that producers only receive the amount of indemnity to which they are entitled. Since the amount of production to count is adjusted based on the price received for the damaged production, the insurance provider must establish the value of the damaged production based on the sales records when the crop is sold. However, the use of the phrase ''will be received'' allows adjustment if the producer and purchaser can agree on a price even if the purchaser has not paid for the crop yet. This will minimize any delays in the loss adjustment process. FCIC understands the amount of production sold and the amount in storage at the end of the insurance period may not be the same because there will be some production loss resulting from shrinkage, etc. However, the loss will be based on the amount of production determined in accordance with section 11. The sales records will only be used to establish the price of damaged production for the purposes of quality adjustment.

Comment: A commenter stated that the potato industry and grower groups have concerns with proposed section 11(g)(2)(ii) because combining the charts is difficult or possibly not workable due to the dramatic difference in the causation and temporal impacts of damage from events as different as freeze and rot. The commenter stated that it was not able to determine the effect of this change on coverage as there are different types of damages and the proposed chart, which details the changes and damages, is not published with this proposed rule. The commenter asked for an opportunity for discussion with FCIC regarding a single chart to handle these issues.

Response: FCIC combined the adjustments for tuber rot and freeze damage to adequately reflect the value lost due to soft rot and freeze and to ease the administration of the quality adjustment provisions. The adjustment factors were included in proposed section 11(g)(2)(ii)(A) so any interested party could determine the effects of the changes on coverage. FCIC has determined that although the causes are dissimilar, the amount of damage and effect of the damage is sufficiently similar that it made sense to combine these causes into one table to ease the administration of the policy, especially in cases where both causes of loss may have occurred.

Comment: A commenter stated: that the current policy allows producers the opportunity to market potatoes even when a qualifying loss exists. The producer is allowed to accept 85 percent of the indemnity and continue to market the crop. This has been a positive aspect to growers motivated to perform in the market and positive to FCIC by reducing the percent of indemnity paid. The commenter states that the proposed changes would remove the capability of a grower to market the production while receiving a smaller indemnity. The commenter stated that the cost of the program will increase as producers maximize their indemnity and destroy the production. The production to count will decrease, as will their APH and therefore their ability to properly insure in the future. The commenter also stated that the proposed rule creates timeline limitations that may be unrealistic to the grower's normal market channels and delivery period.

Response: In some cases, under current quality adjustment provisions, producers sold more production than the amount used to determine the production to count. For example, the previous provision provided that only 15 percent of production would be production to count when 10.4 percent of the production had tuber rot and production was retained by the producer for more than 60 days after the end of the insurance period. This represented a vulnerability in the program because FCIC only has the authority to pay for actual production losses. In cases where only 15 percent of production is production to count, the resulting indemnity payment represents a significant loss of the crop. If the producer is also able to market the same production for fair market value, the producer is receiving both an indemnity payment and market value on the same production. In order to reduce this vulnerability, a change has to be made in the policy provisions for quality adjustment procedures. Now producers will be paid an indemnity based on the actual production to count determined from the price received for sold production or the price agreed to between the producer and the purchaser for production to be sold in the future instead of the assignment of a set amount of production to count. FCIC is unaware of any timeline limitations caused by this change. Producers may still market their crop at any time.

Comment: A few commenters commented on the prevented planting provisions in section 13. The commenters stated that they recommend eliminating the option to increase prevented planting coverage levels (in the second sentence) and that FCIC review the amount that is being paid for prevented planting purposes. The commenters stated that the 25 percent payment rate may be excessive for potatoes. The commenters stated that if this sentence is retained, the reference to ''* * * limited or additional coverage * * * should be updated to ''* * * additional coverage * * *''

Response: Since no changes to this section were proposed to section 13, the recommended changes would be substantive in nature and the public was not provided an opportunity to comment on the recommended changes, the recommendations cannot be incorporated in the final rule. No change has been made.

Northern Potato Crop Insurance Quality Endorsement

Comment: A few commenters recommended removing the references to different deadlines in proposed

sections 5(a)(1) and (2) and sections 6(a) and (b), if the Storage Coverage Endorsement is elected in accordance with the comments provided to proposed sections 11(g)(1) and (2) of the Northern Potato Crop Insurance Provisions.

Response: As stated above in response to the same suggestion for proposed sections 11(g)(1) and (2) of the Northern Potato Crop Insurance Provisions, this change would add complexity to the Northern Potato Crop Insurance Storage Coverage Endorsement and would not improve clarity. No change has been made.

Comment: A few commenters recommended FCIC minimize the repeated phrases in proposed section 5(a)(1) and in equivalent subsections of the Northern Potato Crop Provisions. The commenters recommend stating ''For potatoes for which a price is agreed upon between you and a buyer, or that are delivered to a buyer with 21 days * * *''. Additional comments were received regarding proposed section 5(a)(2)(i)(A). The commenters indicated if a price has not been agreed upon, it will not be possible for insurance providers to know what price ''will be received'' unless they wait to finalize the claim until the production has been sold.

Response: As stated above, it would be more confusing and add more complexity to the Northern Potato Crop Insurance Quality Endorsement if the provisions were moved. As stated above, claims will have to remain open until production is sold or a price is agreed upon between the producer and the purchaser. No change has been made.

Northern Potato Crop Insurance Processing Quality Endorsement

Comment: A few commenters recommended removal of the proposed definition of ''percentage factor'' since it is also included in the Northern Potato Crop Insurance Quality Endorsement. Proposed section 2(a) states that this endorsement also requires that the Northern Potato Crop Insurance Quality Endorsement be in effect. Therefore, there is no need to have this definition in the Northern Potato Crop Insurance Processing Quality Endorsement as well.

Response: To avoid any potential conflicts, there should only be one definition of a term in the policy documents unless exceptions are being made. However, to enable the producer to locate the definition, FCIC is including a cross reference to the definition in the Northern Potato Quality Endorsement.

Comment: A commenter inquired about proposed section 2(b)(1), which requires a copy of the processor contract to be submitted on or before the acreage reporting date. The commenter is concerned the contract may not be immediately available so as to comply with this provision. In recent years, contract negotiations have continued into the planting season as a tactic to force growers into completing the negotiation process. Therefore, the commenter states that there is a need for a flexible time line for providing the contract to FCIC.

Response: Since the acreage reporting date is well after the final planting date, most contracts should be executed by the acreage reporting date. Additionally, since insurance under the Northern Potato Crop Insurance Processing Quality Endorsement is only provided for acreage grown under contract, the producer must know by the acreage reporting date the acres that can be reported for insurance under the endorsement. No change has been made.

Comment: A commenter asked about proposed section 5(b), which states that the number of acres insured under the endorsement will not exceed the actual number of acres planted to the potato types needed to fulfill the contract. However, proposed section 5(a) states all production of this type of potato must be covered. The commenter stated that excluding a small percentage of the production, as in proposed section 5(b), is contradictory to proposed section 5(a). As matter of production efficiency growers will generally complete the planting of a tract of land, particularly under irrigated conditions, which may create an uninsured portion of the field/crop. Processors generally purchase the ''overrun'' production from these small portions of the crop. The commenter stated that making them ineligible to be covered based on contract volume will reduce participation under the endorsement, reduce premium, and may worsen the loss ratio for this endorsement.

Response: FCIC has revised the provision to indicate all acreage will be insurable unless the number of acres planted exceeds the amount necessary to fulfill the contract. In that case, the excess amount of acres will be insured under the Northern Potato Crop Insurance Quality Endorsement. FCIC expects the number of acres not covered under the processing endorsement will be minimal and will not impact program participation. Additionally, the acres not covered under the processing endorsement will still be covered under the quality endorsement.

Comment: A commenter expressed concern in proposed section 6(a) regarding the requirement for production to be rejected by the processor. The commenter stated the problem that potatoes cannot be adjusted for quality if the potatoes are not rejected and there are occasions where the quality deficiencies (i.e., specific gravity, fry color and sugar ends, and other internal quality problems) result in a reduction of the contract price the grower receives from the buyer, not rejection. As a result, some growers are being docked by the buyer for these deficiencies but cannot receive an indemnity payment. The requirement for a letter of rejection from the processor is not fair and essentially denies the farmer his/her right of ownership of the potatoes and the right to receive indemnity payments from the policy.

Response: FCIC has clarified section 6 of the Northern Potato Crop Insurance Processing Quality Endorsement to state potatoes valued less than the maximum price election because they do not meet the quality standards in the endorsement may qualify for quality adjustment. FCIC has also separated out the provisions that determine the circumstances that must occur before the potatoes are eligible for a quality adjustment from the actual quality standards and added a new section 7 for clarity and ease of reading. Now the provisions will allow quality adjustment for potatoes that have been rejected by the processor as well as those that have been discounted below the base contract price (and valued less than the maximum price election) because they do not meet any of the standards in redesignated sections 7(a) through (d).

Comment: A few commenters recommended including a definition for ''rejected'' under section 1 because most processors have a sliding scale for pricing that includes bonuses for premium quality and reductions for less than premium quality. For example, even though the processor payment is based on number two grade, the contract may provide for a bonus if there are greater than 40 percent number one grade potatoes, and they may reduce the base price if there are less than 40 percent number one potatoes in the lot. The commenters stated that there is confusion about whether to use the salvage value if the potatoes receive less than the base price. The commenters stated that FCIC has provided clarification on this issue, and the adjustment only kicks in when the potatoes are rejected. To be considered rejected, the potatoes must be below the minimum standards, and the growers

must be released from their contract. The commenters state that the clarification provided by FCIC needs to be incorporated into the policy. Oftentimes the processor will reject the potatoes for being below the minimum standards in the contract and then buy them back. This is an acceptable practice and the adjustment should apply since the potatoes are released and a new contract is negotiated. The commenters recommended ''rejected'' be defined as not acceptable based on the minimum standards in the contract.

Response: Clarification is needed with respect to production to count for potatoes failing to meet the quality standards. To address this issue, FCIC has revised the language to remove the reference to rejection and include adjustments to production to count when potatoes are valued less than the maximum price election for failure to meet the quality standards in redesignated section 7.

Comment: A few commenters stated proposed sections 6(a) and (b) are so lengthy they are difficult to follow. A thorough revision could be difficult and time-consuming, but a few small changes might help somewhat. The commenters recommended removing some of the multiple references to ''the production to count * * * will be determined'' and similar phrases. In addition, proposed sections 6(a)(1) and (2) could begin ''If a price. * * *'' instead of ''For potatoes for which a price. * * *''

Response: FCIC has revised the proposed provision to eliminate duplication. The proposed sections 6(a) and (b) have been separated into redesignated sections 6, 7 and 8 to make them easier to read and to reduce redundancy. Clarifications have also been made in redesignated sections 8(a) and (b) to make them easier to read.

Comment: A few commenters objected to the language in proposed section 6(a)(2)(i)(A) referring to the ''price that is received, or will be received.'' The commenters state that the old language is preferable. The old language said if a price is not received or agreed upon in writing, production to count will be determined in accordance with the Northern Potato Crop Insurance Quality Endorsement. The commenters stated that this new language is really confusing (see comments above for section 11(g)(2)(i)(A) of the Northern Potato Crop Provision).

Response: As stated above, claims cannot be finalized until after a price has been determined for damaged production. The provision states ''received'' or ''will be received'' because a price may have been settled on, but the actual financial transaction may not yet have taken place. In cases where there is no price received and there is no agreed upon price, the claim must remain open until the price is known.

Comment: A few commented on proposed sections 6 and 7, regarding the possibility of moving the references to different deadlines if the Northern Potato Crop Insurance Storage Endorsement is elected. The commenter referred to the comments provided to proposed sections 11(g)(1) and (2) of the Northern Potato Crop Provisions and proposed section 5(a)(1) and (2) and 6(a) and (b) of the Northern Potato Crop Insurance Quality Endorsement.

Response: As stated above, moving the deadlines will not improve clarity and will add complexity to the other endorsements. No change has been made.

Comment: A few commented regarding proposed section 8 (redesignated section 9) and asked FCIC to consider moving instructions for determining any quality adjustment to section 6 or possibly put into a definition of ''U.S. Standards,'' as suggested for the Northern Potato Crop Provisions above. Proposed section 8 states (redesignated section 9) ''all quality determinations must be based upon a grade inspection using the United States Standards for Grades of Potatoes for Processing or Chipping.''

Response: It is not practical to put the definition of such standards because they are not determined by FCIC and the policy must be able to quickly adjust to any changes made to the standards by the applicable government agency. Therefore, the policy contains a reference to the standards that are used. However, redesignated section 9 has been changed to include United States Standards for Grades of Potatoes for Processing or the United States Standards for Grades of Potatoes for Chipping.

Comment: A few commented regarding proposed section 9 (redesignated section 10). The commenters question whether the changes are necessary and asked if the statements in the actuarial documents also will be revised to ''U.S. No. 1 grade'' and ''U.S. No. 2 grade''. This same change was not made in section 10 of the Northern Potato Crop Insurance Quality Endorsement.

Response: FCIC made changes for clarification purposes and will make the same changes in the section 10 of the Northern Potato Crop Insurance Quality Endorsement, as well as the actuarial documents.

Potato Crop Insurance Certified Seed Endorsement

Comment: A few commenters had concerns with provision proposed in section 1 that stated ''Any additional premium paid for coverage under the Northern Potato Storage Coverage Endorsement will not apply to the additional coverage provided under the terms of this endorsement''. The commenters are concerned that while the Background explanation in the proposed rule makes it clear the Northern Potato Crop Insurance Certified Seed Endorsement extends the time-period to discover damage beyond harvest that results from a cause of loss that occurred during the insurance period, the actual endorsement does not make this clear. The commenters point out that section 8 stated, ''Nothing herein extends the insurance period beyond the time period specified in section 8 of the Northern Potato Crop Provisions and section 11 of the Basic Provisions.'' The commenters also stated that there should be something in the Northern Potato Crop Insurance Certified Seed Endorsement that overrides section 14(c) of the Basic Provisions, which states you must submit a claim for indemnity declaring the amount of your loss not later than 60 days after the end of the insurance period unless you request an extension in writing. The commenters stated that the section references in redesignated sections 4 and 7 needs to be revised as well.

Response: Although notification of failure to make certified seed can occur after the end of the insurance period, the damage and insured cause of loss must occur within the insurance period. FCIC has revised the provision to make it clear that the insurance period under this endorsement has not been extended. The section references in redesignated sections 4 and 7 should be corrected and FCIC has done so. Redesignated section 8 was also revised to clarify the time-period for the producer to submit any claim.

Northern Potato Storage Coverage Endorsement

Comment: A commenter requested that sub-lethal freeze become an insurable cause of loss under the Northern Potato Crop Insurance Storage Coverage Endorsement. The commenter further stated that freeze should be covered in storage. Sub-lethal freezing does not show up during harvest, and can be confused with soft rot by graders who are grading potatoes under the storage coverage. The commenter recommends the freeze damage that was

not apparent at harvest, but becomes apparent in storage be covered under the Northern Potato Crop Insurance Storage Coverage Endorsement and the storage coverage rates increased accordingly to cover this risk.

Response: Freeze damage that occurs in the field is apparent at harvest and there is no need to extend discovery period for freeze. According to industry experts sub lethal freeze can also be detected at harvest. If the tuber is cut open, it will brown much faster than a tuber that is not damaged. Therefore, to the extent this damage can be detected at harvest it would be covered as freeze damage. No change has been made.

Comment: A few commenters had concerns with proposed section 5(c)(2) and recommended allowing some flexibility regarding the 21-day grading period because it is possible state or federal graders will not be able to complete grading within this time period.

Response: The proposed policy for 1998 included a 7-day time-period. In response to requests at that time to extend the time-period, a 21-day period was granted. The longer time-period was provided to give flexibility to complete the grading process. Since it is unlikely that all of the sampling will take place at the same time, the grading time-period of 21 days should not be a hindrance. In addition, FCIC is not aware of any problems with the grading time-period and, therefore, does not see a need to extend the time allotment. No change has been made.

Comment: A few commenters were in favor of reducing the storage period. Proposed sections 11(g)(1) and (2) of the Northern Potato Crop Insurance Provisions, and the Northern Potato Crop Insurance Storage Coverage Endorsement require samples to be obtained within 60 days of the end of insurance period. However, FCIC notes on page 42764 of the Proposed Rule that, ''several potato industry experts state that virtually all damage that occurs within the insurance period will become apparent within 45 days after production is harvested''. Based on this, the commenters recommended the time-period be reduced from the current 60 days to 45 days.

Response: While FCIC has revised the provision to be more clear, FCIC has not proposed to revise the 60-day period for discovery of damage that occurred during the insurance period. Since a change in the discovery period would be a substantive change and the public was not provided an opportunity to comment, FCIC cannot make the recommended change.

Comment: A comment was received stating that FCIC is incorrect when it concluded that no extension of the 60 day storage coverage period was necessary because ''several potato industry experts state virtually all damage that occurs within the covered insurance period will become apparent within 45 days after production is harvested.'' The commenter stated that the findings from this review actually present the contrary result and are exactly why the coverage is needed. Problems occur in storage that are caused by problems that occurred in the field that may be unrecognizable at harvest. With today's improved technology and storage capabilities, field problems may not display themselves until a later time. Differences in production, storage, and management cannot ensure that virtually all damage will become apparent within 45 days of harvest. It is impossible to predict with 100 percent certainty how each crop will react when put into storage.

Response: It is possible that it may take longer than 45 days to discover all possible damage that occurred during the insurance period. FCIC did not propose to reduce the period to 45 days for this reason. At the request of producers, RMA reviewed the storage coverage issue in detail and determined the current provision of the 60-day discovery period is sufficient. FCIC did not discover any evidence of any damage that cannot be discovered within the current 60 day period. No change has been made.

Central and Southern Potato Crop Insurance Provisions

Comment: A few commenters stated that with the addition of the text ''and any other states or counties if allowed by the Special Provisions'', it will need to be made clear in the Special Provisions whether the specific state and county is covered under the Central and Southern Potato Crop Insurance Provisions.

Response: Once the final rule is published, any additional states or counties to be included under the Central and Southern Potato Crop Insurance Provisions will be specified in the appropriate Special Provisions.

Comment: A commenter provided the same comments they did to the Northern Potato Insurance Crop Provisions regarding the definition of ''grade inspection'', ''unit division'', the increase in price election from 80 percent to 90 percent for unharvested acreage, and naturally occurring causes of loss.

Response: FCIC reiterates its responses here and to the extent that it has made changes in the Northern Potato Crop Insurance Provisions, the same changes will be made to the Central and Southern Potato Crop Insurance Provisions.

Comment: A few commented regarding proposed section 4(c). The commenters did not think it is necessary to add a fourth contract change date for the states and counties covered under the Central and Southern Potato Crop Insurance Provisions. Even if a fifth cancellation/termination date is deemed necessary, as proposed in section 5, the states with the new January 31 cancellation/termination date could stay under the September 30 contract change date, with the states/counties with a cancellation/termination date of November 30 or December 31.

Response: The commenter is correct and the states and counties covered under the cancellation and termination date of January 31 will remain under the September 30 contract change date.

Comment: A few commenters stated that they do not think that the states of Delaware, Maryland, New Jersey, North Carolina and Virginia need to have a cancellation/termination date of January 31, but should continue to be included under the December 31 date.

Response: This change was requested from interested parties who felt that January 31 would more accurately reflect the growing conditions in those areas. FCIC reviewed the request and determined that the January 31 date was more appropriate.

Comment: A few commenters had concerns with proposed section 10(b)(1). The commenters asked FCIC to consider revising the last phrase from ''* * * occurs after potatoes have been placed in storage'' to ''* * * occurs or becomes evident in storage'' to match the earlier phrase and to match the Northern Potato Crop Insurance Provisions.

Response: FCIC changed the provision accordingly.

Comment: A comment was received regarding section 12(d)(1)(iv). The commenter stated it appears there should be reference made to section 12(e) within this section because unharvested, appraised production is also determined based on section 12(e).

Response: FCIC is not clear what is meant by this comment. Reference is already made to section 12(e) in section 12(d)(1)(iv). No change has been made.

Comment: A few commenters had concern regarding section 12(d)(1)(iv)–(v). The commenter asked if these provisions should be revised as proposed in the Northern Potato Crop

Insurance Provisions (i.e., reworded and combined into one).

Response: Both the Northern Potato Crop Insurance Provisions and the Central and Southern Potato Crop Insurance Provisions should have the consistent language where it is appropriate and feasible to do so. Section 12(d)(iv) will be revised and section 12(d)(v) will be deleted in the Central and Southern Potato Crop Insurance Provisions to be consistent with the language in the Northern Potato Crop Insurance Provisions.

Comment: A comment was received regarding section 12(d)(2). The commenter indicated the language in this subsection is not the same as in the Northern Potato Crop Provisions and recommended that one or both be revised to match. The Central/Southern Crop Insurance Provisions state ''All harvested production from the insurable acreage determined in accordance with section 12(e)(1).'' However, the Northern Crop Insurance Provisions state ''All harvested production from the insurable acreage (the amount of production prior to the sorting or discarding of any production).''

Response: This provision cannot be made consistent. In the Central and Southern Potato Crop Insurance Provisions, only ''marketable lots'' of potatoes are included as production to count. In the Northern Potato Crop Insurance Provisions, all harvested production is counted but can be adjusted for quality deficiencies. No change has been made.

Comment: A comment was received regarding the first paragraph of proposed section 12(e). The commenter recommended removing the phrase ''With the exception of production with external defects''. This sentence currently gives the impression that this section does not pertain to those potatoes that have external defects, which is not accurate. Also, as the proposed rule reads, this section is not specific as to how internal defect determinations are made. The commenters recommend changing proposed section 12(e)(6)(ii) to read ''Does not meet the standards of grading U.S. No. 2 or better on a field run sample due to internal defects; or''. The commenter believes this change would clarify how samples are to be taken to determine quality when internal defects are in question.

Response: Clarification is needed regarding production with external defects. The provisions have been revised to clarify how such production will be handled for claims purposes. Further, section 12(e) specifically requires adjustments to be based on grade inspections, which determine the manner in which samples are to be taken. Therefore, the recommended change is not necessary.

Comment: A comment was received regarding proposed section 12(e)(1). The commenter disagreed with the revised text and recommend retaining the provision currently being used. The revised text now allows a determination of practical to separate production for unharvested production. This should not be allowed as unharvested production can always be separated.

Response: Only those potatoes not grading U.S. No. 2 due to external defects are eligible for an adjustment. It does not matter whether the acreage is harvested or not. Further, the determination of whether it is practical to separate production is not dependent upon whether production is harvested or unharvested. The ability to separate production depends on the kind of damage that occurred and the method available to separate the damaged production. No change has been made.

Comment: A question was asked regarding proposed section 12(e)(3). The commenter asked if there is any concern in the situation where a grade inspection must be made for unharvested, appraised production, the insured will always state his/her intended use will be the use that provides the most favorable grading standards for the insured. The producer will not be harvesting the production and the true intended use will not be known.

Response: There is some concern the producer may specify the most favorable standard. However, given the fact a standard must be used to grade the potatoes, a standard must be identified. Every attempt should be made to use the most appropriate standard. For example, the type of potato produced could determine the standard used. If the type is for multiple uses and there is concern about which standard to apply, the insurance provider can ask for previous records and make a determination based on previous production history. The provision has been revised accordingly. FCIC has also similarly revised the Northern Potato Crop Insurance Provisions.

Comment: A comment was received regarding proposed section 12(e)(3). The commenter suggested the text requiring the insured to indicate the intended use prior to a grade inspection included in section 11 (Duties in the Event of Damage or Loss).

Response: The placement of the provision under section 11, Duties in the Event of a Loss, does not substantially improve or clarify the provision. No change has been made.

Comment: A few commented regarding the prevented planting provisions. The commenters recommend eliminating the option to increase prevented planting coverage levels (in the second sentence), as well as reviewing the amount that is being paid for prevented planting purposes (the 25 percent payment rate may be excessive for potatoes). However, if this sentence is retained, the reference to ''* * * limited or additional coverage * * *'' should be updated to ''* * * additional coverage * * *''

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

In addition to the changes described above, FCIC has made minor editorial changes and the following changes:

1. In all policies, standardized the references to the ''Northern Potato Crop Provisions,'' ''Northern Potato Quality Endorsement,'' ''Northern Potato Processing Quality Endorsement,'' ''Potato Certified Seed Endorsement,'' and ''Northern Potato Storage Coverage Endorsement.''

Northern Potato Crop Insurance Provisions (§ 457.142)

1. Revise the definition of ''grade inspection'' to include a standard ''for all other potatoes, The United States for Grades of Potatoes'' and to include the ''United States Standards of Potatoes for Seed''. This change is needed to recognize the separate U.S. quality standard for grading seed potatoes.

2. Revise the end of the insurance period in Kansas to October 25.

Potato Crop Insurance Certified Seed Endorsement (§ 457.145)

1. Corrected the citation in redesignated section 3 by replacing the number 5 with the number 4.

2. Amend redesignated section 4 by adding paragraphs (a) and (b). These provisions were inadvertently omitted in the previous version.

Central and Southern Potato Crop Insurance Provisions (§ 457.147)

1. Correct the spelling of ''Gains'' to Gaines County, Texas in section 9(e).

2. Amend section 9 by revising paragraphs (a) through (e) and adding a new paragraph (f) to change the end of insurance dates for North Carolina and Virginia. Requests were received from

state agriculture agencies and state extension personnel to extend the end of the insurance period in these states. According to industry experts, changes in cultural practices have extended harvesting past the current dates. Therefore, certain varieties will require the extension of the end of the insurance period so adequate insurance protection can be offered. Although this information was received after the proposed rule was published, this change would give the producers sufficient time to complete harvest without going beyond the insurance period.

List of Subjects in 7 CFR Part 457

Crop insurance, Potatoes, Reporting and recordkeeping requirements.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2008 and succeeding crop years for the Northern Potato Crop Insurance Provisions, Northern Potato Crop Insurance Quality Endorsement, Northern Potato Crop Insurance Processing Quality Endorsement, Potato Crop Insurance Certified Seed Endorsement, and the Northern Potato Crop Insurance Storage Coverage Endorsement. The Central and Southern Potato Crop Insurance Provisions changes will apply for the 2009 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

■ 2. Amend § 457.142 as follows:
■ a. Revise the introductory text;
■ b. Remove the paragraph regarding document priority immediately preceding section 1 and revise the remaining paragraph below the heading ''Northern Potato Crop Provisions'' and before section 1;
■ c. Amend section 1 by revising the definitions of ''Certified seed'' and ''Grade inspection'', adding the definition of ''Potato certified seed program'', and removing the definitions of ''Processor contract'' and ''Reduction percentage'';
■ d. Amend section 2 by revising paragraphs (b) and (c);
■ e. Amend section 8 by revising paragraphs (d) and (e), and adding a new paragraph(f); and
■ f. Amend section 11 as follows:
■ A. Revise paragraph (b)(7);
■ B. Remove paragraph (d)(1)(iv), redesignate paragraph (d)(1)(v) as (d)(1)(iv) and revise newly redesignated paragraph (d)(1)(iv) introductory text;
■ C. Revise paragraph (e)(2);
■ D. Add new paragraph (e)(3);
■ E. Revise paragraph (f);
■ F. Revise paragraph (g); and
■ G. Remove paragraph (h).

The added and revised text reads as follows:

§ 457.142 Northern potato crop insurance provisions.

The Northern Potato Crop Insurance Provisions for the 2008 and succeeding crop years are as follows:

* * * * *

These provisions will be applicable in: Alaska; Humboldt, Modoc, and Siskiyou Counties, California; Colorado; Connecticut; Idaho; Indiana; Iowa; Kansas; Maine; Massachusetts; Michigan; Minnesota; Montana; Nebraska; Nevada; San Juan County, New Mexico; New York; North Dakota; Ohio; Oregon; Pennsylvania; Rhode Island; South Dakota; Utah; Washington; Wisconsin; and Wyoming; and any other states or counties if allowed by the Special Provisions.

* * * * *

1. Definitions

* * * * *

Certified seed. Potatoes that were entered into the potato certified seed program and that meet all requirements for production to be used to produce a seed crop for the next crop year or a potato crop for harvest for commercial uses in the next crop year.

* * * * *

Grade inspection. An inspection in which samples of production are obtained by us, or a party approved by us, prior to the sale, storage, or disposal of any lot of potatoes, or any portion of a lot and the potatoes are evaluated and quality (grade) determinations are made by us, a laboratory approved by us, or a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, in accordance with the United States Standards for Grades of Potatoes. The United States standards used to determine the quality (grade) deficiencies will be: For potatoes produced for chipping, the United States Standards for Grades of Potatoes for Chipping; for potatoes produced for processing, the United States Standards for Grades of Potatoes for Processing; for potatoes produced for seed, the United States Standards for Grades of Seed Potatoes; and for all other potatoes, the United States Standards for Grades of Potatoes. The quantity and number of samples required will be determined in accordance with procedure issued by FCIC.

* * * * *

Potato certified seed program. The state program administered by a public agency responsible for the seed certification process within the state in which the seed is produced.

* * * * *

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

* * * * *

(b) If the production from any acreage of the insured crop is not harvested, the price used to determine your indemnity will be 90 percent of your price election. This requirement is not applicable to the certified seed endorsement price election.

(c) The price election for unharvested acreage will apply to any acreage of potatoes damaged to the extent that similarly situated producers in the area would not normally care for the potatoes even if you choose to continue to care for or harvest them. Potatoes that are lifted to the soil surface and not removed from the field will also receive the price election for unharvested acreage.

* * * * *

8. Insurance Period

* * * * *

(d) October 20 in Maine;

(e) October 25 in Kansas; and

(f) October 31 in Humboldt, Modoc, and Siskiyou Counties, California; Connecticut; Idaho; Massachusetts; San Juan County, New Mexico; New York; Ohio; Oregon; Pennsylvania; Rhode Island; and Washington.

* * * * *

11. Settlement of Claim

* * * * *

(b) * * *

(7) Multiplying the result of section 11(b)(6) by your share.

For example:

You have a 100 percent share in 100 harvested acres of potatoes in the unit, with a guarantee of 150 hundredweight per acre and a price election of $4.00 per hundredweight. You are only able to harvest 10,000 hundredweight. Your indemnity would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee;

(2) 15,000 hundredweight × $4.00 price election = $60,000.00 value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count;

(6) $60,000.00 − $40,000.00 = $20,000.00 loss; and

(7) $20,000.00 × 100 percent = $20,000.00 indemnity payment.

You also have a 100 percent share in 100 unharvested acres of potatoes in the same unit, with a guarantee of 150 hundredweight per acre and a price election of $3.60 per hundredweight. (The price election for unharvested acreage is 90.0 percent of your elected price election ($4.00 × 0.90 = $3.60.)) This unharvested acreage was appraised at 35 hundredweight per acre for a total of 3500 hundredweight as production to count. Your total indemnity for the harvested and unharvested acreage would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the harvested acreage, and

100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the unharvested acreage;

(2) 15,000 hundredweight guarantee × $4.00 price election = $60,000.00 value of guarantee for the harvested acreage, and

15,000 hundredweight guarantee × $3.60 price election = $54,000.00 value of guarantee for the unharvested acreage;

(3) $60,000.00 + $54,000.00 = $114,000.00 total value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count for the harvested acreage, and 3500 hundredweight × $3.60 = $12,600.00 value of production to count for the unharvested acreage;

(5) $40,000.00 + $12,600.00 = $52,600.00 total value of production to count;

(6) $114,000.00 − $52,600.00 = $61,400.00 loss; and

(7) $61,400.00 loss × 100 percent = $61,400.00 indemnity payment.

* * * * *

(d) * * *

(1) * * *

(iv) Unharvested production, including unharvested production on insured acreage you intend to put to another use or abandon, or acreage damaged by insurable causes and for which you cease to provide further care, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or cease providing care for the crop. This unharvested production may be adjusted in accordance with sections 11(e), (f), and (g); and the value of all unharvested production will be calculated using the reduced price election determined in section 2(b). If agreement on the appraised amount of production is not reached:

* * * * *

(e) * * *

(2) A grade inspection is completed no later than 21 days after the end of the insurance period (if the Northern Potato Storage Coverage Endorsement is applicable, samples must be obtained within 60 days after the end of the insurance period and quality (grade) determinations must be completed with 21 days of sampling); and

(3) Prior to any grade inspection, you must notify us of the intended use of the potatoes so the appropriate United States standards will be applied (We may request previous sales records to verify your claimed intended use or base the intended use on the type of potato grown if such potatoes are not usually grown for the intended use you reported).

(f) Potato production to count that is eligible for quality adjustment, as specified in section 11(e), with 5 percent damage or less (by weight) will be adjusted 0.1 percent for each 0.1 percent of damage through 5.0 percent.

(g) Potato production to count that is eligible for quality adjustment, as specified in section 11(e), with 5.1 percent damage or more (by weight) will be determined as follows:

(1) If a price is agreed upon between you and a buyer within 21 days (60 days if the Northern Potato Storage Coverage endorsement is applicable), after the end of the insurance period, or the production is delivered to a buyer within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production will be determined by:

(i) Dividing the price per hundredweight received or that will be received by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market); and

(ii) Multiplying the result (not to exceed 1.0) by the number of hundredweight of sold or to be sold production (We may verify this after the production has actually been sold); or

(2) If a price is not agreed upon between you and a buyer and the production is not delivered within 21 days (60 days if the Northern Storage Coverage Endorsement is applicable) after the end of the insurance period, and that remain in storage 22 or more days (61 or more days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production will be the greater of:

(i) The amount determined by:

(A) Dividing the price per hundredweight that is received, or will be received after the end of the applicable insurance period, by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market); and

(B) Multiplying the result of section 11(g)(2)(i)(A) (not to exceed 1.0) by the number of hundredweight of sold or to be sold production (We may verify this after the production has actually been sold); or

(ii) The amount of production determined by:

(A) Reducing any harvested or appraised production:

(*1*) By 0.1 percent for each 0.1 percent damage through 5.0 percent;

(*2*) By 0.5 percent for each 0.1 percent of damage from 5.1 percent through 6.0 percent;

(*3*) By 1.0 percent for each 0.1 percent of damage from 6.1 through 13.5 percent; or

(B) Including 15 percent of the production when damage is in excess of 13.5 percent.

(iii) For any production discarded:

(A) Within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production to count will be:

(*1*) Zero if we determine the production could not have been sold; or

(*2*) Determined in accordance with section 11(g)(2)(ii) if we determine the production could have been sold; or

(B) Later than 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production to count will be adjusted in accordance with section 11(g)(2)(ii).

* * * * *

■ 3. Amend § 457.143 as follows:

■ a. Revise introductory text;

■ b. Remove section 9 and redesignate sections 5 through 8 as 7 through 10;

■ c. Redesignate sections 1 through 4, as sections 2 through 5, and add new section 1;

■ d. Revise redesignated section 5;

■ e. Add new section 6; and

■ f. Revise redesignated section 10.

The revised and added text read as follows:

§ 457.143 Northern potato crop insurance—quality endorsement.

The Northern Potato Crop Insurance Quality Endorsement Provisions for the 2008 and succeeding crop years are as follows:

* * * * *

1. Definitions

Percentage factor. The historical average percentage of potatoes grading U.S. No. 2 or better, by type, determined from your records. If at least 4 continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than 4 years of records are available, the percentage factor will be determined based on a combination of your records and the percentage factor contained in the Special Provisions so that such a combination would be the functional equivalent of 4 years of records.

* * * * *

5. We will adjust the production to count determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions for potatoes that do not meet U.S. No. 2 grade requirements from unharvested acreage or harvested acreage that is stored or is marketed after a grade inspection due to:

(a) Internal defects as long as the number of potatoes with such defects are in excess of the tolerances allowed for the U.S. No. 2 grade potatoes on a lot basis and are not separable from undamaged production using methods used by the packers or processors to whom you normally deliver your potato production as follows:

(1) If a price is agreed upon between you and a buyer within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable) after the end of the insurance period, or the production is delivered to a buyer within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable) after the end of the insurance period, the amount of production will be determined by (adjustment under section 5(a)(1) or 5(a)(2)(i) will not be performed if it already has been performed under the terms of section 11(g) of the Northern Potato Crop Provisions):

(i) Dividing the price received or that will be received per hundredweight by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market); and

(ii) Multiplying the result (not to exceed 1.0) by the number of hundredweight of sold or to be sold production (We may verify this after the production has actually been sold); or

(2) If a price is not agreed upon between you and a buyer and the production is not delivered within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable) after the end of the insurance period, and the potatoes remain in storage 22 or more days (61 or more days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production will be the greater of:

(i) The amount of production determined by:

(A) Dividing the price per hundredweight that is received, or will be received after the end of the applicable insurance period, by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market); and

(B) Multiplying the result of section 5(a)(2)(i)(A) (not to exceed 1.0) by the number of hundredweight of sold or to be sold production (We may verify this after the production has actually been sold); or

(ii) The amount of production determined as follows:

(A) The combined weight of sampled potatoes grading U.S. No. 2 or better (the amount of potatoes grading U.S. No. 2 will be based on a grade inspection completed no later than 21 days after the end of the insurance period (if the Northern Potato Storage Coverage Endorsement is applicable), samples must be obtained within 60 days after the end of the insurance period and a grade inspection completed within 21 days of sampling) and are damaged by freeze or tuber rot will be divided by the total sample weight;

(B) The percentage determined in section 5(a)(2)(ii)(A) will be divided by the applicable percentage factor; and

(C) The result of section 5(a)(2)(ii)(B) will be multiplied by the amount of production to count determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions.

(b) Factors other than those specified in section 5(a), in accordance with section 5(a)(2)(ii).

6. For any production that qualifies for adjustment in accordance with section 5(a) and that is discarded:

(a) Within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production to count will be:

(1) Zero if we determine the production could not have been sold; or

(2) Determined in accordance with section 5(a)(2)(ii) if we determine the production could have been sold; or

(b) Later than 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production to count will be adjusted in accordance with section 5(a)(2)(ii).

* * * * *

10. The actuarial documents may provide ''U.S. No. 1 grade'' in place of ''U.S. No. 2 grade'' as used in this endorsement.

(a) If both U.S. No.1 and U.S. No. 2 grades are available in the actuarial documents, you may elect U.S. No. 1 or 2 grade by potato type or group, if separate types or groups are specified in the Special Provisions.

(b) If both fresh and processing types are specified in the actuarial documents, you cannot elect the fresh type for any potatoes grown for processing or chipping.

■ 4. Revise § 457.144 to read as follows:

§ 457.144 Northern potato crop insurance—processing quality endorsement.

The Northern Potato Crop Insurance Processing Quality Endorsement Provisions for the 2008 and succeeding crop years are as follows:

1. Definitions

Broker. Any business enterprise regularly engaged in the buying and selling of processing potatoes, that possesses all licenses and permits as required by the state in which it operates, and when required, has the necessary facilities or the contractual access to such facilities, with enough equipment to accept and transfer processing potatoes to the broker within a reasonable amount of time after harvest or the typical storage period.

Percentage factor. The term as defined in the Northern Potato Quality Endorsement.

Processor. Any business enterprise regularly engaged in processing potatoes for human consumption, that possesses all licenses and permits for processing potatoes required by the state in which

it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process processing potatoes grown under a processing contract within a reasonable amount of time after harvest or the typical storage period.

Processor contract. A written agreement between the producer and processor, or between a producer and a broker, containing at a minimum:

(a) The producer's commitment to plant and grow processing potatoes, and to deliver the potato production to the processor or broker;

(b) The processor's or broker's commitment to purchase all the production stated in the processing contract; and

(c) A price or pricing mechanism to determine the value of delivered production.

2. To be eligible for coverage under this endorsement, you must have a:

(a) Northern Potato Quality Endorsement in place and elect this endorsement on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this endorsement:

(1) Cancellation of your Northern Potato Quality Endorsement will automatically result in cancellation of this endorsement;

(2) This endorsement may be canceled by either you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date: and

(b) Processor contract executed with a processor or broker for the potato types insured under this endorsement that is applicable for the crop year:

(1) A copy of the processor contract must be submitted to us on or before the acreage reporting date for potatoes; and

(2) Failure to timely provide the processor contract will result in no coverage under this endorsement and coverage will be provided only under the terms of the Northern Potato Crop Provisions and Northern Potato Quality Endorsement.

3. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of your Northern Potato Crop Provisions and Northern Potato Quality Endorsement subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Crop Provisions or Northern Potato Quality Endorsement and this endorsement, this endorsement will control.

4. All terms of the Northern Potato Quality Endorsement not modified by this endorsement will be applicable to acreage covered under this endorsement.

5. If you elect this endorsement, all insurable acreage of production under contract with the processor or broker must be insured under this endorsement; however:

(a) When the processor contract requires the processor or broker to purchase a stated amount of production, rather than all of the production from a stated number of acres, the insurable acres will be determined by dividing the stated amount of production by the approved yield for the acreage; and

(b) The number of acres insured under this endorsement will not exceed the actual number of acres planted to the potato types needed to fulfill the contract.

6. Potato lots may be adjusted in accordance with section 8 if such potatoes:

(a) Fail to meet the standards in section 7(a), (b), (c), or (d), or a standard contained in the processor contract, for the same quality factors specified in section 7(a), (b), (c), or (d), if such standard is less stringent;

(b) Have a value less than the maximum price election; and

(c) Fail to meet the applicable standards and are not separable from undamaged production using methods used by processors to whom you normally deliver your potato production.

7. To qualify for a quality reduction under this endorsement, the potatoes must:

(a) Fail to meet the applicable U.S. No. 2 grade requirements due to internal defects as long as the number of potatoes with such defects are in excess of the tolerance allowed for U.S. No. 2 grade potatoes;

(b) Have a specific gravity lower than 1.074;

(c) Have a fry color of No. 3 or darker due to either sugar exceeding 10 percent or sugar ends exceeding 19 percent; or

(d) Have an Agtron rating lower than 58.

8. In lieu of the provisions contained in section 5 of the Northern Potato Quality Endorsement, production to count determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions, from unharvested acreage or harvested acreage that is stored or is marketed after a grade inspection determined in section 10, will be adjusted in accordance with sections 8(a) or 8(b), whichever is applicable, (adjustment under section 8(a) or 8(b)(1) will not be performed if it already has been performed under the terms of section 11(g) of the Northern Potato Crop Provisions):

(a) If a price is agreed upon between you and a buyer within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable) after the end of the insurance period, or the production is delivered to a buyer within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production will be determined by:

(1) Dividing the price per hundredweight received or that will be received by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (If the production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market); and

(2) Multiplying the result of section 8(a)(1) (not to exceed 1.0) by the number of hundredweight of sold or to be sold production (We may verify this after the production has actually been sold); or

(b) If a price is not agreed upon between you and a buyer and the production is not delivered within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, and the production remains in storage 22 or more days (61 or more days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production will be the greater of:

(1) The amount of production determined by:

(i) Dividing the price per hundredweight that is received, or that will later be received after the end of the applicable insurance period, by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market); and

(ii) Multiplying the result of section 8(b)(1)(i) (not to exceed 1.0) by the number of hundredweight of sold or to be sold production (We may verify this after the production has actually been sold); or

(2) The amount of production determined as follows:

(i) The combined weight of sampled potatoes that grade U.S. No. 2 or better (the amount of potatoes grading U.S. No. 2 or better will be based on a grade

inspection completed no later than 21 days after the end of the insurance period, if the Northern Potato Storage Coverage Endorsement is applicable; samples must be obtained within 60 days after the end of the insurance period and grade inspection completed within 21 days of sampling) and are damaged by freeze or tuber rot will be divided by the total sample weight;

(*A*) The percentage determined in section 8(b)(2)(i) will be divided by the applicable percentage factor; and

(B) The result of section 8(b)(2)(i)(A) will be multiplied by the amount of production to count determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions.

(c) The production to count for potatoes that have a value less than the maximum price election due to factors other than those specified in section 7 will be adjusted in accordance with section 8(b)(2).

9. For any production that qualifies for adjustment in accordance with section 7 and that is discarded:

(a) Within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production to count will be:

(1) Zero if we determine the production could not have been sold; or

(2) Determined in accordance with section 8(b)(2) if we determine the production could have been sold; or

(b) Later than 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production to count will be adjusted in accordance with section 8(b)(2).

10. All quality determinations must be based upon a grade inspection using the United States Standards for Grades of Potatoes for Processing or the United States Standards for Grades of Potatoes for Chipping.

11. The actuarial documents may provide ''U.S. No. 1 grade'' in place of ''U.S. No. 2 grade'' as used in this endorsement. If both U.S. No. 1 and 2 grades are available in the actuarial documents, you may elect U.S. No. 1 or 2 grade by potato type or group, if separate types or groups are specified in the Special Provisions.

■ 5. Amend § 457.145 as follows:
■ a. Revise the introductory text;
■ b. Revise section 1;
■ c. Remove section 2, and redesignate sections 3 through 11 as 2 through 10;
■ d. Amend redesignated section 3 by removing the number ''5'' and replacing it with the number ''4'';
■ e. Amend redesignated section 4 by adding paragraphs 4(a) and 4(b);
■ f. Revise redesignated section 6;
■ g. Amend redesignated section 7 by removing the number ''8'' and replacing it with the number ''7'' each time it appears;
■ h. Revise redesignated section 8; and
■ i. Revise redesignated section 10.

The revised text reads as follows:

§ 457.145 Potato crop insurance—certified seed endorsement.

The Potato Crop Insurance Certified Seed Endorsement Provisions for the 2008 and succeeding crop years are as follows:

* * * * *

1. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of your Northern Potato Crop Provisions subject to the terms and conditions described herein. In accordance with section 8, since your insurance period is not extended in this endorsement, any additional premium paid for coverage under the Northern Potato Storage Coverage Endorsement will not apply to the additional coverage provided under the terms of this endorsement. In the event of a conflict between the Northern Potato Crop Provisions and this endorsement, this endorsement will control.

* * * * *

4. * * *

(a) Multiply the average number of your acres entered into and passing certification in the potato certified seed program the 3 previous calendar years by 1.25 and divide this result by the number of acres grown by you for certified seed in the current crop year; and

(b) Multiply the result of section 4(a) (not to exceed 1.0) by the production guarantee for certified seed for the current crop year.

* * * * *

6. All potatoes insured for certified seed production must be produced and managed in accordance with the regulations, standards, practices, and procedures required for certification under the potato certified seed program. Any production that does not qualify as certified seed because of varietal mixing or your failure to meet any requirements under the potato certified seed program will be considered as lost due to uninsured causes.

* * * * *

8. You must notify us of any loss under this endorsement not later than 14 days after you receive notice from the state certification agency that any acreage or production has failed certification. Nothing herein extends the insurance period beyond the time period specified in section 8 of the Northern Potato Crop Provisions and section 11 of the Basic Provisions. In lieu of the provisions in section 14(c) of the Basic Provisions specifying that any claim for indemnity must be filed not later than 60 days after the end of the insurance period, your claim for indemnity must be filed by the later of:

(a) Sixty (60) days after the end of the insurance period; or

(b) Thirty (30) days after you receive notice from the state certifying agency that production has failed certification.

* * * * *

10. Failure to meet any requirements for seed to be used to produce a subsequent seed crop will not be covered. All the production that meets requirements for certified seed used to produce a commercial crop will be included in production to count.

■ 6. Amend § 457.146 as follows:
■ a. Revise the introductory text; and
■ b. Amend section 5 by revising the introductory text, revising paragraphs (a)(3) and (c) and removing paragraph (d).

The revised text reads as follows:

§ 457.146 Northern potato crop insurance—storage coverage endorsement.

The Northern Potato Crop Insurance Storage Coverage Endorsement Provisions for the 2008 and succeeding crop years are as follows:

* * * * *

5. In lieu of section 9(b)(1) of the Northern Potato Crop Provisions, the extended coverage provided by this endorsement will be applicable but only if:

(a) * * *

(3) The potatoes damaged by an insurance cause of loss fail to meet any of the following standards or a less stringent standard for the same quality factors specified below, contained in the processor contract, if applicable, (this coverage is applicable only to production covered under the Northern Potato Processing Quality Endorsement):

(i) A specific gravity lower than 1.074;

(ii) A fry color of No. 3 or darker due to either sugar exceeding 10 percent or sugar ends exceeding 19 percent; or

(iii) An Agtron rating lower than 58.

* * * * *

(b) * * *

(c) The percentage of production with any of the quality deficiencies specified in section 5(a) is determined based on samples obtained no later than 60 days after the end of the insurance period and the potatoes are evaluated and quality (grade) determinations are made

by us, a laboratory approved by us, a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, or us, in accordance with the United States Standards for Grades of Potatoes:

(1) Samples of damaged production must be obtained by us or a party approved by us prior to the sale or disposal of any lot of potatoes; and

(2) If production is not sold or disposed of within 60 days after the end of the insurance period, samples must be obtained within 60 days after the end of the insurance period and a quality (grade) determination must be completed within 21 days of sampling.

* * * * *

■ 7. Amend § 457.147 as follows:

■ a. Revise the introductory text;

■ b. Remove the paragraph regarding document priority immediately preceding section 1 and revise the remaining paragraph below the heading ''Central and Southern Potato Crop Provisions'' and before section 1;

■ c. Amend section 1 by revising the definition of ''Certified seed'' and ''Grade inspection'', and adding a new definition for ''Potato certified seed program'';

■ d. Amend section 3 by revising paragraphs (b) and (c);

■ e. Amend section 4 by revising paragraph (b);

■ f. Revise section 5;

■ g. Revise section 9;

■ h. Amend section 10 by revising paragraph (b)(1); and

■ i. Amend section 12 as follows:

■ A. Revise paragraph (b)(7);

■ B. Remove paragraph (d)(1)(iv), redesignate paragraph (d)(1)(v) as (d)(1)(iv) and revise newly redesignated paragraph (d)(1)(iv) introductory text; and

■ C. Revise paragraph (e) in its entirety.

The added and revised text read as follows:

§ 457.147 Central and Southern potato crop insurance provisions.

The Central and Southern Potato Crop Insurance Provisions for the 2009 and succeeding crop years are as follows:

* * * * *

These provisions will be applicable in Alabama; Arizona; all California counties except Humboldt, Modoc, and Siskiyou; Delaware; Florida; Georgia; Maryland; Missouri; New Jersey; all New Mexico counties except San Juan; North Carolina; Oklahoma; Texas; and Virginia; and other states or counties if allowed by the Special Provisions.

* * * * *

1. Definitions

* * * * *

Certified seed. Potatoes that were entered into the potato certified seed program and that meet all requirements for production to be used to produce a seed crop for the next crop year or a potato crop for harvest for commercial uses in the next crop year.

* * * * *

Grade inspection. An inspection in which samples of production are obtained by us, or a party approved by us, prior to the sale, storage, or disposal of any lot of potatoes, or any portion of a lot and the potatoes are evaluated and quality (grade) determinations are made by us, a laboratory approved by us, or a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, in accordance with the United States Standards for Grades of Potatoes. The United States standards used to determine the quality (grade) deficiencies will be: For potatoes produced for chipping, the United States Standards for Grades of Potatoes for Chipping; for potatoes produced for processing, the United States Standards for Grades of Potatoes for Processing; for potatoes produced for seed, the United States Standards for Grades of Seed Potatoes; and for all other potatoes, the United States Standards for Grades of Potatoes. The quantity and number of samples required will be determined in accordance with procedure issued by FCIC.

* * * * *

Potato certified seed program. The state program administered by a public agency responsible for the seed certification process within the state in which the seed is produced.

* * * * *

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

* * * * *

(b) If the production from any acreage of the insured crop is not harvested, the price used to determine your indemnity will be 90 percent of your price election.

(c) The price election for unharvested acreage will apply to any acreage of potatoes damaged to the extent that similarly situated producers in the area would not normally care for the potatoes even if you choose to continue to care for or harvest them. Potatoes that are lifted to the soil surface and not removed from the field will also receive the price election for unharvested acreage.

* * * * *

4. Contract Changes

* * * * *

(b) September 30 preceding the cancellation date for counties with a November 30, December 31, or January 31 cancellation date; and

* * * * *

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Dates
Pinellas, Hillsborough, Polk, Osceola, and Brevard Counties, Florida, and all Florida counties lying south thereof	September 30.
Arizona; all California counties; and all Texas counties except Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Haskell, Knox, Lamb, Parmer, Swisher, and Yoakum.	November 30.
Alabama; Georgia; Missouri; and All Florida Counties except Pinellas, Hillsborough, Polk, Osceola, and Brevard Counties, Florida, and all Florida counties to the south thereof.	December 31.
Delaware; Maryland; New Jersey; North Carolina; and Virginia	January 31.
Oklahoma; and Haskell and Knox Counties, Texas	February 28.
Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Lamb, Parmer, Swisher, and Yoakum counties, Texas; and all New Mexico counties except San Juan County.	March 15.

* * * * *

9. Insurance Period

In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows (exceptions, if any, for specific counties, varieties or types are contained in the Special Provisions):

(a) July 15 in Missouri; and all Texas counties except Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Haskell, Hartley, Knox, Lamb, Parmer, Swisher, and Yoakum.

(b) July 25 in Arizona.

(c) August 15 in North Carolina; Oklahoma; and Haskell and Knox Counties, Texas.

(d) August 31 in Virginia.

(e) In Alabama; California; Florida; and Georgia; the dates established by the Special Provisions for each planting period; and

(f) October 15 in Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Lamb, Parmer, Swisher, and Yoakum Counties, Texas; Delaware; Maryland; New Jersey; and all counties in New Mexico except San Juan.

10. Cause of Loss

* * * * *

(b) * * *

(1) Damage that occurs or becomes evident after the end of the insurance period, including, but not limited to, damage that occurs or becomes evident in storage; or

* * * * *

12. Settlement of Claim

* * * * *

(b) * * *

(7) Multiplying the result of section 12(b)(6) by your share.

For example: You have a 100 percent share in 100 harvested acres of potatoes in the unit, with a guarantee of 150 hundredweight per acre and a price election of $4.00 per hundredweight. You are only able to harvest 10,000 hundredweight. Your indemnity would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee;

(2) 15,000 hundredweight × $4.00 price election = $60,000.00 value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count;

(5) $60,000.00 − $40,000.00 = $20,000.00 loss; and

(6) $20,000.00 × 100 percent = $20,000.00 indemnity payment.

You also have a 100 percent share in 100 unharvested acres of potatoes in the same unit, with a guarantee of 150 hundredweight per acre and a price election of $3.60 per hundredweight. (The price election for unharvested acreage is 90.0 percent of your elected price election ($4.00 × 0.90 = $3.60.)) This unharvested acreage was appraised at 35 hundredweight per acre for a total of 3500 hundredweight as production to count. Your total indemnity for the harvested and unharvested acreage would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the harvested acreage, and

100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the unharvested acreage;

(2) 15,000 hundredweight guarantee × $4.00 price election = $60,000.00 value of guarantee for the harvested acreage, and

15,000 hundredweight guarantee × $3.60 price election = $54,000.00 value of guarantee for the unharvested acreage;

(3) $60,000.00 + $54,000.00 = $114,000.00 total value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count for the harvested acreage, and 3500 hundredweight × $3.60 = $12,600.00 value of production to count for the unharvested acreage;

(5) $40,000.00 + $12,600.00 = $52,600.00 total value of production to count;

(6) $114,000.00 − $52,600.00 = $61,400.00 loss; and

(7) $61,400.00 loss × 100 percent = $61,400.00 indemnity payment.

* * * * *

(d) * * *

(1) * * *

(iv) Unharvested production, including unharvested production on insured acreage you intend to put to another use or abandon, or acreage damaged by insurable causes and for which you cease to provide further care, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or cease providing care for the crop. This unharvested production may be adjusted in accordance with sections 12(e), and the value of all unharvested production will be calculated using the reduced price election determined in section 3(b). If agreement on the appraised amount of production is not reached:

* * * * *

(e) Only marketable lots of mature potatoes will be production to count for loss adjustment purposes, except for production specified in 12(e)(1):

(1) Production not meeting the standards for grading U.S. No. 2 due to external defects will be determined on an individual basis for all harvested and unharvested potatoes if we determine it is or would be practical to separate the damaged production;

(2) All determinations must be based upon a grade inspection; and

(3) Prior to any grade inspection, you must notify us of the intended use of the potatoes so the appropriate United States Standard will be applied (We may request previous sales records to verify your claimed intended use or base the intended use on the type of potato grown if such potatoes are not usually grown for the intended use you reported).

(4) Marketable lots of potatoes will include any lot of potatoes that is:

(i) Stored;

(ii) Sold as seed;

(iii) Sold for human consumption; or

(iv) Harvested and not sold or that is appraised if such lots meet the standards for grading U.S. No. 2 grade or better on a sample basis.

(5) Marketable lots will also include any potatoes that we determine:

(i) Could have been sold for seed or human consumption in the general marketing area;

(ii) Were not sold as a result of uninsured causes including, but not limited to, failure to meet chipper or processor standards for fry color or specific gravity; or

(iii) Were disposed of without our prior written consent and such disposition prevented our determination of marketability.

(6) Unless included in section 12(e)(4) or (5), a potato lot will not be considered marketable if, due to insurable causes of damage, it:

(i) Is partially damaged, and is salvageable only for starch, alcohol, or livestock feed;

(ii) Does not meet the standards for grading U.S. No. 2 grade or better due to internal defects; or

(iii) Does not meet the standards for grading U.S. No. 2 grade or better due to external defects, and it is not practical to separate the damaged production.

* * * * *

Signed in Washington, DC on October 23, 2007.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

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AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).