Materials Prepared for

Federation of Southern Cooperatives
Epes, Alabama
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Individual Crop Insurance

by Karen R. Krub

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FARMERS' LEGAL
ACTION GROUP,
INCORPORATED

Farmers' Legal Action Group, Inc.
360 North Robert Street, Suite 500
Saint Paul, Minnesota 55101-1589

Phone: 651.223.5400
Fax: 651.223.5335

Email: lawyers@flaginc.org
Web site: www.flaginc.org

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CAUTION: These materials are for training purposes only. To learn the details about any certain point, refer to the applicable statute, regulations, handbooks, and policy notices.

Individual Crop Insurance

I. Participants in Federal Crop Insurance

The federal crop insurance programs are a unique mixture of private contracts and government regulations.

A. FCIC and RMA

The Federal Crop Insurance Corporation (FCIC) was created in 1938 as a do-all agency for the then-new federal crop insurance program. Over time its role changed from direct insurance product creator and insurance provider to oversight of private insurance companies offering approved, reinsured policies to producers.

The Risk Management Agency (RMA) was created in 1996 to administer FCIC programs and do other risk management outreach and education.

Similar to the relationship between the Commodity Credit Corporation and the Farm Service Agency, it is easiest and largely accurate to think of RMA and FCIC interchangeably. But there can be occasions where the distinction is significant.

FCIC publishes lengthy regulations that control the terms of policies that producers sign. The regulations can be confusing because some are general rules that apply to all federal crop insurance policies.[1] Other regulations apply only in particular years

[1] Some regulations apply generally to federal crop insurance. See, for example, 7 C.F.R. pt. 400, subpt. G. Some provide the basic insurance contracts that are used for many crops. See, for example, the Catastrophic Risk Protection Endorsement, 7 C.F.R. pt. 402, and the Common Crop Insurance Policy, 7 C.F.R. §§ 457.1-457.9. Other regulations apply only to certain crops and add to the more general policy provisions. See, for example, Hybrid Seed Corn Crop Insurance Provisions, 7 C.F.R. § 457.152, and Peach Crop Insurance Provisions, 7 C.F.R. § 457.153. Finally, some regulations govern the relationship between the approved insurance providers and FCIC.

or to particular crops. Despite the complexity of the statutes and regulations, the publication of the rules gives everyone official legal notice of their contents. This means that each person who is insured under the federal crop insurance program is bound by the rules set forth in the Federal Register and the Code of Federal Regulations.

RMA/FCIC role:

1. Determine what crops are insurable and where and what premium rates apply.
2. Approve insurance companies to be providers.
3. Approve and publish the types of policies that may be offered.
4. Establish program regulations and procedures.
5. Subsidize producer premiums.
6. Pay providers' administrative and operating expenses.
7. Reinsure providers. (Essentially, this is a guarantee to cover loss claims exceeding a certain level.)

B. Private Insurance Provider

In general, producers obtain crop insurance coverage from private insurance providers. These providers, typically private insurance companies, must be approved by FCIC to offer the federal insurance programs. Local USDA offices are required to make available to producers the names of insurance agents and companies offering to sell crop insurance in that area.

Once a policy has been approved, a private insurance provider must offer it to all eligible producers in the provider's service area.

Insurance provider role:

1. Sell approved policies to producers.
2. Service policies. This includes, among other things, collecting premiums and fees, investigating loss claims, appraising losses, and calculating benefits due.

See, for example, Agency Sales and Service Contract—Standards for Approval, 7 C.F.R. pt. 400, subpt. M.

3. May not waive or alter policy terms unless specifically allowed in the program regulations.

4. May develop new products and submit them to FCIC for approval.

C. Producer

Producer role:

1. Apply for coverage by sales closing date.

2. Pay premium and/or administrative fee.

3. Report acreage planted.

4. Use good farming practices.

5. Maintain all required records.

6. Comply with all policy requirements.

7. Report losses and cooperate with loss investigation.

The burden is on producer to ensure that all reports—for example, acreage reports and loss claims—are complete and accurate. The producer cannot rely on an insurance agent's filling out of the forms. In some cases, producers have been able to fight a denial of coverage due to an agent's error, but the strong trend is for both USDA and the courts to find that the ultimate burden is the producer's.

Errors can result in either reduced coverage or, in some cases, no coverage.

II. The Crop Insurance Contract

The producer's rights and responsibilities are based primarily on his or her contract with the insurance provider, and the insurance provider will be the decision maker on loss claims and other issues under the contract.

The producer should read and understand all of the crop insurance documents before enrolling. In general, no indemnity will be paid unless the producer complies with all terms and conditions of the contract.

A federal crop insurance contract "policy" will include a number of documents brought together:

A. The producer's complete **application** for coverage.

B. **Basic provisions**—the main umbrella policy.

C. **Crop provisions**—specific coverage provisions applicable to a given crop.

D. **Special provisions**—specific coverage provisions that vary by geographic area.

E. A catastrophic risk protection (CAT) **endorsement**, if the producer selects only the minimum level of coverage.

F. **Actuarial documents** prepared by FCIC setting out, for a given crop, the coverage levels available, particular types or varieties covered, premium rates, covered practices, and related information.

G. The **regulations** at Chapter IV of Title 7 of the Code of Federal Regulations.

III. Crop Insurance Basics

A. Losses Covered

Federal crop insurance covers losses by caused by **drought, flood, or other natural disaster**. FCIC defines what counts as a drought, flood, or other natural disaster for crop insurance purposes. The **crop provisions** in the producer's specific policy should list insurable types of losses and exclusions, if any.

B. Losses Not Covered

1. Crop insurance policies generally exclude from coverage those losses caused by "**neglect, mismanagement, or wrongdoing**."[2]

2. Losses are excluded from coverage if the producer **failed to reseed** the same crop in areas where and under circumstances in which it would have been customary to reseed.[3]

3. Crop insurance policies generally require that the producer follow "recognized good farming practices."[4] A **failure to follow "good farming practices"** will result in denial of the producer's loss claim.

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[2] See 7 C.F.R. § 457.8, Common Crop Insurance Policy, "12. Causes of Loss (a)"; Crop Revenue Coverage (CRC) Insurance Policy, "13. Causes of Loss (a)" (Policy No. 05-CRC-Basic).

[3] 7 U.S.C. § 1508(a)(3)(B).

[4] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "12. Causes of Loss (b)"; Crop Revenue Coverage (CRC) Insurance Policy, "13. Causes of Loss (b)" (Policy No. 05-CRC-Basic).

"Good farming practices" are defined as:

> production methods utilized to produce the insured crop and allow it to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance, including any adjustments for late planted acreage, 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.[5]

An important aspect of this definition is the idea that good farming practices are those that are generally recognized in the area. The term "generally recognized" is also defined in the policies:

> [w]hen 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 crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance.[6]

The insurance provider makes the "good farming practice" determination. The insurance provider may—on its own initiative or at the request of the producer—request FCIC to determine whether a particular production method will qualify.

4. Numerous other causes of a loss may be excluded by a crop insurance policy depending on a **particular crop**. For example, a policy likely will not cover the failure of an irrigation system.[7] Or there may be particular

5 7 C.F.R. § 457.8, Common Crop Insurance Policy, "1. Definitions, 'Good farming practices'" (2008); Crop Revenue Coverage (CRC) Insurance Policy, "1. Definitions, 'Good farming practices'" (Policy No. 05-CRC-Basic).

6 7 C.F.R. § 457.8, Common Crop Insurance Policy, "1. Definitions, 'Generally recognized'"; Crop Revenue Coverage (CRC) Insurance Policy, "1. Definitions, 'Generally recognized'" (Policy No. 05-CRC-Basic).

7 7 C.F.R. § 457.8, Common Crop Insurance Policy, "12. Causes of Loss (d)"; Crop Revenue Coverage (CRC) Insurance Policy, "13. Causes of Loss (d)" (Policy No. 05-CRC-Basic).

rotation requirements for the crop.[8] The particular policy signed by the producer will likely list several other causes of loss that will not be covered.

C. Linkage: When Crop Insurance Is Required

One of the most important aspects of crop insurance for many producers is whether the producer must purchase some form of federal crop insurance in order to be eligible for another USDA program. These requirements are sometimes called "linkage" requirements because they link crop insurance with other programs.

1. *Conservation Reserve Program and FSA Loans—Must Have Insurance or Waive Future Disaster Assistance*

To be eligible for payments under **Conservation Reserve Program** (CRP) contracts and for Farm Service Agency (FSA) **farm loan programs**, including direct and guaranteed FSA operating (OL), farm ownership (FO), and emergency (EM) loans, a producer must either: (a) get crop insurance for each crop of economic significance in which the producer has an interest (if such insurance is available); or (b) sign a waiver of eligibility for emergency crop loss assistance in connection with the uninsured crop.

Producers who do not either sign a waiver or get crop insurance are not eligible for the programs, and any linked program payments already received for that crop year will likely have to be refunded.

a. *Option One: Crop Insurance for All Crops of Economic Significance*

A crop of economic significance is defined as one that accounts for 10% or more of the total expected value of all crops grown by the producer.[9] If a crop meets the 10% test for either the past year's production or the current year's projections, the crop will be considered economically significant.[10]

If the total expected liability under the insurance policy is equal to or less than the administrative fee required to sign up for insurance, the crop is not considered to be of economic significance.

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8 See, for example, 7 C.F.R. §§ 457.109, Sugar Beet Crop Provisions, "8. Insurable Acreage (a)(3)," 457.142, Northern Potato Crop Provisions, "7. Insurable Acreage (a)."

9 7 C.F.R. § 400.651, "Crop of economic significance."

10 7 C.F.R. § 400.653(a).

b. Option Two: Waiver of Emergency Crop Loss Benefits

A producer may avoid purchasing crop insurance and still retain eligibility for CRP and FSA loan programs by signing a waiver of the right to claim emergency crop loss assistance.[11] Any producer signing the waiver agrees that he or she will not be eligible for emergency crop loss assistance for the crop to which the waiver applies.

2. New Disaster Assistance Programs—Crop Insurance Required with Waiver or Equitable Relief in Some Circumstances

Most of the new disaster assistance programs created by the 2008 Farm Bill include a strict linkage requirement. In general, a producer must have obtained crop insurance or Noninsured Crop Disaster Assistance Program (NAP) coverage on all crops in order to be eligible for crop loss payments under these programs.[12]

However, FSA will waive this requirement for producers who meet the definition of socially disadvantaged, limited resource, or beginning farmers or ranchers.[13] The Secretary of Agriculture may also provide equitable relief on a case-by-case basis to producers who unintentionally fail to satisfy this requirement.[14]

D. Producer Eligibility for Crop Insurance

1. Insurable Interest in the Crop

The person seeking insurance must have an insurable interest in a crop as an owner-operator, landlord, tenant, or other crop shareowner.[15]

2. Insurable Acreage

In addition, the acreage must be insurable. For example, land that has not been planted and harvested within one of the last three crop years may not be insurable.[16]

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[11] 7 U.S.C. § 1508(b)(7)(A)(ii).

[12] 7 C.F.R. § 760.104.

[13] 7 C.F.R. § 760.107.

[14] 7 C.F.R. § 760.106.

[15] 7 C.F.R. § 457.8(a); Crop Revenue Coverage (CRC) Insurance Policy, "1. Definitions, 'Share'" (Policy No. 05-CRC-Basic); 7 C.F.R. § 407.8(a).

The 2008 Farm Bill has added a new restriction that crop insurance will not be available during the first five years of planting on native sod acreage that was first tilled for the purpose of producing an annual crop after May 22, 2008.[17]

3. *Timely Application*

A written application for crop insurance must be submitted on or before the sales closing date set by FCIC for the crop in that county.[18] This application will generally be submitted to an approved insurance provider.

4. *Timely Planting*

The producer must meet the deadline for each crop's planting period to be eligible for full coverage under a crop insurance policy.[19] This date will be set out in the **Special Provisions** for the insured crop. It may be possible to receive coverage at a reduced level for crops that are planted during a late planting period.

5. *Administrative Fee or Premium*

The producer must pay an administrative fee, a premium, or both, by the payment due date. The premiums and administrative fees vary with the type of insurance and level of coverage selected.

6. *Historical Records*

The producer must provide records acceptable to FCIC of historical acreage and production reports for the crop to be insured.[20] If these records are not

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16 See, for example, 7 C.F.R. § 457.8, Common Crop Insurance Policy, "9. Insurable Acreage (a)(1)"; Crop Revenue Coverage (CRC) Insurance Policy, "10. Insurable Acreage (a)(1)" (Policy No. 05-CRC-Basic).

17 7 U.S.C. § 1508(o).

18 7 U.S.C. § 1508(f)(2); 7 C.F.R. §§ 400.654(a), 407.8(a), 457.8(a); Crop Revenue Coverage (CRC) Insurance Policy, "1. Definitions, 'Sales closing date'" (Policy No. 05-CRC-Basic).

19 7 C.F.R. § 457.8, Common Crop Insurance Policy, "1. Definitions, "Final planting date'"; Crop Revenue Coverage (CRC) Insurance Policy, "1. Definitions, "Final planting date'" (Policy No. 05-CRC-Basic).

20 See 7 C.F.R. § 457.8, Common Crop Insurance Policy, "1. Definitions, 'Production report,'" "3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities (e)"; Crop Revenue Coverage (CRC) Insurance Policy, "1. Definitions, 'Production report,'" "4. Coverage Level, and Approved Yield for Determining Final Guarantee and Indemnity (d)" (Policy No. 05-CRC-Basic).

provided, the producer must accept a yield level determined by FCIC or the provider.[21] Yield calculations are discussed in more detail below.

7. *Timely Acreage Report*

The producer must file an annual acreage report on or before the acreage reporting date for the insured crop.[22] Special rules apply if the producer will be insuring multiple crops. The acreage report must be signed by the producer and must describe: (a) all acreage of the crop in the county (insurable and not insurable) in which the producer has a share; (b) the producer's share at the time coverage begins; (c) the crop practice; (d) the crop type; and (e) the date the insured crop was planted.

It is very important that the acreage report be accurate. If the report contains information later determined to be incorrect and the error results in lower coverage than the producer could have received, the producer will be bound by the error and will only receive the lower amount of coverage. If the error results in higher coverage than the producer should have received, the coverage will be reduced to the correct amount. More seriously, if the error results in coverage more than 10% higher or lower than it should have been, any benefit from the policy—including indemnity, prevented planting payment, or replanting payment—will be reduced in proportion to the amount the error exceeds 10%.

In addition, if a producer has incorrectly reported acreage in any crop year, the insurance provider may require the producer to provide documentation to substantiate acreage reports submitted in later crop years.

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21 7 U.S.C. § 1508(f)(3)(A); 7 C.F.R. § 457.8, Common Crop Insurance Policy, "3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities (e)(1)"; Crop Revenue Coverage (CRC) Insurance Policy, "4. Coverage Level, and Approved Yield for Determining Final Guarantee and Indemnity (d)(1)" (Policy No. 05-CRC-Basic).

22 7 U.S.C. § 1508(f)(3)(B); 7 C.F.R. § 400.654(d); 7 C.F.R. § 457.8, Common Crop Insurance Policy, "6. Report of Acreage"; Crop Revenue Coverage (CRC) Insurance Policy, "1. Definitions, 'Acreage report,'" "7. Report of Acreage" (Policy No. 05-CRC-Basic).

8. *Information About Other Coverage*

The producer must provide information regarding crop insurance coverage previously obtained on any crop.[23]

9. *Not Delinquent on Debt Related to Crop Insurance*

A producer who is delinquent on a debt under any crop insurance policy will be ineligible for coverage.[24] When the ineligibility takes effect will depend on whether the delinquent debt is an unpaid administrative fee or premium, an overpayment, or default on a payment agreement. Delinquency will also result in termination of any policies in effect, and the producer may be required to return benefits already received.

E. Important Federal Crop Insurance Dates

Sales closing date: Last day for the producer to complete and sign an application for coverage for a given crop year. This is also the last date for the producer to make changes to the previous year's policy if coverage will continue.

Generally, the sales closing date will be:

- February 28 or March 15 for spring-planted crops.
- September 30 for fall-planted crops.
- November 20 for perennials and horticultural crops.

Cancellation date: Last day for the producer or insurance provider to cancel coverage (otherwise policies continue from year to year).

Final planting/Late planting dates: Last day for the producer to plant the crop and secure the full amount of requested coverage. Depending on the crop, planting after the final planting date will either result in a decreased level of coverage or no coverage.

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[23] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "2. Life of Policy, Cancellation, and Termination (j)"; Crop Revenue Coverage (CRC) Insurance Policy, "3. Life of Policy, Cancellation, and Termination (j)" (Policy No. 05-CRC-Basic).

[24] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "2. Life of Policy, Cancellation, and Termination (f)"; Crop Revenue Coverage (CRC) Insurance Policy, "3. Life of Policy, Cancellation, and Termination (f)" (Policy No. 05-CRC-Basic).

Acreage reporting date: Last day for the producer to report, for each insured crop:

1. The number of acres planted or prevented from being planted,
2. Planting date,
3. The acreage location,
4. The producer's share in the crop,
5. The farming practices used, and
6. The crop types of varieties planted.

The provider may deny coverage if the acreage report is filed after the acreage reporting date for the crop.

F. Establishing Approved Yields

For most crops, the approved yield used to calculate coverage will be determined under the Actual Production History (APH) Coverage Program. The APH is based on an average of historical yields, using the producer's individual records.[25] Producers are required to certify the accuracy of the production reports used to determine historical yields, and verification of the producer's records may also be required.[26]

For crops not covered by the APH program, the approved yield will be determined according to the provisions of the particular crop insurance policy.[27]

1. Simple Average of 4-10 Years of Producer's Actual Production History

The APH yield is based on a simple average of the producer's most recent, continuous individual production yields for the crop. A minimum of four years of records, if available, will be used in the average. Up to 10 years of records will be used if available. Beyond that, as each new year's production is added to the calculation, the oldest yield drops out.

25 7 C.F.R. § 400.55.

26 7 C.F.R. § 400.53(a)(2), (b).

27 7 C.F.R. §§ 400.651, "Approved yield," 402.4, Catastrophic Risk Protection Endorsement, "1. Definitions, 'Approved yield.'"

2. *Assigned Yields If Verifiable Records Not Available*

Producers unable to provide the necessary verifiable records of past production will be assigned a yield for the years needed to determine an approved yield.[28] If not enough years of production history are provided, county 10-year average yields, or "T-yields," may be substituted.[29]

Cases in which a yield must be assigned for a crop are:

a. when the producer has not provided satisfactory evidence of the yield of the crop;

b. when the producer has not had a share in the production of the crop for more than two years;

c. when the producer has not farmed the land before;

d. when the producer rotates to a crop that has not previously been produced on the farm.[30]

If more than one T-yield is used to fill out a producer's history, they will be factored down: 1 year, 100% of T-yield; 2 years, 90% of T-yield; 3 years, 80% of T-yield; and 4 years, 65% of T-yield.[31]

A producer who has grown the crop before but doesn't supply any records of past production will be assigned 65% of T-yield.

If the producer is growing the crop for the first time, coverage will be at 100% of T-yield.

3. *Adjustment to APH in Some Circumstances*

a. *Substitute for Disaster-Year Yields*

If, in one or more of the crop years used to establish the producer's approved yield for a crop, the producer's appraised or recorded yield was less than 60% of the T-yield due to an insurable cause of loss, the producer

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28 7 U.S.C. § 1508(g)(2)(B); 7 C.F.R. § 400.52(f).

29 7 C.F.R. § 400.52(p).

30 7 U.S.C. § 1508(g)(2)(B).

31 7 C.F.R. § 400.52(c).

is allowed to elect to exclude that yield and replace each excluded yield with a yield equal to 60% of the applicable T-yield.[32]

b. Adjust for Excessive APH Yield Result

A producer's approved APH yield will be reduced in cases where that yield is more than 115% of the average of approved yields from all applicable APH databases for the farming operation.[33] In such cases, the yield will be reduced to an amount consistent with the average of approved yields from other APH databases for the operation with the same crop, type, and practice. The approved APH yield will also be reduced when there are no APH databases from the farming operation for comparison and the producer's approved yield is more than 115% of the county T-yield. In those cases, the yield will be adjusted by reducing it to an amount consistent with the county T-yield.

c. Adjust for Substantial Increase in Acreage

A producer's approved APH yield will also be reduced when there is a substantial increase in acreage planted to the crop. This adjustment is triggered in two situations: (1) when the current year's insured acreage—including prevented planting acreage—is more than 400% of the average number of acres in the APH database; or (2) the acreage in two or more individual years in the APH database is less than 10% of the current year's insurable acreage in the unit—including prevented planting acreage.[34] In such cases, the producer's yield will be reduced to an amount consistent with the average of approved yields from other APH databases for the operation with the same crop, type, and practice.

[32] 7 C.F.R. §§ 402.4, Catastrophic Risk Protection Endorsement, "1. Definitions, 'Approved yield,'" 457.8, Common Crop Insurance Policy, "36. Substitution of Yields"; Crop Revenue Coverage (CRC) Insurance Policy, "35. Substitution of Yields" (Policy No. 05-CRC-Basic).

[33] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "3. Insurance Guarantees, Coverage Levels, and Prices (g)(2)(i)"; Crop Revenue Coverage (CRC) Insurance Policy, "4. Coverage Level, and Approved Yield For Determining Final Guarantee and Indemnity (f)(2)(i)" (Policy No. 05-CRC-Basic).

[34] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "3. Insurance Guarantees, Coverage Levels, and Prices (g)(2)(ii)"; Crop Revenue Coverage (CRC) Insurance Policy, "4. Coverage Level, and Approved Yield For Determining Final Guarantee and Indemnity (f)(2)(ii)" (Policy No. 05-CRC-Basic).

d. Adjust for New Production Method Likely to Reduce Yield

The approved APH yield for a crop will also be reduced if the producer uses a different production method than was used previously, and the new production method is likely to result in a yield lower than the average of the producer's previous actual yields.[35] The yield will be reduced to an amount consistent with the production methods actually used, considering the producer's yields on other units where such production methods were used or, if no such yields exist, the county T-yield for the production methods.

A producer must notify the insurance provider of a change in production methods by the acreage reporting date. A failure to do so will result not only in the reduction of approved yield, as discussed here, but will also be considered a misreport of acreage and will result in reduced coverage.

4. Approved Yield Calculation Example

Suppose a producer applies for crop insurance for a 2009 soybean crop. The producer has grown soybeans in the five previous years and has submitted production records showing these yields:

2008 = 38 bu./ac.
2007 = 33 bu./ac.
2006 = 24 bu./ac.
2005 = 38 bu./ac.
2004 = 27 bu./ac.

The producer's actual average yield is 32 bu./ac.

Now suppose that the producer has grown soybeans in the five previous years but has not submitted records for each year of production. Now the graduated county average yields will be substituted for any missing year(s).

[35] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "3. Insurance Guarantees, Coverage Levels, and Prices (g)(3)"; Crop Revenue Coverage (CRC) Insurance Policy, "4. Coverage Level, and Approved Yield For Determining Final Guarantee and Indemnity (f)(3)" (Policy No. 05-CRC-Basic).

Assume the following county average yields:

2008 = 35 bu./ac.
2007 = 28 bu./ac.
2006 = 24 bu./ac.
2005 = 30 bu./ac.
2004 = 25 bu./ac.

If the producer does not have production records for the 2005 crop, the producer's APH yield would be calculated as follows:

2008 = 38 bu./ac.
2007 = 33 bu./ac.
2006 = 24 bu./ac.
2005 = 30 bu./ac. (100% of county average yield)
2004 = drops out because no longer continuous

The average is 31.25 bu./ac., or .75 bu./ac. less than the producer's actual average.

If the producer does not have production records for the 2005 and 2006 crops, the producer's APH yield would be calculated as follows:

2008 = 38 bu./ac.
2007 = 33 bu./ac.
2006 = 21.6 bu./ac. (90% of county average yield)
2005 = 27 bu./ac. (90% of county average yield)
2004 = drops out because no longer continuous

The rounded average is 30 bu./ac., or 2 bu./ac. less than the producer's actual average.

If the producer does not have production records for the 2005, 2006, and 2007 crops, the producer's APH yield would be calculated as follows:

2008 = 38 bu./ac.
2007 = 22.4 bu./ac. (80% of county average yield)
2006 = 19.2 bu./ac. (80% of county average yield)
2005 = 24 bu./ac. (80% of county average yield)
2004 = drops out because no longer continuous

The rounded average is 26 bu./ac., or 6 bu./ac. less than the producer's actual average.

If the producer does not have production records for any of the four most recent crops grown, the producer's APH yield would be calculated as follows:

2008 = 22.75 bu./ac. (65% of county average yield)
2007 = 18.2 bu./ac. (65% of county average yield)
2006 = 15.6 bu./ac. (65% of county average yield)
2005 = 19.5 bu./ac. (65% of county average yield)
2004 = drops out because no longer continuous

The rounded average is 19 bu./ac., or 13 bu./ac. less than the producer's actual average.

IV. Types of Crop Insurance

The Federal Crop Insurance Act and the regulations that implement it allow for hundreds of possible crop insurance plans. Federal crop insurance is currently available in permanent policies or pilot programs for more than 100 different crops.

Yield Insurance vs. Revenue Insurance

Individual Risk vs. Group Risk

Single Crop Coverage vs. Whole-Farm Coverage

In most cases, insurance coverage must be elected on a crop-by-crop basis. This means that if coverage is obtained at all, the same type of policy and level of coverage must be obtained for all of the producer's acreage of that crop in the county for that year.[36] There are exceptions to this general rule for fields in different sections, different crop types or varieties, and different production practices (for example, organic vs. conventional or irrigated vs. non-irrigated).[37]

A. Multi-Peril Coverage for Yield Losses

The most familiar form of crop insurance is traditional **multi-peril coverage**—often called MPCI—which provides insurance against yield losses. In general, the producer buys multi-peril coverage for each crop individually, and indemnity payments are triggered by low yields, poor quality, late planting, prevented planting, or forced replanting.

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[36] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities (b)"; Crop Revenue Coverage (CRC) Insurance Policy, "4. Coverage Level, and Approved Yield For Determining Final Guarantee and Indemnity (b)" (Policy No. 05-CRC-Basic).

[37] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "34. Unit Division"; Crop Revenue Coverage (CRC) Insurance Policy, "2. Unit Structure" (Policy No. 05-CRC-Basic).

Under a multi-peril yield insurance policy, the producer's insurance guarantee is the producer's historical yield multiplied by a coverage level selected by the producer (from 50—85% of historical yield). The producer also selects an indemnity price level (from 55—100% of expected market price, where RMA sets the expected price). If the producer's actual yield is less than the yield guarantee, an indemnity will be due.

The decision of what coverage and price levels to choose is based on two factors: risk acceptance and cost. Higher coverage levels pay out more, and more often, than lower coverage levels. But higher coverage levels are also more expensive, with the federal premium subsidy dropping off significantly at higher coverage levels.

Coverage level	50/55	50/100	55	60	65	70	75	80	85
FCIC subsidy share	100	67	64	64	59	59	55	48	38
Producer's share of premium	0	33	36	36	41	41	45	52	62

1. *Catastrophic Risk Protection (CAT)*

Catastrophic risk protection (CAT) is the minimum level of yield insurance available. The purpose of CAT coverage is to protect against a major crop loss. CAT policies receive a 100% premium subsidy from FCIC. The producer pays only an administrative fee for the coverage.

a. *Covers 50 Percent of Approved Yield*

CAT policies guarantee 50% of the producer's approved yield.[38] The 50% approved yield calculation determines both eligibility for benefits and the level of benefits. This means that the producer will only get coverage if the loss is over 50% of the approved yield. In addition, payments will only be made on the portion of the loss that exceeds 50% of the approved yield.

For example, a producer insured under a CAT policy who suffers a loss of 40% of his or her approved yield will not receive any indemnity payments at all. A producer who suffers a 60% loss of his or her approved yield will receive indemnity payments based on 10% of the approved yield—that is, the extent of the loss that exceeds 50%.

[38] 7 U.S.C. § 1508(b)(2)(A); 7 C.F.R. § 402.4, Catastrophic Risk Protection Endorsement, "4. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities"; 7 C.F.R. § 400.651, "Catastrophic risk protection."

b. Covers 55 Percent of Expected Market Price

CAT coverage payments are calculated using 55% of the expected market price for the crop in question.[39] The "expected market price" is set by FCIC before the sales closing date for the crop.[40] The expected price may be less than the actual price paid by buyers if the actual price typically includes compensation to the producer for significant amounts of post-production expenses such as conditioning, culling, sorting, or packing.

2. "Additional" Coverage

Any level of federal crop insurance that exceeds the CAT level of coverage is considered "additional coverage."[41] These policies provide added coverage by insuring less severe crop losses than CAT does and providing a better payment rate. For example, a producer who obtains additional insurance at the 75% coverage level will receive a loss payment for any crop loss that is greater than 25%.

a. Covers 50 to 85 Percent of Approved Yield

Under an additional coverage policy, a producer may elect to insure 50—85% of the producer's approved yield.

b. Covers Up to 100 Percent of Expected Market Price

Additional coverage insurance pays up to 100% of the expected market price for the crop.[42]

3. Yield Coverage Example

Suppose that a producer has an approved historical yield of 50 bushels per acre for soybeans and the producer purchases crop yield insurance coverage at 75% of yield.

The producer's yield guarantee is:

Approved yield x coverage level = Yield guarantee
50 bu./ac. x .75 = 37.5 bu./ac.

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39 7 U.S.C. § 1508(b)(2)(A)(i); 7 C.F.R. § 400.651, "Catastrophic risk protection."

40 7 C.F.R. § 400.651, "Expected market price."

41 7 U.S.C. § 1502(b)(1).

42 7 U.S.C. § 1508(c)(9).

The producer must experience a loss of 25%, or 12.5 bu./ac., before an indemnity would be triggered. Once coverage has been triggered, the producer will receive payment for the difference between the yield guarantee and the actual yield.

If the producer's actual yield was 30 bu./ac., the indemnity would be based on a covered loss of 7.5 bu./ac.:

Yield guarantee – actual yield = Covered loss
37.5 bu./ac. – 30 bu./ac. = 7.5 bu./ac.

This covered loss is multiplied by the price level selected by the producer and the number of acres under the policy. If the producer selected 100% of the soybean price of $7/bu. and had planted 200 acres, the total indemnity would be:

Covered loss x expected market price x selected price level = Indemnity
7.5 bu./ac. x $7/bu. x 200 ac. = $10,500

If the producer had elected to insure 60% of his yield rather than 75%, the result would be:

Yield guarantee = 50 bu./ac. x .60 = 30 bu./ac.
Covered loss = 30 bu./ac. – 30 bu./ac. = 0 bu./ac.

That is, there would be no covered loss because the producer's actual yield equaled the yield guarantee.

Similarly, for any coverage election below 60%, there would be no covered loss because the actual yield would have exceeded the yield guarantee.

If the producer had elected to insure 85% of his yield at 60% of the price, the result would be:

Yield Guarantee = 50 bu./ac. x. .85 = 42.5 bu./ac.
Covered Loss = 42.5 bu./ac. – 30 bu./ac. = 12.5 bu./ac.
Covered Price = $7/ac. x .60 = $4.20/bu.
Indemnity = 12.5 bu./ac. x $4.20/bu. x 200 ac. = $10,500

B. Revenue Insurance

Since 1995, FCIC has experimented with federal crop insurance coverage that seeks to protect producers against declines in crop prices as well as crop yields. Several different types of this coverage have become available in different parts of the country for a variety of crops. The revenue coverage plans are in most ways very similar to traditional multi-peril yield insurance. The important difference, however, is that in the revenue-based programs, in one way or another payment indemnities—as well as premiums—take into account crop price changes.

The different revenue insurance products are distinguished by the crop price used to determine the revenue guarantee, the levels of coverage available, and the units that can be insured.

1. Crop Revenue Coverage (CRC)

The most common of the revenue-based federal crop insurance policies is Crop Revenue Coverage (CRC). CRC is now authorized on a permanent basis by FCIC and is widely available. It has come to rival traditional multi-peril yield-based insurance for the dominant type of crop insurance. Since the 2000 crop year, CRC coverage has been available for corn, grain sorghum, soybeans, cotton, rice, and/or wheat in all states where multi-peril coverage is available.

For the most part, the production history requirements, application and payment deadlines, acreage and production reporting requirements, prevented planting and replanting coverage, and premium subsidies for CRC are similar to those for traditional multi-peril crop insurance.

CRC combines protection for both price and yield risk. The yield coverage component of revenue insurance is based entirely on APH and permits the producer to select the level of yield coverage, within a given range. Under a CRC policy, a producer is guaranteed an income for the crop based on the expected harvest price and the producer's expected yields.

The producer's revenue guarantee is based on historical yield, the coverage level elected by the producer, and the higher of the early-season base price or the harvest-time price.[43] As a result, revenue coverage under a CRC policy increases during the season if crop prices rise (up to a 200% price increase). The crop prices used to determine revenue are established market prices, not the actual price received by the producer.

Actual revenue for CRC is calculated as the actual yield multiplied by the harvest-time price. If actual revenue is less than the revenue guarantee, an indemnity will be due.

[43] See Crop Revenue Coverage (CRC) Insurance Policy, "1. Definitions, 'Base Price,' 'Final guarantee,' 'Harvest Price'" (Policy No. 05-CRC-Basic).

2. *Revenue Coverage Example*

Suppose a producer has an approved yield of 50 bushels per acre for soybeans. The base price for soybeans is $8.00/bushel.

Approved yield x base price = Expected revenue
50 bu./ac. x $8/bu. = $400/ac.

If the producer obtains crop revenue insurance coverage at 75% of expected revenue, the producer's revenue guarantee is:

Expected revenue x coverage level = Revenue guarantee
$400/ac. x .75 = $300/ac.

The producer must experience a loss of 25%, or $100/ac., before an indemnity would be triggered.

Once coverage has been triggered, the producer will receive payment for the difference between the revenue guarantee and the actual revenue.

If the producer's actual yield was 40 bu./ac. and the harvest-time price was $6.00, the producer's actual revenue would be:

Actual yield x harvest-time price = Actual revenue
40 bu./ac. x $6.00/bu. = $240/ac.

The indemnity would be based on a covered loss of $60/ac.:

Revenue guarantee – actual revenue = Covered loss
$300/ac. guarantee – $240/ac. actual = $60/ac.

This covered loss is multiplied by the number of acres under the policy.

If the producer had planted 200 acres, the total indemnity would be:

Indemnity = $60/ac. x 200 ac. = $12,000

If the producer had elected to insure 60% of his revenue, the result would be:

Revenue guarantee = 50 bu./ac. x $8.00/bu. x .60 = $240/ac.
Covered loss = $240/ac. guarantee – $240/ac. actual = $0/ac.

That is, there would be no covered loss because the producer's actual revenue equaled the revenue guarantee.

Similarly, for any coverage election below 60%, there would be no covered loss because the actual revenue would have exceeded the revenue guarantee.

If producer had elected the original 75% revenue guarantee, but the harvest time price was $7.50, the producer's actual revenue would be:

Actual revenue = 40 bu./ac. x $7.50/bu. = $300/ac.
Covered loss = $300/ac. guarantee – $300/ac. actual = $0/ac.

Again there would be no covered loss because the producer's actual revenue equaled the revenue guarantee. The increased price at harvest time offset the reduced yield. Similarly, for any actual harvest price above $7.50, there would be no covered loss because the actual revenue would have exceeded the revenue guarantee.

If the producer had elected to insure 85% of his revenue and the final harvest price was $8.25, the result would be:

Revenue guarantee= 50 bu./ac. x. $8.00/bu. x .85 = $340/ac.
Actual revenue 40 bu./ac. x $8.25/bu. = $330/ac.
Covered loss = $340/ac. - $330/ac. = $10/ac.
Indemnity = $10/ac. covered loss x 200 ac.

V. Cost of Crop Insurance

The cost of federal crop insurance involves two factors: an administrative fee and a premium.

A. Administrative Fee

All types of federal crop insurance include an administrative fee to be paid by the producer.

1. Fee Amount

a. CAT coverage: $300 per crop per county.

b. Multi-peril yield coverage exceeding CAT levels: $30 per crop per county.

c. CRC: $30 per crop per county.

2. Waiver if Zero Acreage Report Timely Filed

The administrative fee will be waived if the producer files a zero acreage report by the acreage reporting date.

3. *Waiver for Limited Resource Farmers Purchasing CAT Coverage*

Limited resource farmers can receive a waiver of the administrative fee for CAT coverage.[44] The waiver is not automatic. It must be requested by the producer.

A producer will qualify as a limited resource farmer who:

(1) has "direct or indirect" gross farm sales of $155,200 or less in each of the previous two years;[45] and

(2) in each of the previous two years had a total household income at or below the national poverty level for a family of four *or* less than 50% of the county median household income.

4. *Fee Due Date*

The administrative fee for crop insurance coverage must be paid when the premium is due or, for CAT coverage, within 30 days after the producer has been billed by the insurance provider.[46] The billing date will be stated in the Special Provisions of the policy.

B. Premium (Except for CAT Policies)

As mentioned above, FCIC pays 100% of the premium for CAT coverage, so no premium is required from the producer.[47] Producers purchasing "additional

[44] 7 U.S.C. § 1508(b)(5)(E); 7 C.F.R. § 402.4, Catastrophic Risk Protection Endorsement, "6. Annual Premium and Administrative Fees (c)."

[45] 7 C.F.R. § 402.4, Catastrophic Risk Protection Endorsement, "1. Definitions, 'Limited resource farmer.'" The amount in the regulation—$100,000—is adjusted for inflation each year using the Prices Paid by Farmer Index as compiled by the National Agricultural Statistical Service. Annual adjustments can be found through USDA's Limited Resource Farmer/Rancher self-determination tool at www.lrftool.sc.egov.usda.gov/tool.asp.

[46] 7 C.F.R. § 402.4, Catastrophic Risk Protection Endorsement, "6. Annual Premium and Administrative Fees (b)"; 7 C.F.R. § 457.8, Common Crop Insurance Policy, "7. Annual Premium and Administrative Fees (e)(2)"; Crop Revenue Coverage (CRC) Insurance Policy, "8. Annual Premium and Administrative Fees (e)(2)" (Policy No. 05-CRC-Basic).

[47] 7 U.S.C. § 1508(b)(5), (e)(1)(A); 7 C.F.R. § 402.4, Catastrophic Risk Protection Endorsement, "6. Annual Premium and Administrative Fees (a)."

coverage" under yield insurance or any type of revenue insurance will be charged both the administrative fee and a premium.[48]

The annual premium for crop insurance policies is calculated based on the amount of insured acreage, the producer's share at the time coverage begins, the premium rate for the crop, any premium adjustments that may apply, and the level of coverage selected by the producer. For most policies, information about premium rates and available adjustments will be included in the crop actuarial documents.

VI. Coverage for Special Planting Circumstances

A. Late Planting Coverage

In some cases, producers may be able to insure a crop planted after the final planting date if the inability to timely plant the crop was due to an eligible cause of loss that occurred during the insurance period. In some cases, it may even be possible to insure a crop that is planted after the late planting period. As is the case with many other crop insurance provisions, this can vary significantly from crop to crop, so producers should check their individual policies.

There is no increased premium for late planting coverage.[49] The premium for late planting coverage is included in the base crop insurance policy price.

In general, the late planting coverage provision can apply in four different circumstances.[50]

1. Crops Planted During the Late Planting Period

Many crops have a designated late planting period. Late planting periods generally begin on the day after the final planting date and usually last for 25 days after the final planting date.[51]

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[48] 7 U.S.C. § 1508(c)(10), (d). 7 C.F.R. § 457.8, Common Crop Insurance Policy, "7. Annual Premium and Administrative Fees"; Crop Revenue Coverage (CRC) Insurance Policy, "8. Annual Premium and Administrative Fees" (Policy No. 05-CRC-Basic).

[49] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "16. Late Planting (c)"; Crop Revenue Coverage (CRC) Insurance Policy, "17. Late Planting (c)" (Policy No. 05-CRC-Basic). If it turns out that the amount of premium that the producer is to pay for the late planted acreage is greater than the benefits due, coverage for those acres will not be available. No premium will be due and no indemnity will be paid.

[50] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "16. Late Planting"; Crop Revenue Coverage (CRC) Insurance Policy, "17. Late Planting" (Policy No. 05-CRC-Basic).

If the producer insures a crop that is planted during a late planting period, the production guarantee or amount of insurance for each acre planted will generally be reduced by 1% per day for each day after the final planting date that the crop is planted.[52] For CRC policies, the final coverage guarantee is reduced by 1% per day.[53]

2. *Crops Planted After the Late Planting Period*

It can also be possible to insure a crop that was planted after a late planting period.[54] The late planting coverage level in this situation is determined by multiplying the production guarantee or amount of insurance that would have been provided if the acreage had been planted on time by the producer's prevented planting coverage level. For CRC, the final coverage guarantee is multiplied by the prevented planting coverage level.

3. *Crops Planted Late When There Is No Late Planting Period*

Producers may be able to plant and insure a crop after the final planting date even if no late planting period exists for the crop. As with plantings after a late planting period, in this situation the coverage available is determined by multiplying the production guarantee or amount of insurance that would have been provided if the acreage had been planted on time by the producer's prevented planting coverage level. For CRC, the final coverage guarantee is reduced by the prevented planting coverage level.

4. *Planting Started—But Completion Prevented*

In some cases, an insurable cause may be a material factor in preventing a producer from completing planting after planting has begun. For acreage to be completely planted, according to FCIC regulations, the following must occur: the seeds, plants, or trees must have been placed at the correct depth and into a

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[51] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "1. Definitions, 'Late planting period'"; Crop Revenue Coverage (CRC) Insurance Policy, "1. Definitions, 'Late planting period'" (Policy No. 05-CRC-Basic).

[52] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "16. Late Planting (a)."

[53] Crop Revenue Coverage (CRC) Insurance Policy, "17. Late Planting (a)" (Policy No. 05-CRC-Basic).

[54] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "16. Late Planting (b)"; Crop Revenue Coverage (CRC) Insurance Policy, "17. Late Planting (b)" (Policy No. 05-CRC-Basic).

seedbed that has been properly prepared.[55] These actions must meet the appropriate requirements of the crop and the producer's chosen planting method. For example, if seed is broadcast on the soil surface but cannot be incorporated as intended because of an insurable cause, it meets the requirements of this provision.[56]

If acreage cannot be completely planted due to an insurable cause, for the purposes of crop insurance the crop is treated as if it were planted after the final planting date. The coverage for the crop will be determined by multiplying the production guarantee or amount of insurance that would have been provided if the acreage had been planted on time by the producer's prevented planting coverage level.[57] For CRC, the final coverage guarantee is multiplied by the prevented planting coverage level.[58]

B. Replanting Coverage

If allowed under the producer's specific insurance policy, a producer who is required to replant a crop may be eligible for compensation for those expenses.[59] Replanting compensation is not available under CAT policies, even where replanting is required by a contract.[60]

Replanting, for these purposes, is defined as performing the cultural practices necessary to prepare the land to replace the seed or plants of the damaged or destroyed insured crop and then replacing the seed or plants of the same crop in the

[55] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "1. Definitions, 'Planted acreage'"; Crop Revenue Coverage (CRC) Insurance Policy, "1. Definitions, 'Planted acreage'" (Policy No. 05-CRC-Basic).

[56] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "16. Late Planting (d)"; Crop Revenue Coverage (CRC) Insurance Policy, "17. Late Planting (d)" (Policy No. 05-CRC-Basic).

[57] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "16. Late Planting (b)(1), (d)."

[58] Crop Revenue Coverage (CRC) Insurance Policy, "17. Late Planting (b)(1), (d)" (Policy No. 05-CRC-Basic).

[59] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "13. Replanting Payment"; Crop Revenue Coverage (CRC) Insurance Policy, "14. Replanting Payment" (Policy No. 05-CRC-Basic).

[60] 7 C.F.R. § 402.4, Catastrophic Risk Protection Endorsement, "8. Replanting Payment."

insured acreage.[61] The expectation is to produce at least the crop yield used to calculate the crop insurance production guarantee.

1. Requirements for Replanting Coverage

a. Insurance Provider Approves Replanting

Before a producer receives a replanting payment, the insurance provider must approve the replanting.

b. Must Replant 20 Acres or 20 Percent of the Unit

The acreage replanted must be at least 20 acres or 20% of the insured acreage for the unit. This calculation is made as of the final planting date for the crop, or within the late planting period if a late planting period is available.

c. Must Be "Practical to Replant"

In general, "practical to replant" means that the insurance provider determines, after loss or damage to the insured crop, that replanting the insured crop will allow the crop to attain maturity by the calendar date for the end of the insurance period.[62] When making this determination, the provider is to consider (1) moisture availability, (2) marketing windows, (3) the condition of the field, and (4) the time to crop maturity, among other relevant factors. The "practical to replant" determination does not take into account the producer's input costs or the availability of seed or plants.

If the late planting period—or the final planting date, if no late planting period is applicable—has passed, it will only be considered practical to replant if replanting is generally occurring in the area.

[61] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "1. Definitions, 'Replanting'"; Crop Revenue Coverage (CRC) Insurance Policy, "1. Definitions, 'Replanting'" (Policy No. 05-CRC-Basic).

[62] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "1. Definitions, 'Practical to replant'"; Crop Revenue Coverage (CRC) Insurance Policy, "1. Definitions, 'Practical to replant'" (Policy No. 05-CRC-Basic).

2. *Restrictions on Replanting Payments*

Replanting payments are not available in three particular circumstances.

a. If the insurance provider's appraisal concludes that production without replanting will be greater than the replanting coverage level set in the producer's policy.[63]

b. If the initial crop was planted before the earliest planting date set out in the producer's policy.

c. If one replanting payment has already been made on the acreage for that crop year.

3. *Amount of Replanting Payments*

Replanting payments will be the producer's per acre cost of replanting, up to the replanting coverage amount set out in the producer's insurance policy.[64]

C. Prevented Planting Coverage

Prevented planting coverage is triggered when a producer is prevented from planting a crop due to an insured event, such as adverse weather conditions.[65] Prevented planting is one of the most important and confusing aspects of federal crop insurance. There is a significant variation in particular policies regarding prevented planting.

There is no increased premium for prevented planting coverage.[66] The premium is included in the base crop insurance premium or administrative fee. If the amount of the producer's premium for acreage that is prevented from being planted is greater

[63] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "13. Replanting Payment (b)(1)"; Crop Revenue Coverage (CRC) Insurance Policy, "14. Replanting Payment (b)(1)" (Policy No. 05-CRC-Basic).

[64] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "13. Replanting Payment (c)"; Crop Revenue Coverage (CRC) Insurance Policy, "14. Replanting Payment (c)" (Policy No. 05-CRC-Basic).

[65] See 7 U.S.C. § 1508(h)(6); 7 C.F.R. § 457.8, Common Crop Insurance Policy, "17. Prevented Planting"; Crop Revenue Coverage (CRC) Insurance Policy, "18. Prevented Planting" (Policy No. 05-CRC-Basic).

[66] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "17. Prevented Planting (c)"; Crop Revenue Coverage (CRC) Insurance Policy, "18. Prevented Planting (c)" (Policy No. 05-CRC-Basic).

than the insurer's liability for the acreage, coverage for these acres will not be available. No premium will be due and no indemnity will be paid.[67]

1. Prevented Planting Coverage Levels

Prevented planting coverage is set at a percentage of the regular insured crop guarantee. The level of coverage available for prevented planting losses depends on the crop being insured and whether the producer has purchased additional coverage.

a. Protection Levels Vary by Crop

The protection level for prevented planting can vary a great deal from crop to crop. For example, prevented planting coverage for small grains is typically 60% of the guarantee for planted acreage, while the prevented planting coverage for onions is 45% of the planted acreage guarantee, and the prevented planting coverage for northern potatoes is 25% of the guarantee for planted acreage.[68] In all cases, producers need to check their specific crop insurance documents to make sure of their coverage.

b. Additional Levels of Coverage Sometimes Available

Sometimes it is possible for producers to purchase additional prevented planting coverage.[69] For example, for small grains crop insurance, prevented planting coverage is typically set at 60% of the production guarantee for acreage that is planted in a timely way. If the producer pays an additional premium, he or she may increase this level of coverage for prevented planting.[70]

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67 7 C.F.R. § 457.8, Common Crop Insurance Policy, "17. Prevented Planting (c)."

68 7 C.F.R. §§ 457.101, Small Grains Crop Provisions, "13. Prevented Planting (b)," 457.135, Onion Crop Provisions, "14. Prevented Planting," 457.142, Northern Potato Crop Provisions, "12. Prevented Planting."

69 7 C.F.R. § 457.8, Common Crop Insurance Policy, "17. Prevented Planting (b)"; Crop Revenue Coverage (CRC) Insurance Policy, "18. Prevented Planting (b)" (Policy No. 05-CRC-Basic). See, for example, 7 C.F.R. §§ 457.101, Small Grains Crop Provisions, "13. Prevented Planting (b)," 457.108, Sunflower Seed Crop Provisions, "12. Prevented Planting," 457.142, Northern Potato Crop Provisions, "12. Prevented Planting."

70 7 C.F.R. § 457.101, Small Grains Crop Provisions, "13. Prevented Planting (b)."

2. *Basics of Prevented Planting Coverage Eligibility*

a. *Inability to Plant by Final Planting Date*

Prevented planting coverage depends on the inability of the producer to plant the crop by a certain date.[71]

(1) *Final Planting Date*

If the producer is prevented from planting the crop by the final planting date, the producer may be eligible for prevented planting coverage. The final planting date, which will vary considerably by crop and county, is included in the producer's policy.[72]

(2) *Late Planting Period*

In some cases, the producer will also have the chance to plant a crop during a late planting period.[73] Producers are not required to try to plant during the late planting period to be eligible for prevented planting coverage.

If the producer tries to plant the crop during or after the late planting period but is prevented from doing so, prevented planting coverage is still available. If the producer was able to plant the insured crop during or after the late planting period, the crop will be covered under the late planting provisions, discussed above.

b. *Planting Prevented Due to Insured Cause of Loss*

In order for prevented planting payments to be available, the reason the producer is not able to plant must be included in the insured causes of loss

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71 7 C.F.R. § 457.8, Common Crop Insurance Policy, "1. Definitions, 'Prevented planting'"; Crop Revenue Coverage (CRC) Insurance Policy, "1. Definitions, 'Prevented planting'" (Policy No. 05-CRC-Basic).

72 7 C.F.R. § 457.8, Common Crop Insurance Policy, "1. Definitions, 'Final planting date'"; Crop Revenue Coverage (CRC) Insurance Policy, "1. Definitions, 'Final planting date'" (Policy No. 05-CRC-Basic).

73 7 C.F.R. § 457.8, Common Crop Insurance Policy, "17. Prevented Planting (a)(3)"; Crop Revenue Coverage (CRC) Insurance Policy, "18. Prevented Planting (a)(3)" (Policy No. 05-CRC-Basic).

listed in the producer's insurance policy.[74] Other cause of loss requirements for prevented planting coverage are the following.

(1) Must Have Affected Other Producers With Similar Acreage

In order for prevented planting coverage to be available, the producer must have been prevented from planting the insured crop due to an insured cause of loss that is general to the surrounding area. This cause must also prevent other producers from planting acreage with similar characteristics.

(2) Proper Equipment Was Used

The producer must have been unable to plant the insured crop despite using proper equipment.

(3) Inputs and Land Must Have Been Available for Planting and Producing the Crop

The producer must be able to prove that he or she had the inputs available to plant and produce the crop with an expectation of at least producing the yield used to determine the production guarantee or amount of insurance.[75]

c. Triggering Coverage: 20 Acres or 20 Percent of Unit

For the producer to be eligible for prevented planting payments, the affected acreage must be at least 20 acres or 20% of the producer's insurable crop acreage in the unit, whichever is less.[76]

d. Once Trigger Reached—Determine Total Acres Covered

Once a trigger for prevented planting coverage is met, the next step is to determine the total acres that are covered for prevented planting. This is

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[74] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "1. Definitions, 'Prevented planting'"; Crop Revenue Coverage (CRC) Insurance Policy, "1. Definitions, 'Prevented planting'" (Policy No. 05-CRC-Basic).

[75] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "17. Prevented Planting (f)(9)"; Crop Revenue Coverage (CRC) Insurance Policy, "18. Prevented Planting (f)(10)" (Policy No. 05-CRC-Basic).

[76] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "17. Prevented Planting (f)(1)"; Crop Revenue Coverage (CRC) Insurance Policy, "18. Prevented Planting (f)(1)" (Policy No. 05-CRC-Basic).

done by setting the maximum eligible prevented planting acreage and then reducing the maximum by the number of acres that the producer was actually able to plant.[77] This is a rather complicated calculation that considers whether the crop is required to be contracted with a processor to be eligible for crop insurance coverage and whether the producer has, in the last four crop years, produced any crop for which prevented planting coverage was available.

3. *Drought and Prevented Planting*

Drought will be considered an insurable cause of loss for prevented planting in some circumstances.[78]

a. *Drought Coverage for Non-Irrigated Acreage*

For non-irrigated acreage to qualify for drought-related prevented planting coverage, the circumstances described below must be true as of the final planting date for the crop—or within the late planting period if the producer tried to plant during the late planting period.

1. The prevented planting area must have insufficient soil moisture for germination of the seed and progress toward crop maturity.
2. The insufficient soil moisture must be due to a prolonged period of dry weather.
3. The prolonged deficiencies in precipitation must be verifiable through information collected by sources whose business it is to record and study the weather.

b. *Drought Coverage for Irrigated Acreage*

For irrigated acreage to qualify for drought-related prevented planting coverage, there must be no reasonable expectation of having adequate water to produce the yield guarantee or revenue guarantee as of the final planting date for the crop—or within the late planting period if the producer tried to plant during the late planting period.

[77] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "17. Prevented Planting (e)"; Crop Revenue Coverage (CRC) Insurance Policy, "18. Prevented Planting (e)" (Policy No. 05-CRC-Basic).

[78] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "17. Prevented Planting (d)"; Crop Revenue Coverage (CRC) Insurance Policy, "18. Prevented Planting (d)" (Policy No. 05-CRC-Basic).

4. *Prevented Planting Benefits Based on a Reduced Guarantee*

In general, indemnity payments for acreage prevented from being planted are based on a reduced guarantee. Individual policies should explain how this provision works for a particular crop.

D. Planting and Insuring a Substitute Crop

Once a crop fails or is prevented from being planted, it is often possible for the producer to plant an alternative or substitute crop. Sometimes it is possible for a producer to insure that substitute crop. If a producer is not able to plant a crop for which insurance has been obtained, FCIC may allow the producer to insure a substitute crop under a CAT policy after the sales closing date but before the acreage reporting date.[79]

The coverage rules for a second crop on the same acreage in a given crop year are quite complicated, with many decisions and responsibilities for producers, including reporting obligations.[80] Producers should consult with their insurance providers about coverage for second crops.

1. *Where First Crop Suffers Total or Partial Insurable Loss*

Producers whose first crop suffered a total or partial insurable loss may choose one of two coverage options. First, the producer can choose not to plant a second crop and instead collect an insurance payment equal to 100% of the insurable loss for the first crop.[81] Second, the producer can choose to plant a second crop and collect an up-front payment of 35% of the insurable loss for the first crop.[82] If the producer then does not suffer an insurable loss to the second crop, the producer will be paid the remainder of the full indemnity payment for

79 7 C.F.R. § 400.654(c).

80 See 7 C.F.R. § 457.v8, Common Crop Insurance Policy, "9. Insurable Acreage (a)(8)."

81 7 U.S.C. § 1508a(b)(1)(A); 7 C.F.R. § 457.8, Common Crop Insurance Policy, "15. Production Included in Determining an Indemnity and Payment Reductions (e)(1)."

82 7 U.S.C. § 1508a(b)(1)(B); 7 C.F.R. § 457.8, Common Crop Insurance Policy, "15. Production Included in Determining an Indemnity and Payment Reductions (e)(2)(i)."

the first crop loss.[83] The premium paid for the first crop will be adjusted to reflect either the partial or full indemnity payment for the first crop.[84]

2. *Where First Crop Is Prevented From Being Planted*

If a first insured crop is prevented from being planted, the producer may similarly choose one of two options. First, the producer may elect not to plant a second crop and collect an indemnity payment equal to 100% of the prevented planting guarantee for the acreage for the first crop.[85] This option, however, is available only in "those situations in which other producers, in the area where a first crop is prevented from being planted is located, are also generally affected by the conditions that prevented the first crop from being planted."[86]

Under the second option, the producer may plant a second crop and collect an up-front payment of up to 35% of the prevented planting guarantee for the first crop.[87] This option is also only available if other producers in the area are generally affected by the conditions that prevented the first crop's planting.[88] A further requirement is that the second crop cannot be planted before the latest planting date established by FCIC for the first crop.[89] The premium paid for the first crop will be adjusted to reflect either the partial or full indemnity payment.[90]

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83 7 C.F.R. § 457.8, Common Crop Insurance Policy, "15. Production Included in Determining an Indemnity and Payment Reductions (e)(2)(iii)(A)."

84 7 C.F.R. § 457.8, Common Crop Insurance Policy, "15. Production Included in Determining an Indemnity and Payment Reductions (e)(2)(ii), (iii)(B)."

85 7 C.F.R. § 457.8, Common Crop Insurance Policy, "15. Production Included in Determining an Indemnity and Payment Reductions (f)(1)."

86 7 U.S.C. § 1508a(c)(4). See 7 C.F.R. § 457.8, Common Crop Insurance Policy, "1. Definitions, 'Prevented planting.'"

87 7 C.F.R. § 457.8, Common Crop Insurance Policy, "15. Production Included in Determining an Indemnity and Payment Reductions (f)(2)(i)."

88 See 7 C.F.R. § 457.8, Common Crop Insurance Policy, "1. Definitions, 'Prevented planting.'"

89 7 C.F.R. § 457.8, Common Crop Insurance Policy, "15. Production Included in Determining an Indemnity and Payment Reductions (f)(2)(i)."

90 7 C.F.R. § 457.8, Common Crop Insurance Policy, "15. Production Included in Determining an Indemnity and Payment Reductions (f)(2)(ii)."

If this option is elected, the producer will receive an assigned yield for the first crop for future actual production history calculations equal to 60% of the producer's current actual production history yield for the crop.[91]

VII. Claiming Federal Crop Insurance Benefits

The producer is responsible for taking certain actions when he or she discovers a crop loss. Whether the producer acts appropriately and promptly may determine whether the insurance provider will make an indemnity payment on the loss.

A. Crop Insurance Contract Defines Obligations

The actions that the producer must take after a loss are written in the insurance contract. For many contracts, they can be found in the section called "Duties in the Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage." The duties specified in the contract signed by the producer determine exactly what actions are required.

B. Common Producer Obligations

The following guidelines provide a list of the most common requirements for producers who have suffered a loss.[92] Failure to satisfy these requirements will usually result in denial of coverage.

1. Protect the Crop

The producer should protect the crop from further damage by providing sufficient care for the crop.

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[91] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities (h)." If part of the unit is planted and part is prevented from being planted, the yield will be determined by (1) multiplying the number of insured prevented planting acres by 60% of the producer's approved yield for the first insured crop; (2) and adding that amount to the appraised or harvested production for all of the insured planted acreage; and (3) dividing that amount by the total number of acres in the unit.

[92] This list is derived from 7 C.F.R. § 457.8, Common Crop Insurance Policy, "14. Duties in the Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage, Your Duties"; Crop Revenue Coverage (CRC) Insurance Policy, "15. Duties in the Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage, Your Duties" (Policy No. 05-CRC-Basic).

2. *Give Notice to Provider as Soon as Possible—Often Within 72 Hours*

The producer should give notice to the insurance provider as soon as possible after the loss is discovered. Many policies require that the producer give notice within 72 hours of the first discovery of crop damage (and no later than 15 days after the end of the insurance period). For prevented planting, the producer must give notice within 72 hours after the final planting date, the end of the late planting period, or the date the producer determines it would not be possible to plant the insured crop within any late planting period, as applicable. Most policies allow the initial notice to be made by phone or in person but require a written confirmation within 15 days.

3. *Leave Representative Samples*

The producer should leave representative samples of the crop intact for each insured field.

4. *Allow Provider to Examine Crop*

The crop insurance provider will retain the right to examine the insured crop as often as it reasonably requires. Failure to provide access will result in a determination that no payment is due under the policy for that crop year.[93]

5. *Cooperate With Investigation and Settlement*

The producer must cooperate with the private insurance provider in the settlement of the claim. This means that, as long as the requests are reasonable, the producer must show the provider the damaged crop, allow the provider to remove samples of the crop, provide records and documents that the provider requests, and allow the provider to make copies of the records.

6. *Get Consent Before Some Actions*

The producer should get written consent from the insurance provider before taking some actions. These include:

- Destroying any of the insured crop that is not harvested.
- Putting the insured crop to an alternative use.

[93] 7 C.F.R. § 457.8, Common Crop Insurance Policy, "21. Access to Insured Crop and Record Retention (e)"; Crop Revenue Coverage (CRC) Insurance Policy, "21. Access to Insured Crop and Record Retention (e)" (Policy No. 05-CRC-Basic).

- Putting the acreage to another use.
- Abandoning any portion of the insured crop.

The insurance provider must also be informed, in writing, after any of these actions are taken.

In most cases, the insurance provider will not give a producer permission to take any of these actions if it is practical to replant the crop. Also, the producer will generally not be permitted to take any of these actions until the provider has made an appraisal of the potential production of the crop.

7. *Submit a Written Claim*

In addition to complying with all other notice requirements, the producer must submit a written claim for indemnity declaring the amount of crop loss. This claim usually must be filed no later than 60 days after the end of the insurance period. An extension may be possible if the amount of loss cannot be determined within the time limit. The written claim must include all the information required under the contract for settling the claim.

8. *Provide Requested Additional Information*

Upon the request of the insurance provider, the producer must also cooperate in providing certain additional information.

a. *Harvesting and Marketing Records*

The producer must provide a complete harvesting and marketing record of each insured crop, by unit. This includes separate records showing the same types of information for production from any acreage that was not insured. Producers who take advantage of the opportunity to plant a second crop after a first insured crop has been damaged or prevented from being planted will have additional reporting requirements.

b. *Examination Under Oath*

If requested, the producer must usually submit to an examination under oath.

9. *Establish Proof*

The producer will usually need to prove:

a. the total production or value received for the insured crop;

b. that any crop loss occurred during the insurance period; and

c. that any crop loss was directly caused by one or more of the insured causes.

10. Retain Records

Producers are required to maintain a number of different records as proof of their eligibility for crop insurance coverage and/or payment. FCIC or the insurance provider may extend the period that the records must be kept by notifying the producer of the extension in writing.[94]

a. Harvest and Sale Records for Three Years

For three years after the end of the covered crop year, the producer must retain a complete record of the planting, replanting, inputs, production, harvesting, and disposition of all crops, including acreage not insured.[95]

b. Production Records for Three Years

The records used by the producer to establish the basis for production reports must also be retained for three years after the coverage year and must be provided to the insurance provider upon request.

c. Penalties for Failing to Retain Records

Failure to retain records can result, at the option of the provider, in the cancellation of the policy, production levels being assigned to units by the provider, and/or the denial of an indemnity payment.

C. Common Insurance Provider Obligations

Crop insurance regulations also set out a limited number of obligations that must be met by the private insurance provider.[96] These include the following.

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94 7 C.F.R. § 457.8, Common Crop Insurance Policy, "21. Access to Insured Crop and Records, and Record Retention (c)"; Crop Revenue Coverage (CRC) Insurance Policy, "21. Access to Insured Crop and Records, and Record Retention (c)" (Policy No. 05-CRC-Basic).

95 7 C.F.R. § 457.8, Common Crop Insurance Policy, "21. Access to Insured Crop and Records, and Record Retention (b)(1)"; Crop Revenue Coverage (CRC) Insurance Policy, "21. Access to Insured Crop and Records, and Record Retention (b)(1)" (Policy No. 05-CRC-Basic).

96 This list is derived from 7 C.F.R. § 457.8, Common Crop Insurance Policy, "14. Duties in the Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage, Our Duties"; Crop Revenue Coverage (CRC) Insurance Policy, "15. Duties in the Event of Damage,

1. *Pay Within 30 Days of Claim Resolution*

If the producer meets all of the crop insurance policy requirements, the insurance provider must generally pay the producer within 30 days after the provider and producer reach an agreement regarding the settlement.

If the producer and provider cannot reach an agreement, the provider must pay the owed claim within 30 days after the completion of an arbitration, reconsideration of a determination of good farming practices, or other appeal, or within 30 days after a court enters final judgment in the dispute.

Payment must also be made within 30 days of the completion of any investigation by USDA of a current or past claim for indemnity, unless evidence of wrongdoing is found. If evidence of wrongdoing is found, the insurance provider may offset the indemnity due against any overpayment.

2. *Give Notice If Unable to Pay in Time*

If the insurance provider is unable to pay the loss within the 30-day period, the provider must give the producer notice of its intentions within the 30-day period.

3. *Use FCIC Loss Procedures*

The private insurance provider must apply the loss adjustment procedures established or approved by FCIC. But the provider may defer adjustment of the crop loss until the amount of the loss can be accurately determined. The provider is not obligated to pay for additional damage resulting from the producer's failure to provide sufficient care for the crop during this deferral period.

Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage, Our Duties" (Policy No. 05-CRC-Basic).