

## SUMMARY OF CHANGES FOR THE ADJUSTED GROSS REVENUE PILOT INSURANCE POLICY (2007- AGR)

The following is a brief description of the majority of changes to the Adjusted Gross Revenue (AGR) insurance policy that will be effective for the 2007 insurance year. Please refer to the policy for more complete information. These modifications are:

- (1) Added to the AGR expense and income history definitions, that 'verifiable' supporting records may be requested by the insurance provider on an individual case basis to verify the accuracy of reported allowable AGR expenses and allowable AGR income.
- (2) Added definition for 'farm operation' for clarification.
- (3) Added definition for 'generally recognized' to provide consistency between the AGR policy and the Common Crop Basic Provisions of Insurance and to support the new arbitration section.
- (3) Replaced definition for 'good farming practices' to provide consistency between the AGR policy and the MPC I General Provisions of Insurance and to support the new arbitration section.
- (4) Shortened the definition of qualifying person by moving the criteria that must be met to section 4. Clarified that a person as defined in the policy must meet all of the criteria in section 4 to qualify for AGR insurance.
- (5) Added language to the verifiable records definition to clarify records required from direct marketers and from producers who process and pack their own production.
- (6) Added 'in full' to section 2(e)(5) to clarify that the full payment is required.
- (7) Corrected the date in section 2(e)(6) to the 'termination' date.
- (8) Clarified the ending of section 2(e)(8) to read 'Since applications for insurance cannot be accepted after the sales closing date, if you become eligible after the sales closing date, you cannot apply for insurance until the next insurance year.'
- (9) Changed section 3(a) to a new contract change date of August 31.
- (10) Changed section 3(c) to reflect the RMA website.
- (11) Deleted Liberalization language in section 4 and replaced it with qualifying person criteria.
- (12) Clarified in section 4(e) that in order to use the previous taxpayer's tax returns that the tax entity (taxpayer identification number) must have changed. Clarified that if the insured purchased or leased a separate farming operation the insured must have had an insurable interest in that farming operation to use the previous tax entity's tax returns.
- (13) Clarified in section 4(e) that 90 percent of the previous tax entity's farm operation includes both the land and facilities either owned or leased by the previous tax entity that was used to produce AGR agricultural commodities. Added a provision that requires the most recent tax year prior to the change in the tax entity to have generated at least 90 percent of the average allowable income of the years to be included in the insured's AGR income history before it may be used.
- (14) Added the documentation that is required for an insured to use the previous tax entity's tax returns, provided deadlines for submitting the required documentation, and indicated that the use of such tax returns requires Insurance Provider approval. Insurance will attach upon the insurance provider's approval of the use of the previous tax entity's tax returns.
- (15) Clarified section 5(d) to indicate that if the insured failed to report any information required in section 5 timely, the Insurance provider will deny coverage and that no premium or indemnity will be owed.
- (16) Corrected section 7(f) to reflect the changes made on the Special Provisions pertaining to the number of commodities required by coverage level.
- (17) Added section 9(b) indicating price fluctuations will be presumed to be from unavoidable natural disasters unless USDA can specifically identify a man-made cause that resulted in a measurable change in price.
- (16) Clarified section 10(a)(2)(ii)(C) with the word 'verifiable'.
- (18) Modified section 10(a)(4) to clarify that the original date is the one specified by the IRS.
- (19) Modified section 10(a)(5)(i) and 10(a)(6) to specify 'verifiable' records and that no indemnity will be paid unless verifiable records are provided.
- (20) Replaced section 13 to provide consistency with the Common Crop Basic Provisions of Insurance for Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review.
- (21) Modified section 14(b) to specify 'verifiable' records.
- (22) Replaced section 16 with the current language for conformity to the Food Security Act.
- (23) Added section 18(c) to clarify that the insured's right to recover damages, attorney's fees, or other charges is limited or excluded by this contract or by Federal Regulations.
- (24) Updated section 27, Multiple Government Benefits to indicate that the insured may have to provide verifiable records establishing the total expected value and revenue for each agricultural commodity to be eligible for another government benefit.



DEPARTMENT OF AGRICULTURE  
FEDERAL CROP INSURANCE CORPORATION

ADJUSTED GROSS REVENUE PILOT INSURANCE POLICY  
(This is a continuous policy. Refer to section 2.)

This insurance policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the provisions of the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) (Act). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act. The provisions of the policy may not be waived or varied in any way by the crop insurance agent or any other agent or employee of FCIC or the company. In the event we cannot pay your loss, your claim will be settled in accordance with the provisions of this policy and paid by FCIC. No state guarantee fund will be liable for your loss.

Throughout this policy, "you" and "your" refer to the named insured shown on the accepted application and "we," "us," and "our" refer to the insurance company providing insurance. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural. Some of the definitions in section 1 may require information contained on farm tax form Schedule F (Form 1040). In such cases, the specific line number from the Schedule F for the cash accounting method (2005 tax year version) is shown. To the extent that the line numbers have changed, the corresponding line number for the Schedule F for the insurance year the policy is in effect will apply

**AGREEMENT TO INSURE:** In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If a conflict exists among the provisions contained herein and any applicable Special Provision, the Special Provisions will control.

TERMS AND CONDITIONS

1. **Definitions.**

**AGR** - Adjusted gross revenue.

**AGR expense history** - A written record on our form of 5 consecutive tax years of allowable expenses prior to the year immediately preceding the insurance year. We must be able to verify the accuracy of this record using farm tax forms or amendments to such forms that have been submitted to the IRS and supporting verifiable records requested by us on an individual case basis.

**AGR income history** - A written record on our form of 5 consecutive tax years of allowable income prior to the year immediately preceding the insurance year. We must be able to verify the accuracy of this record using farm tax forms or amendments to such forms that have been submitted to the IRS and supporting verifiable records requested by us on an individual case basis.

**AGR liability** - The dollar amount determined by multiplying your approved AGR by your coverage level percentage and your payment rate percentage.

**Abandon** - Failure to continue activities necessary to produce an amount of allowable income equal to or greater than your approved AGR, performing activities so insignificant as to provide no benefit to the agricultural commodities produced on the farm, or failure to harvest or market in a timely manner, unless an insured cause of loss prevents you from properly caring for, harvesting, or marketing the commodities or causes damage to them to the extent that most producers of the commodities on acreage in the area with similar characteristics would not normally further care for or harvest them. If abandoned, the value of the production will be included as revenue to count. Your decision not to harvest an agricultural commodity due to low market prices will not be

considered abandonment.

**Accounts payable (beginning)** - Expenses incurred prior to the insurance year, but that have not been paid at the beginning of the insurance year and must be supported by verifiable records.

**Accounts payable (ending)** - Expenses incurred prior to and during the insurance year, but that have not been paid at the end of the insurance year and must be supported by verifiable records.

**Accounts receivable (beginning)** - Allowable income earned prior to the insurance year, but that has not been received at the beginning of the insurance year and must be supported by verifiable records. This amount includes the value of beginning inventory that is under a contract with a buyer to be purchased at a specified price.

**Accounts receivable (ending)** - Allowable income earned prior to and during the insurance year, but that has not been received at the end of the insurance year and must be supported by verifiable records. This amount includes the value of ending inventory that is under a contract with a buyer to be purchased at a specified price.

**Accrual accounting method** - A system of record keeping in which farm business income earned and expenses incurred for a specified time period are recorded regardless of whether or not the income was received or the expenses were paid during the specified time period.

**Act** - The Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

**Actuarial documents** - The material for the insurance year that is available for public inspection in your agent's

office, and which shows the available coverage levels, and other related information regarding the insurance coverage.

**Agricultural commodity** - Grain and non-grain crops, vegetables, fruits, nuts, nursery plants, floriculture, Christmas trees, maple tree sap, animals, products from animals such as milk, eggs, etc., and any other agricultural production, excluding timber, forest, and forest products.

**Allowable expenses** - Farm expenses that are reported to the IRS for the production of agricultural commodities, including only those specifically listed below:

- (a) The cost or other basis of animals and other agricultural commodities you bought for resale (line 2 of Schedule F);
- (b) Car and truck expenses (line 12 of Schedule F);
- (c) Chemicals (line 13 of Schedule F);
- (d) Conservation expenses (line 14 of Schedule F);
- (e) Custom hire (machine work) (line 15 of Schedule F);
- (f) Depreciation and section 179 expense deduction not claimed elsewhere (line 16 of Schedule F) (Include only the amount of depreciation allowed for animals);
- (g) Feed purchased (line 18 of Schedule F);
- (h) Fertilizers and lime (line 19 of Schedule F);
- (i) Freight and trucking (line 20 of Schedule F);
- (j) Gasoline, fuel and oil (line 21 of Schedule F);
- (k) Insurance (other than health) (line 22 of Schedule F);
- (l) Labor hired (less employment credits) (line 24 of Schedule F) (Exclude share holder wages, if reported on this line.);
- (m) Repairs and maintenance (line 27 of Schedule F);
- (n) Seeds and plants purchased (line 28 of Schedule F);
- (o) Storage and warehousing (line 29 of Schedule F);
- (p) Supplies purchased (line 30 of Schedule F) (Exclude those used in post-production value added operations such as processing, packing, packaging, etc.);
- (q) Utilities (line 32 of Schedule F);
- (r) Veterinary, breeding, and medicine (line 33 of Schedule F); and
- (s) Other farm expenses (line 34 of Schedule F) (Include only those directly related to the production of agricultural commodities that the IRS allows you to report.)

**Allowable income** - Farm income (does not include added value for any agricultural commodity due to post-production operations such as processing, packing, packaging, etc.) from the production of agricultural commodities that the IRS requires you to report, including only the amount received from:

- (a) The sales of animals, and other agricultural commodities you bought for resale less the cost or other basis of such animals or other commodities (line 3 of Schedule F);
- (b) The sales of animals, produce, grains and other agricultural commodities you raised (line 4 of Schedule F);

- (c) The taxable amount of total cooperative distributions (line 5b of Schedule F) (Include only those directly related to the sale of agricultural commodities.);
- (d) Commodity Credit Corporation loans reported under election (line 7a of Schedule F.) (Amounts received from the Commodity Credit Corporation for production that was placed under loan and that you elected to report to the IRS in a tax year prior to the year in which the loan period ended.);
- (e) The taxable amount of Commodity Credit Corporation loans forfeited (line 7c of Schedule F) (Amounts received from the Commodity Credit Corporation for production that is placed under loan.);
- (f) Other income, including Federal and state gasoline or fuel tax credit or refund (line 10 of Schedule F) (Exclude Federal and state gasoline or fuel tax credits or refunds if reported on this line. Include all income directly related to the production of agricultural commodities that the IRS requires you to report, including, but not limited to:
  - (1) Income from bartering (This amount will be determined in accordance with IRS rules.);
  - (2) Payments from buyers of agricultural commodities for bypassed acreage (These are payments made to you in accordance with a contract between you and a buyer for not harvesting your crop.); and
  - (3) Diversion or set-aside payments or other income from such programs under any Federal or State Program, or marketing order (These are payments made to you for not producing or harvesting an agricultural commodity.).

**Animals** - Living organisms other than plants or fungi that are produced or raised in farming operations, including, but not limited to, bovine, equine, swine, sheep, goats, poultry, aquacultural species propagated or reared in a controlled environment, bees, and fur bearing animals, excluding animals for sport, show or pets.

**Application** - The form required to be completed by you and accepted by us before insurance coverage will begin. This form must be completed and filed in your agent's office not later than the sales closing date for the insurance year. If cancellation or termination of insurance coverage occurs for any reason, including but not limited to indebtedness, suspension, debarment, disqualification, cancellation by you or us or violation of the controlled substance provisions of the Food Security Act of 1985, a new application must be filed. Insurance coverage will not be provided if you are ineligible for one of the above stated reasons or under any Federal statute or regulation.

**Approved AGR** - The simple average of the AGR income history you included on your farm report, adjusted to reflect any expected increase or reduction in allowable income for the insurance year (see section 5).

**Approved expenses** - The simple average of the AGR expense history you included on your farm report adjusted to reflect any expected increase or reduction in

allowable expenses for the insurance year (see section 5).

**Assignment of indemnity** - A transfer of policy rights, made on our form, and effective when approved by us. It is the arrangement whereby you assign your right to an indemnity payment for the insurance year to any party of your choice.

**Bypassed acreage** - Land on which an agricultural commodity, grown under a processor contract, is ready for harvest but the buyer elects not to accept such commodity so it is not harvested.

**Calendar year** - A period of 12 consecutive months beginning with January 1 and ending on December 31.

**Cancellation date** - The calendar date designated in these provisions on which your coverage will automatically renew unless canceled in writing by either you or us or terminated in accordance with the policy terms.

**Cash accounting method** - A system of record keeping where farm business income and expenses are recorded during the time period they are actually or constructively received or paid.

**Claim for indemnity** - A claim made on our form by you for a loss by this policy.

**Consent** - Approval in writing by us allowing you to take a specific action.

**Contiguous** - Two tracts of land that are touching at any point.

**Cost** - For the purpose of section 11(c), the actual dollar amount paid for an agricultural commodity you bought for resale, or for an agricultural commodity you depreciate for tax purposes, the actual dollar amount you paid less depreciation amounts on animals allowed on previous year's and the current year's tax return.

**County** - Any county, parish, or other political subdivision of a state.

**Coverage** - The insurance provided by this policy against loss of covered revenue.

**Days** - Calendar days.

**Delinquent account** - Any account you have with us in which premiums and interest on those premiums are not paid or any other amounts due us, such as indemnities found not to have been earned, which are not paid within 30 days of our mailing or other delivery of notification to you of the amount due.

**End of insurance period, date of** - The date upon which your insurance coverage ceases.

**FSA** - The Farm Service Agency, an agency of USDA, or a successor agency.

**Farm report** - A required report that must be submitted to us at the time of application for the initial year and by the sales closing date for subsequent years (see section 5).

**Farm tax forms** - IRS income tax forms used to report farm income and expenses, specifically including schedule F.

**Farm operation** - All of the farming activities for which income and expenses are reported to IRS under a single taxpayer identification number.

**Fiscal year** - A period of 12 consecutive months used for accounting and tax purposes, and ending on the last day of the twelfth month as long as month is not December.

**Generally recognized** - When agricultural experts or the organic agricultural industry, as applicable, are aware of the production method or practice and there is no genuine dispute regarding whether the production method or practice allows the commodity to make normal progress toward maturity and produce at least the allowable income used to determine the approved AGR.

**Good farming practices** - The marketing practices and production methods utilized to produce the insured agricultural commodities and allow them to make normal progress toward maturity resulting in at least the allowable income used to determine the approved AGR, which are: (1) For conventional or sustainable farming practices, those generally recognized by agricultural experts for the area; or (2) for organic farming practices, those generally recognized by the organic agricultural industry for the area or contained in the organic plan. Good farming practices will include replacing (or replanting crops) damaged or lost agricultural commodities when the allowable income from the sale of such agricultural commodities will exceed the cost of replacing or replanting the agricultural commodity. We may, or you may request us to, contact FCIC to determine whether or not production methods will be considered to be good farming practices.

**IRS** - Internal Revenue Service, United States Department of the Treasury.

**Insurance year** - A calendar year if you file your taxes on a calendar year basis. A fiscal year if you file your taxes on a fiscal year basis. The insurance year is designated by the calendar year in which the sales closing date occurs.

**Inventory (beginning)** - A record of the agricultural commodities you produced prior to the insurance year, but that have not been sold or otherwise disposed of at the beginning of the insurance year. This record must be supported by verifiable records. Any agricultural commodity that is under a futures contract with a buyer to be purchased during the previous insurance year at a price that will not be determined until the current insurance year will be considered as beginning inventory. For example, if you execute a futures contract on June 30, 2006, with the price to be determined by averaging the first 10 days price for the agricultural commodity on the Chicago Board of Trade for the month of March, 2007, the beginning inventory for the 2007 insurance year will include the production or amount of the agricultural commodity under contract. The beginning inventory will be valued as specified in section 11(c).

**Inventory (ending)** - A record of the agricultural commodities you produced prior to and during the insurance year, but that have not been sold or otherwise disposed of at the end of the insurance year. This record must be supported by verifiable records. Any

agricultural commodity that is under a contract with a buyer to be purchased during the insurance year at a price that will not be determined until the subsequent insurance year will be considered as ending inventory. For example, if you execute a futures contract on June 30, 2007, with the price to be determined by averaging the first 10 days price for the agricultural commodity on the Chicago Board of Trade for the month of March, 2008, the ending inventory will include the production or amount of the agricultural commodity under contract. The ending inventory will be valued as specified in section 11(c).

**Limited resource farmer** - A person with:

- (a) Direct or indirect gross farm sales not more than \$100,000 in each of the previous two years (to be increased starting in fiscal year 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service(NASS)); and
- (b) A total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data).

**Local market value** - The average price offered by buyers of the agricultural commodity being valued in the area where you normally sell that commodity, as reported by the Agricultural Market News Service (the most recent publication prior to the date of valuation will be used). If such a price is not available, the average price offered by at least two commercial buyers, one nominated by you and one nominated by us. The value of any animal will not exceed the local market value of the same breed and type being valued.

**Loss, notice of** - A written notice required to be filed in your agent's office whenever you initially discover that your allowable income may be less than the level covered by this policy.

**Negligence** - The failure to use such care as a reasonably prudent and careful person experienced in the production of agricultural commodities would use under similar circumstances.

**Person** - An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision of a State. "Person" does not include the United States Government or any agency thereof.

**Pilot county** - A county listed in the actuarial documents for this AGR coverage.

**Policy** - The agreement between you and us consisting of the accepted application, these provisions, Special Provisions, actuarial documents, and the applicable regulations published in 7 C.F.R. chapter IV.

**Post-production operations** - Operations performed after the crop is harvested, such as processing, conditioning, packing, packaging, etc.

**Qualifying person** - You are a qualifying person if you are a person that meets all of the criteria contained in section 4.

**Sales closing date** - January 31, which is the date by which an application must be filed. The sales closing date is the last date by which you may change your AGR coverage for an insurance year. Coverage changes will be limited in accordance with section 7(g).

**Special Provisions** - The part of the policy that contains specific provisions of insurance that may vary by geographic area.

**Substantial beneficial interest** - An interest held by any person of at least 10 percent in the applicant or insured.

**Termination date** - The calendar date designated in these provisions upon which your insurance ceases to be in effect because of nonpayment of any amount due us under the policy, including premium.

**USDA** - United States Department of Agriculture.

**Verifiable records** - Written records developed contemporaneously with the event recorded (such as harvested production, sale of an agricultural commodity, etc.), provided from a disinterested third party (such as records from a warehouse, processor, packer, broker, etc.), or by measurement of farm stored agricultural commodities. If you sell directly to consumers (direct market), written records developed contemporaneously with the sale and used to determine taxes paid on the farm tax forms must be provided. If you process or pack your insured commodities, you must provide final settlement sheets showing disposition of the insured agricultural commodities and marketing records reconcilable with income reported for tax purposes for the insured entity.

**Void** - Nullification of the policy back to the beginning of the insurance year.

## 2. Life of Policy, Cancellation, and Termination.

- (a) This is a continuous policy and will remain in effect for each insurance year following the acceptance of the original application until canceled by you in accordance with the terms of the policy or terminated by operation of the terms of the policy or by us.
- (b) You must be a qualifying person and your application for insurance must contain all the information required by us to insure your farm revenue. Applications that do not contain all social security numbers, employer identification numbers, and taxpayer identification numbers, as applicable (except as stated herein), coverage level and payment rate, and any other material information required to insure the farm revenue, will not be accepted. If a person with a substantial beneficial interest in the insured revenue refuses to provide a social security number or employer identification number, the amount of coverage available under the policy will be reduced proportionately by that person's share of the revenue.
- (c) After acceptance of the application, you may not cancel this policy for the initial insurance year. Thereafter, the policy will continue in force for each succeeding insurance year unless canceled or terminated as provided in these provisions.

- (d) Either you or we may cancel this policy after the initial insurance year by providing written notice to the other on or before the cancellation date shown in these Provisions.
- (e) If any amount due, including premium, administrative fees, or overpaid indemnities is not paid on or before the termination date for the insurance year on which an amount is due:
- (1) For a policy with unpaid premium, the policy will terminate effective on the first day of the insurance year immediately subsequent to the insurance year for which the premium was due (insurance will be considered not to have attached in the subsequent year and no premium will be owed or indemnity paid);
  - (2) For a policy with other amounts due, the policy will terminate effective on the termination date immediately after the account becomes delinquent;
  - (3) Ineligibility will be effective as of the date that this policy was terminated and for all other insurance policies with coincidental termination dates;
  - (4) All other crop insurance policies that are reinsured by FCIC under the authority of the Act will also terminate as of the next termination date contained in the applicable policy;
  - (5) If you are ineligible, you may not obtain any insurance under the Act until payment is made in full, you execute an agreement that is accepted by us to repay the debt, or you file a petition to have your debts discharged in bankruptcy;
  - (6) If you execute an agreement to pay the debt and fail to make any scheduled payment, all policies will be terminated effective on the termination date for the crop year in which you failed to make the scheduled payment and no indemnity or prevented planting payment will be due for that crop year. You will no longer be eligible to obtain crop insurance by execution of an agreement to pay the debt. You will be ineligible for crop insurance until the debt is paid in full or you file a petition to discharge the debt in bankruptcy and subsequently obtain discharge of the amounts due. Dismissal of the bankruptcy petition before discharge, and prior to the payment of the debt in full, will void all policies in effect retroactive to the date you were originally determined ineligible to participate;
  - (7) Once the policy is terminated, the policy cannot be reinstated for the current insurance year unless the termination was in error;
  - (8) After you again become eligible for insurance, if you want to obtain insurance coverage, you must reapply on or before the applicable sales closing date (Since applications for insurance cannot be accepted after the sales closing

date, if you become eligible after the sales closing date, you cannot apply for insurance until the next insurance year); and

- (9) If we deduct the amount due us from an indemnity owed for a subsequent insurance year, the date of payment for the purpose of this section will be the date you sign the properly executed claim for indemnity.

For example, if policy A, with a termination date of January 30, 2001, and policy B, with a termination date of March 15, 2001, are issued and you do not pay the premium for policy A by the termination date, you are ineligible for insurance as of January 31, 2001, and policy A is terminated on that date. Policy B is terminated as of March 15, 2001. If you enter an agreement to repay the debt on December 31, 2001, you can apply for insurance for policy A by the January 31, 2002, sales closing date and policy B by the March 15, 2002, sales closing date. If you fail to make a scheduled payment on April 1, 2002, your policy will terminate as of January 31, 2002, for crop A, and March 15, 2002, for crop B, and no indemnity or prevented planting payment will be due for that crop year for either crop. You will not be eligible to apply for crop insurance for any crop until after the debt is paid in full or you file a petition to discharge the debt in bankruptcy and you make application in accordance with section 2(e).

- (f) If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the policy will terminate as of the date of death, disappearance, judicial declaration, or dissolution. If such event occurs after coverage begins for any insurance year, the policy will continue in force through the insurance year and terminate at the end of the insurance period and any indemnity will be paid to the person or persons determined to be beneficially entitled to the indemnity. Any premium remaining to be paid will be deducted from the indemnity or collected from the estate. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.
- (g) We may terminate your policy if no premium is earned for 3 consecutive years.
- (h) The cancellation and termination dates are January 31.

### 3. Contract Changes.

- (a) The contract change date is August 31 of the calendar year preceding the calendar year in which your insurance year begins.
- (b) We may change the terms of your coverage under this policy from year to year.
- (c) After the year of application, any changes in policy provisions, premium rates, and program dates will be provided by us to your crop insurance agent or published on the RMA website ([www.rma.usda.gov](http://www.rma.usda.gov))

or its successor) not later than the contract change date. If not in the office by the contract change date or published on the FCIC website, you have the option of accepting the changes. You may view the documents or request copies from your crop insurance agent.

- (d) After the year of application, you will be notified, in writing, of changes to these provisions and the Special Provisions not later than 30 days prior to the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

#### 4. Qualifying Person Criteria.

To be considered a qualifying person, you must:

- (a) Be a person;
- (b) Be engaged in the business of farming and derive income from the production of agricultural commodities primarily within pilot counties but may also derive income from agricultural commodities produced in non-pilot counties that are contiguous to pilot counties;
- (c) If insured as an individual, be a United States citizen or resident;
- (d) If insured as a corporation, partnership, or trust, be permanently established in the United States, and file either a Schedule F tax form or submits other tax forms to the IRS that contain the same information that is provided on the Schedule F tax form;
- (e) File a United States federal income tax return (tax return) for each year of AGR income and expense history that is the same taxpayer (tax entity) as the insured entity for the insurance year unless your tax entity (taxpayer identification number) changed (e.g., you and your spouse form a partnership and file a U.S. Partnership Return of Income and you previously filed a U.S. Individual Income Tax Return that included your spouse's interest in the farm operation), you stop farming as an individual and farm as an entity, or you form a successor farming operation that is a different tax entity.
  - (1) The purchase or lease of a separate farming operation during the five tax years you are required to report to calculate your approved AGR is NOT sufficient to permit you to use the tax returns of the previous tax entity of that farming operation. You must have had an insurable interest in the farming operation.
  - (2) You may use the previous tax entity's tax returns if all of the following are met:
    - (i) At least 90 percent of the previous tax entity's farm operation, specifically including the land and facilities (e.g., irrigation systems, greenhouses, etc.) either owned or leased by the previous tax entity that were used to produce agricultural commodities upon which the AGR income and expense histories are based, for the most recent tax year prior to the change in tax entity or the year you inherited the farming operation, was

assumed by you. In addition, the previous tax entity's most recent tax year must have generated (or if commodities were damaged or destroyed by an insurable cause of loss was capable of generating ) at least 90 percent of the average allowable income for the previous tax entity to be included in your AGR income history. For example, for the 2007 insurance year the five years to be included in your AGR history are the 2001-2005 tax years and you formed a new farm tax entity for the 2004 tax year. The most recent tax year prior to the change in the tax entity is 2003. You can only use the AGR income and expense history of the previous tax entity's farm operation for the 2001-2003 tax years if 90 percent of the land and facilities contained in the 2003 farm operation were assumed in your 2004 successor farm operation and the income generated for the 2003 tax year was at least 90 percent of the average allowable income generated for the 2001-2003 tax years;

- (ii) The change in the tax entity was not done to circumvent any tax law or liability;
- (iii) The previous tax entity met the requirements of sections 4(a), (b), and (c) and for each tax year that you wish to use, the previous tax entity filed a tax return that was for the same tax entity;
- (iv) You complete an application along with a request to use the previous tax entity's tax returns no later than the sales closing date and you submit the documentation required in sections 4(e)(2)(v) and (vi) to us no later than 15 calendar days after you submit your application;
- (v) You submit evidence acceptable to us of the previous tax entity's land and facilities used to generate the income contained on the previous tax entities tax returns and that at least 90 percent of that tax entity's land and facilities is assumed in your successor farming operation;
- (vi) You submit a copy of the previous tax entity's tax returns and Schedule F's for all of the tax years in the five-year history you will use:
  - (A) If the previous tax entity did not file Schedule F, you must complete, in accordance with IRS rules for Schedule F, a substitute Schedule F for such tax years and provide a copy to us;
  - (B) If requested, you must also provide a copy of the previous tax entity's verifiable records that are needed to support the allowable income,

allowable expenses stated on the farm tax forms (including any substitute Schedule F's) and the cost of post production operations by no later than 15 calendar days after we request them; and

(vii) We approve the use of the previous tax entity's tax returns and substitute Schedule F's when applicable:

(A) We will not approve use of the previous tax entity's tax returns unless you timely provide all of required documentation and meet all the conditions in section 4(e);

(B) We will notify you within 10 working days after receiving the required documentation whether the use of the previous tax entity's tax returns is approved. If approved, the AGR expense and income history of the previous tax entity will be used when calculating your approved AGR and approved expenses;

(C) When the previous tax entity's farm tax returns are used along with your current tax returns to obtain the five years required to calculate the approved AGR (e.g., through inheritance or due to a change in the tax entity), the combined AGR expense and income histories will be used when calculating your approved AGR and approved expenses (e.g., three years of the prior tax entity's allowable income and expenses and two years of your allowable income and expenses); and

(D) Coverage will begin on the date the use of the prior tax entity's tax returns is approved; and

(f) Have not more than:

(1) Fifty percent of your allowable income for the insurance year derived from agricultural commodities purchased for resale;

(2) Fifty percent of your allowable income for the insurance year derived from a combination of the production of crops for which individual insurance policies (e.g., an apple policy) are offered under the authority of the Federal Crop Insurance Act, animals and animal products, unless such commodities are insured under other available insurance offered under the authority of the Federal Crop Insurance Act; or

(3) Thirty-five percent of your allowable income for the insurance year derived from animals and animal products.

## 5. Reports.

(a) On or before the sales closing date for each insurance year, you must submit a farm report that

includes:

(1) Your AGR expense and AGR income histories;

(2) Copies of your farm tax forms for the 5 years that were used to determine your AGR expense and AGR income histories;

(3) An accounting of the allowable income you expect to receive on an agricultural commodity-by-commodity basis for the insurance year;

(4) Any changes in the agricultural commodities you intend to produce, the amount of the agricultural commodity you intend to produce, the location of each agricultural commodity, production practices, the size of your farming operation, your share, market conditions or damage to any crop occurring prior to the beginning of the insurance period, or any other condition that may reduce your allowable income from previous levels.

(b) For each insurance year you must submit a report of your beginning inventory on or before:

(1) January 31 if you file a calendar year tax return; or

(2) The last day of the month in which your fiscal year begins if you file a fiscal year tax return.

(c) On or before the sales closing date for the first year of insurance only, if you elect a coverage level of 75 or 80 percent, you must submit an accounting on our form on an agricultural commodity-by-commodity basis of acres planted (quantity produced for agricultural commodities other than crops) the location of the agricultural commodity, production practices, and marketing method for each year of AGR history.

(d) If you fail to timely submit any information required in this section, we will deny liability and no indemnity will be owed by us or premium will be owed by you.

(e) Your average AGR income history will be adjusted to reflect any reduction in potential revenue for the insurance year caused by changing the agricultural commodities produced from your farming operation, the size of your farming operation, your share, market conditions or damage to any crop occurring prior to the beginning of the insurance period, or any other factor that could result in less allowable income for the insurance year than the simple average of your AGR income history.

(1) We will make this reduction based on the information contained in your farm report, our inspection of any damaged crop, and our estimate of the effect of these changes or conditions.

(2) If you fail to notify us of any circumstance that may reduce your allowable income below your average AGR income history at the time you submit your farm report, we will, at our option, reduce your approved AGR as necessary at any time we become aware of the circumstance or deny liability.

(3) If you can prove that your allowable income for the insurance year will be higher than the



average of your AGR income history, we may establish your approved AGR at a greater amount than the average.

- (4) If we establish your approved AGR at a greater amount than the average of your AGR income history, the indexed average expenses will be calculated as follows:

- (i) Divide each tax year's allowable expenses by the preceding tax year's allowable expenses (results are rounded to three decimal places and may not exceed 1.200 or be less than 0.800);
- (ii) Total the results of subparagraph (i);
- (iii) Divide the result of subparagraph (ii) by four (rounded to three decimal places);
- (iv) Multiply the result of subparagraph (iii) by itself three times; and
- (v) Multiply the result of subparagraph (iv) by the average allowable expenses and round to the nearest dollar.

Example: 2001 allowable expenses are \$89,000; 2002 allowable expenses are \$95,000; 2003 allowable expenses are \$93,500, 2004 allowable expenses are \$95,000, 2005 allowable expenses are \$107,200. The average AGR allowable expenses are \$95,940.

1.  $(\$107,200/\$95,000) = 1.128$ ;  $(\$95,000/\$93,500) = 1.016$ ;  $(\$93,500/\$95,000) = .984$ ;  $(\$95,000/\$89,000) = 1.067$
2.  $1.128 + 1.016 + .984 + 1.067 = 4.195$
3.  $4.195/4 = 1.049$
4.  $1.049 \times 1.049 \times 1.049 \times 1.049 = 1.211$
5.  $\$95,940 \times 1.211 = \$116,183$

- (5) If we establish your approved AGR at a lower amount than the average of your AGR history, the average AGR expense history will be multiplied by the factor that results from dividing your approved AGR by the simple average of your AGR income history. For example, if your average AGR income history is \$100,000, your average AGR expense history is \$90,000, and your approved AGR is \$80,000, your approved expenses would be  $\$90,000 \times (\$80,000/\$100,000) = \$72,000$ . ( $\$80,000/\$100,000 = 0.8$ ).

- (f) We will reduce your approved AGR and any indemnity or deny liability at any time we become aware that the information used to determine your approved AGR is incorrect or is not supported by verifiable records. Your premium will be adjusted to reflect any revised approved AGR.
- (g) You may not revise any farm report or beginning inventory report after the date it is required to be submitted without our consent.

#### 6. Annual Premium and Administrative Fee.

- (a) The annual premium is earned and payable at the time coverage begins.
- (b) The annual premium amount is calculated by:

- (1) Multiplying your approved AGR by the coverage level and payment rate you elected. If you have any other policy issued under the authority of the Act, this amount will be adjusted by subtracting the dollar amount of liability under all other policies you have that are issued under the authority of the Act and that could compensate you for damage to or loss of agricultural commodities insured under this policy, not to exceed the amount determined by multiplying your AGR liability by 0.5 (For policies where the liability can change during the coverage period, the liability used for the purpose of this paragraph will be that used to determine the amount of premium.);
- (2) Multiplying the result of section 6(b)(1) by the premium rate for the coverage and payment level you elected; and
- (3) Multiplying the result of section 6(b)(2) by any premium adjustment percentages that may apply.

- (c) Your administrative fee for this policy will be \$30. The administrative fee will be waived if you request it and:

- (1) You qualify as a limited resource farmer; or,
- (2) You were insured prior to the 2005 insurance year or for the 2005 insurance year and your administrative fee was waived for one or more of those insurance years because you qualified as a limited resource farmer under a policy definition previously in effect, and you remain qualified as a limited resource farmer under the definition that was in effect at the time the administrative fee was waived.

- (d) You will be billed for any premium due and the applicable administrative fee not earlier than December 1. The total due, plus any accrued interest, will be considered delinquent if it is not paid on or before the termination date. Premium must be paid by the termination date regardless of whether a claim is pending.

#### 7. Insured Revenue and Available Coverages.

- (a) The insured revenue will be the amount that you earn or obtain from the sale of all agricultural commodities you produce, the sale of all agricultural commodities you purchase for resale, and all other allowable income as defined in section 1 during the insurance year.
- (b) Increased value caused by any post-production process, including, but not limited to, the following, will not be covered:
  - (1) Canning, freezing, or otherwise processing the insured agricultural commodities, including the value of the labor required to perform such activities; or
  - (2) Packing or packaging, including the value of packaging materials and labor.
- (c) You may select only one coverage level and payment rate under this policy for each insurance year. The available coverage levels and payment

rates will be those contained in the actuarial documents.

- (d) Your revenue guarantee will be determined by multiplying your approved AGR by the coverage level you elected, and by the expense factor determined in accordance with section 11(a)(2) if your allowable expenses for the insurance year are less than 70 percent of your approved expenses. If your revenue to count (see section 11(c)) for the insurance year falls below your revenue guarantee, you will be paid the amount determined by multiplying the amount of that deficiency by the payment rate you elected.
- (e) We may limit your coverage level and payment rate based on the number or amount of agricultural commodities you produce.
- (f) You must produce at least the number of agricultural commodities stated in the Special Provisions to qualify for the coverage level selected. The expected allowable income shown on your farm report for each of these commodities must also equal or exceed the amount determined in accordance with the Special Provisions.
- (g) You may change your coverage level and payment rate for the following insurance year by giving us written notice not later than the sales closing date for the insurance year you wish the change to be effective. You may not increase your coverage level or payment rate if any cause of loss that could or would reduce your allowable income for the insurance year is evident prior to the time you request the increase.

#### **8. Share Insured.**

Insurance will be provided against loss of revenue only for the person named on the application and will not extend to any other person having a share in the agricultural operation.

#### **9. Causes of Loss.**

- (a) Insurance is provided against loss of revenue due to any unavoidable natural disaster that occurs during the current insurance year, except any loss due to the following will not be covered:
  - (1) Negligence, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, employees, or contractors;
  - (2) Failure to follow recognized good farming and management practices including scientifically sound sustainable and organic farming practices for each agricultural commodity;
  - (3) Water contained by any governmental, public, or private dam or reservoir project;
  - (4) Failure or breakdown of irrigation equipment or facilities;
  - (5) Failure to carry out a good irrigation practice;
  - (6) Theft or mysterious disappearance;
  - (7) Vandalism;
  - (8) Inability to market the agricultural commodities due to quarantines, boycotts, or refusal of any person to accept your agricultural commodities;

- (9) Lack of labor to properly care for, harvest or perform any necessary production or post-production operations for any insured agricultural commodity;
  - (10) Failure of any buyer to pay you for agricultural commodities you produced;
  - (11) Failure to follow the requirements contained in any processor contract;
  - (12) Abandonment; or
  - (13) Failure to obtain a price for any agricultural commodity that is reflective of the local market value.
- (b) Price fluctuations will be presumed to be from unavoidable natural disasters unless USDA can specifically identify a man-made cause that resulted in a measurable change in the price. In the case of such occurrence, losses caused by the price fluctuation will not be covered.
  - (c) For the year of application, you will not be covered for any losses that occur earlier than 10 days after we receive your properly completed application.

#### **10. Duties in the Event of Damage or Loss.**

##### **(a) Your Duties -**

- (1) In the event of probable loss, you must provide us with:
  - (i) A notice of loss within 72 hours of your initial discovery that your allowable income for the insurance year could fall below the amount determined by multiplying your approved AGR by the coverage level you elected. Failure to provide notice within 15 days after the filing of your farm tax forms for the insurance year will result in denial of your claim (for the purposes of this provision requests for extensions will not be considered a farm tax form);
  - (ii) A copy of your farm tax forms, and any amendments applicable to the insurance year, and any additional documentation we require to convert the allowable income and allowable expenses for the insurance year to an accrual accounting method;
  - (iii) An ending inventory; and
  - (iv) A beginning and ending accounts receivable.
- (2) In case of damage to any insured agricultural commodity, you must:
  - (i) Protect it from further damage by providing sufficient care if the cost of such care will not exceed the value of the agricultural commodity; and
  - (ii) Cooperate with us in the investigation or settlement of the claim, and, as often as we reasonably require:
    - (A) Allow us to inspect the damaged commodity;
    - (B) Allow us to remove samples and determine the extent of damage;

and

- (C) Provide us with the verifiable records and documents we request and permit us to make copies.
- (3) You must notify us and obtain our consent before you abandon, dispose of, or destroy, any insured agricultural commodity. If we do not inspect the damage within 7 days after notification, you may abandon, dispose of, or destroy the insured agricultural commodity without our consent. If we determine that expenses associated with the sale of an agricultural commodity would be greater than the allowable income from the sale, we will not include the potential revenue when determining revenue to count under section 11(c).
- (4) In addition to complying with all other notice requirements, you must submit a claim for indemnity declaring the amount of your loss not later than 60 days after the original date specified by the IRS that your income tax forms for the insurance year must be provided to the IRS.
- (i) This claim must include all the information we require to settle the claim.
- (ii) We will not pay any indemnity if you do not file your income taxes by the first day of the seventh month after the end of the insurance year unless you have requested a Federal tax filing extension.
- (iii) If you have requested a Federal tax filing extension we will not pay any indemnity if you do not file your taxes by the final extended tax due date.
- (iv) To be considered timely filed, you must also provide to us a copy of your request for an extension or a copy of your tax return showing the date signed, or a proof of mailing showing the date the return was filed, or, if required by us, you must request that the IRS send us verification of the date the return was filed.
- (5) Upon our request, you must:
- (i) Provide verifiable records that comprise a complete marketing record of each agricultural commodity; and
- (ii) Submit to examination under oath (failure to answer all questions fully and completely, and provide all information we determine necessary for the adjustment of the claim, will result in our determination that no indemnity is due.)
- (6) You must establish, using verifiable records, the total revenue received for all agricultural commodities, and that the loss of production or revenue was caused by perils covered under this policy. Failure to provide these records will result in denial of the claim.
- (b) Our Duties -
- (1) If you have complied with all the policy

provisions, we will pay your loss within 30 days after:

- (i) We reach agreement with you;
- (ii) Completion of arbitration or appeal proceedings; or
- (iii) The entry of a final judgment by a court of competent jurisdiction.
- (2) In no event can a claim be settled until farm tax forms for the insurance year are filed with the IRS (see section 11(d)).
- (3) We recognize and apply the claim adjustment and other procedures established or approved by FCIC.

#### 11. Claim For Indemnity.

- (a) In the event of loss of revenue covered by this policy, we will settle your claim as follows:
- (1) Determine your approved AGR;
- (2) If your allowable expenses for the insurance year (see section 11(b)) fall below 70.0 percent of your approved expenses, reduce the result of section 11(a)(1) by 0.1 percent for each 0.1 percent that your allowable expenses for the insurance year fall below 70.0 percent of your approved expenses (Such reduction will not change the approved AGR used to determine your premium amount);
- (3) Multiply the result of section 11(a)(1) or (2), whichever is applicable, by the coverage level percentage you elected;
- (4) Subtract your revenue to count (see section 11(c)) for the insurance year from the result of section 11(a)(3); and
- (5) Multiply the result of section 11(a)(4) by the payment rate percentage you elected.

For example:

You have approved expenses of \$100,000, expenses for the insurance year of \$68,000, and an approved AGR of \$130,000. Your revenue to count is \$25,000 and you purchased a coverage level of 65.0 percent and a payment rate of 75.0 percent. The indemnity would be calculated as follows:

- (a)(1) Approved AGR = \$130,000;
- (a)(2)  $\$68,000/\$100,000 = 68.0$  percent or 2.0 percent less than 70.0 percent. Therefore, the approved AGR is reduced by 2.0 percent to \$127,400;
- (a)(3)  $\$127,400 \times 0.65 = \$82,810$ ;
- (a)(4)  $\$82,810 - 25,000$  revenue to count = \$57,810; and
- (a)(5)  $\$57,810 \times 0.75 = \$43,358$  indemnity paid.
- (b) Your allowable expenses will be determined from your income tax forms. However, if you use a cash accounting method and prepay expenses and supplies to a greater extent than you have in your AGR history, or if losses in the insurance year prevent you from paying or prepaying for expenses and supplies to the extent you have in the past, we may adjust your expenses by accrual accounting methods. Such adjustment may include adjustment for beginning and ending accounts payable.

- (c) Your revenue to count will be calculated by:
- (1) Determining your allowable income from your income tax forms; and
  - (2) If you use a cash accounting method, making accrual accounting method adjustments to the result of section 11(c)(1) by adding or subtracting (positive amounts are added and negative amounts are subtracted) the following:
    - (i) The dollar amount of your ending accounts receivable less the dollar amount of your beginning accounts receivable. The value will not include the cost of the commodity being valued if you purchased the commodity for resale. For example, if the beginning accounts receivable is \$100 but the cost of the agricultural commodities that sold for \$100 was \$40, only \$60 will be included as beginning accounts receivable; and
    - (ii) For all agricultural commodities except, those covered in section 11(c)(2)(iii), the value of your ending inventory less the value of your beginning inventory (the value of both the beginning and ending inventories will be the actual price received if the inventory is sold prior to the time your claim is finalized or if the inventory is not sold at the time we finalize your claim the local market value on the first day of the month in which the claim is finalized);
    - (iii) For all animals and other agricultural commodities you purchased for resale, the amount calculated by:
      - (A) Determining the local market value of your ending inventory on the last day of the insurance year;
      - (B) Subtracting the cost of the agricultural commodities in the ending inventory from the result of section 11(c)(2)(iii)(A);
      - (C) Determining the local market value of your beginning inventory on the first day of the insurance year;
      - (D) Subtracting the cost of the agricultural commodities in the beginning inventory from the result of section 11(c)(2)(iii)(C); and
      - (E) Subtracting the result of section 11(c)(2)(iii)(D) from the result of section 11(c)(2)(iii)(B).
  - (3) Adding to the result of section 11(c)(1) or 11(c)(2), as applicable, any allowable income that is lost because agricultural commodities were damaged or destroyed by causes of loss not covered under this policy;
  - (4) Adding to the result of section 11(c)(3) any insurance indemnity or noninsured crop disaster assistance program payment (NAP).

For example, an insurance payment from a multiple peril, hail, or mortality policy for damage to any agricultural commodity would be included; and

- (5) Adding to the result of section 11(c)(4) any net gain from commodity hedging.
- (d) A claim cannot be settled until:
- (1) The corresponding year's farm tax forms are filed. If the farm tax forms are amended before or after the claim is settled or an IRS audit indicates the amount of allowable income or allowable expenses on such forms was incorrect, you must notify us and provide a copy of the amended forms or audit results. We may adjust the amount of any indemnity based on the information contained in the amended form or the information found to be correct by the audit.
  - (2) All other insurance indemnities that cover agricultural commodities insured under this policy have been finalized.

## **12. Agricultural Commodities as Payment.**

You must not forfeit any agricultural commodity to us. We will not accept any agricultural commodity as compensation for payments due us.

## **13. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review.**

- (a) If you and we fail to agree on any determination made by us except those specified in section 13(d), the disagreement may be resolved through mediation in accordance with section 13(g). If resolution cannot be reached through mediation, or you and we do not agree to mediation, the disagreement must be resolved through arbitration in accordance with the rules of the American Arbitration Association (AAA), except as provided in sections 13(c) and (f), and unless rules are established by FCIC for this purpose. Any mediator or arbitrator with a familial, financial or other business relationship to you or us, or our agent or loss adjuster, is disqualified from hearing the dispute.
  - (1) All disputes involving determinations made by us, except those specified in section 13(d), are subject to mediation or arbitration. However, if the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, either you or we must obtain an interpretation from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC.
    - (i) Any interpretation by FCIC will be binding in any mediation or arbitration.
    - (ii) Failure to obtain any required interpretation from FCIC will result in the nullification of any agreement or award.
    - (iii) An interpretation by FCIC of a policy provision is considered a rule of general

- applicability and is not appealable. If you disagree with an interpretation of a policy provision by FCIC, you must obtain a Director's review from the National Appeals Division in accordance with 7 CFR 11.6 before obtaining judicial review in accordance with section 13(e);
- (iv) An interpretation by FCIC of a procedure may be appealed to the National Appeals Division in accordance with 7 CFR part 11.
- (2) Unless the dispute is resolved through mediation, the arbitrator must provide to you and us a written statement describing the issues in dispute, the factual findings, the determinations and the amount and basis for any award and breakdown by claim for any award. The statement must also include any amounts awarded for interest. Failure of the arbitrator to provide such written statement will result in the nullification of all determinations of the arbitrator. All agreements reached through settlement, including those resulting from mediation, must be in writing and contain at a minimum a statement of the issues in dispute and the amount of the settlement.
- (b) Regardless of whether mediation is elected:
- (1) The initiation of arbitration proceedings must occur within one year of the date we denied your claim or rendered the determination with which you disagree, whichever is later;
- (2) If you fail to initiate arbitration in accordance with section 13(b)(1) and complete the process, you will not be able to resolve the dispute through judicial review;
- (3) If arbitration has been initiated in accordance with section 13(b)(1) and completed, and judicial review is sought, suit must be filed not later than one year after the date the arbitration decision was rendered; and
- (4) In any suit, if the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, an interpretation must be obtained from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC. Such interpretation will be binding.
- (c) Any decision rendered in arbitration is binding on you and us unless judicial review is sought in accordance with section 13(b)(3). Notwithstanding any provision in the rules of the AAA, you and we have the right to judicial review of any decision rendered in arbitration.
- (d) With respect to good farming practices:
- (1) We will make decisions regarding what constitutes a good farming practice and determinations of assigned revenue to count for uninsured causes for your failure to use good farming practices.
- (i) If you disagree with our decision of what constitutes a good farming practice, you must request a determination from FCIC of what constitutes a good farming practice before filing any suit against FCIC.
- (ii) If you disagree with our determination of the amount of assigned revenue to count, you must use the arbitration or mediation process contained in this section.
- (iii) You may not sue us for our decisions regarding whether good farming practices were used by you.
- (2) FCIC will make determinations regarding what constitutes a good farming practice. If you do not agree with any determination made by FCIC:
- (i) You may request reconsideration by FCIC of this determination in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J; or
- (ii) You may file suit against FCIC.
- (A) You are not required to request reconsideration from FCIC before filing suit.
- (B) Any suit must be brought against FCIC in the United States district court for the district in which the insured acreage is located.
- (C) Suit must be filed against FCIC not later than one year after the date:
- (I) Of the determination; or
- (II) Reconsideration is completed, if reconsideration was requested under section 13(d)(2)(i).
- (e) Except as provided in section 13(d), if you disagree with any other determination made by FCIC, you may obtain an administrative review in accordance with 7 CFR part 400, subpart J (administrative review) or appeal in accordance with 7 CFR part 11 (appeal). If you elect to bring suit after completion of any appeal, such suit must be filed against FCIC not later than one year after the date of the decision rendered in such appeal. Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from FCIC.
- (f) In any mediation, arbitration, appeal, administrative review, reconsideration or judicial process, the terms of this policy, the Act, and the regulations published at 7 CFR chapter IV, including the provisions of 7 CFR part 400, subpart P, are binding. Conflicts between this policy and any state or local laws will be resolved in accordance with section 24. If there are conflicts between any rules of the AAA and the provisions of your policy, the provisions of your policy will control.
- (g) To resolve any dispute through mediation, you and we must both:
- (1) Agree to mediate the dispute;
- (2) Agree on a mediator; and
- (3) Be present or have a designated representative who has authority to settle the

case present, at the mediation.

- (h) Except as provided in section 13(i), no award or settlement in mediation, arbitration, appeal, administrative review or reconsideration process or judicial review can exceed the amount of liability established or which should have been established under the policy, except for interest awarded in accordance with section 19.
- (i) In a judicial review only, you may recover attorneys fees or other expenses, or any punitive, compensatory or any other damages from us only if you obtain a determination from FCIC that we, our agent or loss adjuster failed to comply with the terms of this policy or procedures issued by FCIC and such failure resulted in you receiving a payment in an amount that is less than the amount to which you were entitled. Requests for such a determination should be addressed to the following: USDA/RMA/Deputy Administrator of Compliance/Stop 0806, 1400 Independence Avenue, S.W., Washington D.C. 20250-0806.
- (j) If FCIC modifies, revises or corrects your claim, prior to payment, you may not bring an arbitration, mediation or litigation action against us. You must request administrative review or appeal in accordance with section 13(e).

#### **14. Access to Insured Farm Business and Records, and Record Retention.**

- (a) We may examine your agricultural operation as often as we reasonably require.
- (b) For each insurance year, you must have verifiable records necessary to support the beginning and ending inventories and accounts receivable, allowable income and allowable expenses stated on the farm tax forms and farm reports, the value of post production operations and provide them if requested by the specified deadline. Failure to timely provide these records will result in a determination that no indemnity is due.
- (c) For three years after the end of the insurance year, you must retain, and provide upon our request, complete verifiable records of the harvesting, storage, shipment, sale, or other disposition of all covered agricultural commodities. Verifiable records used to establish your AGR income and AGR expense histories and your beginning and ending accounts payable and accounts receivable must be kept for this same time period. We may extend the record retention period beyond three years by notifying you of such extension in writing. Your failure to keep and maintain such verifiable records will, at our option, result in:
  - (1) Cancellation of the policy;
  - (2) Assignment by us of value to, or quantities of, agricultural commodities; or
  - (3) A determination that no indemnity is due.
- (d) By applying for insurance issued under the authority of the Act, you agree to allow us or any person acting for us:
  - (1) Access to the farm; and
  - (2) To obtain records relating to this insurance or the agricultural operation from any person who

may have custody of those records including, but not limited to, FSA offices, banks, warehouses, gins, cooperatives, marketing associations, accountants, tax consultants, and tax preparers. You must assist us in obtaining all records that we request from third parties. For example, you must provide written authorization directing third parties to provide records to us. Failure to provide such authorization will result in denial of the claim.

#### **15. Other Insurance.**

- (a) You may obtain other insurance issued under the authority of the Act on your share of any agricultural commodity insured under this policy.
- (b) Any other policy purchased will be primary and any insurance payment received from another policy for loss or damage to agricultural commodities covered under this policy will be considered to be revenue to count.

#### **16. Conformity to Food Security Act.**

Although your violation of a number of federal statutes, including the Act, may cause cancellation, termination, or voidance of your insurance contract, you should be specifically aware that your policy will be canceled if you are determined to be ineligible to receive benefits under the Act due to violation of the controlled substance provisions (title XVII) of the Food Security Act of 1985 (Pub. L. 99-198) and the regulations promulgated under the Act by USDA. Your insurance policy will be canceled if you are determined, by the appropriate Agency, to be in violation of these provisions. We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid or to be paid by you.

#### **17. Amounts Due Us.**

- (a) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any portion thereof, on any unpaid amount due us.
- (b) For the purpose of premium amounts due us, the interest will start to accrue on the first day of the month following the premium billing date specified in the Special Provisions.
- (c) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned, interest will start to accrue on the date that notice is issued to you for the collection of the unearned amount. Amounts found due under this paragraph will not be charged interest if payment is made within 30 days of issuance of the notice by us. The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us.
- (d) All amounts paid will be applied first to expenses of collection (see section 17(e)) if any, second to the reduction of accrued interest, and then to the reduction of the principal balance.
- (e) If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of

collection.

- (f) Amounts owed to us that are partially paid by FCIC may, to the extent paid by FCIC, be collected through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37.

#### **18. Legal Action Against Us.**

- (a) You may not bring legal action against us unless you have complied with all of the policy provisions.
- (b) If you do take legal action against us, you must do so within 12 months of the date of final denial of the claim. Suit must be brought in accordance with the provisions of 7 U.S.C. 1508(j).
- (c) Your right to recover damages (compensatory, punitive, or other), attorney's fees, or other charges is in accordance with section 13(i).

#### **19. Payment and Interest Limitations.**

- (a) Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim.
- (b) We will pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment of a court of competent jurisdiction, from and including the 61st day after the date you sign, date, and submit to us the properly completed claim on our form. Interest will be paid only if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) and published in the **Federal Register** semiannually on or about January 1 and July 1 of each year, and may vary with each publication.

#### **20. Concealment, Misrepresentation or Fraud.**

- (a) If you have falsely or fraudulently concealed the fact that you are ineligible to receive benefits under the Act or if you or anyone assisting you has intentionally concealed or misrepresented any material fact relating to this policy:
  - (1) This policy will be voided; and
  - (2) You may be subject to remedial sanctions in accordance with 7 U.S.C. 1515(h) and 7 CFR part 400, subpart R.
- (b) Even though the policy is void, you will still be required to pay 20 percent of the premium due under the policy to offset costs incurred by us in the service of this policy. If previously paid, the balance of the premium will be returned.
- (c) Voidance of this policy will result in you having to reimburse all indemnities paid for the insurance year for which the voidance was effective.
- (d) Voidance will be effective on the first day of the insurance year in which the act occurred and will not affect the policy for subsequent insurance years unless a violation of this section also occurred in such subsequent insurance years.

#### **21. Transfer of Coverage and Right to Indemnity.**

You will not be allowed to transfer your coverage to any other person.

#### **22. Assignment of Indemnity.**

You may assign your right to an indemnity for the insurance year. The assignment must be on our form and will not be effective until approved in writing by us. The assignee will have the right to submit all loss notices and forms as required by the policy. If you have suffered a loss from an insurable cause and fail to file a claim for indemnity within 60 days after the end of the insurance period, the assignee may submit the claim for indemnity not later than 15 days after the 60-day period has expired. We will honor the terms of the assignment only if we can accurately determine the amount of the claim. However, no action will lie against us for failure to do so.

#### **23. Subrogation (Recovery of Loss From A Third Party).**

Since you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve this right. If we pay you for your loss, your right to recovery will, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

#### **24. Applicability of State and Local Statutes.**

If the provisions of this policy conflict with statutes of the State or locality in which this policy is issued, the policy provisions will prevail. State and local laws and regulations in conflict with Federal statutes, this policy, and the applicable regulations do not apply to this policy.

#### **25. Descriptive Headings.**

The descriptive headings of the various policy provisions are formulated for convenience only and are not intended to affect the construction or meaning of any of the policy provisions.

#### **26. Notices.**

- (a) All notices required to be given by you must be in writing and received by your crop insurance agent within the designated time period unless otherwise provided by the notice requirement. All notices that must be received by us within 72 hours may be made by telephone or in person to your insurance provider but must be confirmed in writing within 15 days. Time of the notice will be determined by the time of our receipt of the written notice. If the date by which you are required to submit a report or notice falls on Saturday, Sunday, or a Federal holiday, or if your agent's office is, for any reason, not open for business on the date you are required to submit such notice or report, such notice or report must be submitted on the next business day.
- (b) All notices and communications required to be sent by us to you will be mailed to the address contained in your records located with your insurance agent. Notice sent to such address will be conclusively presumed to have been received by you. You should advise us immediately of any change of address.

#### **27. Multiple Government Benefits.**

- (a) If you are eligible to receive an indemnity under this plan of insurance and are also eligible to receive benefits for the same loss under any other USDA

program, you may receive benefits under both programs, unless specifically limited by the insurance contract or by law.

- (b) The total amount received from all such sources may not exceed the amount of your actual loss. The amount of the actual loss is the difference between the total expected value summed for all commodities on the farm, without regard to coverage level and payment rate, before the loss and the total revenue to count for all commodities on the farm after the loss. If the other program benefits are only available for a single crop or several crops but are less than the entire farming operation, you may be required to provide verifiable records establishing the total expected value and the revenue for each agricultural commodity for which you are eligible for another benefit.
- (c) FSA will determine and pay the additional amount due you for any applicable USDA program, after first considering the amount of any crop insurance indemnity.
- (d) Failure to obtain crop insurance may impact your ability to obtain benefits under other USDA programs. You should contact any USDA agency from which you wish to obtain benefits to determine eligibility requirements.