

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563-AB97

#### Common Crop Insurance Regulations; Peanut Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes amendments to the Peanut 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 insured producers. The changes will apply for the 2007 and succeeding crop years.

**DATES:** *Effective Date:* October 26, 2006.

**FOR FURTHER INFORMATION CONTACT:** Gary Johnson, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133-4676, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget (OMB).

##### Paperwork Reduction Act of 1995

Pursuant to 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 economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, or a notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited

resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities 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 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 impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

##### Background

On January 25, 2006, FCIC published a notice of proposed rulemaking in the **Federal Register** at 71 FR 4056-4061 to revise 7 CFR 457.134 Peanut Crop Insurance Provisions. Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions. A total of 12 sets of comments were received from reinsured companies, agents, trade associations, producers, an insurance

service organization and other interested parties. The comments received and FCIC's responses are as follows:

*Comment:* An insurance service organization commented on the definition of "base contract price" by asking if the maximum amount of a base contract price will always be specified in the Special Provisions. The commenter asked if it will be a consistent value for all states and counties. The commenter also asked if this maximum amount is intended to be set high enough to reflect contracted values for organic peanuts (i.e., values as high as \$0.45 per pound or \$900.00 per ton).

*Response:* The maximum amount of the base contract price will not be in the Special Provisions, but rather a price factor will be specified in the Special Provisions, which will be used by multiplying such factor by the price election issued by FCIC, as applicable and by peanut type. FCIC anticipates providing a price factor that is consistent for all states and counties. The base contract price may or may not reflect the value of organic peanuts grown under contract.

*Comment:* An insurance service organization suggested a definition of "damaged production" or "damaged peanuts" should be added otherwise many non-insurable defects could be allowed and non-insurable discounts could be subtracted from the value of the peanuts by a buyer to result in a value less than 85 percent of the applicable price election when determining quality loss adjustment.

*Response:* The definition of "damaged" in the Basic Provisions requires that the peanuts be injured or deteriorated before they are considered damaged. Further, section 14(e) of the Peanut Crop Provisions requires the damage to be due to an insurable cause of loss before quality adjustment will apply. As always, it is the producer's burden to establish the insured cause of loss that caused the damage. If such burden cannot be met or such cause of loss would not likely cause the type of damage found, quality adjustment would not be applicable. In addition, the peanuts must be graded, which will establish whether they have been injured or deteriorated. These provisions should be sufficient to ensure that only peanuts injured or deteriorated by insured causes of loss are subject to quality adjustment and preclude the possibility that non-insurable defects or non-insurable discounts are covered. Therefore, no change has been made.

*Comment:* Three trade associations and an approved insurance provider commented that requiring the peanut producers to include all of their peanut acres in an enterprise unit would impose undue hardship. The commenters state that the number of peanut producers is decreasing; however, their acreage is increasing because of not being limited by the quota program. The commenters also claim that peanut producers deal with multiple farm serial numbers and under the current peanut loan program, virtually every load of peanuts is placed under loan through the Farm Service Agency (FSA) peanut loan program. Each farm has potentially differing land or soils characteristics, disease patterns, and rainfall frequency. The commenters state that a peanut loan is not made to the producer if the yield varies substantially from the average peanut yield history for the county.

*Response:* FCIC agrees with the commenters and has removed the provision that limits peanuts grown under contract to an enterprise unit. Basic and optional units for peanuts will be allowed on peanuts consistent with other Category B crops, unless limited by the Special Provisions.

*Comment:* An insurance service organization commented the definition of "harvest" would be better defined as "the completion of digging and threshing" rather than "removal from the field." The commenter asked if removal from the field has been a problem for peanuts as it has for cotton.

*Response:* FCIC agrees that digging and threshing are part of the harvest process and should be included in the definition. However, referring to removal from the field in the definition will also allow harvest to remain an event that ends the insurance period. Previously, section 10(c) stated that "removal of peanuts from the field" replaced harvest as the event marking the end of the insurance period for the purposes of section 11 of the Basic Provisions, but this definition of harvest will make section 10(c) no longer necessary and it will be removed.

*Comment:* An insurance service organization asked why the definition of "inspection certificate and sales memorandum" was deleted. The commenter states that the memorandum is referring to the Farm Service Agency (FSA)-1007 and asks whether this form is still being utilized by FSA and buyers.

*Response:* The inspection certificate and sales memorandum were mainly used to obtain the "value per pound," which was a term used in the loss adjustment process. However, value per

pound is no longer used in the policy now that price elections have been established through the contract or by FCIC. Therefore, the inspection certificate and sales memorandum are no longer necessary to determine the terms of the policy but the documents can be used as supporting documentation for production reporting and loss adjustment purposes.

*Comment:* An insurance service organization commented on the definition of "price election" and stated that it should be clearer that the base contract price in the sheller contract may be limited if it exceeds the maximum amount in the Special Provisions. This also could be clearer about the distinctions between peanuts not grown under a sheller contract and those grown under a sheller contract.

*Response:* The definition of "base contract price" specifies that it is limited to an amount not greater than the price election times the price factor contained in the Special Provisions. Therefore, it is not necessary to reiterate this limitation in the definition of "price election." Further, sections 3(a) and (b) of the Peanut Crop Provisions specify what price will be used when peanuts are grown under a sheller contract and not grown under a sheller contract. However, FCIC agrees the provisions could be clearer and has revised them accordingly.

*Comment:* An insurance service organization commented on the definition of "segregation I, II, or III" and indicated the definition may still be used in the minimum quality and handling standards for domestic and imported peanuts in the United States and Farm Service Agency (FSA) Notice PS-521.

*Response:* The definition of "segregation I, II, or III" peanuts was necessary because the price election was originally based on average Commodity Credit Corporation support price for these type of quota and non-quota peanuts. However, with the elimination of quotas, FCIC is now establishing the price elections or the base contract price is used. Therefore, the term "segregation I, II, or III" is no longer necessary to establish a term of the policy. However, the Notice PS-521 may be used as supporting documentation for production reporting and loss adjustment purposes.

*Comment:* An insurance service organization asked with respect to section 12(a)(1) whether the insured (tenant and/or landlord) has to incur replant expense to collect a replant payment under this policy.

*Response:* Under these Crop Provisions, replant payments are made

based on share. Therefore, if the tenant and/or landlord have an insured share of the insured crop, they are entitled to receive a replant payment for their applicable share, regardless of whether they have incurred any expenses. Since all other obligations and payments under the policy are based on share, it seemed more equitable and less burdensome to make replant payments also on a share basis.

*Comment:* An insurance service organization commented regarding section 12(b)(1) and asked what price election is used for a replant payment when the insured has multiple sheller contracts each with differing base contract prices and/or the insured also has peanuts insurable but not grown under a contract and the price election is the FCIC announced price.

*Response:* If the producer did not elect the price election specified in the Special Provisions and there are different base contract prices and/or the insured also has insurable peanuts not grown under a contract, replanting payments will be valued using the price election elected by the insured for planted acreage in each unit, as applicable. For an example, if the insured has two sheller contracts and the first base contract price is \$0.23 per pound for Runner type peanuts, then \$0.23 per pound will be used for the value of any replanted Runner type peanut acreage. If the second base contract is priced \$0.21 per pound for Spanish type peanuts, then \$0.21 per pound will be used for the value of any replanted Spanish type peanut acreage. If there are two separate sheller contracts for the same type peanuts, for example two contracts for Runner type peanuts at \$0.23 and \$0.21, respectively, if the contracts apply to separate optional units, each respective price election will apply to each respective unit. If the peanuts under both contracts are insured in the same unit, then the replanted acreage will be prorated to each contract based on the number of acres needed to fulfill each contract (For example, if there are 20 acres in the unit and 10 were replanted, the production guarantee per acre for the unit is 2,000 pounds per acre, and the contract for \$0.23 was for 25,000 pounds and the contract for \$0.21 was for 15,000 pounds, then the acreage under the \$0.23 contract constitutes 62.5 percent of the acreage in the unit (25,000/40,000) and the other contract 37.5 percent of the acreage (15,000/40,000). Of the 10 acres replanted, 6.25 (10 × .625) would be paid at the \$0.23 price election and 3.75 (10 × .375) acres would be paid at the \$0.21 price election). If the insured has peanuts not

grown under a contract or the producer selects the price election specified in the Special Provisions, the replanting payments will be valued using the price election as specified in the Special Provisions. The provisions will be so clarified.

*Comment:* An insurance service organization commented regarding section 15 and asked what price election will be used for prevented planting acres when the insured has multiple sheller contracts each with the contracts based on production and/or other peanuts are insurable without a sheller contract.

*Response:* If the producer did not elect the price election specified in the Special Provisions and there are different base contract prices and/or the insured also has insurable peanuts not grown under a contract, the prevented planting payment will be based on the price election elected by the insured. For an example, if the insured has two sheller contracts and if the first base contract price is \$0.23 per pound for Runner type peanuts, then \$0.23 per pound will be used for the value of any prevented planted Runner type peanut acreage. If the second base contract price is \$0.21 per pound for Spanish type peanut, then \$0.21 per pound will be used for the value of any prevented planted Spanish type peanut acreage. If there are two separate sheller contracts for the same type peanuts, for example two contracts for Runner type peanuts at \$0.23 and \$0.21, respectively, if the contracts apply to separate optional units, each respective price election will apply to each respective unit. If the peanuts under both contracts are insured in the same unit, then the prevented planting acreage will be prorated to each contract based on the number of acres needed to fulfill each contract (For example, if there are 20 acres in the unit and 10 were prevented from planting, the production guarantee per acre for the unit is 2,000 pounds per acre, and the contract for \$0.23 was for 25,000 pounds and the contract for \$0.21 was for 15,000 pounds, then the acreage under the \$0.23 contract constitutes 62.5 percent of the acreage in the unit (25,000/40,000) and the other contract 37.5 percent of the acreage (15,000/40,000). Of the 10 acres prevented from planting, 6.25 (10 × .625) would be paid at the \$0.23 price election and 3.75 (10 × .375) acres would be paid at the \$0.21 price election). If the insured has peanuts not grown under a contract or the producer selects the price election specified in the Special Provisions, the prevented planting payments will be valued using the price election as specified in the

Special Provisions. The provisions will be so clarified.

*Comment:* An insurance service organization asked if the peanut program would be rated accordingly for the addition of the prevented planting insurance coverage.

*Response:* FCIC will adjust premium rates to reflect the addition of prevented planting coverage.

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

1. Removed the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict. This same information is contained in the Basic Provisions. Therefore, it is duplicative and has been removed in the Crop Provisions.
2. Revised the definition of "marketing association" to clarify it is a cooperative approved by the Secretary of Agriculture to administer payment programs for peanuts.
3. Revised section 14(b)(1) to remove redundant language for clarification.

#### List of Subjects in 7 CFR Part 457

Crop insurance, Peanut, Reporting and recordkeeping requirements.

#### Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457, Common Crop Insurance Regulations, for the 2007 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(l) and 1506(p).

■ 2. Revise § 457.134 to read as follows:

#### § 457.134 Peanut Crop Insurance Provisions.

The Peanut Crop Insurance Provisions for the 2007 and succeeding crop years are as follows:

FCIC policies: United States Department of Agriculture, Federal Crop Insurance Corporation.

Reinsured policies: (Appropriate title for insurance provider).

Both FCIC and reinsured policies.  
Peanut Crop Insurance Provisions.

##### 1. Definitions

**Base contract price.** The price for farmers' stock peanuts stipulated in the sheller contract, without regard to discounts or incentives that may apply, not to exceed the price election times the price factor specified in the Special Provisions.

**Farmers' stock peanuts.** Picked or threshed peanuts produced in the United States, which are not shelled, crushed, cleaned, or

otherwise changed (except for removal of foreign material, loose shelled kernels and excess moisture) from the condition in which peanuts are customarily marketed by producers.

**Green peanuts.** Peanuts that are harvested and marketed prior to maturity without drying or removal of moisture either by natural or artificial means.

**Handler.** A person who is a sheller, a buying point, a marketing association, or has a contract with a sheller or a marketing association to accept all of the peanuts marketed through the marketing association for the crop year. The handler acquires peanuts for resale, domestic consumption, processing, exportation, or crushing through a business involved in buying and selling peanuts or peanut products.

**Harvest.** The completion of digging andreshing and removal of peanuts from the field.

**Marketing association.** A cooperative approved by the Secretary of the United States Department of Agriculture to administer payment programs for peanuts.

**Planted acreage.** In addition to the requirement in the definition in the Basic Provisions, peanuts must initially be planted in a row pattern which permits mechanical cultivation, or that allows the peanuts to be cared for in a manner recognized by agricultural experts as a good farming practice. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

**Price election.** In addition to the definition in the Basic Provisions, the price election for peanuts insured in accordance with a sheller contract will be the base contract price specified in the sheller contract.

**Price factor.** The factor specified in the Special Provisions that places limits on the base contract price.

**Sheller.** Any business enterprise regularly engaged in processing peanuts for human

consumption; that possesses all licenses and permits for processing peanuts 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 contracted peanuts within a reasonable amount of time after harvest.

**Sheller contract.** A written agreement between the producer and a sheller, or the producer and a handler, containing at a minimum:

- (a) The producer's commitment to plant and grow peanuts, and to deliver the peanut production to the sheller or handler;
- (b) The sheller's or handler's commitment to purchase all the production stated in the sheller contract (an option to purchase is not a commitment); and
- (c) A base contract price.

If the agreement fails to contain any of these terms, it will not be considered a sheller contract.

2. Unit Division

In accordance with the Basic Provisions, basic and optional units are applicable, unless limited by the Special Provisions.

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

In addition to the requirements of section 3 of the Basic Provisions:

- (a) The price election percentage you choose for peanuts which are not insured in accordance with a sheller contract (may also include peanuts in excess of the amount required to fulfill your sheller contract) and for peanuts insured in accordance with a sheller contract must have the same percentage relationship to the maximum price election offered by us for peanuts not insured in accordance with a sheller contract. For example, if you choose 100 percent of the maximum price election for peanuts not insured in accordance with a sheller contract, you must also choose 100 percent of the

applicable price election for peanuts insured in accordance with a sheller contract.

(b) You may not insure more pounds of peanuts than your production guarantee (per acre) multiplied by the number of acres that will be planted to peanuts. For the purposes of determining the guarantee, premiums, indemnities, replant payments, and prevented planting payments:

(1) Where all production of peanuts is grown under one or more sheller contracts, you may elect a price election to cover all insurable peanuts that is the base contract price contained in such sheller contracts or the price contained in the Special Provisions.

(2) Where some peanuts are grown under one or more sheller contracts but some peanuts are not grown under a sheller contract, you may elect:

- (i) The price election contained in the Special Provisions to cover all insurable peanuts; or
- (ii) The price election using the base contract price for peanuts grown under a sheller contract and the price contained in the Special Provisions for peanuts not grown under a sheller contract.

(3) Where none of the peanuts are grown under a sheller contract, the price election will be the price contained in the Special Provisions.

(c) Any peanuts excluded from the sheller contract at any time during the crop year will be insured at the price election specified in the Special Provisions.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

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

State and county	Dates
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas and all Texas Counties lying south, thereof.	January 15.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties south and east thereof; and all other states, except New Mexico, Oklahoma, and Virginia.	February 28.
New Mexico; Oklahoma; Virginia; and all other Texas counties .....	March 15.

6. Report of Acreage

In addition to the requirements of section 6 of the Basic Provisions, you must provide a copy of all sheller contracts to us on or before the acreage reporting date if you wish to insure your peanuts in accordance with your sheller contract.

7. [Reserved]

8. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the peanuts in the county for which a premium rate is provided by the actuarial documents:

- (1) In which you have a share;

(2) That are planted for the purpose of marketing as farmers' stock peanuts;

(3) That are a type of peanut designated in the Special Provisions as being insurable;

(4) That are not (unless allowed by the Special Provisions or by written agreement):

- (i) Planted for the purpose of harvesting as green peanuts;

- (ii) Interplanted with another crop; or
- (iii) Planted into an established grass or legume; and

(5) Whether or not the peanuts are grown in accordance with a sheller contract (if not grown in accordance with the sheller contract, the peanuts will be valued at the price election issued by FCIC for the purposes of determining the production guarantee, premium, and indemnity).

(b) You will be considered to have a share in the insured crop if, under the sheller contract, you retain control of the acreage on which the peanuts are grown, you are at risk of a production loss, and the sheller contract provides for delivery of the peanuts to the sheller or handler and for a stipulated base contract price.

(c) A peanut producer who is also a sheller or handler may establish an insurable interest if the following requirements are met:

- (1) The producer must comply with these Crop Provisions;
- (2) Prior to the sales closing date, the Board of Directors or officers of the sheller or handler must execute and adopt a resolution that contains the same terms as a sheller

contract. Such resolution will be considered a sheller contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of a sheller contained in these Crop Provisions.

#### 9. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(a) Any acreage of the insured crop damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that replanting is not practical.

(b) We will not insure any acreage:

(1) On which peanuts are grown using no-till or minimum tillage farming methods unless allowed by the Special Provisions or written agreement; or

(2) Which does not meet the rotation requirements, if any, contained in the Special Provisions.

#### 10. 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:

(a) November 30 in all states except New Mexico, Oklahoma, and Texas; and

(b) December 31 in New Mexico, Oklahoma, and Texas.

#### 11. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if due to a cause of loss contained in section 11(a) through (g) that occurs during the insurance period.

#### 12. Replanting Payments

(a) A replanting payment is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these Crop Provisions;

(2) Except as specified in section 12(a)(1), you must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions; and

(3) The insured crop must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of:

(1) 20.0 percent of the production guarantee, multiplied by your price election, multiplied by your share; or

(2) \$80.00 multiplied by your insured share.

(c) If there are different base contract prices or you also have insurable peanuts not grown under a contract:

(1) If the sheller contracts are for different types of peanuts or one type of peanut is grown under a sheller contract and another is not, replanting payments will be valued using the price election elected by you for the planted acreage, as applicable (For an example, you have two sheller contracts and the base contract price is \$0.23 per pound for Runner type peanuts, then \$0.23 per pound will be used for the value of any replanted Runner type peanut acreage. If the base contract price is \$0.21 per pound for Spanish type peanuts, then \$0.21 per pound will be used for the value of any replanted Spanish type peanut acreage.

(2) If the sheller contracts are for the same type of peanuts but they have different base contract prices:

(i) If the peanuts under each sheller contract are insured in separate optional units, each respective price election from each sheller contract will apply to each respective unit; or

(ii) If all or some of peanuts under both sheller contracts are insured in the same unit, then the replanted acreage will be prorated to each contract based on the number of acres needed to fulfill each contract (For example, if there are 20 acres in the unit and 10 were replanted, the production guarantee per acre for the unit is 2,000 pounds per acre, and the contract for \$0.23 was for 25,000 pounds and the contract for \$0.21 was for 15,000 pounds, then the acreage under the \$0.23 contract constitutes 62.5 percent of the acreage in the unit (25,000/40,000) and the other sheller contract 37.5 percent of the acreage (15,000/40,000). Of the 10 acres replanted, 6.25 acres (10 × .625) would be paid at the \$0.23 price election and 3.75 acres (10 × .375) would be paid at the \$0.21 price election).

(3) If the peanuts are not grown under a contract, the replanting payments will be valued using the price election as specified in the Special Provisions. If the unit has peanuts grown under a sheller contract and peanuts not grown under a sheller contract, the replanted acreage must be prorated between the contract and non-contract acreage by determining the acreage grown under a contract and the remaining acreage in the unit (For example, if there are 20 acres in the unit and 10 were replanted, the production guarantee per acre for the unit is 2,000 pounds per acre, there is a sheller contract for \$0.23 for 25,000 pounds, the remaining peanuts are not grown under a sheller contract, and the price election in the Special Provisions is for \$0.20. The peanuts under the sheller contract constitute 62.5 percent (25,000/40,000) of the acreage in the unit and remaining peanuts constitute 37.5 percent (40,000 – 25,000/40,000) of the acreage. Of the 10 acres replanted, 6.25 acres (10 × .625) would be paid with the liability based on the \$0.23 price election and 3.75 acres (10 × .375) would be paid with the liability based on the \$0.20 price election).

(d) When the crop is replanted using a practice that is uninsurable for an original planting, the liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

(e) Replanting payments will be calculated using your price election and production guarantee for the crop type that is replanted and insured. A revised acreage report will be required to reflect the replanted type, if applicable.

#### 13. Duties in the Event of Damage or Loss

Representative samples are required in accordance with section 14 of the Basic Provisions.

#### 14. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability for the harvested acreage for the unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the number of insured acres by the respective production guarantee (per acre) for peanuts insured under a sheller contract or not insured under a sheller contract, as applicable;

(2) Multiplying each result of section 14(b)(1) by the applicable price election for peanuts insured at the base contract price or the price election specified in the Special Provisions, as applicable;

(3) Totaling the results of section 14(b)(2);

(4) Multiplying the production to count by the respective price election (If you have one or more sheller contracts, we will value your production to count by using your highest price election first and will continue in decreasing order to your lowest price election based on the amount of peanuts insured at each price election);

(5) Totaling the results of section 14(b)(4);

(6) Subtracting the result of section 14(b)(5) from the result of section 14(b)(3); and

(7) Multiplying the result in section 14(b)(6) by your share.

Example #1 (without a sheller contract):

You have 100 percent share in 25 acres of Valencia peanuts in the unit, with a production guarantee (per acre) of 2,000 pounds, the price election specified in the Special Provisions is \$0.17 per pound, and your production to count is 43,000 pounds.

(1) 25 acres × 2,000 pounds = 50,000 pound guarantee;

(2) 50,000 pound guarantee × \$0.17 price election specified in the Special Provisions = \$8,500.00 guarantee;

(3) 43,000 pounds of production to count × \$0.17 price election specified in the Special Provisions = \$7,310.00;

(4) \$8,500.00 guarantee – \$7,310.00 = \$1,190.00; and

(5) \$1,190.00 × 1.000 = \$1,190.00;

Indemnity = \$1,190.00.

Example #2 (with a sheller contract):

You have 100 percent share in 25 acres of Valencia peanuts in the unit, with a

production guarantee (per acre) of 2,000 pounds. You have two sheller contracts, the first is for 25,000 pounds, price election (contract) is \$0.23 per pound, and the second is for 10,000 pounds, price election (contract) is \$0.21 per pound. The price election (non-contract) specified in the Special Provisions is \$0.17 per pound, and your production to count is 43,000 pounds.

(1) 25 acres  $\times$  2,000 pounds = 50,000 pound guarantee;

(2) 25,000 pounds contracted  $\times$  \$0.23 price election (contract) = \$5,750.00;

10,000 pounds contracted  $\times$  \$0.21 price election (contract) = \$2,100.00;

50,000 pound guarantee – 25,000 pounds contracted – 10,000 pounds contracted = 15,000 pounds not contracted;

15,000 pounds not contracted  $\times$  \$0.17 price election (non-contract) specified in the Special Provisions = \$2,550.00;

(3) \$5,750.00 + \$2,100.00 + \$2,550.00 = \$10,400.00 guarantee;

(4) 43,000 pounds of production to count: 25,000 pounds contracted  $\times$  \$0.23 price election (contract) = \$5,750.00;

10,000 pounds contracted  $\times$  \$0.21 price election (contract) = \$2,100.00;

43,000 pounds of production to count – 25,000 pounds contracted (at \$0.23 per pound) – 10,000 pounds contracted (at \$0.21 per pound) = 8,000 pounds;

8,000 pounds  $\times$  \$0.17 price election (non-contract) specified in the Special Provisions = \$1,360.00;

(5) \$5,750.00 + \$2,100.00 + \$1,360.00 = \$9,210.00;

(6) \$10,400.00 guarantee – \$9,210.00 = \$1,190.00; and

(7) \$1,190.00  $\times$  1.000 = \$1,190.00; Indemnity = \$1,190.00.

(c) The total production to count (in pounds) from all insurable acreage on the unit will include all appraised and harvested production.

(d) All appraised production will include:  
(1) Not less than the production guarantee for acreage:

- (i) That is abandoned;
- (ii) Put to another use without our consent;
- (iii) Damaged solely by uninsured causes;

or

(iv) For which you fail to provide production records that are acceptable to us.

(2) Production lost due to uninsured causes;

(3) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 14(e));

(4) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for the acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(i) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of

production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(ii) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(5) All harvested production from the insurable acreage.

(e) Mature peanuts may be adjusted for quality when production has been damaged by an insured cause of loss.

(1) To enable us to determine the number of pounds, price per pound, and the quality of production for any peanuts that qualify for quality adjustment, we must be given the opportunity to have such peanuts inspected and graded before you dispose of them.

(2) If you dispose of any production without giving us the opportunity to have the peanuts inspected and graded, the gross weight of such production will be used in determining total production to count unless you submit a marketing record satisfactory to us which clearly shows the number of pounds, price per pound, and quality of such peanuts.

(3) Such production to count will be reduced if the price per pound received for damaged peanuts is less than 85 percent of the price election by:

(i) Dividing the price per pound for the damaged peanuts, as determined by us in accordance with section 14(e)(1), received for the insured type of peanuts by the applicable price election; and

(ii) Multiplying this result by the number of pounds of such production.

#### 15. Prevented Planting

(a) Your prevented planting coverage will be 50 percent of your production guarantee for timely planted acreage. If you have additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

(b) In addition to the provisions of section 17(i) of the Basic Provisions, if there are different base contract prices or you also have insurable peanuts not grown under a contract:

(1) If the sheller contracts are for different types of peanuts or one type of peanut is grown under a sheller contract and another is not, the liability will be determined using the price election elected by you for planted acreage, as applicable (For an example, you have two sheller contracts and the base contract price is \$0.23 per pound for Runner type peanuts, then \$0.23 per pound will be used for the value of any prevented planting Runner type peanut acreage. If the base contract price is \$0.21 per pound for Spanish type peanuts, then \$0.21 per pound will be used for the value of any prevented planting Spanish type peanut acreage.

(2) If the sheller contracts are for the same type of peanuts but they have different base contract prices:

(i) If the peanuts grown under each sheller contract are insured in separate optional units, the liability will be determined using each respective price election for the prevented planting acreage in each respective unit; or

(ii) If all or some of the peanuts grown under the sheller contracts are insured in the same unit, then the liability for each contract must be determined separately using the respective price election and the number of eligible prevented planting acres to which the liability applies and will be determined by prorating prevented planting acreage to each contract based on the number of acres needed to fulfill each contract (For example, if there are 20 acres in the unit and 10 were prevented from planting, the production guarantee per acre for the unit is 2,000 pounds per acre, and the contract for \$0.23 was for 25,000 pounds and the contract for \$0.21 was for 15,000 pounds, then the acreage under the \$0.23 contract constitutes 62.5 percent (25,000/40,000) of the acreage in the unit and the other contract 37.5 percent (15,000/40,000) of the acreage. Of the 10 acres prevented from planting, 6.25 acres (10  $\times$  .625) would be paid with the liability based on the \$0.23 price election and 3.75 acres (10  $\times$  .375) would be paid with the liability based on the \$0.21 price election).

(3) If the peanuts are not grown under a contract, the liability for such peanuts will be based on the price election as specified in the Special Provisions. If the unit has peanuts grown under a sheller contract and peanuts not grown under a sheller contract, the eligible prevented planting acreage must be determined by determining the acreage grown under a contract and the remaining acreage in the unit (For example, if there are 20 acres in the unit and 10 were prevented from planting, the production guarantee per acre for the unit is 2,000 pounds per acre, there is a sheller contract for \$0.23 for 25,000 pounds, the remaining peanuts are not grown under a sheller contract, and the price election in the Special Provisions is for \$0.20. The peanuts under the sheller contract constitute 62.5 percent (25,000/40,000) of the acreage in the unit and remaining peanuts constitute 37.5 percent (40,000 – 25,000/40,000) of the acreage. Of the 10 acres prevented from planting, 6.25 acres (10  $\times$  .625) would be paid with the liability based on the \$0.23 price election and 3.75 acres (10  $\times$  .375) would be paid with the liability based on the \$0.20 price election).

Signed in Washington, DC, on September 18, 2006.

**Eldon Gould,**

*Manager, Federal Crop Insurance Corporation.*

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**BILLING CODE 3410–08–P**