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**OPINION, U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT
(JUNE 4, 2024)**

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

M&T FARMS, a California General Partnership,

Plaintiff-Appellant,

v.

FEDERAL CROP INSURANCE OPINION
CORPORATION, a wholly-owned government
corporation that administers the Federal Crop
Insurance Program; RISK MANAGEMENT
AGENCY, the United States Department of
Agriculture's agency that manages the FCIC and
administers federal crop insurance policies,

Defendants Appellees.

No. 23-15837

D.C. No. 5:21-cv-09590-SVK

Appeal from the United States District Court
for the Northern District of California

Susan G. Van Keulen, Magistrate Judge, Presiding*

* The parties consented to proceed before a magistrate judge.
See 28 U.S.C. § 636(c).

Before: Milan D. SMITH, JR., Andrew D. HURWITZ,
and Anthony D. JOHNSTONE, Circuit Judges.

OPINION

HURWITZ, Circuit Judge:

In this Administrative Procedure Act (“APA”) action, M&T Farms challenges an official interpretation of an insurance policy by the Federal Crop Insurance Corporation (“FCIC”).¹ The district court granted summary judgment to the FCIC, and we affirm.

BACKGROUND

M&T Farms is a California general partnership between two farmers, Paul Missou and Gary Tognetti. M&T Farms and a third farmer, Ed Tognetti, sell farm commodities through a storefront, B&T Farms, which owns their business name and goodwill. B&T Farms is also a California general partnership, in which two partners, M&T Farms and Ed Tognetti, hold 65% and 35% interests, respectively.

M&T Farms purchased crop insurance for the 2017 crop year under the Whole-Farm Revenue Protection Pilot Policy (“WFRP Policy”) from Producers

¹ The FCIC is a government corporation within the Department of Agriculture created “[t]o carry out the purposes” of the Federal Crop Insurance Act (“FCIA”). 7 U.S.C. § 1503; 31 U.S.C. § 9101(3)(D). The Risk Management Agency (“RMA”) supervises the FCIC and administers FCIA programs. 7 U.S.C. § 6933(a), (b)(1)-(3). “For all relevant and practical purposes, the RMA and the FCIC are one and the same.” *William J. Mouren Farming, Inc. v. Great Am. Ins. Co.*, No. 05-cv-0031, 2005 WL 2064129, at *2 (E.D. Cal. Aug. 24, 2005). We therefore refer to the two defendant agencies in this opinion collectively as “the FCIC.”

Agriculture Insurance Company (“ProAg”), an insurer approved and reinsured by the FCIC. M&T Farms later filed a claim seeking the full policy amount, \$1,991,876. In January 2019, ProAg cancelled the policy and denied the claim, stating that M&T Farms was not a “qualifying person” under section 3(a)(4) of the WFRP Policy, which provides:

The [IRS] Schedule F, or Substitute Schedule F, must cover 100 percent of your farm operation. (A tax entity which reports a fractional share of farming activity conducted by a partnership, corporation or any other “joint venture” does not qualify for WFRP coverage on the fractional share of farming activity).

ProAg denied the claim because M&T Farms “reports a fractional share of farming activity conducted by a partnership”—B&T Farms.

M&T Farms then instituted arbitration against ProAg. The arbitrator authorized the parties to seek an interpretation of the WFRP Policy from the FCIC, as allowed by federal law. *See* 7 U.S.C. § 1506(r); 7 C.F.R. § 400.767. In December 2019, M&T Farms and ProAg each requested an interpretation of section 3(a)(4).²

² M&T Farms and ProAg also requested an interpretation of section 3(e) of the WFRP Policy and paragraph 21(1)(d) of the WFRP Handbook. Section 3(e) states: “Originating pass-through entities may insure the allowable revenue from commodities produced by the farm operation under WFRP. Owners of a pass-through entity that are not the originating entity may not insure pass-through revenue or loss under WFRP.” Paragraph 21(1)(d) of the WFRP Handbook largely restates section 3(a)(4) of the WFRP Policy but also states: “a

In March 2020, the FCIC responded to the requests, stating that the WFRP Policy “does not allow a partner whom [sic] files taxes on a fractional share of farming activity conducted by a partnership [to be] eligible for WFRP coverage for the fractional share of that farming activity.”³

In August 2020, M&T Farms submitted another request for interpretation, providing this hypothetical, in which Entity A corresponds to B&T Farms and Entity B to M&T Farms:

Entity A is a general partnership made up of Entity B (a partnership) and individual C.

Entity A is not a “farm operation” because it reports no farm activity to the IRS in the form o[f] revenues or expenses. Moreover, Entity A is not an “originating entity” because it physically produces no commodities. Instead, Entity A is a store-front that holds the business name and goodwill for Entity B and individual C.

Entity B is a “single farm operation” because it reports 100 percent of its farm activity to the IRS in the form of revenue and expenses on its tax forms under a single taxpayer

tax entity may still qualify for WFRP coverage on a fractional share of a commodity in which they have an insurable interest.” Those provisions are not at issue in this litigation.

³ In July 2020, M&T Farms submitted a second request for interpretation, which the FCIC rejected because it contained “specific facts” about the requestor’s case in violation of 7 C.F.R. § 400.767(a)(8).

number. Entity B is also an “originating entity” because it actually physically produces its percentage share of the commodities grown nominally under the name of Entity A.

Individual C is likewise a “single farm operation” because it reports 100 percent of its farm activity to the IRS in the form of [f] revenue and expenses on its tax forms under a single taxpayer number. Individual C also actually physically produces its percentage share of the commodities grown nominally under the name of Entity A.

M&T Farms then suggested that in this scenario, “Entity A is not a ‘farm operation’ and has no farming activity,” and that Entity B therefore qualifies for WFRP coverage under section 3(a)(4).

The FCIC responded in September 2020, stating that “[a] farm operation must meet eligibility requirements of both sections 3(a)(4) and 3(e) for coverage under WFRP.” Addressing M&T Farms’ hypothetical, it said:

Using the example from the requestor’s interpretation, Entity A is a partnership that includes Entity B and individual C. Entity A, holding the business name and goodwill of Entity B and individual C (*i.e.*, marketing and selling the commodities produced), is the pass-through entity. Although Entity B may be considered an originating pass-through entity with regards to itself, it reports a fractional share of the general partnership (Entity A). Therefore, Entity B

and individual C do not meet the requirements of eligibility within section 3(a)(4) under WFRP.

M&T Farms then filed this action challenging the FCIC's interpretation of section 3(a)(4). The district court granted summary judgment to the government defendants and M&T Farms timely appealed.

JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction under 28 U.S.C. § 1291 and review a summary judgment de novo. *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 593 F.3d 923, 929 (9th Cir. 2010). Under the APA, we must uphold a final agency decision unless it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”⁴ 5 U.S.C. § 706(2)(A). The “court simply ensures that the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021).

⁴ An FCIC regulation provides that its interpretation of a crop insurance policy is a “final agency action” subject to judicial review under the APA, 5 U.S.C. § 704. *See* 7 C.F.R. § 400.765 (defining “final agency determination” as “[m]atters of general applicability regarding FCIC's interpretation of provisions of the [FCIA] or any regulation codified in the Code of Federal Regulations, including certain policy provisions, which are applicable to all participants in the Federal crop insurance program and the appeals process”). Section 33(a)(1)(iii) of the WFRP Policy additionally provides that “[a]n interpretation by FCIC of a policy provision is considered a determination that is a matter of general applicability.”

An agency’s interpretation of a regulation may also be entitled to deference under the framework announced in *Auer v. Robbins*, 519 U.S. 452 (1997). Although the WFRP Policy is not technically a regulation, the parties do not challenge the district court’s holding that the FCIC’s interpretations of the WFRP Policy are entitled to *Auer* deference. We therefore assume without deciding that *Auer* deference applies. *See Bottoms Farm P’ship v. Perdue*, 895 F.3d 1070, 1074 (8th Cir. 2018) (“Given the [FCIA’s] broad grant of authority to the [FCIC], and the specific authority over the provisions of insurance and insurance contracts . . . we must give substantial deference to the FCIC’s interpretation of the special provision.”); *see also Davis v. Producers Agric. Ins. Co.*, 762 F.3d 1276, 1286 (11th Cir. 2014) (“[I]nterpretive issue[s] within the exclusive province of the FCIC” receive “substantial weight because they were made by the agency charged with administration of the statute.”).

DISCUSSION

M&T Farms challenges the FCIC’s decision that a partnership “holding the business name and good will of [others] (*i.e.*, marketing and selling the commodities produced)” is engaged in “farming activity” under section 3(a)(4) of the WFRP Policy and that, therefore, any entity reporting a fractional share of the partnership’s activity on its tax returns is ineligible for WFRP Policy coverage.

Under the arbitrary and capricious standard of review, a court cannot

vacate an agency’s decision unless it has relied on factors which Congress had not intended it to consider, entirely failed to

consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Nat'l Ass'n of Home Builders v. Defs. of Wildlife, 551 U.S. 644, 658 (2007) (cleaned up). If *Auer* deference applies, we must also defer to an agency's interpretation of a "genuinely ambiguous" regulation if its interpretation is reasonable and entitled to controlling weight. *Kisor v. Wilkie*, 588 U.S. 558, 574-76 (2019). We conclude that the FCIC's interpretation of "farming activity" in the WFRP Policy passes muster under both standards of review.

I. APA Analysis

APA "arbitrary and capricious" review is "highly deferential, presuming the agency action to be valid and affirming the agency action if a reasonable basis exists for its decision." *Ranchers Cattlemen Action Legal Fund v. U.S. Dep't of Agric.*, 499 F.3d 1108, 1115 (9th Cir. 2007) (cleaned up).

Neither the governing statute, regulations, WFRP Policy, nor the WFRP Handbook define "farming activity." *See, e.g.*, 7 U.S.C. § 1502; 7 C.F.R. §§ 400.402, 400.765. And, as the district court noted, dictionaries provide no definitive answer about whether the marketing and sales of agricultural commodities by a "store-front" owned by entities that grow the commodities is "farming activity." *See Yith v. Nielsen*, 881 F.3d 1155, 1165 (9th Cir. 2018) (courts may consult dictionary definitions when interpreting statutes); *Farm*, Black's Law Dictionary (11th ed. 2019) (defining

“to farm” as “to cultivate land” and “to conduct the business of farming”).

M&T Farms argues that, read as a whole, the “WFRP Policy provides a clear answer.” Its argument begins with the definition of “farm operation” in the WFRP Policy: “All of the farming activities for which revenue and expenses are reported to the IRS under a single taxpayer identification number.” M&T Farms argues that only a “farm operation” can carry out “farming activity.” It also notes that the WFRP Policy ties “allowable revenue” and “allowable expenses” (used to calculate coverage in the event of losses) to the production of commodities.⁵ M&T Farms argues that these provisions compel the conclusion that an entity like B&T Farms, which markets and sells commodities produced by its general partners but does not itself report revenue or expenses to the IRS (because its general partners do), is not engaged in “farming activity.”

As the FCIC notes, however, M&T Farms overlooks that the WFRP Policy defines “[d]irect marketing” as “[m]arketing commodities directly to consumers

⁵ The WFRP Policy includes the following definitions:

Allowable expenses—Farm expenses, specified by this policy and adjusted as applicable, that are incurred in the production of commodities on your farm and reported to the IRS on farm tax records.

Allowable revenue—Allowable revenue is farm revenue, specified by this policy and including applicable adjustments, from the production of commodities produced by your farm operation, or purchased for further growth and development by your farm operation, that the IRS requires you to report on farm tax records.

without the involvement of a third party (e.g., farmer’s markets, u-pick, roadside stands, internet sales, etc.)” and links “[d]irect marketing sales records” to “allowable revenue.”⁶ Thus, the WFRP Policy envisions that marketing and sales can qualify as “farming activity.” And, the WFRP Policy’s definitions of farm operation and allowable costs and expenses do not directly define “farming activity.” As the FCIC stresses, these terms all pertain only to insured entities, not affiliated partnerships that sell the insured’s goods, like B&T Farms.

In light of this ambiguity, the FCIC’s conclusion that a partnership selling its partners’ products and holding their goodwill and business name is engaged in “farming activity” under section 3(a)(4) of the WFRP Policy has a reasonable basis. Under the arbitrary and capricious standard of review, “the agency’s action need only be a reasonable, not the best or most reasonable, decision.” *River Runners for Wilderness v. Martin*, 593 F.3d 1064, 1070 (9th Cir. 2010) (per curiam) (cleaned up). The FCIC’s interpretation of “farming activity” in the WFRP Policy satisfies this requirement.

The example M&T Farms submitted to the FCIC acknowledged that the “store-front” partnership (i.e., B&T Farms) “holds the business name and goodwill”

⁶ The WFRP Policy defines “[d]irect marketing sales records” as:

Contemporaneous records that document the sale of commodities through direct marketing. If you sell a commodity through direct marketing, you must provide the contemporaneous records used to determine allowable revenue on the Schedule F farm tax form.

for its general partners (*i.e.*, M&T Farms and Ed Tognetti) and their farm commodities are nominally grown in B&T Farms' name. From this information, the FCIC reasonably inferred that the hypothetical store-front partnership marketed and sold the commodities produced by its general partners, an inference that M&T Farms concedes. That direct marketing and sales activity, the FCIC concluded, was "farming activity" under WFRP Policy section 3(a)(4).

This is a reasonable conclusion given the WFRP Policy's definitions of "direct marketing" and "direct marketing sales records." From there, the FCIC's conclusion that the store-front's general partners are not covered under the WFRP Policy flows inexorably from the plain language of section 3(a)(4)—"A tax entity which reports a fractional share of farming activity conducted by a partnership . . . does not qualify for WFRP coverage on the fractional share of farming activity."

The FCIC's interpretation is also reasonable as a matter of policy. First, denying WFRP Policy coverage to entities that report the marketing and sales activities of other entities allows insurers to effectively evaluate coverage, claims, and audit records. Second, the interpretation helps to avoid "double dipping," under which two entities make claims arising from the same loss. *See Kalvinskas v. Cal. Inst. of Tech.*, 96 F.3d 1305, 1309 (9th Cir. 1996) (addressing "double dipping" in the disability context). Although there is no allegation of double-dipping in this case, it is reasonable for the FCIC to interpret the WFRP Policy to prevent the practice in general.

M&T Farms' contention that the FCIC's interpretation would lead to "clearly absurd" results is

unpersuasive. M&T Farms' suggestion that the interpretation would only allow farmers to sell their commodities through direct marketing is incorrect. As the FCIC points out, farmers selling through unaffiliated third parties would not report a fractional share of those parties' farming activity and would therefore qualify for WFRP coverage.

Nor does the fact that neither M&T Farms nor B&T Farms would qualify for WFRP coverage render the FCIC's interpretation unreasonable. Nothing in the governing statute guarantees that every business structure adopted by farmers will qualify for WFRP coverage. *See* 7 U.S.C. § 1508(a)(1) ("[T]he Corporation may insure . . . producers of agricultural commodities . . . under 1 or more plans of insurance"). And the WFRP Policy makes clear that some businesses (such as those who do not file a Schedule F) are ineligible for coverage.⁷

To be sure, other interpretations of "farming activity," including M&T Farms' proposal, are possible. If we were simply interpreting the language of an insurance contract in the first instance, we might well apply the familiar canon of construing any ambiguity against the insurer. *See, e.g., State Farm Mut. Auto. Ins. Co. v. Partridge*, 514 P.2d 123, 128 (Cal. 1973). But here, we review a final agency action; we are not ourselves

⁷ The FCIC suggests that M&T Farms may be eligible for other kinds of federal crop insurance coverage. We express no opinion whether that is so.

interpreting the WFRP Policy anew. We must instead afford considerable deference to the FCIC's reasonable interpretation of its policy provisions. *See Muratore v. U.S. Off. of Pers. Mgmt.*, 222 F.3d 918, 922 (11th Cir. 2000); *Sternberg v. Sec'y of Health & Human Servs.*, 299 F.3d 1201, 1205 (10th Cir. 2002). Because the FCIC's interpretation of "farming activity" in the WFRP Policy is reasonable, it survives APA arbitrary and capricious review.

II. *Auer* analysis

A. Ambiguity of the Phrase "Farming Activity"

As discussed, the term "farming activity" under section (3)(a)(4) of the WFRP Policy is "genuinely ambiguous" because the governing statute, regulations, WFRP Policy, and WFRP Handbook do not define the term. *See Kisor*, 588 U.S. at 575 (holding that, to determine whether a regulation "is genuinely ambiguous, a court must exhaust all the traditional tools of construction" (cleaned up)); 7 U.S.C. § 1502; 7 C.F.R. §§ 400.402, 400.765. And dictionary definitions provide little help in clearly identifying whether non-producing activities like marketing could constitute "farming activity" under the WFRP Policy. *See Yith*, 881 F.3d at 1165.

Although M&T Farms and the FCIC offer competing interpretations of the term, both parties can find support for their proposed readings of "farming activity" in the WFRP Policy. *Cf. Goffney v. Becerra*, 995 F.3d 737, 742 (9th Cir. 2021) ("The parties direct

us to various other provisions of the regulations. One supports Goffney’s reading and others support the government’s, and they do not clearly resolve the ambiguity.”). Therefore, the ambiguity requirement for *Auer* deference is satisfied.

B. Reasonableness of Agency Interpretation

An agency’s interpretation of a regulation is only entitled to deference if it is reasonable. *Kisor*, 588 U.S. at 575-76. “In other words, it must come within the zone of ambiguity the court has identified after employing all its interpretive tools.” *Id.* at 576. “It is well established that an agency’s interpretation need not be the only possible reading of a regulation—or even the best one to prevail.” *Decker v. Nw. EnO Def. Or.*, 568 U.S. 597, 613 (2013). For the same reasons outlined above with respect to the APA analysis, the FCIC’s conclusion that a partnership selling its partners’ products and holding their goodwill and business name is engaged in “farming activity” under the WFRP Policy has a reasonable basis. It is consistent with the WFRP Policy’s definitions of “direct marketing” and “direct marketing sales records,” is not foreclosed by any other definition, and is justified by legitimate policy considerations.

C. Weight of Agency Interpretation

To determine whether an agency’s interpretation of a regulation is entitled to *Auer* deference, a court must “make an independent inquiry into whether the character and context of the agency interpretation entitles it to controlling weight.” *Kisor*, 588 U.S. at 576. Under this inquiry, an interpretation must (1) “be the agency’s authoritative or official position,” (2)

“in some way implicate its substantive expertise,” and (3) “reflect [its] fair and considered judgment.” *Id.* at 577-79 (cleaned up). The FCIC’s interpretation of the WFRP Policy satisfies these criteria.

M&T Farms does not dispute that the FCIC’s interpretation of the WFRP Policy is an authoritative official position. *See* 7 C.F.R. § 400.766(b)(2) (FCIC interpretations are “binding on the parties to the dispute”). Nor does M&T Farms claim that the interpretation does not reflect the agency’s fair and considered judgment. *See Goffney*, 995 F.3d at 745 (“[T]he agency [need not] engage in an exhaustive interpretive discussion—even an interpretation implicit in an agency’s order can reflect the agency’s ‘fair and considered judgment.’”). Indeed, the FCIC carefully considered M&T Farms’ interpretation request and responded only after review by nine staff members.

Rather, M&T Farms only challenges the FCIC’s substantive expertise, urging that its interpretation “turns on concepts such as legal entities (*e.g.*, partnerships) and tax reporting (*e.g.*, Schedule F and the like) for which the RMA-FCIC has no special knowledge.” But Congress established the FCIC to administer a system of crop insurance and tasked it with issuing regulations and interpreting the FCIA and its regulations. 7 U.S.C. §§ 1502-03, 1506(o), (r). The FCIA “produced a complex and highly technical regulatory program,” and “[t]he identification and classification of . . . eligibility criteria necessarily require significant expertise and entail the exercise of judgment grounded in policy concerns.” *Pauley v. BethEnergy Mines, Inc.*, 501 U.S. 680, 697 (1991). The FCIC’s interpretation of “farm activity” as part of the WFRP Policy’s eligibility conditions necessarily implicated

the agency's substantive expertise in administering crop insurance. And, contrary to M&T Farms' argument, the FCIC's expertise necessarily includes knowledge of legal entities and tax reporting in the farming context, as those considerations are essential to properly administering a crop insurance program.

CONCLUSION

The judgment of the district court is **AFFIRMED**.

**ORDER ON CROSS-MOTIONS
FOR SUMMARY JUDGMENT,
U.S. DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
(MARCH 9, 2023)**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

M&T FARMS,

Plaintiff,

v.

FEDERAL CROP INSURANCE CORPORATION,
ET AL.,

Defendants.

Case No. 21-cv-09590-SVK

Re: Dkt. Nos. 25, 28, 29, 31

Before: Susan Van KEULEN,
United States Magistrate Judge.

**ORDER ON CROSS-MOTIONS
FOR SUMMARY JUDGMENT**

This is an action for judicial review of a final agency action under the Administrative Procedure Act (“APA”), 5 U.S.C. § 701, *et seq.* This case is before

the Court on cross-motions for summary judgment. Dkts. 25, 28. The Parties appeared before the undersigned for oral argument on January 24, 2023, after which the Court ordered supplemental briefing. Dkt. 33. Briefing is now complete, and the Parties have consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c)(1). Dkts. 12, 16. For the reasons discussed below, the Court DENIES Plaintiff's motion for summary judgment and GRANTS Defendants' cross-motion for summary judgment.

I. Issue to be Decided

1. Whether the Defendants' conduct was arbitrary and capricious under the Administrative Procedure Act ("APA").

II. Background

Although disputes involving farming insurance are uncommon in this court, the origin of this case springs from well-trodden ground: a plaintiff obtained insurance, suffered a loss, and the defendant insurance company refused to pay. Thus, this story begins.

Plaintiff M&T Farms ("M&T Farms" or "Plaintiff") is a general partnership consisting of two partners, Gary Tognetti and Paul Missou, that operates a farm in Gilroy, California. Dkt. 1 at ¶¶ 7-8. Defendants are the Federal Crop Insurance Corporation ("FCIC") and the Risk Management Agency ("RMA") (collectively, "Defendants" or "the Agencies"). In its Complaint, Plaintiff seeks a declaratory judgment arising from administrative determinations issued by the RMA. Dkt. 1 at 9.

The Federal Crop Insurance Act (“FCIA”), 7 U.S.C. § 1501, *et seq.*, was enacted “to promote the national welfare by improving the economic stability of agriculture through a sound system of crop insurance and providing the means for the research and experience helpful in devising and establishing such insurance.” 7 U.S.C. § 1502(a). Defendant FCIC is a federal government-owned corporation within the U.S. Department of Agriculture that was created to “carry out the purposes” of the FCIA. 7 U.S.C. § 1503; 31 U.S.C. § 9101(3). Defendant RMA supervises the FCIC and administers all programs authorized under the FCIC. 7 U.S.C. § 6933(a); 7 U.S.C. § 6933(b)(1)-(3); 7 C.F.R. § 400.701. “The United States Department of Agriculture Risk Management Agency (‘RMA’) administers FCIC. For all relevant and practical purposes, the RMA and the FCIC are one and the same.” *William J. Mouren Farming, Inc. v. Great Am. Ins. Co.*, No. 05-cv-0031, 2005 WL 2064129, at *2 (E.D. Cal. Aug. 24, 2005).

Under the FCIA, FCIC is authorized to act as a reinsurer to Approved Insurance Providers (“AIPs”). 7 U.S.C. § 1508. An AIP is “a private insurance provider that has been approved by [FCIC] to provide insurance coverage to producers participating in the Federal crop insurance program established under this subchapter.” 7 U.S.C. § 1502(b)(2). “In order to qualify for reinsurance through the FCIC, the policies written by [AIPs] must comply with the FCIA and its accompanying regulations.” *Davis v. Producers Agric. Ins. Co.*, 762 F.3d 1276, 1284 (11th Cir. 2014). Accordingly, despite the fact that “the crop insurance policy is between the farmer and an approved insurance pro-

vider,” the FCIA “generally establishes the terms and conditions of insurance[.]” *Id.*

One of the types of federal crop insurance is the Whole-Farm Revenue Protection (“WFRP”) insurance, which protects against losses for all commodities on the farm under a single insurance policy. *See* AR 178. Here, M&T Farms purchased a WFRP Pilot Policy (the “WFRP Policy” or “Policy”) for the 2017 crop year from Producers Agriculture Insurance Company (“ProAg”) to insure its peppers, tomatoes, corn, cabbage, and cherries against loss of revenue. Dkt. 1 at ¶¶ 7, 9, 11, Ex. 1 (Dkt. 24, Administrative Record (“AR”) 178-224). Non-party ProAg is an AIR *Id.* at ¶ 2. The WFRP Policy is reinsured by Defendant FCIC under the provisions of the FCA. *Id.* at ¶ 6, Ex. 1 (AR 178-224). After paying the premiums, M&T Farms claimed the full amount of insurance, or \$1,991,876.00. *Id.* at ¶ 10. On January 2, 2019, ProAg cancelled the 2017 WFRP Policy on the grounds that M&T Farms was not a “qualifying person” under § 3(a)(4) of the WFRP Policy. *Id.* at ¶ 11. Section 3(a)(4) of the WFRP Policy provides:

3. Qualifying Person Criteria and Insurance Eligibility

- (a) To be considered a qualifying person, you must:
 - (4) The Schedule F, or Substitute Schedule F, must cover 100 percent of your farm operation. (A tax entity which reports a fractional share of farming activity conducted by a partnership, corporation or any other “joint venture” does not

qualify for WFRP coverage on the fractional share of farming activity).

AR 189. In its letter, ProAg explained that it was cancelling the WFRP Policy because M&T Farms' business structure disqualified it from coverage under the policy. Dkt. 25-2 (McFarland Decl.), Ex. 1. M&T Farms is, itself, a general partner with a 65% interest in another general partnership, B&T Farms. Dkt. ¶ 31. Mr. Tognetti is the other general partner, with a 35% ownership interest in B&T Farms. *Id.* ProAg interpreted M&T Farms' earlier presentation of the facts as indicating that M&T was reporting a fractional interest in B&T's farming activities. See McFarland Decl., Ex. 1.

A. The Arbitration and Requests for Interpretation

In April 2019, M&T Farms timely filed for arbitration to challenge ProAg's cancellation of the WFRP Policy. Dkt. 1 at ¶ 13. The arbitrator authorized both ProAg and M&T Farms to seek an interpretation of the WFRP Policy from the RMA in accordance with federal regulations. Dkt. 1 at ¶¶ 15-16; AR 228-33, 234-41; 7 U.S.C. § 1506(r); *see Davis*, 762 F.3d at 1285 ("The FCIC provides, as necessary, interpretations of the statute and regulations to interested parties."). Final agency determinations from the FCIC are "[m]atters of general applicability regarding FCIC's interpretation of the [FCIA] or any regulation codified in the Code of Federal Regulations, including certain policy provisions[.]" 7 C.F.R. § 400.765. Similarly, an FCIC interpretation is "an interpretation of a policy provision not codified in the Code of Federal Regulations or any procedure used in the administration of

the Federal crop insurance program.” *Id.* “FCIC will not provide a final agency determination or FCIC interpretation for any request regarding, or that contains, specific factual information to situations or cases, such as acts or failures to act of any participant under the terms of a policy, procedure, or any reinsurance agreement.” 7 C.F.R. § 400.768(a). Accordingly, litigants must frame their questions more generally or as hypotheticals.

On December 13, 2019, M&T Farms requested FCIC’s interpretation of Sections 3(a)(4) and 3(e) of the WFRP Policy and Paragraph 21(1)(d) of the WFRP Pilot Handbook (the “Handbook”) (AR 1-176). AR 228-33. M&T Farms framed the issue as follows:

May a partnership who is an originating entity that files tax forms reporting a fractional share of the farming activity conducted by a partnership obtain WFRP coverage on the partner’s fractional share of the partnership’s farming activity for which the partnership has a financial risk of loss?

AR 230. ProAg, instead, framed the question as follows: “May a partner who files tax forms reporting a fractional share of the farming activity conducted by a partnership obtain WFRP coverage on the partner’s fractional share of the partnership’s farming activity?” AR 237. On March 11, 2020, the RMA responded to both requests for interpretation, indicating that it agreed with ProAg’s interpretation and disagreed with M&T Farms’ interpretation. AR 256-57, 259-60. The RMA emphasized particularly that “[c]overage is only available to a tax filing entity that reports 100 percent of the farming activity to the IRS, including a farming activity conducted by a partnership.” AR

256. On July 15, 2020, M&T Farms submitted a further request for interpretation to the RMA, and ProAg did the same on August 4, 2020. AR 344-62, 451-72. This time, M&T Farms framed the question as follows:

May a partnership that is an originating pass-through entity that files tax forms reporting the revenue and expenses from its percentage share of the commodities it physically produced qualify for WFRP coverage for its percentage share of the revenue from its percentage share of the commodities?

AR 345. Additionally, M&T Farms provided the following example:

Entity A is a general partnership made up of Entity B (a partnership) and individual C.

Entity A is not a “farm operation” because it reports no farming activity to the IRS in the form or [sic] revenues or expenses. Moreover, Entity A is not an “originating entity” because it physically produces no commodities. Instead, Entity A is a store-front that holds the business name and goodwill for Entity B and individual C.

Entity B is a “single farm operation” because it reports 100 percent of its farm activity to the IRS in the form of revenue and expenses on its tax forms under a single taxpayer number. Entity B is also an “originating entity” because it actually physically produces its percentage share of the commodities

grown nominally under the name of Entity A.

Individual C is likewise a “single farm operation” because it reports 100 percent of its farm activity to the IRS in the form or [sic] revenue and expenses on its tax forms under a single taxpayer number. Individual C also actually physically produces its percentage share of the commodities grown nominally under the name of Entity A.

AR 347-48. ProAg presented the following question for the RMA’s interpretation: “May a partner who files taxes on a fractional share of farming activity conducted by the partnership insure that fractional share under a WFRP policy if the partner is an originating pass-through entity for its share of commodities produced through the partnership?” AR 294 (emphasis in original).

On September 15, 2020, the RMA responded with its interpretations, once again siding with ProAg. AR 560-65. In rejecting M&T Farms’ proffered interpretation, the RMA explained:

A farm operation must meet eligibility requirements of both sections 3(a)(4) and 3(e) for coverage under WFRP. A farm operation may meet the requirements of an originating pass-through entity within itself. However, if that same entity also reports a fractional share of another entity (farming activity), the entity is not eligible for a coverage under WFRP. Using the example from the requestor’s interpretation, Entity A is a partnership that includes Entity B

and individual C. Entity A, holding the business name and good will of Entity B and individual C (i.e., marketing and selling the commodities produced) is the pass-through entity. Although Entity B may be considered an originating pass-through entity with regards to itself, it reports a fractional share of the general partnership (Entity A). Therefore, Entity B and individual C do not meet the requirements of eligibility within section 3(a)(4) under WFRP.

AR 562. Following receipt of the RMA's interpretations, M&T Farms timely appealed to the National Appeals Division ("NAD"), a division of the U.S. Department of Agriculture. AR 581-91. On March 4, 2021, the NAD found that the FCIC's September 15, 2020 interpretations were "not appealable because they are matters of general applicability." AR 577-79. The arbitrator subsequently granted ProAg's motion for summary disposition. Dkt. 1 at ¶ 29.

B. Federal Court Litigation

M&T Farms initiated this action against Defendants FCIC and RMA on December 10, 2021. Dkt. 1. Defendants lodged the Administrative Record on September 12, 2022. Plaintiff moved for summary judgment on September 22, 2022. Dkt. 25. Defendants filed their opposition and cross-motion to summary judgment on October 31, 2022. Dkt. 28. Plaintiff replied in support of its motion and in opposition to Defendants' cross-motion for summary judgment, and appeared before the undersigned for a hearing on January 24, 2022. Following oral argument, the Court asked the Parties to file supplemental briefs

addressing whether the action could be remanded to the RMA. Dkt. 33. The Court has considered the arguments raised in the Parties' supplemental briefing and declines to pursue that avenue. Plaintiff's motion for summary judgment and Defendants' cross-motion for summary judgment are fully briefed and ripe for disposition.

III. Standard of Review

In cases involving review of a final agency determination under the APA, a district court's role is not fact-finding. *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1472 (9th Cir. 1994). "[T]he function of the district court is to determine whether or not as a matter of law the evidence in the administrative record permitted the agency to make the decision it did." *Occidental Eng'g Co. v. I.N.S.*, 753 F.2d 766, 769 (9th Cir. 1985). The reviewing court must "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). "Review under the arbitrary and capricious standard is deferential." *Nat'l Ass'n of Home Builders v. Defs of Wildlife*, 551 U.S. 644, 658 (2007). Under this standard, the reviewing court "must determine whether the agency considered the relevant factors and articulated a rational connection between the facts found and the choices made." *Friends of Animals v. U.S. Fish & Wildlife Serv.*, 28 F.4th 19, 28 (9th Cir. 2022) (quoting *Ranchers Cattlemen Action Legal Fund v. U.S. Dep't of Agric.*, 499 F.3d 1108, 1115 (9th Cir. 2007)). A reviewing court should not vacate an agency's decision unless the agency has "relied on factors which Congress had not

intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders*, 551 U.S. at 2529-30 (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). The APA does not permit a court to overturn an agency decision because it disagrees with the decision or with the agency’s conclusions. *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 555 (1978). In other words, the court “may not substitute its judgment for that of the agency concerning the wisdom or prudence of [the agency’s] action.” *Or. Env’tl Council v. Kunzman*, 817 F.2d 484, 492 (9th Cir. 1987).

IV. Discussion

Plaintiff asserts that Defendants erred in concluding that, under the hypothetical Plaintiff offered, a general partnership may be deemed to have engaged in farming activity where products are sold nominally under the partnership’s name and the partnership holds the goodwill and business name of its constituent partners. Defendants maintain that the RMA reasonably concluded that such activities constitute farming activity and that, to the extent Plaintiff required additional clarity, Plaintiff should have asked the RMA to define the term “farming activity” as it is used in the WFRP Policy.

Before resolving the above dispute, the Court must first clarify its role under the APA. Plaintiff’s motion for summary judgment and reply in support

thereof repeatedly conflate the example in its Request for Interpretation, AR 344-50, with the actual facts before the arbitrator. *See* Dkts. 25-1, 29. However, Defendants did not engage in factfinding; Defendants simply interpreted their own policy. *See* AR 560-65; 7 C.F.R. § 400.768(a). The arbitrator made factual findings based on Defendants' policy interpretations, and those findings are not the subject of this suit. The Court's review under the APA is confined to determining whether Defendants' interpretations of the WFRP Policy and Handbook were arbitrary and capricious. *See, e.g., Struss v. U.S. Dep't of Agriculture*, No. 18-cv-2184, 2019 WL 2490721, at *2 (D. Kan. June 14, 2019).

Second, the Court must clarify the scope of the present dispute. The parties agree that to be a "qualifying person," under the WFRP Policy, an individual must satisfy the criteria set forth in Sections 3(a) and 3(e) and that the RMA's interpretation of Section 3(e) is not in dispute. Dkt. 29 at 5; Dkt. 28 at 15-17. Therefore, the Court will not consider Section 3(e) in the below analysis. Second, although Plaintiff purports to challenge the RMA's March 2020 and September 2020 interpretations, Plaintiff's briefing seeks relief exclusively as to the RMA's September 2020 decisions. Dkt. 25-1 at 9; Dkt. 29 at 2. Accordingly, the Court confines its review to the RMA's September 2020 decisions.

The parties have narrowed their dispute to the following passage from the RMA's September 2020 decision rejecting Plaintiff's proffered interpretations of Section 3(a)(4) of the WFRP Policy and Paragraph 21(1)(d) of the Handbook:

A farm operation may meet the requirements of an originating pass-through entity within itself. However, if that same entity also reports a fractional share of another entity (farming activity), the entity is not eligible for coverage under WFRP. Using the example from the requestor's interpretation, Entity A is a partnership that includes Entity B and individual C. Entity A, holding the business name and goodwill of Entity B and individual C (i.e., marketing and selling the commodities produced) is the pass-through entity. Although Entity B may be considered an originating pass-through entity with regards to itself, it reports a fractional share of the general partnership (Entity A). Therefore, Entity B and individual C do not meet the requirements of eligibility within section 3(a)(4) under WFRP.

AR 562 (emphasis added). Here, the RMA holds that Entity A's acts of (1) holding the business name and good will of Entity B and Individual C and (2) marketing and selling the commodities produced by Entity and Individual C, together mean that Entity A is engaged in "farming activity." *See id.* As demonstrated at oral argument, the central dispute for the Court to resolve is whether the RMA's interpretation of the term "farming activity," as used in the WFRP Policy and Handbook, was arbitrary and capricious.

A. Is the Agency's Decision Entitled to Deference?

Before reviewing Defendants' interpretation of the WFRP Policy and Handbook provisions, we must

determine the level of deference owed to the RMA's construction of those provisions. *See* 7 C.F.R. 400.765. While the FCIA and pertinent regulations apply to the WFRP Policy, the policy is not codified in the Code of Federal Regulations and does not carry the force of law. AR 11. Nevertheless, courts have treated FCIC interpretations substantially the same as regulations for purposes of determining the level of deference owed. *See, e.g., Bottoms Farm P'ship v. Perdue*, 895 F.3d 1070, 1074 (8th Cir. 2018) ("Given the Act's broad grant of authority to the Corporation, and the specific authority over the provisions of insurance and insurance contracts found in 5 U.S.C. §§ 1505 and 1506, we conclude that we must give substantial deference to the FCIC's interpretation of the special provision."); *Rain & Hail Ins. Serv. Inc. v. Fed. Crop Ins. Corp.*, 426 F.3d 976, 979 (8th Cir. 2005) ("[W]e think that the reasons for deferring to an agency's interpretation of its regulations apply equally to the AGBCA's interpretation of the Manager's Bulletin[.]"); *United States v. Gonzales & Gonzales Bonds & Ins. Agency, Inc.*, 103 F. Supp. 3d 1121, 1129 (N.D. Cal. 2015) ("[S]everal courts have held that, where an agency's action is being challenged pursuant to the APA, and where the agency has interpreted a contract, that interpretation is entitled to deference and the arbitrary-and-capricious standard applies—at least where the agency's expertise or statutory domain is implicated."). In the absence of guidance from the Ninth Circuit, we, too, shall treat the FCIC interpretations at issue here as regulations in this respect.

1. Is the Policy Genuinely Ambiguous?

Here, the Parties dispute whether the term “farming activity” is ambiguous. Plaintiff maintains that the term is unambiguous and that the Court need only look to the “plain meaning” of the WFRP Policy, while Defendants argue that the term is ambiguous and entitled to substantial deference under *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019).¹ The Court finds Section 3(a)(4) of the Policy and Paragraph 21(1)(d) of the Handbook genuinely ambiguous as to what activities constitute “farming activities.”

In general, “[w]hen an agency interprets its own regulation, even if through an informal process, its interpretation of an ambiguous regulation is controlling under [*Auer v. Robbins*, 519 U.S. 452 (1997)] unless ‘plainly erroneous or inconsistent with the regulation.’” *Bassiri v. Xerox Corp.*, 463 F.3d 927, 930 (9th Cir. 2006) (quoting *Auer*, 519 U.S. at 460). Such deference to an agency’s construction of its own ambiguous regulation is known as *Auer* deference. *Kisor*, 139 S.Ct. at 2411. However, an agency’s interpretation is not entitled to *Auer* deference unless the regulation is genuinely ambiguous. *Amazon.com, Inc. v. Comm’r of Internal Revenue*, 934 F.3d 976, 992 (9th Cir. 2019). “And before concluding that a rule is genuinely ambiguous, a court must exhaust all the ‘traditional tools’ of construct.” *Kisor*, 139 S.Ct. at 2415 (quoting *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 n.9 (1984)). This requires a court to “carefully consider []” the text,

¹ During oral argument, Defendants clarified that they are arguing that the term “farming activity” is ambiguous. Compare Dkt. 28 at 16 with Dkt. 31 at 5.

structure, history, and purpose of a regulation, in all the ways it would if it had no agency to fall back on.” *Id.* Put more simply, a court “cannot wave the ambiguity flag” until its “legal toolkit is empty and the interpretive question still has no single right answer[.]” *Id.*

When a court concludes that a regulation is genuinely ambiguous, it must still find the agency’s reading reasonable before *Auer* deference attaches. *Id.* “In other words, it must come within the zone of ambiguity the court has identified after employing all its interpretive tools.” *Id.* The inquiry does not end here, however. A court must still make an “independent inquiry into whether the character and context of the agency interpretation entitles it to controlling weight.” *Id.* To this end, the agency’s interpretation “must be one actually made by the agency,” meaning that it reflects the agency’s official position. *Id.* Further, the agency’s interpretation “must in some way implicate its substantive expertise.” *Id.* Lastly, the “agency’s reading of a rule must reflect ‘fair and considered judgment’ to receive *Auer* deference.” *Id.* (quoting *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 155 (2012)). In practice, that means ‘that a court should decline to defer to a merely ‘convenient litigating position’ or ‘post hoc rationalization[n] advanced’ to ‘defend past agency action against attack.’” *Id.* (quoting *Christopher*, 567 U.S. at 155). The new interpretation should not create “unfair surprise” to regulated parties. *Id.* (quoting *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 170 (2007)).

Pursuant to the Supreme Court’s guidance in *Kisor*, the Court accordingly addresses the text of the

WFRP Policy, the available FCIC interpretations, and the FDA's regulations to the extent relevant. Kisor, 139 S.Ct. at 2415. Section 3(a)(4) of the Policy provides:

3. Qualifying Person Criteria and Insurance Eligibility

- (a) To be considered a qualifying person, you must:
 - (4) The Schedule F, or Substitute Schedule F, must cover 100 percent of your farm operation. (A tax entity which reports a fractional share of farming activity conducted by a partnership, corporation or any other "joint venture" does not qualify for WFRP coverage on the fractional share of farming activity).

AR 189. Paragraph 21(1)(d) of the Handbook states:

21 Eligibility

- (1) To be considered eligible for a WFRP policy, the insured must:
 - (d) have a Schedule F that covers 100 percent of their farm operation. A tax entity which reports a fractional share of farming activity conducted by a partnership, corporation, or any other "joint venture" does not qualify for WFRP coverage on the fractional share of farming activity. However, a tax entity may still qualify for WFRP coverage on a fractional share of a commodity in which they have an insurable interest.

AR 20. The Parties agree that neither the FCIA, the regulations implementing the FCIA, the WFRP Policy nor the Handbook expressly defines the term “farming activity.” *See, e.g.*, 7 U.S.C. § 1501 and 7 CFR §§ 400.402, 400.765. Nor have the Parties, or the Court, identified any prior or subsequent version of the WFRP Policy or Handbook that offers such a definition.² Given the absence of a definition, the Parties turn to the other defined terms in the WFRP Policy for guidance. Dkt. 29 at 5-6; Dkt. 31 at 8-10. The Court agrees that any analysis must begin with the WFRP Policy’s other definitions and provisions.

Here, only one definition in the WFRP Policy and Handbook uses the term “farming activity:”

Farm operation — All of the farming activities for which revenue and expenses are reported to the IRS under a single taxpayer identification number will be considered a single farm operation for WFRP purposes (*e.g.*, a partnership filing a U.S. tax return for partnership income that includes revenue and expenses from separate row crop, perennial crop and livestock farms is a single farm operation because it files one tax return).

AR 102, 183 (emphasis added). Taking the example provided in the definition of “farm operation,” Plaintiff argues that the partnership filing a U.S. tax return for partnership income that includes revenue and expenses from farming separate row crops qualifies

² Nor does it appear that the RMA previously has taken up this issue. *See* <https://www.rma.usda.gov/en/Policy-and-Procedure/Insurance-Plans/Whole-Farm-Revenue-Protection> (collecting previous WFRP Interpretations of Procedure).

as a single farm operation because “as the definition holds, it reports the revenue and expenses from the production of the commodities from its farming activities to the IRS, under a single taxpayer identification number.” Dkt. 29 at 6. Thus, “farming activities” must be understood in relation to the term “farm operation” and the stated purpose of the WFRP Policy—to protect against loss of revenue from commodities produced by the farm operation. *Id.* (citing AR 178). Stated more concisely, Plaintiff’s argument is that the definition of “farm operation” clearly links “farming activities” to revenue and expenses reported to the IRS, which means that to be engaged in “farming activities,” an entity must be generating revenue and expenses from the commodities it produces. *See id.* In support of this conclusion, Plaintiff points to the WFRP Policy’s definitions of “allowable expenses” and “allowable revenue.”

Allowable expenses—Farm expenses, specified by the policy and adjusted as applicable, that are incurred in the production of commodities on your farm and reported to the IRS on farm tax records.

Allowable revenue—Allowable revenue is farm revenue, specified by this policy and including applicable adjustments, from the production of commodities produced by your farm operation, or purchased for further growth and development by your farm operation, that the IRS requires you to report on farm tax records.

AR 180.³ Because the Policy defines expenses in terms of costs incurred in the production of commodities on the insured's farm and likewise defines revenue in terms of the monies earned from the production of commodities produced by the insured's farm operation, Plaintiff reasons that the term "farming activities" necessarily refers to "those things from which revenue and expenses are reported in connection with the actual production of commodities." Dkt. 29 at 6. Ergo, the absence of revenue and expenses related to the production of commodities would indicate that an entity is not engaged in farming activities. *See id.*; Dkt. 25-1 at 8.

Defendants rejoin that the definition of "farm operation" is "largely directed to the reporting requirements, and it does not substantively restrict the meaning of 'farming activities.'" Dkt. 31 at 4. As proof of this, they note that the term "farm operation report" refers to "[t]he form on which you provide all required information regarding the commodities you expect to earn revenue from during the insurance period" and consists of three parts. AR 183. Defendants further argue that the terms "allowable expenses" and "allowable revenue" are largely based on tax reporting requirements and that such requirements should have no bearing on the definition of "farming activities." Dkt. 31 at 4. While Defendants are correct that the definition of "farm operation" does not go into detail regarding what is and is not "farming

³ Although not discussed in the briefing, neither the WFRP Policy nor the Handbook defines the term "revenue" or "expenses" specifically and instead defines the terms "allowable revenue," "allowable expenses," "approved expenses," and "approved revenue." AR 180.

activity,” the definition does plainly link “farming activity” with revenue and expenses. In other words, though the definition of “farm operation” includes a reporting component, the “farming activity” is the reason revenue and expenses are generated that must be reported to the IRS. The reporting requirements, accordingly, are not constricting the definition of “farming activities;” they are merely a consequence of the revenue and expenses generated by “all of the farming activities” in a farm operation. Moreover, to discount the definitions of “allowable expenses” and “allowable revenue” as based chiefly on tax reporting requirements, as Defendants suggest, ignores the rest of those definitions.

Defendants further argue that even if the term “farming activity” is linked to revenue and expenses, the definitions of “direct marketing” and “direct marketing sales records” evidence that “farming activity” broadly encompasses other aspects of a farm operation beyond the production of commodities. Dkt. 31. The WFRP Policy defines “direct marketing” and “direct marketing sales records” as follows:

Direct marketing—Marketing commodities directly to consumers without the involvement of a third party (*e.g.*, farmer’s markets, u-pick, roadside stands, internet sales, etc.).

Direct marketing sales records—Contemporaneous records that document the sale of commodities through direct marketing. If you sell a commodity through direct marketing, you must provide the contemporaneous records used to determine allowable revenue on the Schedule F farm tax form.

AR 182. “Direct marketing sales records” also refers to “allowable revenue” generated by the sale of commodities through “direct marketing,” as documented in “contemporaneous records.” *Id.* “Contemporaneous records” include “written records developed at the time the event occurred, recording information such as planting of a commodity, harvested production, sale of commodity, daily receipts, etc.” AR 181. Thus, even though “direct marketing” does not involve the production of commodities, it still generates “allowable revenue” from the sale of a commodity. It follows that being engaged in “farming activities” does not necessarily require that an entity be engaged in producing commodities because other activities, like direct marketing, still generate revenue that must be reported to the IRS. *See id.*

At oral argument, Plaintiff claimed that Defendants’ broad interpretation of the term “farming activities” is inconsistent with the other definitions in the WFRP Policy and the “common understanding” of what farming activity is—i.e., the production of commodities. Dkt. 32. A “farm” is commonly understood to refer to the “land and connected buildings used for agricultural purposes,” while the verb “farm” means “to cultivate land; to conduct the business of farming.” *Farm* (n.), *farm* (vb.), *Black’s Law Dictionary* (11th ed. 2019); see also *Yith v. Nielsen*, 881 F.3d 1155, 1165 (9th Cir. 2018) (holding, for purpose of statutory interpretation, courts, “[w]hen determining the plain meaning of language, . . . may consult dictionary definitions”). Yet, the dictionary definitions shed no further light on what falls under the umbrella of “farming activities” where the verb “farm” broadly refers to “cultivat[ing] the land” and “conduct[ing]

the business of farming.” Farm (vb.), Black’s Law Dictionary (11th ed. 2019).

The Court is, therefore, unpersuaded that the plain text of the provisions at issue are clear on their face. The WFRP Policy and Handbook each fail to define the term “farming activity.” Plaintiff offers a narrow interpretation of the term while Defendants offer a broad interpretation. Both appear plausible, though not compelled by the language of the Policy or Handbook. When considered in relation to the other definitions, the Court finds that the Policy and Handbook are ambiguous as to what constitutes “farming activity” or “activities.” *See, e.g., George S. v. Saul*, No. 19-cv-4252, 2020 WL 6149692, at *3 (N.D. Cal. Oct. 20, 2020) (finding that where regulation failed to “squarely address whether an individual receiving retirement benefits is eligible for the PASS program,” the omission rendered the regulation ambiguous on that point within the meaning of *Kisor*); *JPM-RDP, LLC v. U.S. Dep’t of Agriculture Risk Mgmt. Agency*, No. 17-cv-85, 2018 WL 1167325, at* 10-11 (M.D. Fla. Mar. 6, 2018) (concluding phrase “no effective control measure exists” in 7 C.F.R. § 457.139, ¶ 11(b)(1) was not “plain and unambiguous” and applying Auer deference).

2. Is the Agencies’ interpretation of “farming activity” reasonable?

Having determined that the term “farming activity” is ambiguous, the Court next must consider whether the Agencies’ decision was reasonable. *Kisor*, 139 S. Ct. at 2415-16. “In other words, it must come within the zone of ambiguity the court has identified after employing all its interpretive tools.” *Id.* at 2416.

“[T]he agency’s reading must fall ‘within the bounds of reasonable interpretation.’” *Id.* (quoting *Arlington v. FCC*, 569 U.S. 290, 296 (2013)). The Court concludes that it does.

In Plaintiff’s August 2020 Request for Interpretation, Plaintiff proposed the following example: “Entity A is not a ‘farm operation’ because it reports no farm activity to the IRS in the form of revenue or expenses. Moreover, Entity A is not an ‘originating entity’ because it physically produces no commodities. Instead, Entity A is a storefront that holds the business name and goodwill for Entity B and individual C.” AR 348. Plaintiff also posited that Entity B’s and Individual C’s commodities are grown nominally under the name of Entity A. *Id.* From these details, the Agencies concluded, “Entity A, holding the business name and goodwill of Entity B and individual C (*i.e.*, marketing and selling the commodities produced), is the pass-through entity. Although Entity B may be considered an originating pass-through entity with regards to itself, it reports a fractional share of the general partnership (Entity A).” AR 562. Under the WFRP Policy, a “pass-through entity” is an entity that reports to the IRS but does not pay taxes on portions of the revenue, instead passing it to each individual owner who then pays income tax on their portion of the revenue from the business.” AR 184.

The Agencies reasonably concluded that Entity A’s acts of holding the business name and goodwill of Entity B and Individual C and marketing and selling the commodities they produce qualify as “farming activities.” Although Plaintiff stresses that Entity A is a mere “store-front,” Dkt. 29-1 at 2, Plaintiff’s example states that Entity A is a partnership, not a

mere fictitious business name for Entity B or Individual C, that holds assets and markets and sells the commodities produced by its general partners. *See* AR 347-48. As set forth above, “farming activity” is not defined in the WFRP Policy or the Handbook. In light of the Policy’s other definitions, particularly the definitions of “direct marketing” and “direct marketing sales records,” the Agencies could reasonably conclude that Entity A is engaged in a form of direct marketing and selling on behalf of Entity B and Individual C and that it passes the profits from the sale of commodities back to Entity B and Individual C. AR 182. Defendants note that the Policy and Handbook contrast the “verifiable records” requirements for transactions with third parties with those for “direct marketing sales records.” *See* AR 47-48, 182, 186. “Verifiable records” include “[c]ontemporaneous records provided from a disinterested third party, such as records from a warehouse, processor, packer, input vendor, etc., or by measurement of farm-stored commodities.” AR 186. Based on Plaintiff’s example, Entity A is not a disinterested third party because it (1) markets and sells commodities produced by its general partners and (2) holds the business name and goodwill for its general partners. *See* AR 347-48. Thus, in the absence of facts to show that a third-party vendor sells commodities for Entity B and Individual C, the Agencies could reasonably find that, in Plaintiff’s example, Entity A is engaged in a form of direct marketing, such as marketing and selling through a farmer’s market or roadside stand. AR 182, 562. Further, the Agencies could reasonably find that Entity A’s acts of marketing and selling commodities on behalf of its general partners, coupled with the fact that Entity A holds the business name and

goodwill for those same partners, demonstrate that Entity A is engaged in farming activity, thus precluding Entity B and Individual C from meeting the eligibility requirement set forth in Section 3(a)(4) of the Policy.

In sum, the Court finds that the Agencies' interpretation of the WFRP Policy and Handbook was reasonable and, further, that the Agencies reasonably concluded that Entity A was engaged in "farming activities" under the hypothetical Plaintiff offered at AR 347-48.

3. Is the Agencies' interpretation entitled to controlling weight?

The Court next must "make an independent inquiry into whether the character and context of the agency interpretation entitles it to controlling weight." *Kisor*, 139 S. Ct. at 2416. To this end, the interpretation must (1) reflect the agency's authoritative or official position, (2) implicate the agency's substantive expertise, and (3) reflect fair and considered judgment. *Id.* at 2416-18. The Court finds these criteria satisfied.

First, Defendants' interpretations reflect the USDA's official position. As set forth above, M&T Farms timely appealed the Agencies' interpretation to the NAD. AR 581-91. On March 4, 2021, the NAD found that the Agencies' September 15, 2020 interpretations were "not appealable because they are matters of general applicability." AR 577-79. Plaintiff does not dispute that it has exhausted its administrative remedies with respect to the Agencies' interpretations and that the interpretations, consequently, reflect the FDA's official position. *See* Dkt. 35 at 4.

Second, Defendants' interpretations implicate the Agencies' substantive expertise. Congress established the FCIC to administer crop insurance under the FCIA and established the RMA to supervise the FCIC and administer all programs authorized under the FCIC. 7 U.S.C. § 1502; 31 U.S.C. § 9101(3); 7 U.S.C. § 6933(a); 7 U.S.C. § 6933(b)(1)-(3); 7 C.F.R. § 400.701. Congress also vested the FCIC with the authority to issue regulations and interpret the FCIA or any regulations the FCIC might issue. 7 U.S.C. §§ 1506(o), 1506(r). As relevant here, the FCIC has issued regulations providing that it will likewise issue interpretations "of a policy provision not codified in the Code of Federal Regulations or any procedure used in the administration of the Federal crop insurance program." 7 C.F.R. § 400.765. The WFRP Policy at issue in this case is a pilot policy reinsured by the FCIC that is not codified in the Code of Federal Regulations. AR 11, 178. Although the basic issue here what constitutes "farming activity" is seemingly prosaic, it nonetheless implicates the Agencies' specific area of expertise in administering the complexities of the WFRP Pilot Policy and the circumstances under which an entity qualifies for coverage under that Policy. *See Kisor*, 139 S.Ct. at 2417; *Bottoms Faun*, 895 F.3d at 1073-74.

Finally, the interpretations reflect Defendants' fair and considered judgment and are not "convenient litigating position[s]" or "post hoc rationalization[ns]." *Kisor*, 139 S.Ct. at 2417 (quoting *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 155 (2012)). The interpretations reflect that the FCIC carefully considered M&T Farms' request and worked directly

with the “facts” presented in the hypothetical regarding Entities A and B and Individual C.

In sum, the Kisor framework being satisfied, the Court finds that *Auer* deference is warranted.

B. The Agencies’ Decision Was Not Arbitrary and Capricious.

Having found that Defendants’ interpretations of the WFRP Policy and Handbook provisions at issue are entitled to *Auer* deference, the Court must defer to those interpretations “unless ‘plainly erroneous or inconsistent with the regulation.’” *Bassiri*, 463 F.3d at 930. As discussed extensively in Section IV above, the Court finds Defendants’ interpretations neither plainly erroneous nor inconsistent with the other WFRP Policy and Handbook provisions. Having concluded that Entity A was engaged in “farming activities,” Defendants’ conclusion that neither Entity B nor Individual C met the eligibility requirements under § 3(a)(4) is not contrary to the WFRP Policy or Handbook. Section 3(a)(4) provides:

3. Qualifying Person Criteria and Insurance Eligibility

- (a) To be considered a qualifying person, you must:
 - (4) The Schedule F, or Substitute Schedule F, must cover 100 percent of your farm operation. (A tax entity which reports a fractional share of farming activity conducted by a partnership, corporation or any other “joint venture” does not qualify for WFRP coverage on the fractional share of farming activity).

AR 189. In Plaintiff's hypothetical, Entity B and Individual C, Defendants conclude, are reporting a fractional share of partnership Entity A's farming activities and therefore do not qualify for WFRP coverage on the fractional share of farming activity. AR 347-48. This conclusion follows from the plain language of the WFRP Policy and, thus, is not arbitrary.

Further, Defendants did not act arbitrarily or capriciously in interpreting "farming activity" as encompassing the activities of the partnership Entity A contained in Plaintiff's hypothetical—i.e., holding the business name and goodwill of its constituent general partners and marketing and selling their commodities under Entity A's own name. AR 347-48; AR 562. As set forth above, the Court found this interpretation reasonable given the record before the Agencies at the time the interpretations were provided and the structure and other definitions of the WFRP Policy and Handbook.

In sum, the Agencies reasonably determined that "farming activity" includes holding the business name and goodwill, "i.e., marketing and selling the commodities produced," of a partnership's constituent general partners. This determination was not plainly erroneous or contrary to any other provision of the WFRP Policy, Handbook, or any regulation. Thus, the Court finds that the Agencies' interpretation should not be vacated on this ground.

V. Conclusion

For the reasons set forth above, the Court DENIES Plaintiff's motion for summary judgment

and GRANTS Defendants' cross-motion for summary judgment.

SO ORDERED.

**ORDER DENYING PETITION FOR
REHEARING, U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT
(AUGUST 13, 2024)**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

M&T FARMS, a California General Partnership,

Plaintiff-Appellant,

v.

FEDERAL CROP INSURANCE OPINION
CORPORATION, a wholly-owned government
corporation that administers the Federal Crop
Insurance Program; RISK MANAGEMENT
AGENCY, the United States Department of
Agriculture's agency that manages the FCIC and
administers federal crop insurance policies,

Defendants Appellees.

No. 23-15837

D.C. No. 5:21-cv-09590-SVK

Northern District of California, San Jose

Before: M. SMITH, HURWITZ, and JOHNSTONE,
Circuit Judges.

The panel has unanimously voted to deny the
petition for panel rehearing. Judges M. Smith and

Johnstone voted to deny the petition for rehearing en banc, and Judge Jurwitz so recommended. The petition for rehearing en banc, and Judge Hurwitz so recommended. The petition for rehearing en banc was circulated to the Judges of the Court, and no judge requested a vote for en banc consideration. Fed. R. App. P. 35.

The petition for panel rehearing en banc, Dkt. 31, is DENIED.

RELEVANT STATUTORY PROVISION

5 U.S.C.A. § 706

Scope of Review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

- (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

7 U.S.C.A. § 1502

Purpose; Definitions; Protection of Information; Relation to Other Laws

(a) Purpose

It is the purpose of this subchapter to promote the national welfare by improving the economic stability of agriculture through a sound system of crop insurance and providing the means for the research and experience helpful in devising and establishing such insurance.

(b) Definitions

As used in this subchapter:

(1) Additional Coverage

The term “additional coverage” means a plan of crop insurance coverage providing a level of coverage greater than the level available under catastrophic risk protection.

(2) Approved Insurance Provider

The term “approved insurance provider” means a private insurance provider that has been approved by the Corporation to provide insurance coverage to producers participating in the Federal

crop insurance program established under this subchapter.

(3) Beginning Farmer or Rancher

The term “beginning farmer or rancher” means a farmer or rancher who has not actively operated and managed a farm or ranch with a bona fide insurable interest in a crop or livestock as an owner-operator, landlord, tenant, or sharecropper for more than 5 crop years, as determined by the Secretary.

(4) Board

The term “Board” means the Board of Directors of the Corporation established under section 1505(a) of this title.

(5) Corporation

The term “Corporation” means the Federal Crop Insurance Corporation established under section 1503 of this title.

(6) Cover Crop Termination

The term “cover crop termination” means a practice that historically and under reasonable circumstances results in the termination of the growth of a cover crop.

(7) Department

The term “Department” means the United States Department of Agriculture.

(8) Farm Financial Benchmarking

The term “farm financial benchmarking” means—

- (A) the process of comparing the performance of an agricultural enterprise against the performance of other similar enterprises, through the use of comparable and reliable data, in order to identify business management strengths, weaknesses, and steps necessary to improve management performance and business profitability; and
- (B) benchmarking of the type conducted by farm management and producer associations consistent with the activities described in or funded pursuant to section 5925f of this title.

(9) Hemp

The term “hemp” has the meaning given the term in section 1639 of this title.

(10) Loss Ratio

The term “loss ratio” means the ratio of all sums paid by the Corporation as indemnities under any eligible crop insurance policy to that portion of the premium designated for anticipated losses and a reasonable reserve, other than that portion of the premium designated for operating and administrative expenses.

(11) Organic Crop

The term “organic crop” means an agricultural commodity that is organically produced consistent with section 6502 of this title.

(12) Secretary

The term “Secretary” means the Secretary of Agriculture.

(13) Transitional Yield

The term “transitional yield” means the maximum average production per acre or equivalent measure that is assigned to acreage for a crop year by the Corporation in accordance with the regulations of the Corporation whenever the producer fails—

- (A) to certify that acceptable documentation of production and acreage for the crop year is in the possession of the producer; or
- (B) to present the acceptable documentation on the demand of the Corporation or an insurance company reinsured by the Corporation.

(14) Veteran Farmer or Rancher

The term “veteran farmer or rancher” means a farmer or rancher who—

- (A) has served in the Armed Forces (as defined in section 101 of Title 38); and
- (B)
 - (i) has not operated a farm or ranch;
 - (ii) has operated a farm or ranch for not more than 5 years; or
 - (iii) is a veteran (as defined in section 101 of that title) who has first obtained status as a veteran (as so defined) during the most recent 5-year period.

(c) Protection of Confidential Information

(1) General Prohibition Against Disclosure

Except as provided in paragraph (2), the Secretary, any other officer or employee of the Department or an agency thereof, an approved insurance provider and its employees and contractors, and any other person may not disclose to the public information furnished by a producer under this subchapter.

(2) Authorized Disclosure

(A) Disclosure in Statistical or Aggregate Form

Information described in paragraph (1) may be disclosed to the public if the information has been transformed into a statistical or aggregate form that does not allow the identification of the person who supplied particular information.

(B) Consent of Producer

A producer may consent to the disclosure of information described in paragraph (1). The participation of the producer in, and the receipt of any benefit by the producer under, this subchapter or any other program administered by the Secretary may not be conditioned on the producer providing consent under this paragraph.

(3) Violations; Penalties

Section 2276(c) of this title shall apply with respect to the release of information collected in any manner or for any purpose prohibited by this subsection.

(4) Information

(A) Request

Subject to subparagraph (B), the Farm Service Agency shall, in a timely manner, provide to an agent or an approved insurance provider authorized by the producer any information (including Farm Service Agency Form 578s (or any successor form)) or maps (or any corrections to those forms or maps) that may assist the agent or approved insurance provider in insuring the producer under a policy or plan of insurance under this subchapter.

(B) Privacy

Except as provided in subparagraph (C), an agent or approved insurance provider that receives the information of a producer pursuant to subparagraph (A) shall treat the information in accordance with paragraph (1).

(C) Sharing

Nothing in this section prohibits the sharing of the information of a producer pursuant to subparagraph (A) between the agent and the approved insurance provider of the producer.

(d) Relation to Other Laws

(1) Terms and Conditions of Policies and Plans

The terms and conditions of any policy or plan of insurance offered under this subchapter that is reinsured by the Corporation shall not—

- (A) be subject to the jurisdiction of the Commodity Futures Trading Commission or the Securities and Exchange Commission; or
- (B) be considered to be accounts, agreements (including any transaction that is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”), or transactions involving contracts of sale of a commodity for future delivery, traded or executed on a contract market for the purposes of the Commodity Exchange Act (7 U.S.C. 1 et seq.).

(2) Effect on CFTC and Commodity Exchange Act

Nothing in this subchapter affects the jurisdiction of the Commodity Futures Trading Commission or the applicability of the Commodity Exchange Act (7 U.S.C. 1 et seq.) to any transaction conducted on a contract market under that Act by an approved insurance provider to offset the approved insurance provider's risk under a plan or policy of insurance under this subchapter.

7 U.S.C.A. § 1503

**Federal Crop Insurance Corporation;
Creation; Offices**

To carry out the purposes of this subchapter, there is hereby created as an agency of and within the Department a body corporate with the name "Federal Crop Insurance Corporation". The principal office of the Corporation shall be located in the District of Columbia, but there may be established agencies or branch offices elsewhere in the United States under rules and regulations prescribed by the Board.

7 U.S.C.A. § 1506

General Powers

(a) Succession

The Corporation shall have succession in its corporate name.

(b) Corporate Seal

The Corporation may adopt, alter, and use a corporate seal, which shall be judicially noticed.

(c) Property

The Corporation may purchase or lease and hold such real and personal property as it deems necessary or convenient in the transaction of its business, and may dispose of such property held by it upon such terms as it deems appropriate.

(d) Suit

Subject to section 1508(j)(2)(A) of this title, the Corporation, subject to the provisions of section 1508(j) of this title, may sue and be sued in its corporate name, but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Corporation or its property. The district courts of the United States, including the district courts of the District of Columbia and of any territory or possession, shall have exclusive original jurisdiction, without regard to the amount in controversy, of all suits brought by or against the Corporation. The Corporation may intervene in any court in any suit, action, or proceeding in which it has an interest. Any suit against the Corporation shall be brought in the District of Columbia, or in the district wherein the plaintiff resides or is engaged in business.

(e) Bylaws and Regulations

The Corporation may adopt, amend, and repeal bylaws, rules, and regulations governing the manner in which its business may be conducted and the powers granted to it by law may be exercised and enjoyed.

(f) Mails

The Corporation shall be entitled to the use of the United States mails in the same manner as the other executive agencies of the Government.

(g) Assistance

The Corporation, with the consent of any board, commission, independent establishment, or executive department of the Government, including any field service thereof, may avail itself of the use of information, services, facilities, officials, and employees thereof in carrying out the provisions of this subchapter.

(h) Collection and Sharing of Information

(1) Surveys and Investigations

The Corporation may conduct surveys and investigations relating to crop insurance, agriculture-related risks and losses, and other issues related to carrying out this subchapter.

(2) Data Collection

(A) In General

The Corporation shall assemble data for the purpose of establishing sound actuarial bases for insurance on agricultural commodities.

(B) National Agricultural Statistics Service

Data collected by the National Agricultural Statistics Service, whether published or unpublished, shall be—

- (i) provided in an aggregate form to the Corporation for the purpose of providing insurance under this subchapter; and

- (ii) kept confidential by the Corporation in the same manner and to the same extent as is required under—
 - (I) section 2276 of this title; and
 - (II) the Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note; Public Law 107-347).

(C)Noninsured Crop Disaster Assistance Program

In collecting data under this subsection, the Secretary shall ensure that—

- (i) appropriate data are collected through the noninsured crop disaster assistance program established by section 7333 of this title; and
- (ii) not less frequently than annually, the Farm Service Agency shares, and the Corporation considers, the data described in clause (i).

(3)Sharing of Records

Notwithstanding section 1502(c) of this title, records submitted in accordance with this subchapter and section 7333 of this title shall be available to agencies and local offices of the Department, appropriate State and Federal agencies and divisions, applicants who have received payment under section 1522(b)(2)(E) of this title, and approved insurance providers for use in carrying out this subchapter, such section 7333 of this title, and other agricultural programs.

(i) Expenditures

The Corporation shall determine the character and necessity for its expenditures under this subchapter and the manner in which they shall be incurred, allowed, and paid, without regard to the provisions of any other laws governing the expenditure of public funds and such determinations shall be final and conclusive upon all other officers of the Government.

(j) Settling Claims

The Corporation shall have the authority to make final and conclusive settlement and adjustment of any claim by or against the Corporation or a fiscal officer of the Corporation.

(k) Other Powers

The Corporation shall have such powers as may be necessary or appropriate for the exercise of the powers herein specifically conferred upon the Corporation and all such incidental powers as are customary in corporations generally.

(l) Contracts

The Corporation may enter into and carry out contracts or agreements, and issue regulations, necessary in the conduct of its business, as determined by the Board. State and local laws or rules shall not apply to contracts, agreements, or regulations of the Corporation or the parties thereto to the extent that such contracts, agreements, or regulations provide that such laws or rules shall not apply, or to the extent that such

laws or rules are inconsistent with such contracts, agreements, or regulations.

(m) Submission of Certain Information

(1) Social Security Account and Employer Identification Numbers

The Corporation shall require, as a condition of eligibility for participation in the multiple peril crop insurance program, submission of social security account numbers, subject to the requirements of section 405(c)(2)(C)(iii) of Title 42, and employer identification numbers, subject to the requirements of section 6109(f) of Title 26.

(2) Notification by Policyholders

Each policyholder shall notify each individual or other entity that acquires or holds a substantial beneficial interest in such policyholder of the requirements and limitations under this subchapter.

(3) Identification of Holders of Substantial Interests

The Manager of the Corporation may require each policyholder to provide to the Manager, at such times and in such manner as prescribed by the Manager, the name of each individual that holds or acquires a substantial beneficial interest in the policyholder.

**(4)“Substantial Beneficial Interest”
Defined**

For purposes of this subsection, the term “substantial beneficial interest” means not less than 5 percent of all beneficial interests in the policyholder.

(n)Actuarial Soundness

**(1)Projected Loss Ratio as of October
1, 1995**

The Corporation shall take such actions as are necessary to improve the actuarial soundness of Federal multiperil crop insurance coverage made available under this subchapter to achieve, on and after October 1, 1995, an overall projected loss ratio of not greater than 1.1, including—

- (A) instituting appropriate requirements for documentation of the actual production history of insured producers to establish recorded or appraised yields for Federal crop insurance coverage that more accurately reflect the associated actuarial risk, except that the Corporation may not carry out this paragraph in a manner that would prevent beginning farmers (as defined by the Secretary) from obtaining Federal crop insurance;
- (B) establishing in counties, to the extent practicable, a crop insurance option based on area yields in a manner that allows an insured producer to qualify for an indemnity

if a loss has occurred in a specified area in which the farm of the insured producer is located;

- (C) establishing a database that contains the social security account and employee identification numbers of participating producers, agents, and loss adjusters and using the numbers to identify insured producers, agents, and loss adjusters who are high risk for actuarial purposes and insured producers who have not documented at least 4 years of production history, to assess the performance of insurance providers, and for other purposes permitted by law; and
- (D) taking any other measures authorized by law to improve the actuarial soundness of the Federal crop insurance program while maintaining fairness and effective coverage for agricultural producers.

(2) Projected Loss Ratio

The Corporation shall take such actions, including the establishment of adequate premiums, as are necessary to improve the actuarial soundness of Federal multiperil crop insurance made available under this subchapter to achieve an overall projected loss ratio of not greater than 1.0.

(3) Nonstandard Classification System

To the extent that the Corporation uses the nonstandard classification system, the Corporation shall apply the system to all insured producers in a fair and consistent manner.

(o) Regulations

The Secretary and the Corporation are each authorized to issue such regulations as are necessary to carry out this subchapter.

(p) Purchase of American-Made Equipment and Products

(1) Sense of Congress

It is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased by the Corporation using funds made available to the Corporation should be American-made.

(2) Notice Requirement

In providing financial assistance to, or entering into any contract with, any entity for the purchase of equipment and products to carry out this subchapter, the Corporation, to the greatest extent practicable, shall provide to the entity a notice describing the statement made in paragraph (1).

(q) Redesignated (p)

(r) Procedures for Responding to Certain Inquiries

(1) Procedures Required

The Corporation shall establish procedures under which the Corporation will provide a final agency determination in response to an inquiry regarding the interpretation by the Corporation of this

subchapter or any regulation issued under this subchapter.

(2) Implementation

Not later than 180 days after June 23, 1998, the Corporation shall issue regulations to implement this subsection. At a minimum, the regulations shall establish—

- (A) the manner in which inquiries described in paragraph (1) are required to be submitted to the Corporation; and
- (B) a reasonable maximum number of days within which the Corporation will respond to all inquiries.

(3) Effect of Failure to Timely Respond

If the Corporation fails to respond to an inquiry in accordance with the procedures established pursuant to this subsection, the person requesting the interpretation of this subchapter or regulation may assume the interpretation is correct for the applicable reinsurance year.

7 C.F.R. § 400.767

Requestor Obligations

(a) All requests for a final agency determination or FCIC interpretation submitted under this subpart must:

- (1) Be submitted to the Deputy Administrator using the guidelines provided on RMA's website at www.rma.usda.gov through one of the following methods:

- (i) In writing by certified mail or overnight delivery, to the Deputy Administrator, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0801, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205;
 - (ii) By facsimile at (816) 926–3049; or
 - (iii) By electronic mail at subpartx@rma.usda.gov;
- (2) State whether you are seeking a final agency determination or FCIC interpretation;
- (3) Identify and quote the specific provision in the Act, regulations, procedure, or policy provision for which you are requesting a final agency determination or a FCIC interpretation;
- (4) Contain no more than one request for an interpretation (You must make separate requests for each provision if more than one provision is at issue. For example, if there is a dispute with the interpretation of Paragraph 3 of the Loss Adjustment Manual, then one request for an interpretation is required. If there is a dispute with the interpretation of Paragraph 3 of the Loss Adjustment Manual and Paragraph 2 of the Macadamia Nut Loss Adjustment Standards Handbook, then two separate requests for an interpretation are required);
- (5) State the crop, crop year(s), and plan of insurance applicable to the request;

- (6) State the name, address, and telephone number of a contact person for the request;
 - (7) Contain your detailed interpretation of the specific provision of the Act, regulations, procedure, or policy provision for which the request for interpretation is being requested; and
 - (8) Not contain any specific facts, alleged conduct, or hypothetical situations or the request will be returned to the requestor without consideration.
- (b) You must advise FCIC if the request for a final agency determination or FCIC interpretation will be used in a judicial review, mediation, or arbitration.
- (1) You must identify the type of proceeding (e.g., mediation, arbitration, or litigation), if applicable, in which the interpretation will be used, and the date the proceeding is scheduled to begin, or the earliest possible date the proceeding would likely begin if a specific date has not been established;
 - (2) The name, address, telephone number, and if applicable, fax number, or email address of a contact person for both parties to the dispute;
 - (3) Unless the parties elect to use the expedited review process available under the AAA rules or the appeal is before NAD, requests must be submitted not later than 90 days before the date the mediation, arbitration,

or litigation proceeding in which the interpretation will be used is scheduled to begin.

- (i) If the rules of the court, mediation, or arbitration require the interpretation prior to the date the proceeding begins, add 90 days to the number of days required prior to the proceeding. For example, if a court requires the interpretation 20 days prior to the date the proceeding begins, you must submit the request 110 days before the proceeding is scheduled to begin.
- (ii) Failure to timely submit a request for a final agency determination or FCIC interpretation may result in:
 - (A) FCIC issuing a determination that no interpretation could be made because the request was not timely submitted; and
 - (B) Nullification of any agreement or award in accordance with § 400.766 if no final agency determination or FCIC interpretation can be provided.
- (iii) Notwithstanding paragraph (b) of this section, if during the mediation, arbitration, or litigation proceeding, an issue arises that requires a final agency determination or FCIC interpretation the mediator, arbitrator, judge, or magistrate must promptly request a final agency determination or FCIC interpretation in accordance with § 400.767(a).

App.70a

- (4) FCIC at its sole discretion may authorize personnel to provide an oral or written final agency determination or FCIC interpretation, as appropriate; and
 - (5) Any decision or settlement resulting from such mediation, arbitration, or litigation proceeding before FCIC provides its final agency determination or FCIC interpretation can be nullified in accordance with § 400.766.
- (c) If multiple parties are involved and have opposing interpretations, a joint request for a final agency determination or FCIC interpretation including both requestor interpretations in one request is encouraged. If multiple insured persons are parties to the dispute, and the request for a final agency determination or FCIC interpretation applies to all parties, one request may be submitted for all insured persons instead of separate requests for each person. In this case, the information required in this section must be provided for each person.

**FCIC RESPONSE TO M&T FARMS REQUEST
FOR POLICY INTERPRETATION
(SEPTEMBER 15, 2020)**



**USDA
United States Department of Agriculture
Farm Production and
Conservation Risk Management Agency
1400 Independence Avenue, SW
Stop 0801
Washington , DC 20250-0801**

September 15, 2020

Attorneys for M&T Farms:

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Subject: Request for Federal Crop Insurance Corporation (FCIC) Interpretation - 2017 Whole-Farm Revenue Protection Pilot Policy

Crop Year: 2017

Crop: Whole-Farm Revenue Protection

Dear Mr. Judd & Mr. McFarland:

Thank you for your August 4, 2020, letter requesting a written interpretation regarding whether a producer is eligible under section 3(a)(4) or 3(e) of the 2017 Whole-Farm Revenue Protection (WFRP) Pilot Policy.

Please refer to the attached enclosure for FCIC's interpretation.

Sincerely,

Richard H. Flournoy
Deputy Administrator
Product Management

**RISK MANAGEMENT AGENCY INTERPRETATION
OF FCIC PROVISIONS:**

Subject: Request dated August 5, 2020, to the Risk Management Agency for an interpretation regarding whether a producer is eligible under section 3(a)(4) or 3(e) of the 2017 Whole-Farm Revenue Protection (WFRP) Pilot Policy.

The relevant policy provision provided by the requestor is section 3(a)(4):

3. Eligibility

- (a) To be considered a qualifying person, you must:

...

- (4) The Schedule F, or Substitute Schedule F, must cover 100 percent of your farm operation. (A tax entity which reports a fractional share of farming activity conducted by a partnership, corporation or any other “joint venture” does not qualify for WFRP coverage on the fractional share of farming activity); . . .
- (e) Originating pass-through entities may insure the allowable revenue from commodities produced by the farm operation under WFRP. Owners of a pass-through entity that are not the originating entity may not insure pass-through revenue or loss under WFRP.

The relevant handbook procedure provided by the requestor is subparagraph 21(1)(d):

21. Eligibility

- (1) To be considered eligible for a WFRP policy, the insured must:

...

- (d) have a Schedule F, or Substitute Schedule F that covers 100 percent of their farm operation. A tax entity which reports a fractional share of farming activity conducted by a partnership, corporation or any other “joint venture” does not qualify for WFRP coverage on the fractional share of farming activity. However, a tax entity may still qualify for WFRP coverage on a fractional share of a commodity in which they have an insurable interest.

Interpretation Submitted by Requestor(s)

The requestors’ interpretation of section 3(a)(4) and 3(e) of the 2017 WFRP Pilot Policy is that a farm operation (*i.e.*, a partnership) may qualify for WFRP coverage under either WFRP Policy Section 3, subsection (a)(4) and/or subsection (e). The requestor is seeking an interpretation that an originating pass-through entity may qualify under either subsection (a)(4) or (e), so long as the entity has a percentage share in the commodities it physically produces, as opposed to having a percentage share in a separate farm operation that physically produces the commodities.

The requestor offers the following example:

Entity A is a general partnership made up of Entity B (a partnership) and individual C. Entity A is not a “farm operation” because it reports no farm activity to the IRS in the form of revenues or expenses. Moreover, Entity A is not an “originating entity” because it physically produces no commodities. Instead, Entity A is a storefront that holds the business name and goodwill for Entity B and individual C.

Entity B is a “single farm operation” because it reports 100 percent of its farm activity to the IRS in the form of revenue and expenses on its tax forms under a single taxpayer number. Entity B is also an “originating entity” because it physically produces its percentage share of the commodities grown nominally under the name of Entity A.

Individual C is likewise a “single farm operation” because it reports 100 percent of its farm activity to the IRS in the form of revenue and expenses on its tax forms under a single taxpayer number. Individual C also actually physically produces its percentage share of the commodities grown nominally under the name of Entity A.

Entity B and individual C are not reporting a fractional share of the farming activity of Entity A because Entity A is not a “farm operation” and has no farming activity, and because Entity A does not actually, physically produce commodities.

Thus, in either of the above cases, the Entity B qualifies for coverage under WFRP Policy Section 3, subsections (a)(4) and/or (e) for the percentage of commodities it actually, physically produces. In either case, Entity B’s percentage share of revenue from the

commodities is “allowable revenue” because it was derived 100 percent from Entity B’s “farm operation” as defined in the WFRP Policy. Moreover, Entity B’s percentage share of the commodities was at financial risk of loss and was therefore an “insurable interest” as defined in the WFRP Policy.

Federal Crop Insurance Corporation Determination

FCIC disagrees with the requestors’ interpretation that a farm operation may be eligible for coverage when meeting only some of the criteria required under section 3(a)(4) and 3(e) of the 2017 WFRP Pilot Policy and subparagraph 21(1)(d) of the 2017 WFRP Pilot Handbook. A farm operation must meet eligibility requirements of both sections 3(a)(4) and 3(e) for coverage under WFRP. A farm operation may meet the requirements of an originating pass-through entity within itself. However, if that same entity also reports a fractional share of another entity (farming activity), the entity is not eligible for coverage under WFRP. Using the example from the requestor’s interpretation, Entity A is a partnership that includes Entity B and individual C. Entity A, holding the business name and goodwill of Entity B and individual C (*i.e.*, marketing and selling the commodities produced), is the pass-through entity. Although Entity B may be considered an originating pass-through entity with regards to itself, it reports a fractional share of the general partnership (Entity A). Therefore, Entity B and individual C do not meet the requirements of eligibility within section 3(a)(4) under WFRP.

For clarity, subparagraph 21(1)(d) of the WFRP Pilot Handbook does allow a tax filing entity to

obtain coverage on a fractional share of commodity for which the entity has an insurable interest. For example, an entity owns a farm operation that consists of 100 acres of commodity A with a 100 percent share of commodity A. The farm operation also consists of a 50 percent share of commodity B produced on another 100 acres. The entity would be eligible for WFRP coverage on the 100 percent share of commodity A and the 50 percent share of commodity B.

In accordance with section 33(a)(1) of the WFRP Pilot Policy, this FCIC interpretation is generally applicable and binding in any mediation or arbitration. In accordance with section 33(a)(1), any appeal of this interpretation must be in accordance with 7 C.F.R. part 11.

**FCIC WHOLE-FARM REVENUE
PROTECTION PILOT POLICY
(AUGUST 2016)**



17-0076 WFRP- Pilot
Released –Aug. 2016

**DEPARTMENT OF AGRICULTURE FEDERAL
CROP INSURANCE CORPORATION**

**WHOLE-FARM REVENUE
PROTECTION PILOT POLICY**

Whole-Farm Revenue Protection (WFRP) pilot provides protection against loss of revenue that you expect to earn or will obtain from commodities you produce or purchase for resale during the insurance period. Whole-farm revenue consists of revenue from all insured commodities on the farm operation, including revenue from animals and animal products.

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. 1501-1524) (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 us, our insurance agent or any other contractor or employee of

ours, or any employee of the United States Department of Agriculture (USDA). We will use the procedures, including but not limited to handbooks, manuals, memoranda, and bulletins, as issued by FCIC and published on the Risk Management Agency (RMA's) web site at <http://www.rma.usda.gov/> or a successor Web site, in the administration of this policy, including the adjustment of any loss or claim submitted under this policy.

In the event that we cannot pay your indemnity because we are insolvent or are otherwise unable to perform our duties under our reinsurance agreement with FCIC, your claim will be settled in accordance with the provisions of this policy, and FCIC will be responsible for any amounts owed. No state guarantee fund will be liable for your loss.

Throughout this policy, "you" and "your" refer to the insured shown on the application accepted by us, and "we," "us," and "our" refer to the insurance provider providing insurance. Unless the context indicates otherwise, use of the plural form of a word includes the singular and the singular form of the word includes the plural. Some of the provisions contained in this policy require information contained on farm tax form Schedule F for the Federal tax return (Form 1040) or other alternative farm tax forms. Specific line numbers from the Schedule F for the cash accounting method (2013 tax year version) are referenced in the policy. To the extent that the line numbers may change, the corresponding line number for the Schedule F for the insurance year the policy is in effect will apply.

AGREEMENT TO INSURE: We agree that in return for the payment of the premium, and subject to all of the provisions of this policy, we will provide the insurance as stated in this policy. If there is a conflict between the (1) Act; (2) regulations published at 7 CFR, Chapter IV; (3) policy provisions; and (4) procedures issued by FCIC, the order of priority is (1) controlling (2), etc. If there is a conflict between the policy provisions, the order of priority is the (1) Special Provisions, (2) actuarial documents; and (3) these Basic Provisions, with (1) controlling (2).

[TOC Omitted]

TERMS AND CONDITIONS

YOUR INSURANCE CONTRACT

1. Definitions

Abandon – Failure to continue activities necessary to produce an amount of allowable revenue equal to or greater than the expected value of a commodity, performing activities so insignificant as to provide no benefit to a commodity, or failure to harvest or market a commodity in a timely manner.

Accrual accounting method – A system of record keeping in which revenue earned and expenses incurred for a specified time period are recorded regardless of whether or not the revenue 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 information for the insurance year that is available for public inspection in your agent's office and published on RMA's web

site and includes available crop insurance policies, coverage levels, and information needed to determine amounts of insurance, premium rates, premium adjustment percentages, program dates, and other related information regarding the insurance coverage.

Administrative fee – A fee in addition to your premium that you must pay for insurance for each insurance year.

Agricultural experts – Persons who are employed by the Cooperative Extension System, the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific commodity or practice for which such expertise is sought.

Allowable expenses – Farm expenses, specified by this policy and adjusted as applicable, that are incurred in the production of commodities on your farm and reported to the IRS on farm tax records.

Allowable Expense Worksheet – A worksheet to be completed by you and accepted by us that adjusts your expenses by removing any expenses that are not approved under WFRP.

Allowable revenue – Allowable revenue is farm revenue, specified by this policy and including applicable adjustments, from the production of commodities produced by your farm operation, or purchased for further growth and development by your farm operation, that the IRS requires you to report on farm tax records.

Allowable Revenue Worksheet – A worksheet to be completed by you and accepted by us that adjusts

your revenue by removing revenue that is not allowable under WFRP.

Animals – Living organisms other than plants or fungi that are produced or raised in farm operations, including, but not limited to, cattle, horses, swine, sheep, goats, poultry, aquaculture species, bees, and fur bearing animals. For the purposes of this policy, animals must be propagated or reared in a controlled environment.

Application – The form required to be completed by you and accepted by us before insurance coverage will begin.

Approved expenses – The amount of allowable expenses your farm operation is expected to incur during the insurance period, as approved by us.

Approved revenue – The amount of allowable revenue that your farm operation is expected to earn or will obtain from the sale of commodities you produce, or purchase for resale, in the insurance period as approved by us.

Assignment of indemnity – A transfer of policy rights, where you assign your right to an indemnity payment, for the insurance year only, to creditors or other persons to whom you have a financial debt or other monetary obligation.

Average allowable expenses – The simple average of the allowable expenses for all years in your whole – farm history period.

Average allowable revenue – The simple average of the allowable revenue for all years in your whole-farm history period.

Beginning accounts payable – Allowable expenses, supported by verifiable records, you incurred prior to the insurance period but that have not been paid at the beginning of the insurance period.

Beginning accounts receivable – Allowable revenue, supported by verifiable records, you earned prior to the insurance period, but that has not been received at the beginning of the insurance period. This amount includes the value of beginning inventory that is under a marketing contract with a buyer to be purchased at a specified price.

Beginning farmer or rancher – An individual who has not actively operated and managed a farm or ranch in any state, with an insurable interest in a crop or livestock as an owner-operator, landlord, tenant, or sharecropper for more than five insurance years, as determined in accordance with FCIC procedures. Any insurance year's insurable interest may, at your election, be excluded if earned while under the age of 18, while in full-time military service of the United States, or while in post-secondary education, in accordance with FCIC procedures. A person other than an individual may be eligible for beginning farmer or rancher benefits if all of the substantial beneficial interest holders qualify as a beginning farmer or rancher.

Beginning inventory – The commodities you produced or owned prior to the insurance period, but that have not been sold or otherwise disposed of at the beginning of the insurance period and supported by verifiable records. Any commodity that is under a marketing contract with a buyer to be purchased during the previous insurance period at a price that will not be determined until the current insurance

period or subsequent years will be considered as beginning inventory.

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

Calendar year filer – An insured that files taxes based on the 12 consecutive months corresponding to January 1 through December 31.

Cancellation date – The date specified in the actuarial documents on which your coverage will automatically renew unless canceled in writing by either you or us or terminated in accordance with the policy terms.

Carryover insured – An insured that was covered under WFRP in the insurance year immediately prior to the current insurance year without respect to insurance provider.

Cash accounting method – A system of record keeping where revenue and expenses are recorded during the time period they are actually received or paid.

Catastrophic Risk Protection (CAT) – The minimum level of coverage offered by FCIC.

Certified organic acreage – Acreage in the certified organic farm operation that has been certified by a certifying agent as conforming to organic standards in accordance with 7 CFR part 205.

Certificate – With respect to organic crops, a written document that identifies the name of the person certified, effective date of certification, certificate

number, types of products certified, and name and address of the certifying agency.

Certification – With respect to organic crops, a determination made by the certifying agency that the production or handling operation is in compliance with the certifying agency's certification standards.

Certifying agent – A private or governmental entity accredited by the USDA Secretary of Agriculture for the purpose of certifying a production, processing, or handling operation as organic.

Claim for indemnity – A claim for a loss made on our form that contains the information necessary to pay the indemnity, as specified in this policy.

Commodities purchased for resale – Commodities not produced by your farm operation that are purchased to be added to your farm operation and then subsequently sold. This does not include commodities purchased for further growth, development or maturity for later sale, or commodities purchased to replace production of your farm operation lost due to insurable causes.

Commodity – Any agricultural product established or produced on your farm operation, except timber, forest, and forest products, and animals for sport, show, or pets.

Commodity count – The number of commodities on your farm operation, as determined in accordance with section 19(c).

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

Contemporaneous records – Written records developed at the time the event occurred, recording information such as planting of a commodity, harvested production, sale of a commodity, daily receipts, etc.

Contract change date – The date by which changes to the policy, if any, will be made available.

Contract grower – A person retained under contract to manage the growth of a commodity owned by another person.

Controlled substance – Any substance whose manufacture, distribution, or use is federally regulated under the Controlled Substances Act.

Cooperative Extension System – A nationwide network consisting of a state office located at each state's land-grant university, and local or regional offices. These offices are staffed by one or more agricultural experts, who work in cooperation with the National Institute of Food and Agriculture, and who provide information to agricultural producers and others.

County – Any county, parish, political subdivision of a state, or other area specified in the actuarial documents.

Damage – Injury, deterioration, or loss of production of an insured commodity due to insured or uninsured causes.

Days – Calendar days.

Delinquent debt – Has the same meaning as the term defined in 7 CFR part 400, subpart U.

Direct marketing – Marketing commodities directly to consumers without the involvement of a third

party (*e.g.*, farmer's markets, u-pick, roadside stands, internet sales, etc.).

Direct marketing sales records – Contemporaneous records that document the sale of commodities through direct marketing. If you sell a commodity through direct marketing, you must provide the contemporaneous records used to determine allowable revenue on the Schedule F farm tax form.

Disregarded entity – A single-member tax entity that does not elect to be treated as a corporation for income tax purposes and files taxes under another entity name.

Diversification discount – The discount to your farm premium rate that your farm operation qualifies for based on your commodity count as determined in accordance with section 19(c).

Early fiscal year filer – An insured that files taxes with a fiscal year that begins prior to August 1 of the insurance year.

End of insurance period, date of – The date upon which your insurance coverage ceases for the insurance year.

Ending accounts payable – Allowable expenses, supported by verifiable records, you incurred during the insurance period but that have not been paid at the end of the insurance period.

Ending accounts receivable – Allowable revenue, supported by verifiable records, you earned during the insurance period, but that has not been received at the end of the insurance period. This amount includes the value of ending inventory that is under

a marketing contract with a buyer to be purchased at a specified price.

Ending inventory – The commodities you produced during the insurance period, but that have not been sold or otherwise disposed of at the end of the insurance period and supported by verifiable records, and reported on the Inventory Report as ending inventory. Any commodity that is under a marketing contract with a buyer to be purchased during the insurance period at a price that will not be determined until subsequent insurance years will be considered as ending inventory.

Expanded operation adjusted revenue – The average allowable revenue adjusted to reflect physical expansion of the farm operation.

Expanding operation factor – A factor that is used to calculate the expanded operation adjusted revenue for farm operations that are physically expanding.

Expected revenue – The amount of revenue you expect to receive from a commodity, as stated on your Farm Operation Report.

Expected value – The price that you expect to receive for a commodity, in accordance with the expected value guidelines, less the cost of all post-production expenses.

Expense trend factor – A factor that is used to measure the year to year growth in expenses of your farm operation.

Expense reduction factor – A factor that is used to reduce the approved revenue for claim purposes when allowable expenses for the current year are

less than 70 percent of approved expenses and the reduction is due to an insurable loss.

Familial relationship – Your parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption, or marriage.

Farm premium rate – The premium rate for coverage under this policy calculated based on the commodities on your farm operation.

Farm operation – All of the farming activities for which revenue and expenses are reported to the IRS under a single taxpayer identification number will be considered a single farm operation for WFRP purposes (e.g., a partnership filing a U.S. tax return for partnership income that includes revenue and expenses from separate row crop, perennial crop and livestock farms is a single farm operation because it files one tax return).

Farm Operation Report – The form on which you provide all required information regarding the commodities you expect to earn revenue from during the insurance period. The Farm Operation Report consists of three parts, the Intended Farm Operation Report, Revised Farm Operation Report, and Final Farm Operation Report, with each part due at the time specified in these provisions.

Farm tax forms – IRS income tax forms used to report farm revenue and expenses for a signed and filed Federal tax return, specifically including Schedule F (Form 1040) but also other forms used to report farm revenue and used under this policy to develop a Substitute Schedule F, if needed.

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 the twelfth month is not December.

Farm Service Agency (FSA) – An agency of the USDA, or a successor agency.

Generally recognized – When agricultural experts or organic agricultural experts, 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.

Good farming practices – The production methods utilized to produce the insured commodities and allow them to make normal progress toward maturity resulting in at least the approved revenue, 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 organic agricultural experts for the area or contained in the organic plan. 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”.

Household – A domestic establishment including individuals with a familial relationship and others who live on the same property.

Indexed average expenses – The average allowable expenses adjusted to reflect expense growth during the whole-farm history period.

Indexed average revenue – The average allowable revenue adjusted to reflect revenue growth during the whole-farm history period.

Insurable interest – Your percentage of a commodity that is at financial risk of loss.

Insurance period – The tax year that begins in the insurance year.

Insurance year – The calendar year in which the sales closing date occurs.

Insured – The named person as shown on the application accepted by us. This term does not extend to any other person having a share or interest in the crop such as, a partnership, landlord, or any other person, unless specifically indicated on the application accepted by us.

Insured commodity – A commodity you will produce or purchase for resale during the insurance period.

Insured revenue – The total amount of insurance provided to you by this policy.

Intended commodity – A commodity you reported on your Intended Farm Operation Report.

Internal Revenue Service (IRS) – A bureau of the United States Department of the Treasury.

Inventory Report – The form on which you provide all required information regarding the beginning inventory and ending inventory of your farm operation.

Lag year – The tax year immediately preceding the insurance year.

Late fiscal year filer – An insured that files taxes with a fiscal year that begins August 1 or later in the insurance year.

Limited resource farmer – Has the same meaning as the term defined by USDA at <http://www.lrftool.sc.egov.usda.gov> or a successor Web site.

Local market price – The average price offered by buyers of the commodity in the area where you normally sell that commodity.

Market readiness operations – The on-farm activities that are the minimum required to remove the commodity from the field and make the commodity market ready, such as washing, packing etc. Since it is the minimum required to remove the commodity from the field, the activity must occur on or in close proximity to the field where the commodity is produced. Market readiness operations do not include any activities that occur off-farm or on-farm in in-field that increases the value of the crop, such as canning, freezing, and processing activities that alter the physical nature of insurable commodities including, but not limited to, slicing apples, putting commodities into gift baskets, jams, jellies, wine, or cider, etc.

Marketing contract – A written agreement between you and a buyer for the purchase of a commodity you will produce on your farm operation at a specified price.

National Organic Program – A regulatory program housed within the USDA Agricultural Marketing Service, responsible for developing national standards for organically-produced agricultural products.

Native sod – Acreage that has no record of being tilled (determined in accordance with information collected and maintained by an agency of the USDA or other verifiable records that you provide and are acceptable to us) for the production of an annual crop on or before February 7, 2014, and on which the plant cover is composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing.

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

Net value – Value of a commodity at the beginning of the year minus the cost of the commodity.

Noninsured Crop Disaster Assistance Program (NAP) – A program administered by FSA which provides financial assistance to producers of crops that do not have a permanent crop insurance program available.

Notice of loss – A written notice you are required to file in your agent's office whenever you initially discover that your allowable revenue for the insurance year may be less than your insured revenue.

Nursery and greenhouse commodities – Plants which are propagated or grown to be sold as plants, not including commodities produced by plants (e.g., tomato plants, but not tomatoes). For the purposes of this policy, plants for nursery and greenhouse must be propagated or grown in a controlled environment.

Offset – The act of deducting one amount from another amount.

Organic agricultural experts – Persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education or the Cooperative Extension System, the agricultural departments of universities, or other persons approved by FCIC whose research or occupation is related to the specific organic crop or practice for which such expertise is sought.

Organic farming operation – An operation that uses organic farming practices to produce organic commodities.

Organic farming practice – A system of plant or animal production practices used to produce the commodity that is reviewed by a certifying agent in accordance with 7 CFR part 205.

Organic system plan – A written plan, in accordance with the National Organic Program published in 7 CFR part 205, which describes the organic farming practices and is reviewed annually, or at other times specified on the certificate, by a certifying agent.

Organic standards – Standards in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.) and 7 CFR part 205.

Originating entity – An entity that actually physically produces the commodity.

Pass-through entity – An entity that reports to the IRS but does not pay taxes on portions of the revenue, instead passing it to each individual owner who then pays income tax on their portion of the revenue from the business.

Perennial commodity – A commodity produced on a plant, bush, tree, or vine that has a lifespan of more than one year, as identified in the actuarial documents.

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

Policy – The agreement between you and us to insure all insurable revenue on the farm operation, and consisting of the application accepted by us, these Basic Provisions, the Special Provisions, any other applicable endorsements or options, the actuarial documents and the applicable regulations published in 7 CFR chapter IV. All farm revenue will be insured under one policy.

Post-production operations – Any operations not included in the definition of market readiness operations, performed after producing and harvesting an insured commodity to prepare it for sale. These include, but are not limited to, any activity occurring on-farm or off-farm to prepare the commodity for sale or any activity that increases the value of the crop, such as canning, freezing, and processing activities that alter the physical nature of insurable commodities such as slicing apples, putting commodities into gift baskets, jams, jellies, wine, or cider, or costs for cold and controlled atmosphere storage.

Premium billing date – The earliest date upon which you will be billed for insurance. The premium billing date is contained in the actuarial documents.

Produced – An insured commodity will be considered produced when it has matured to the extent that it is generally saleable at established markets, regardless of whether or not it is actually harvested by the end of the insurance period.

Production capacity – Physical land or structures used for the production of commodities on your farm operation.

Prohibited substance – Any biological, chemical, or other agent that is prohibited from use by Federal statute or is not included in the organic standards for use on any certified organic, transitional or buffer zone acreage. Lists of such substances are contained at 7 CFR part 205.

Qualifying revenue threshold – The minimum amount of revenue a commodity must be expected to generate to qualify as a commodity for the purpose of your commodity count, as determined in accordance with section 19(b).

Replanted commodity – An annual commodity replanted on the same acreage as the first insured commodity for harvest in the same insurance period.

Replanting – Performing the cultural practices necessary to prepare the land and then replacing the seed or plants of the damaged or destroyed commodity on the same acreage.

Revenue trend factor – A factor that is used to measure the year to year growth in revenue of your farm operation.

RMA's Web site – A web site hosted by RMA and located at <http://www.rma.usda.gov/> or a successor web site.

Sales closing date – The date contained in the actuarial documents by which an application must be filed and the last date by which you may change your coverage for an insurance year.

Schedule F – A tax form commonly used to file Federal taxes for a farm.

Short tax year – A period of less than twelve consecutive months for which a tax entity may be required to file a tax return due to changing from a calendar year to fiscal year or vice versa or from changing the dates of a fiscal year.

Special Provisions – The part of the policy that contains specific provisions of insurance that may vary by geographic area or as specified in the policy.

Substantial beneficial interest – An interest held by any person of at least 10 percent in you (*e.g.*, there are two partnerships that each have a 50 percent interest in you and each partnership is made up of two individuals, each with a 50 percent share in the partnership. In this case, each individual would be considered to have a 25 percent interest in you, and both the partnerships and the individuals would have a substantial beneficial interest in you. The spouses of the individuals would not be considered to have a substantial beneficial interest unless the spouse was one of the individuals that made up the partnership. However, if each partnership is made up of six individuals with equal interests, then each would only have an 8.33 percent interest in you and although the partnership would still have a substantial beneficial interest in you, the individuals would not). The spouse of any individual applicant or individual insured will be presumed to have a substantial bene-

ficial interest in the applicant or insured unless the spouses can prove they are legally separated or otherwise legally separate under the applicable state dissolution of marriage laws. Any child of an individual applicant or individual insured will not be considered to have a substantial beneficial interest in the applicant or insured unless the child has a separate legal interest in such person.

Substitute Schedule F – A form used in place of a Schedule F form if you file farm tax forms for your farm operation that do not include a Federal Schedule F tax form.

Summary of coverage – Our statement to you, based upon your Farm Operation Report that provides specific information about your policy including the amount of insurance coverage.

Tax entity – Any person that has a tax reporting requirement.

Tax year – The annual accounting period for the farm operation defined by the period used for tax purposes. The tax years are: (1) a calendar year; or (2) a fiscal year.

Termination date – The date contained in the actuarial documents upon which your insurance ceases to be in effect because of nonpayment of any amount due us under the policy, including premium.

Total expected revenue – The total amount of expected revenue you expect to receive from all commodities on your farm operation during the insurance period, as stated on your Farm Operation Report, including expected revenue from commodities lost due to a covered cause of loss.

Transitional acreage – Acreage on which organic farming practices are being followed but the acreage does not yet qualify to be designated as certified organic acreage.

Verifiable records – Contemporaneous records provided from a disinterested third party, such as records from a warehouse, processor, packer, broker, input vendor, etc., or by measurement of farm-stored commodities. Except for commodities sold through direct marketing, if you process or pack your insured commodities, you must provide final settlement sheets showing disposition of the insured commodities and marketing records reconcilable with revenue reported for tax purposes for your farm operation.

Vertically integrated operation – A person that has a substantial beneficial interest in multiple entities that may buy and sell commodities from each other or move commodities from one entity to the other to conduct post-production operations on the commodities.

Void – When the policy is considered not to have existed for an insurance year.

Whole-farm historic average revenue and expenses – The historic, average allowable revenue and allowable expenses generated from the farm operation, adjusted according to this policy, and stated on the Whole-Farm History Report.

Whole-farm history period – The five consecutive tax years prior to the tax year immediately before the insurance year.

Whole-Farm History Report – The report that documents your farm operation's allowable revenue and allowable expenses for each tax year used to deter-

mine your whole-farm historic average revenue and expenses and other information necessary to determine your whole-farm historic average revenue and expenses.

2. Application.

(a) For your initial year of insurance, you must provide the completed, signed, application to your agent not later than the sales closing date.

(b) If avoidance, 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 your policy is voided due to a conviction of the controlled substance provisions of the Food Security Act of 1985 or Title 21, a new application must be filed for the crop.

- (1) Insurance coverage will not be provided if you are ineligible under the contract or under any Federal statute or regulation.
- (2) Since applications for crop insurance cannot be accepted after the sales closing date, if you make any premium payment, or you otherwise become eligible, after the sales closing date, you cannot apply for insurance until the next insurance year. For example, for the 2012 insurance year, if crop A, with a termination date of October 31, 2012, and crop B, with a termination date of March 15, 2013, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 2012, and crop A's policy is terminated as of that date. Crop B's policy

does not terminate until March 15, 2013, and an indemnity for the 2012 insurance year may still be owed. You will not be eligible to apply for crop insurance for any crop until after the amounts owed are paid in full or you file a petition to discharge the debt in bankruptcy.

(c) To change your coverage in a subsequent year, you must provide a policy change form reflecting the changes by the sales closing date or the policy terms from the previous year will remain in effect.

(d) You must include the following information on your application for insurance or your application will not be accepted and no coverage will be provided:

- (1) The coverage level;
- (2) Your social security number (SSN) if you are an individual. If you are an individual applicant operating as a business, you must provide an employer identification number (EIN) and you must also provide your SSN;
- (3) Your EIN if you are a person other than an individual; and
- (4) The following for all persons who have a substantial beneficial interest in you:
 - (i) The SSN for individuals; or
 - (ii) The EIN for persons other than individuals and the SSNs for all individuals that comprise the person with the EIN if such individuals also have a substantial beneficial interest in you;

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- (iii) Any child of yours will not be considered to have an interest in you, unless the child has a separate legal interest in you.
- (5) Whether your farm taxes, in accordance with this policy, are filed as a:
 - (i) Calendar year;
 - (ii) Early fiscal year; or
 - (iii) Late fiscal year.
- (6) Any other material information required on the application for this policy.
- (7) The county listed on the application should be the county where the majority of the total expected revenue is earned.
- (e) With respect to SSNs or EINs required on your application:
 - (1) Your application will not be accepted and no insurance will be provided for the year of application if the application does not contain your SSN or EIN. If your application contains an incorrect SSN or EIN for you, your application will be considered not to have been accepted, no insurance will be provided for the year of application and for any subsequent insurance years, as applicable, and such policies will be void if:
 - (i) The number is not corrected by you; or
 - (ii) You correct the SSN or EIN but:
 - (A) You cannot prove that any error was inadvertent (Simply stating

the error was inadvertent is not sufficient to prove the error was inadvertent); or

- (B) It is determined that the incorrect number would have allowed you to obtain disproportionate benefits under the crop insurance program, you are determined to be ineligible for insurance or you could avoid an obligation or requirement under any State or Federal law; and
- (2) With respect to persons with a substantial beneficial interest in you:
- (i) If the SSNs or EINs of such persons are included on your application and the SSNs or EINs are correct, but the persons with a substantial beneficial interest in you are ineligible for insurance, the insurance coverage for all revenue included on your application will be reduced proportionately by the percentage interest in you of persons with a substantial beneficial interest in you (presumed to be 50 percent for spouses of individuals);
 - (ii) Your policy will be void if the SSN or EIN of any person with a substantial beneficial interest in you is incorrect or is not included on your application and:
 - (A) The number is not corrected or provided by you, as applicable;

- (B) You cannot prove that any error or omission was inadvertent (Simply stating the error or omission was inadvertent is not sufficient to prove the error or omission was inadvertent);
- (C) Even after the correct SSN or EIN is provided by you, it is determined that the incorrect or omitted SSN or EIN would have allowed you to obtain disproportionate benefits under the crop insurance program, the person with a substantial beneficial interest in you is determined to be ineligible for insurance, or you or the person with a substantial beneficial interest in you could avoid an obligation or requirement under any State or Federal law; or
- (D) Except as provided in sections 2(e)(2)(ii)(B) and (C), your policies will not be voided if you subsequently provide the correct SSN or EIN for persons with a substantial beneficial interest in you and the persons are eligible for insurance;

(f) Your approved revenue will be reduced proportionately by the percentage interest in you of persons with a substantial beneficial interest in you if such persons are ineligible for insurance as long as:

- (1) The SSN's or EIN's of such persons are included on your application; and,

(2) The SSN's or EIN's are correct.

(g) Notwithstanding any of the provisions in this section, you may be subject to civil, criminal or administrative sanctions if you certify to an incorrect SSN or EIN or any other information under this policy.

(h) If any of the information regarding persons with a substantial beneficial interest in you, changes:

- (1) After the sales closing date from the previous insurance year, you must revise your application by the sales closing date for the current insurance year to reflect the correct information; or
- (2) Less than 30 days before the sales closing date for the current insurance year, you must revise your application by the sales closing date for the next insurance year; and
- (3) You fail to provide the required revisions, the provisions in section (f) will apply;

(i) If you are, or a person with a substantial beneficial interest in you is, not eligible to obtain a SSN or EIN, whichever is required, you must request an assigned number for the purposes of this policy from us:

- (1) A number will be provided only if you can demonstrate you are, or a person with a substantial beneficial interest in you is, eligible to receive Federal benefits;
- (2) If a number cannot be provided for you in accordance with (1) your application will not be accepted; or

- (3) If a number cannot be provided for any person with a substantial beneficial interest in you in accordance with (1), the amount of insurance for all commodities on the application will be reduced proportionately by the percentage interest of such person in you.

(j) You must provide information to us regarding insurance you obtained from any other insurance provider or from any FSA office on commodities insured by this policy. The information provided must include the date such insurance was obtained.

(k) If your farm operation is vertically integrated, or you own or have interest in related tax entities, you must clearly identify and explain the relationship between such entities at the time you file your application.

(l) Your application will not be accepted, and no coverage will be provided, if you are ineligible under the contract or under any Federal statute or regulation.

3. Qualifying Person Criteria and Insurance Eligibility.

- (a) To be considered a qualifying person, you must:
 - (1) Be eligible to receive federal benefits;
 - (2) Be a U.S. citizen or resident;
 - (3) File either a Schedule F tax form or other farm tax forms that can be converted to a Substitute Schedule F;
 - (4) The Schedule F, or Substitute Schedule F, must cover 100 percent of your farm operation. (A tax entity which reports a fractional

share of farming activity conducted by a partnership, corporation or any other “joint venture” does not qualify for WFRP coverage on the fractional share of farming activity);

- (5) Be engaged in the business of farming and derive revenue from the production of commodities; and
- (6) Derive not more than 50 percent of expected revenue from commodities purchased for resale.

(b) To be eligible for insurance under this policy you must be a qualifying person that has filed a United States Federal income tax return, including farm tax forms, for each of the five years of your whole-farm history period for the same tax entity and farm operation as the insured person for the insurance year unless one of the following applies:

- (1) 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); or
- (2) You stop farming as an individual and farm as a tax entity other than an individual;
- (3) You form a successor farming operation that is a different tax entity but is basically the same operation;
- (4) You purchase, inherit, or lease another person’s farm operation and your use of

their records is approved in accordance with section 16(g);

- (5) You are a qualifying person that is not required to file a United States Federal income tax return because you are not subject to income tax (*e.g.*, a tribal entity) and:
 - (i) You must have filed reports with a third party entity supported by verifiable records that we agree are sufficient to develop a Substitute Schedule F for each year in your whole-farm history period; and
 - (ii) The reports used to develop your Substitute Schedule F will be considered your farm tax forms under this policy;
- (6) You did not file farm tax forms or report farm revenue for a tax year due to circumstances beyond your control (*e.g.*, illness that prevented you from farming for the year) provided:
 - (i) You only have one year in your whole-farm history period in which you did not file farm tax forms; and
 - (ii) You have filed farm tax forms in the first year of your whole-farm history period, unless you are a carryover insured; and
 - (iii) You must have earned farm revenue during your lag year; or
- (7) You qualify as a beginning farmer or rancher, or you are a carryover insured who qualified

as a beginning farmer or rancher in the previous insurance year, and you have fewer than five years of farm tax forms in your whole farm history period provided:

- (i) You provide your farm tax forms for each year in your whole-farm history period in which you reported farm revenue; and
- (ii) You have at least three years of farm tax forms in your whole-farm history period and must have earned farm revenue during your lag year.

(c) Your farm operation will be ineligible for insurance under this policy and no coverage will be provided if:

- (1) Your insured revenue will be greater than \$8.5 million on the sales closing date, based on your Intended Farm Operation Report;
- (2) Your farm operation includes animals and animal products and;
 - (i) Your expected revenue from animals and animal products intended commodities is greater than \$1 million on the sales closing date; or
 - (ii) We are notified by FCIC that the underwriting capacity for this plan of insurance has been exceeded (see section 46(j));
- (3) Your expected revenue from nursery and greenhouse intended commodities is greater than \$1 million on the sales closing date;

- (4) Your commodity count, as determined using your Intended Farm Operation Report, equals one and;
 - (i) Potatoes are the only commodity with expected revenue that equals or exceeds your qualifying revenue threshold. (This limitation is a legislated requirement under section 508(a)(3)(C) of the Act);
 - (ii) Revenue protection is available under another policy offered under the authority of the Act for the commodity with expected revenue that equals or exceeds your qualifying revenue threshold;
- (5) You elected CAT coverage for another policy offered under the authority of the Act that could provide coverage to any insurable commodity during the insurance period, whether acreage was planted or not; or
- (6) Your farm operation includes any revenue from controlled substances.

(d) You will not be considered a qualifying person for this insurance year if the tax year corresponding to the insurance period will be a short tax year, if you have short tax years in your whole-farm history period, or if your lag year is a short tax year. If you have any short tax years in your history:

- (1) You may resubmit your whole-farm history based on the calendar or fiscal year used for the insurance year;
- (2) The whole-farm history must accurately reflect the income from the calendar or fiscal year; and

- (3) We may, at our discretion and based on your resubmitted records, allow you to obtain insurance.

(e) Originating pass-through entities may insure the allowable revenue from commodities produced by the farm operation under WFRP. Owners of a pass-through entity that are not the originating entity may not insure pass-through revenue or loss under WFRP.

(f) Disregarded entities are not considered qualifying persons. Allowable revenue from disregarded entities may be insured by an entity that files farm tax forms that includes such revenue.

4. Life of Policy, Termination, and Cancellation.

(a) After we have accepted your application, you may not cancel this policy for the initial insurance year.

(b) This is a continuous policy and will remain in effect for each succeeding insurance year following the acceptance of the original application until canceled by you in accordance with the terms of the policy or by us. In accordance with section 5, FCIC may change the coverage provided from year to year.

(c) 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.

(d) We may cancel your policy if no premium is earned for 3 or more consecutive years.

(e) If any amount due, including premium or administrative fees, or overpaid indemnities, is not paid or an acceptable arrangement for payment is

not made on or before the termination date for the insurance year on which an amount is due, you will be determined to be ineligible to participate in any crop insurance program authorized under the Act in accordance with 7 CFR part 400, subpart U.

- (1) For a policy with unpaid administrative fees or premium, the policy will terminate effective on the first day of the insurance year immediately subsequent to the insurance year for which such amount 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 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 to repay the debt or you 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 insurance year in which you failed to make the scheduled payment and no indemnity payment or replant payment, if applicable, will be due for that crop or insurance 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 have your debts discharged in bankruptcy;

- (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, 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 31, 2015, and policy B, with a termination date of March 15, 2015, 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, 2015, and policy A is terminated on that date. Policy B is terminated as of March 15, 2015. If you enter an agreement to repay the debt on December 31, 2015, you can apply for insurance for policy A by the January 31, 2016, sales closing date and policy B by the March 15, 2016, sales closing date. If you fail to make a scheduled payment on April 1, 2016, your policy will terminate as of January 31, 2016, for crop A, and March 15, 2016, for crop B, and no indemnity payment will be due for that insurance 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 have your debts discharged in bankruptcy and you make application in accordance with section 4(e).

(f) Any amount due to us for any policy authorized under the Act will be offset from any indemnity due you for this or any policy insured with us under the authority of the Act.

- (1) Even if your claim has not yet been paid, you must still pay the premium and administrative fee on or before the termination date for you to remain eligible for insurance.
- (2) If we offset any amount due us from an indemnity payment owed to you, the date of payment for the purpose of determining whether you have a delinquent debt will be

the date that you submit the claim for indemnity in accordance with section 25.

(g) A delinquent debt for any policy will make you ineligible to obtain crop insurance authorized under the Act for any subsequent insurance year and result in termination of all policies in accordance with section 4(g)(2).

(1) With respect to ineligibility:

(i) Ineligibility for crop insurance will be effective on:

(A) The date that a policy was terminated in accordance with section 4(g)(2) for the insurance year for which you failed to pay premium, an administrative fee, or any related interest owed, as applicable;

(B) The payment due date contained in any notification of indebtedness for overpaid indemnity, or replanting payment, if you fail to pay the amount owed, including any related interest owed, as applicable, by such due date;

(C) The termination date for the insurance year prior to the insurance year in which a scheduled payment is due under a written payment agreement if you fail to pay the amount owed by any payment date in any agreement to pay the debt; or

- (D) The termination date the policy was or would have been terminated under sections 4(g)(2)(i)(A), (B) or (C) if your bankruptcy petition is dismissed before discharge.
 - (ii) If you are ineligible and a policy has been terminated in accordance with section 4(g)(2), you will not receive any indemnity, or replanting payment, if applicable, and such ineligibility and termination of the policy may affect your eligibility for benefits under other USDA programs. Any indemnity, or replanting payment that may be owed for the policy before it has been terminated will remain owed to you, but may be offset in accordance with section 14(j) unless your policy was terminated in accordance with sections 4(g)(2)(i)(A), (B), (D) or (E).
- (2) With respect to termination:
- (i) Termination will be effective on:
 - (A) For a policy with unpaid administrative fees or premiums, the termination date immediately subsequent to the premium billing date for the insurance year (For policies for which the sales closing date is prior to the termination date, such policies will terminate for the current insurance year even if insurance attached prior to the termination date. Such termination

will be considered effective as of the sales closing date and no insurance will be considered to have attached for the insurance year and no indemnity, or replant payment will be owed);

- (B) For a policy with other amounts due, the termination date immediately following the date you have a delinquent debt (For policies for which the sales closing date is prior to the termination date, such policies will terminate for the current insurance year even if insurance attached prior to the termination date. Such termination will be considered effective as of the sales closing date and no insurance will be considered to have attached for the insurance year and no indemnity, or replant payment will be owed);
- (C) For all other policies that are issued by us under the authority of the Act, the termination date that coincides with the termination date for the policy with the delinquent debt or, if there is no coincidental termination date, the termination date immediately following the date you become ineligible;
- (D) For execution of a written payment agreement and failure to make any scheduled payment, the termination

date for the insurance year prior to the insurance year in which you failed to make the scheduled payment (for this purpose only, the insurance year will start the day after the termination date and end on the next termination date, e.g., if the termination date is March 15 and you fail to make a payment on March 15, 2015 your policy will terminate on March 30, 2015, for the 2016 insurance year); or

- (E) For dismissal of a bankruptcy petition before discharge, the termination date the policy was or would have been terminated under sections 4(g)(2)(i)(A), (B) or (C).
- (ii) For all policies terminated under sections 4(g)(2)(i)(A), (B), (D) or (E), any indemnities, or replanting payments paid subsequent to the termination date must be repaid.
- (iii) Once the policy is terminated, it cannot be reinstated for the current insurance year unless:
 - (A) The termination was in error;
 - (B) The Administrator of the Risk Management Agency, at their sole discretion, determines in accordance with 7 CFR part 400, subpart U and FCIC issued procedures that the following are met:

- (1) You provide documentation that your failure to pay your debt is due to an unforeseen or unavoidable event or an extraordinary weather event that created an impossible situation for you to make timely payment;
- (2) You remit full payment of the delinquent debt owed to us or FCIC with your request submitted in accordance with section 4(g)(2)(iii)(B)(3);
- (3) You submit a written request for reinstatement of your policy to us no later than 60 days after the termination date or the missed payment date of a previously executed written payment agreement, or the due date specified in the notice to you of the amount due, if applicable;
- (4) If authorization for reinstatement is granted, your policies will be reinstated effective at the beginning of the insurance year for which you were determined ineligible, and you will be entitled to all applicable benefits under such policies, provided you meet all eligibility requirements and comply with the terms of the policy; and

- (5) There is no evidence of fraud or misrepresentation.
- (C) We determine, in accordance with 7 CFR part 400, subpart U and FCIC issued procedures, that the following are met:
 - (1) You can demonstrate:
 - (i) You acted in good faith when you made timely payment and you omitted the most recent month's interest or the amount of the payment was clearly transposed from the amount that was otherwise due; or
 - (ii) You acted in good faith when you made the payment and the payment was delayed and postmarked by no more than 7 calendar days after the termination date or the missed payment date of a previously executed written payment agreement, or the due date specified in the notice to you of the amount due, if applicable.
 - (2) You remit full payment of the delinquent debt owed to us; and
 - (3) You submit a written request for reinstatement of your policy to your agent no later than 30 days after the termination date or the missed payment date of a previously executed

written payment agreement, or the due date specified in the notice to you of the amount due, if applicable; and

(4) There is no evidence of fraud or misrepresentation.

(iv) A determination made in section 4(g)(2)(iii)(B) exhausts all administrative remedies for purposes of termination.

(h) Any person may sign any document relative to crop insurance coverage on behalf of any other person covered by such a policy, provided that the person has a properly executed power of attorney or such other legally sufficient document authorizing such person to sign. You are still responsible for the accuracy of all information provided on your behalf and may be subject to the consequences in section 15(j), and any other consequences, including administrative, criminal or civil sanctions, if any information has been misreported.

5. Contract Changes.

(a) The contract change date is August 31 of the calendar year preceding the calendar year or fiscal year in which your insurance year begins.

(b) The terms and conditions of this policy may change from year to year.

(1) Any changes to this policy, including the applicable policy provisions or the actuarial documents, will be published on RMA's website not later than the contract change date.

- (2) After the contract change date information may be revised only to correct obvious errors.
- (3) After the contract change date, all changes made in accordance with this section will be available upon request from your crop insurance agent.

(c) We will provide you, in writing, with a copy of changes to this policy, any other applicable policy provisions, and the actuarial documents, not later than 30 days prior to the cancellation date for the insurance year. If available from us, you may elect to receive these documents and changes electronically.

(d) Your acceptance of all changes made in accordance with this section will be conclusively presumed in the absence of notice from you to change or cancel your insurance.

6. 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 unless otherwise provided by the notice requirement.

- (1) Notices required may be given by telephone, in person, or electronically and confirmed in writing.
- (2) The date the notice is provided will be determined by the date of our receipt of the written notice.
- (3) 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 the notice or report, the notice or report must be submitted on the next business day.

(b) All policy provisions, notices, and communications we are required to send to you will be:

- (1) Provided by electronic means, unless:
 - (i) We do not have the ability to transmit the information to you by electronic means; or
 - (ii) You elect to receive a paper copy of such information;
- (2) Sent to the email address or physical address contained in your records located with your crop insurance agent.

(c) All notices will be conclusively presumed to have been received by you. You should advise us immediately of any change of address.

7. Record Retention and Access to Insured Commodities and Records.

(a) For a period of three years after the end of the insurance year, or three years after the date of final payment of the indemnity, whichever is later, you must retain and provide upon our request, or the request of any employee of USDA authorized to investigate or review any matter relating to insurance authorized under the Act, complete verifiable records and direct marketing sales records pertaining to:

- (1) The planting, replanting, inputs, production, harvest, storage, sale, shipment, and disposition of the insured commodities;

- (2) Your land and facilities;
- (3) The allowable revenue and allowable expenses stated on the farm tax forms, including all forms and records supporting these figures;
- (4) The value of post-production operations and market readiness operations for your insured commodities;
- (5) The beginning and ending inventory information;
- (6) Accounts receivable and payable information; and
- (7) All lease or other agreements that may be applicable to the insured commodities.

(b) By signing the application for insurance authorized under the Act or by continuing insurance for which you have previously applied, you authorize us or USDA, or any person acting for us or USDA authorized to investigate or review any matter relating to insurance authorized under the Act, to obtain records relating to the planting, replanting, lease, ownership, share, production, inputs, harvesting, disposition, or marketing contract agreements of the insured commodity from any person who may have custody of such records, including but not limited to, FSA offices, banks, warehouses, gins, cooperatives, marketing associations, landlords, and accountants. You must assist in obtaining all records we or any employee of USDA, or any person acting for us or USDA authorized to investigate or review any matter relating to insurance authorized under the Act, requests from third parties.

(c) We, any employee of USDA, or any person acting for us or USDA authorized to investigate or review any matter relating to insurance authorized under the Act:

- (1) May extend the record retention period beyond three years by notifying you of such extension in writing; and
- (2) Have the right to examine, as often as reasonably required during the record retention period:
 - (i) The insured commodities on the farm operation or at any location where the commodities may be found or maintained; and
 - (ii) All records related to the insured commodities, this policy, and mediation, arbitration or litigation involving the insured commodities, at any location where the records may be found or maintained.

(d) Failure to provide access to the insured commodities or the farm, maintain or provide any required records, authorize access to the records maintained by third parties, or assist in obtaining all such records will result in a determination that no indemnity is due for the insurance year for which the failure occurred.

8. (Reserved)

YOUR COVERAGE

9. Coverage.

(a) This policy insures the approved revenue that you earn or expect to earn from all commodities that you produce or purchase for resale during the insurance period and in which you have an insurable interest.

(b) We must determine the commodity count for your farm according to section 19. This count will be used to determine eligibility for WFRP, coverage level eligibility, and to calculate your diversification discount.

(c) You must choose one coverage level as shown in the actuarial documents for the insurance year (Catastrophic risk protection is not available under this policy).

- (1) You must produce at least the number of commodities as determined by the commodity count and stated in the Special Provisions to qualify for the coverage level you selected.
- (2) You must meet the requirements for the coverage level through the entire insurance period, unless the requirements are not met due to a covered cause of loss that we verify, or the level of coverage will be reduced to the highest level for which you qualify.
- (3) If you were insured last year under WFRP you may change your coverage level for this

year by giving us written notice by the sales closing date. However, you may not increase your coverage level if any cause of loss that could, or would, reduce your allowable revenue for the insurance year is evident prior to the time you request the increase.

(d) You may insure individual commodities under other individual FCIC plans of insurance and purchase WFRP, however you must purchase buy-up coverage levels of the other insurance.

(e) Both your Farm Operation Report and Whole-Farm History Report, adjusted as applicable to reflect allowable revenue and allowable expenses, are used to determine the approved revenue used to calculate the insured revenue under this policy.

(f) Your insured revenue will be determined by multiplying your approved revenue by the coverage level.

(1) If your allowable expenses for the insurance year fall below 70 percent of your approved expenses, an expense reduction factor, will be applied to your approved revenue to account for expenses not incurred during the insurance year.

(2) An indemnity will be due under this policy if your revenue-to-count for the insurance year falls below your insured revenue.

(g) We will reduce your approved revenue and any indemnity or deny coverage at any time we become aware that the information used to determine your approved revenue is incorrect or is not supported

by verifiable records. Your premium will be adjusted to reflect any revised approved revenue.

(h) A replant payment may be allowed if specified in the Special Provisions.

(i) For native sod acreage, your insured revenue for the first four insurance years of planting an annual crop on more than five acres of native sod acreage in any county in Iowa, Minnesota, Montana, Nebraska, North Dakota or South Dakota will be adjusted to 65 percent of the approved revenue for those acres.

(j) Your coverage will begin:

(1) For the first year you obtain coverage under this policy, your coverage will begin the later of;

(i) The beginning of your tax year; or

(ii) 10 days after our acceptance of your application; or

(2) If you are a carry-over insured, the beginning of your tax year.

10. Allowable Revenue.

(a) Allowable revenue for WFRP purposes is limited to the revenue from:

(1) The sales of animals, and other commodities you purchased for resale, less the cost or other basis of such animals or other commodities (line 1c of Schedule F) (include revenue from CCC loans forfeited);

- (2) The sales of animals, produce, grains and other commodities you raised. (Line 2 of Schedule F.);
 - (3) The taxable amount of total cooperative distributions (line 3b of Schedule F) (Include only those directly related to the sale of insured commodities (*e.g.* distributions for corn, not fertilizer); and
 - (4) Other revenue, including Federal and State gasoline or fuel tax credit or refund (line 8 of Schedule F) (Exclude Federal and State gasoline or fuel tax credits or refunds if reported on this line). Include all revenue directly related to the production of commodities that the IRS requires you to report, including, but not limited to:
 - (i) Revenue from bartering (This amount will be determined in accordance with IRS rules.); and
 - (ii) Payments from buyers of commodities for bypassed acreage (These are payments made to you in accordance with a marketing contract between you and a buyer for not harvesting your crop).
- (b) Allowable revenue specifically excludes:
- (1) Revenue from any post-production operations;
 - (2) Net gain from commodity hedging or speculation;
 - (3) Revenue from commodities in which you do not have an insurable interest;

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- (4) Revenue earned from custom hire or rental activities;
- (5) Cooperative distributions that are not directly related to the sale of an insured commodity;
- (6) Revenue earned as an animal contract grower;
- (7) Revenue from wages, salaries, tips, and cash rent;
- (8) Revenue from government agricultural programs, including the Non-insured Assistance Program (NAP), and federal crop disaster payments;
- (9) Revenue from uninsurable commodities, such as, animals for show or sport, timber, forest and forest products, and controlled substances;
- (10) Crop insurance indemnities, prevented planting payments from other FCIC policies, and replant payments;
- (11) CCC loans repaid (except those repaid by a third party buyer);
- (12) Value assigned for uninsured cause of loss or abandoned acreage; and
- (13) Accrual adjustments for beginning and ending accounts receivable and inventories.

11. Allowable Expenses.

(a) Allowable Expenses are limited to the following expenses:

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- (1) The cost or other basis of animals and other commodities you bought for resale (line 1(b) of Schedule F);
- (2) Car and truck expenses (line 10 of Schedule F);
- (3) Chemicals (line 11 of Schedule F);
- (4) Conservation expenses (line 12 of Schedule F);
- (5) Custom hire (machine work) (line 13 of Schedule F);
- (6) Depreciation and section 179 expense deduction not claimed elsewhere (line 14 of Schedule F) (Include only the amount of depreciation allowed for animals);
- (7) Feed purchased (line 16 of Schedule F);
- (8) Fertilizers and lime (line 17 of Schedule F);
- (9) Freight and trucking (line 18 of Schedule F);
- (10) Gasoline, fuel and oil (line 19 of Schedule F);
- (11) Insurance (other than health) (line 20 of Schedule F);
- (12) Labor hired (less employment credits) (line 22 of Schedule F) (Exclude shareholder wages, if reported on this line.);
- (13) Repairs and maintenance (line 25 of Schedule F);
- (14) Seeds and plants purchased (line 26 of Schedule F);

- (15) Storage and warehousing (line 27 of Schedule F) (Exclude expenses related to post-production operations. For example, exclude storage expenses of harvested commodities and include expenses for inputs such as plants that are to be transplanted);
- (16) Supplies purchased (line 28 of Schedule F) (Exclude those used in post-production operations);
- (17) Utilities (line 30 of Schedule F);
- (18) Veterinary, breeding, and medicine (line 31 of Schedule F); and
- (19) Other farm expenses (line 32 of Schedule F) (Include only those directly related to the production of commodities that the IRS allows you to report).

(b) Allowable expenses specifically exclude any expenses associated with post-production operations, or commodities in which you do not have an insurable interest.

12. Your Approved Revenue and Approved Expenses.

(a) Your approved revenue is the LOWER of your whole-farm historic average revenue or your total expected revenue and will be determined on the Farm Operation Report.

(b) Your approved expenses are based on the determination of your approved revenue. If your approved revenue on the Farm Operation Report is:

- (1) Equal to the total expected revenue, approved expenses are calculated by:

- (i) Dividing your total expected revenue by the average allowable revenue on the Whole-Farm History Report; and
 - (ii) Multiplying the result of clause (i) by your average allowable expenses on the Whole-Farm History Report.
- (2) Equal to the Whole-Farm historic average revenue, approved expenses are equal to the whole-farm historic average expenses.

13. Share Insured.

(a) Insurance will be provided against loss of revenue only on your insurable interest of the commodities on your farm operation and will not extend to any other person having a share in the agricultural operation.

(b) This policy may not be transferred to any person except upon death of the insured provided farm taxes are still filed for the insured operation.

14. Administrative Fees, Subsidy, and Annual Premium.

- (a) The administrative fee:
 - (1) Is \$30, or an amount specified in the Special Provisions, as applicable;
 - (2) Must be paid no later than the time premium is due;
 - (3) The administrative fee will be waived if you request it and:
 - (i) You qualify as a beginning farmer or rancher; or

- (ii) You qualify as a limited resource farmer.
- (4) Failure to pay the administrative fee when due may make you ineligible for certain other USDA benefits.
- (b) Your farm premium rate is determined by:
 - (1) Dividing the expected revenue from each commodity in your Revised Farm Operation Report by your total expected revenue to calculate the percent of expected revenue for each commodity;
 - (2) Multiplying each result of paragraph (1) by the commodity rate shown in the actuarial documents;
 - (3) Summing the result of paragraph (2) for all commodities on the Farm Operation Report to calculate the farm premium rate before applying your diversification discount;
 - (4) Determining your commodity count based on your Revised Farm Operation Report using the formula in section 19(c);
 - (5) Dividing 1 by the result of paragraph (4) (round to three decimals);
 - (6) Calculating your diversification discount by:
 - (i) Subtracting the result of paragraph (1) for each commodity from the result of paragraph (5). Ignore any negative mathematical signs and record each number as a positive number;
 - (ii) Sum the results of subparagraph (6)(i) to calculate the deviation (DEV) number (round to three decimals);

(iii) Using the appropriate formula selected from the special provisions, substitute the result of paragraph (6)(ii) where DEV appears in the formula and then calculate the diversification discount (round to three decimals); and

(7) Multiplying the result of paragraph (3) by your diversification discount from paragraph (6) and any other rate adjustment factors that may apply to determine your farm premium rate (round to 3 decimals).

(c) If you choose to purchase other individual FCIC insurance policies that are issued under the authority of the Act and that could compensate you for damage to, or loss of, commodities insured under WFRP, for premium calculation purposes only, your insured revenue will be adjusted to reflect these purchases. The adjustment to your insured revenue amount will be calculated by:

- (1) Adding together the total liability amount of all other policies that are issued under the authority of the Act, (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) Dividing your insured revenue by two to calculate the maximum adjustment; and,
- (3) Subtracting the smaller of paragraph (1) or paragraph (2) from your insured revenue to determine the insured revenue to use for premium calculation purposes.

(d) Your total premium amount is calculated by:

(1) Multiplying your farm premium rate from subsection (b)(7) by:

(i) If you chose to purchase other insurance authorized by the Act, the result of subsection (c)(3); or

(ii) Your insured revenue; and

(3) Multiplying the result from paragraph (1) or paragraph (2), as applicable, by any premium adjustment amounts that may apply to calculate the total premium.

(e) The information needed to determine your farm premium rate and any premium adjustment percentages that may apply are contained in the actuarial documents.

(f) To calculate the premium amount you will pay after premium subsidy:

(1) Your subsidy amount will be based on the commodity count determined in 19(c), and the table specified in the actuarial documents;

(2) Multiply the total premium amount calculated in subsection (d)(3) by the applicable subsidy rate found in the actuarial documents; and

(3) Subtract the result of paragraph (2) from the result of subsection (d)(3).

(g) Your premium amount will be calculated based on your Revised Farm Operation Report. If you make changes to your farm operation following submission of your Revised Farm Operation Report, we may revise your premium amount accordingly.

(h) The amount of premium calculated in accordance with this section is earned when your application is accepted. You will be billed for your premium and the applicable administrative fee not earlier than the premium billing date contained subsection (o).

- (1) The total due, plus any accrued interest, will be considered delinquent if it is not paid on or before the termination date.
- (2) Premium must be paid by the termination date regardless of whether a claim is pending.

(i) If the amount of premium (total premium less premium subsidy paid on your behalf by FCIC) and administrative fee you are required to pay for this policy exceeds your insured revenue, coverage will not be provided (no premium or administrative fee will be due and no indemnity will be paid).

(j) Premium and administrative fees owed by you will be offset from any indemnity due to you.

(k) If you qualify as a beginning farmer or rancher, your premium subsidy will be 10 percentage points greater than the premium subsidy that you would otherwise receive, unless otherwise specified in the Special Provisions.

(l) Effective for policies with a sales closing date on or after July 1, 2015, you will be ineligible for any premium subsidy paid on your behalf by FCIC for any policy issued by us if:

- (1) USDA determines you have committed a violation of the highly erodible land conservation or wetland conservation provisions of

7 CFR part 12 as amended by the Agricultural Act of 2014; or

- (2) You have not filed form AD-1026 or successor form with FSA by June 1 prior to the sales closing date to be properly identified as in compliance with the conservation provisions specified in paragraph (1) (For example, to be eligible for a premium subsidy for a crop with a sales closing date of March 15, 2016, you must have filed your form AD-1026 by June 1, 2015).

(m) Notwithstanding paragraph (l)(2) of this section, if you demonstrate you began farming for the first time after June 1 and prior to the beginning of the reinsurance year (July 1), you may be eligible for Federal crop insurance premium subsidy for the subsequent reinsurance year.

(n) If you planted an annual crop on more than five acres of native sod acreage in any county in Iowa, Minnesota, Montana, Nebraska, North Dakota, or South Dakota, your premium subsidy for that portion of your expected revenue for native sod will be reduced by 50 percentage points during the first four insurance years of planting. If the premium subsidy applicable to that portion of your revenue is less than 50 percent before reduction, you will receive no premium subsidy.

- (o) Your premium billing date is:

- (1) August 15, or the date shown in the Special Provisions for calendar or early fiscal year filers; or

- (2) December 1, or the date shown on the Special Provisions, for late fiscal year filers.

15. Required Reports.

(a) On or before the sales closing date for each insurance year you must provide:

- (1) Your completed Whole-Farm History Report in accordance with section 16; and
- (2) Your Intended Farm Operation Report in accordance with section 17.

(b) For each insurance year, you must provide an Inventory Report with your beginning inventory, and a Beginning Accounts Receivable and Payable Report. These reports must be submitted by:

- (1) The sales closing date if you are a calendar year filer; or
- (2) The last day of the month in which your fiscal year begins if you file fiscal tax years but no later than October 31 (Late fiscal year filers with fiscal years beginning in November or December are required to submit their reports by October 31).

(c) You must provide a Revised Farm Operation Report by:

- (1) July 15, unless otherwise specified in the Special Provisions, if you are a calendar or an early fiscal year filer;
- (2) The last day of the month in which your fiscal year begins, but no later than October 31, if you are a late fiscal year filer (Late fiscal year filers with fiscal years beginning

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in November or December are required to submit their reports by October 31).

(d) You must notify us within 30 days if you make changes to the commodities grown on your farm after the Revised Farm Operation Report is completed and we may revise your premium amount based on these changes, except those resulting from a covered cause of loss.

(e) If you lose an annual commodity and are able to replant the commodity under good farming practices, you may request a replant payment under this policy. You must notify us within 72 hours of the discovery of damage to request a replant payment.

(f) If you have a loss under this policy;

(1) You must provide us with a notice of loss within 72 hours of your initial discovery that your allowable revenue for the insurance year could fall below the insured revenue; and

(2) You must submit a Claim for Indemnity Report not later than 60 days after the original date that your farm tax forms must be provided to the IRS.

(g) You must complete the Final Farm Operation Report by providing actual production and revenue information by commodity at the earliest of the time an indemnity is claimed for the insurance period or by the sales closing date for the following year, unless this is not required as specified in the Special Provisions.

(h) If you have any of the following special circumstances on your farm operation, the following

sections of this policy apply to your insurance and you may be required to file additional reports or worksheets:

- (1) Organic Commodities: If you use organic farming practices, you must comply with the requirements of section 44.
- (2) Post-Production Operations and Added Value: If you sell commodities that include value from post-production operations, you must comply with the requirements of section 45.
- (3) Animal and Animal Products: If you have animals or animal products, you must comply with the requirements of section 46.
- (4) Nursery and Greenhouse Commodities: If you have nursery or greenhouse commodities, you must comply with the requirements of section 47.
- (5) Marketing Contracts. If you have commodities produced under a marketing contract, you must comply with the requirements of section 48.
- (6) Expanded Operations: If your operation has physically expanded and you wish to increase the amount of insurance protection, you must comply with the requirements of section 49.
 - (i) If you fail to timely submit any required information, or we are unable to verify the information that was submitted, we will deny any indemnity, or replant payment and you will still be required to pay the premium due.

(j) You must provide, sign and certify all required reports and you are responsible for the accuracy of all information contained in those reports. You should verify the information on all reports prior to submitting them to us. If you submit information on any report that is different than what is determined to be correct and the information you originally submitted resulted in:

- (1) A lower insured revenue than the corrected insured revenue, the insured revenue under this policy will remain consistent with the reported information and all revenue will be included as revenue to count; or
- (2) A higher insured revenue than the corrected insured revenue, the information contained in the Farm Operation Report will be revised to be consistent with the correct information and your insured revenue will be lowered to the correct amount.

(k) If we discover you have incorrectly reported any information on your reports for any insurance year, corrections may be made if authorized in section 41 but you may be required to provide documentation in subsequent insurance years substantiating your reports for those insurance years, including, but not limited to, an acreage measurement service at your own expense. If the correction of any misreported information would affect an indemnity, or replant payment that was paid in a prior insurance year, the claim will be adjusted and you will be required to repay any overpaid amounts.

(l) Errors in reporting may be corrected by us at any time we discover the incorrect information unless corrections are authorized in section 41.

16. Your Whole-Farm History Report

(a) On or before the sales closing date for each insurance year, you must provide a completed Whole-Farm History Report and the following documentation:

- (1) A Schedule F tax form or other farm tax form for each year in your 5-year whole-farm history period, except as provided in section 3(b).
 - (i) If you use a farm tax form that is not the Schedule F, you must complete a Substitute Schedule F;
 - (ii) Your Substitute Schedule F worksheet must contain all information that would appear on a Federal Schedule F tax form and must be sufficient to complete your Allowable Revenue Worksheet and Allowable Expense Worksheet.
- (2) An Allowable Revenue Worksheet and Allowable Expense Worksheet for each year in your whole-farm history period; and
- (3) Other signed tax forms if needed to verify your entity information and as requested by us. For example, if your farm includes a disregarded entity for tax purposes, we may request other tax forms to verify the entity information under which your farm taxes were filed.

(b) If you have five years of farm tax forms in your whole-farm history period, your average allowable revenue and expenses will be calculated as follows:

(1) To calculate your average allowable revenue:

- (i) Sum the allowable revenue from each year in your whole-farm history period; and
- (ii) Divide the result of subparagraph (i) by 5.

(2) To calculate your average allowable expenses:

- (i) Sum the allowable expenses from each year in your whole-farm history; and
- (ii) Divide the result of subparagraph (i) by 5.

(c) If you have less than five years of farm tax forms in your whole farm history period and you are eligible for insurance under this policy as provided by section 3(b)(6) or (7);

(1) On or before the sales closing date, you must provide a completed Substitute Schedule F Worksheet, Allowable Revenue Worksheet, and Allowable Expense Worksheet reflecting the revenue earned and expenses incurred by your farm operation during your lag year.

(2) If you have four years of tax records in your whole-farm history period your average allowable revenue and expenses will be calculated as follows:

- (i) To calculate your average allowable revenue:

- (A) Sum the allowable revenue from each year in your whole-farm history period;
 - (B) Add to the result of clause (A) the allowable revenue from the Allowable Revenue Worksheet required by section 16(c)(1); and
 - (C) Divide the result of clause (B) by 5.
- (ii) To calculate your average allowable expenses:
 - (A) Sum the allowable expenses from each year in your whole-farm history period;
 - (B) Add to the result of clause (A) the allowable expenses from the Allowable Expenses Worksheet required by section 16(c)(1); and
 - (C) Divide the result of clause (B) by 5.
- (3) If you have three years of tax records in your whole-farm history period your average allowable revenue and expenses will be calculated as follows:
 - (i) To calculate your average allowable revenue:
 - (A) Sum the allowable revenue from each year in your whole-farm history period;
 - (B) Add to the result of clause (A) the allowable revenue from the Allowable Revenue Worksheet required by section 16(c)(1);

- (C) Determine the lowest allowable revenue from the three years of tax records in your whole-farm history period and the allowable revenue from section 16(c)(1);
 - (D) Add to the result of clause (B) the result of clause (C); and
 - (E) Divide the result of clause (D) by 5.
- (ii) To calculate your average allowable expenses:
 - (A) Sum the allowable expenses from each year in your whole-farm history period;
 - (B) Add to the result of clause (A) the allowable expenses from the Allowable Expenses Worksheet required by section 16(c)(1);
 - (C) Add to the result of (B) the allowable expenses from the tax year corresponding to the allowable revenue determined in section 16(c)(3)(i)(C); and
 - (D) Divide the result of clause (C) by 5.
- (4) You must provide your farm tax forms, and other signed tax forms as requested by us, for your lag year not later than 60 days after they are filed with the IRS.
 - (d) If you have five years of farm tax forms in your whole-farm history period (farms eligible for WFRP under section 3(b)(6) or (7) do not qualify for indexing) and the allowable revenue in either of the

two most recent tax years in your whole-farm history period is greater than your average allowable revenue, you may use the following indexing calculation to account for growth in the farm operation:

- (1) Divide each tax year's allowable revenue by the preceding tax year's allowable revenue. (Round to three decimal places, with a maximum set at 1.200, and minimum set at .800) (These are the four index factors that measure the amount of growth in the operation);
- (2) Sum the results of paragraph (1), with a minimum set at 1.000;
- (3) Divide the result of paragraph (2) by 4 to calculate the average index factor;
- (4) Raise the result of paragraph (3) to the fourth power to get the revenue trend factor; and
- (5) Multiply the result of paragraph (4) by your average allowable revenue to calculate your indexed average revenue.

(e) If your farm operation qualified for indexing in subsection (d) and you elected to use indexing to account for growth in your farm operation, calculate the indexed expenses:

- (1) Divide each tax year's allowable expense amount by the preceding tax year's allowable expense amount. (Round to three decimal places, with a maximum set at 1.200, and minimum set at .800);
- (2) Sum the results of paragraph (1), with a minimum set at 1.000;

- (3) Divide the result of paragraph (2) by 4 to calculate the average index factor;
- (4) Raise the result of paragraph (3) to the fourth power to get the expense trend factor, not to exceed the revenue trend factor; and.
- (5) Multiply the result of paragraph (4) by your average allowable expenses to calculate indexed average allowable expenses.

(f) If you can show us your operation is physically expanding, your expanded operation adjusted revenue will be calculated in accordance with section 49;

(g) If you purchase, inherit, or lease another person's farm operation you may use their tax returns when completing your Whole Farm History Report, including adding the amounts to your allowable revenue and expenses for the particular year, if:

- (1) You obtain control of at least 90 percent of the other person's farm operation, which includes the land and facilities, such as irrigation equipment and systems, greenhouses, and other facilities;
- (2) For each year of the other person's tax returns that you intend to use, the other person:
 - (i) Had an insurable interest in all commodities produced on the farm operation you obtained;
 - (ii) Filed Federal income taxes for the revenue received from those commodities; and

- (iii) Is willing to provide all records necessary under this policy including the farm tax forms necessary ;
- (3) On or before the sales closing date, you submit to us:
 - (i) A written request to use the other person's farm tax forms for the specific years;
 - (ii) A copy of the other farm tax forms for each specific year;
 - (iii) Verifiable documentation that:
 - (A) At least 90 percent of the other person's farm operation was obtained by you and added to your farm operation; and
 - (B) The other person whose farm tax forms you wish to use had an insurable interest in all commodities produced on the farm operation you obtained; and
 - (iv) A completed and signed Whole-Farm History Report that represents the combination of your allowable revenue and expenses and the allowable revenue and expenses for the other person's farm tax forms you wish to use for the applicable years; and
- (4) Within 15 days of our request, you provide:
 - (i) Verifiable documentation that supports the revenue and expenses on the other person's farm tax forms; and,

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- (ii) Verifiable documentation of all market readiness operations and post-production operations related to the other person's farm operation for the tax year's you wish to use.
- (5) We will not approve the use of another persons' tax returns if:
 - (i) All requirements in subsection (c) are not met; and
 - (ii) Obtaining the farm operation or the change in person type was done to circumvent any tax law or any program eligibility criteria, including evading ineligibility for program benefits under 7 CFR part 400, subpart U.
- (6) We will notify you whether your request to use another person's farm tax forms is approved or denied within 15 days of receiving all required information.
 - (i) If we approve your request, your allowable revenue and allowable expenses and the allowable revenue and allowable expenses of the other person will be combined for each applicable year.
 - (ii) If we deny your request to use any of the other person's farm tax forms, your Whole-Farm History Report, and all other applicable reports, will be modified to reflect only the approved allowable revenue and allowable expenses from your farm tax returns for each applicable year.

(h) Your whole-farm historic average revenue is equal to the HIGHER of:

- (1) Your simple average revenue;
- (2) Your expanded operation adjusted revenue, if approved; or
- (3) Your indexed average revenue.

(i) Your whole-farm historic average allowable expense is equal to the expenses that correspond to the whole-farm historic average allowable revenue in subsection (h).

(j) For the initial insurance year, we will notify you if the whole-farm historic average allowable revenue we determine to be correct is less than 95 percent of the whole-farm historic average allowable revenue stated on the Whole-Farm History Report you submitted.

- (1) If we provide you such notification:
 - (i) You may submit a written request for reconsideration; and
 - (ii) Such requests must be made not later than 30 days after the date we provided such notification.
- (2) If you do not request reconsideration, we will revise your Whole-Farm History Report to reflect the amount of allowable revenue and allowable expenses we determine to be correct for each year in your whole-farm history period.
- (3) Changes to your Whole-Farm History Report may also result in changes to your Farm Operation Report, resulting approved

revenue, insured revenue and your premium amount.

17. Your Farm Operation Report.

(a) On or before the sales closing date for each insurance year, you must provide a completed Intended Farm Operation Report to include:

- (1) Detailed information for each intended commodity you plan to produce or purchase for resale on your farm operation during the insurance period. The information should reflect what your farm can reasonably produce given changes in your farm operation, availability of irrigation water supply, or any other changes that may affect your farm in the insured year compared to previous years; and
- (2) Your expected revenue for each intended commodity reported in paragraph (1), with yields reflecting the amount of salable production and expected values reflecting the expected sale price by markets where the crop is normally sold as of the date your Intended Farm Operation Report is completed.
- (3) If you have multiple types or practices of an intended commodity that have different values, you should enter the commodity on multiple lines with the appropriate expected values.

(b) For the initial insurance year, you must report to us any damage that has occurred to any commodity already established on your farm operation at the time you complete your application.

- (1) Your expected revenue on the Intended Farm Operation Report for these commodities must reflect any reduction in potential revenue for the insurance year caused by damage that occurred prior to acceptance of your application.
- (2) If you grow a perennial commodity, you must complete a Pre-Acceptance Worksheet each year. We may inspect the condition of any perennial commodity, and will inspect any perennial commodity damaged prior to the beginning of the insurance period;
- (3) We will make applicable reductions to your Intended Farm Operation Report based on our inspection of any damaged commodities, and our estimate of the effect of these conditions.

(c) You must complete a Revised Farm Operation Report by the date specified in section 15 depending on what type of tax filer you are.

- (1) The information on the Revised Farm Operation Report must reflect any changes you have made to the commodities grown on your farm from what you reported on the Intended Farm Operation Report.
- (2) Your insured revenue, coverage level, commodity count, farm premium rate, and premium will be based on your Revised Farm Operation Report. If your Revised Farm Operation Report shows that:
 - (i) Your insured revenue would exceed \$8.5 million, your insured revenue will be

capped at \$8.5 million and all revenue earned will be considered revenue to count;

- (ii) Your expected revenue from animals and animal products is greater than \$1 million, your expected revenue will be capped at \$1 million of animal and animal products, and all revenue earned will be considered revenue-to-count;
 - (iii) Your expected revenue from nursery and greenhouse commodities is greater than \$1 million, your expected revenue will be capped at \$1 million of nursery and greenhouse commodities, and all revenue earned will be considered revenue-to-count;
 - (iv) You do not have a minimum two commodity requirement, as determined by the commodity count calculation, for farms with potatoes because this limit is a legislated requirement under section 508(a)(3)(C) of the Act your policy will be void and no coverage will be provided; or
 - (v) Your farm operation includes any revenue from controlled substances, your policy will be void and no coverage will be provided.
- (3) If you are a calendar year or early fiscal filer, you cannot update your Farm Operation Report after July 15 of the insurance year without our consent, if you are a late fiscal filer, you cannot update your Farm Operation

Report after the date the Revised Farm Operation Report is due without our consent.

- (4) Expected values used will be in accordance with the Expected Values section of this policy and will be calculated as of:
 - (i) The time the Intended Farm Operation Report is submitted for commodities on the Intended Farm Operation Report;
 - (ii) The time the Revised Farm Operation Report is submitted for commodities that are different than those submitted on the Intended Farm Operation Report (expected values will be carried forward from the Intended Farm Operation Report for commodities on the Intended Farm Operation Report); or
 - (iii) The date of planting for commodities that were planted and reported after the Revised Farm Operation Report date and for which a late revision is allowed by us.
- (5) If your Intended Farm Operation Report only includes expected revenue from perennial commodities already established on your farm operation and no changes are anticipated, you may complete your Revised Farm Operation Report at the time you provide your Intended Farm Operation Report. You are still required to report any changes that occur within the insurance period, in accordance with section 15(d) of this policy.

(d) If you were unable to produce an intended commodity for which you reported expected revenue, or an intended commodity was destroyed prior to reaching maturity and not replanted, the expected revenue from that commodity may be included as expected revenue on your Revised Farm Operation Report as follows:

- (1) We must be able to verify that your failure to establish the intended commodity, or the destruction of the intended commodity, was due to a natural cause which is covered by this policy; and
- (2) If another commodity was raised to replace the intended commodity lost to a covered cause of loss, the expected revenue from the intended commodity must be offset by the expected revenue of the replacement commodity. For example, if you were unable to plant carrots because the acreage you intended to use was too wet and you later plant lettuce on the acreage, the expected revenue of the lettuce must be subtracted from the expected revenue of the carrots to determine the amount of expected revenue for carrots to include on your Revised Farm Operation Report.

(e) If you modify the commodities on your farm operation for reasons other than a covered cause of loss, the changes to your farm operation should be shown on the Revised Farm Operation Report.

- (1) Any intended commodity you chose not to produce that was included on the Intended

Farm Operation Report, will not be shown on the Revised Farm Operation Report.

- (2) Any intended commodity that was lost to an uninsured cause of loss and was not replaced with another commodity, the expected revenue of the lost commodity will be included in revenue to count.
- (3) Any intended commodity that was lost to an uninsured cause of loss and another commodity was raised to replace the lost commodity will have the expected revenue of the initial commodity offset by the expected revenue of the replacement commodity.

(f) You must complete the Production and Revenue section of the Final Farm Operation Report unless specified otherwise in the Special Provisions:

- (1) The Production and Revenue section of the Final Farm Operation Report must be completed by the date specified in section 15(g);
- (2) If the commodity is harvested and not sold, the Final Farm Operation Report should show the amount of production and a price using the expected value sources at the end of the insurance period;
- (3) If commodity is not harvested, the Final Farm Operation Report should provide an estimate of the production and a price using the expected value sources at the end of the insurance period;

- (4) This information is used to rate WFRP and is required of all insured's, whether an indemnity is claimed or not; and
- (5) If this information is not provided you will be limited to a maximum coverage level of 65 percent the year after the insurance year.

18. Expected Value

(a) Expected values to use on the Farm Operation Report will be:

- (1) The price of the commodity that you can expect to receive when the commodity is harvested and based on the following sources:
 - (i) If the commodity is under a marketing contract, the price will be the price contained in the marketing contract (see section 48 for detailed requirements regarding marketing contracts);
 - (ii) If the commodity was sold during the current insurance period prior to reporting your Intended Farm Operation Report, the price will be the price you received; or
 - (iii) The price that we agree best reflects the price you can expect to receive on your farm and for the market where your commodity will be sold, obtained from the most applicable following source for your farm:
 - (A) Prices reported by the Agricultural Marketing Service including Market

News Reports, National Agricultural Statistics Service, Economic Research Service, or other government agency;

- (B) The FCIC published price for the area where you normally sell the commodity;
- (C) The average price you received for the three most recent years;
- (D) Current local, average, cash bid price for the commodity in the area where you normally sell the commodity;
- (E) The average price offered by at least two commercial buyers, one selected by you, and one selected by us; or
- (F) Prices from a reliable third party source such as a commodity broker, crush district, packer/processor or marketing cooperative, and that we approve.

(b) Higher market values may be justified for some commodities produced for markets with higher values, such as certified organic (see section 44), certified seed crops, or malting barley.

(c) The same commodity may have different expected values based on types or varieties, markets, planting seasons, or other reasons.

(d) Expected values must:

- (1) Be reasonable, realistic and consistent with available local market information;

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- (2) Be supported by verifiable records, or direct marketing sales records for commodities that are direct marketed;
- (3) Take into account current local markets, cycles and trends;
- (4) Exclude post-production operation expenses but include market readiness operation expenses;
- (5) For commodities that were purchased for resale, exclude the cost of the commodity;
- (6) For vertically integrated operations, be consistent with values obtained from objective sources. Additionally, any post-production operation expenses removed from the values and market readiness operation expenses included in the values must be customary and reasonable and comparable to disinterested third party costs.

(e) The source for each value must be based on the subsection (a) and noted on the Farm Operation Report.

(f) The source used to determine the expected value under subparagraph (a)(1)(iii) must reflect the price of the commodity:

- (1) During the insurance period and when the commodity will be produced. For example, if the commodity is traded on the futures market (not including specialty types or organic practice) and the price of the commodity on the market is below your three year average price, we will not agree

to using your three year average price to determine the expected value;

- (2) In the marketing area where your commodity will be sold. For example, the basis used to determine the price of the commodity (if any) will be your local basis;
- (3) When the commodity will be harvested. For example, we will not agree to using a source that includes a price premium for storing the commodity after harvest; and
- (4) At the time the expected value is determined in accordance with section 17(c)(4). For example, if FCIC published a price for the commodity in November which is significantly different from the price you can reasonably expect to receive at harvest at the time you submit your Intended Farm Operation report the following March, we will not agree to using the FCIC published price to determine the expected value.

19. Your Commodity Count and Qualifying Revenue Threshold

(a) Your commodity count is based on the number of commodities on your farm operation, or intended commodities you plan to have on your farm operation, with expected revenue equal to or greater than your qualifying revenue threshold and is used to determine:

- (1) The highest coverage level your farm operation qualifies for;
- (2) The diversification discount you will receive to reflect farm diversification;

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- (3) Eligibility for WFRP if you raise potatoes or have commodities with other available revenue coverage; and
- (4) Your subsidy amount.
- (b) To calculate your qualifying revenue threshold:
 - (1) Determine the number of commodities on your farm operation or intended commodities you plan to have on your farm operation. Each separate commodity code on the Farm Operation Report is counted once to determine the number of commodities, regardless of the number of times the commodity code is used;
 - (2) Divide 1.0 by the result of paragraph (1) (round to three decimals);
 - (3) Multiply the result of paragraph (2) by 0.333 (round to three decimals); and
 - (4) Multiply the result of paragraph (3) by the total expected revenue shown on your Farm Operation Report (round to whole dollars) to determine your qualifying revenue threshold.
- (c) To determine your commodity count:
 - (1) Sum the expected revenue for each individual commodity code;
 - (2) Determine the number of commodities or intended commodities in paragraph (1) that have expected revenue equal to or greater than your qualifying revenue threshold;
 - (3) Sum the expected revenue amounts from the commodities of paragraph (2) and subtract the result from the Total Expected Revenue;

- (4) Divide the result of paragraph (3) by your qualifying revenue threshold to determine the number of additional commodities to count (use whole numbers, do not round); and
- (5) Add the number of commodities from paragraph (2) to the result of paragraph (4) to determine your commodity count.

20. (Reserved)

LOSS DETERMINATIONS

21. Causes of Loss.

(a) This policy provides protection against loss of approved revenue due to unavoidable natural causes that occur during the insurance period such as:

- (1) Adverse weather conditions;
- (2) Fire;
- (3) Insects, but not damage due to insufficient or improper application of pest control measures;
- (4) Plant disease, but not damage due to insufficient or improper application of disease control measures;
- (5) Earthquake;
- (6) Volcanic eruption;
- (7) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period;

- (8) Wildlife, unless control measures have not been taken; or
- (9) In accordance with subsections (d) and (e), a decline in the market price.

(b) If you are a carryover insured, natural causes that occurred during the previous insurance period that cause a loss of revenue for the current insurance period will also be covered, except for changes due to a reduction of the irrigation water supply that are known, or should be known, at the time the Farm Operation Report is filed.

(c) This policy will not cover losses due to any of the following causes:

- (1) Negligence, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, employees, or contractors;
- (2) An act by any person that affects the revenue on the farm operation including but not limited to chemical drift, or fire caused by anything other than a naturally occurring event;
- (3) Failure to follow recognized good farming practices for each insured commodity;
- (4) Water that is contained by or within structures that are designed to contain a specific amount of water, such as dams, locks or reservoir projects, etc., on any acreage when such water stays within the designed limits (For example, a dam is designed to contain water to an elevation of 1,200 feet but you plant a crop on acreage at

an elevation of 1,100 feet. A storm causes the water behind the dam to rise to an elevation of 1,200 feet. Under such circumstances, the resulting damage would not be caused by an insurable cause of loss. However, if you planted on acreage that was above 1,200 feet elevation, any damage caused by water that exceeded that elevation would be caused by an insurable cause of loss);

- (5) Damage to machinery or equipment;
- (6) Failure to carry out good irrigation practices for an insured commodity, if applicable;
- (7) Failure or breakdown of irrigation equipment or facilities; or the inability to prepare the land for irrigation using your established irrigation method unless the failure, breakdown or inability is due to an unavoidable natural cause:
 - (i) You must make all reasonable efforts to restore the equipment or facilities to proper working order within a reasonable amount of time, unless we determine it is not practical to do so; and
 - (ii) Cost will not be considered when determining whether it is practical to restore the equipment or facilities;
- (8) Theft, mysterious disappearance or vandalism of an insured commodity;
- (9) Inability to market the commodities due to quarantine, boycott, or refusal of any person to accept your commodities for any reason

other than damage due to an insured cause of loss;

- (10) Lack of labor to properly care for, harvest or perform any necessary production activities for any insured commodity;
- (11) Failure to receive payment for produced commodities;
- (12) Failure to follow the requirements contained in any processor contract;
- (13) Abandonment;
- (14) Failure to obtain a price for any commodity that is reflective of the local market value; or
- (15) Deterioration of commodities in storage that reduces the quality or value of the commodity, unless such deterioration is due to an insured cause of loss that occurred before the commodity was harvested.

(d) Decline in local market price will be presumed to be from unavoidable natural causes unless FCIC is able to specifically identify a man-made cause that resulted in a measurable change in the price. In the case of such occurrence, the portion of the loss caused by the man-made event will not be covered.

(e) For carryover insureds, coverage is provided against loss of revenue due to causes of loss specified in this section that occur during the current or previous insurance period, and market based fluctuation that causes a loss in revenue for the current insurance year in accordance with (d).

(f) With respect to abandonment in subsection (c)(13);

- (1) You must comply with the notice requirements of section 22(c) for any commodity you cease to care for.
- (2) Provided you have met the requirements of section 22(c), a commodity that you have ceased to care for will not be considered abandoned if:
 - (i) An insured cause of loss prevents you from properly caring for, harvesting, or marketing the commodity or causes damage to the commodity to the extent that most producers of the commodity on acreage in the area with similar characteristics would not normally further care for or harvest the commodity; or
 - (ii) You decide not to harvest a commodity due to low market prices, in accordance with section 22(c)(2).

22. Your Duties in the Event of Damage or Loss.

(a) You must provide us with a notice of loss within 72 hours of your initial discovery that your allowable revenue for the insurance year could fall below the insured revenue:

- (1) In the case of damage or loss of production, your notice must specify the damaged commodity and document the cause of loss.
- (2) If you are not able to market any insured commodity (including refusal of a buyer to accept a commodity) you must provide a

notice of loss stating that you are unable to market the commodity and document the reason that you are unable to market the commodity (e.g., quarantine, failure to meet the requirements of a processor contract, etc.).

- (3) You are not required to report general market fluctuations that are not directly related to the condition or marketability of commodities on your farm operation.

(b) In case of potential loss of revenue under this policy, you must:

- (1) Protect commodities from further damage by providing sufficient care if the cost of the care will not exceed the value of the commodity (supporting documentation must be provided as requested); and
- (2) Cooperate with us in the settlement or investigation of your claim, and, as often as we reasonably require:
 - (i) Allow us to inspect damaged acreage or commodities;
 - (ii) Allow us to remove samples and determine the extent of damage;
 - (iii) Provide us with the verifiable records and documents we request and permit us to make copies (except as provided in paragraph (iv)); and
 - (iv) For commodities sold through direct marketing, provide us with direct marketing sales records and documents we request and permit us to make copies.

(c) You must notify us and obtain our consent before you abandon, dispose of, or destroy any damaged or undamaged insured commodities, or sell a commodity for any reason other than its intended purpose or to someone other than a disinterested third party.

- (1) If we do not inspect the insured commodity within 15 days after notification, you may abandon, dispose of, sell, or destroy the insured commodity without our consent.
- (2) If we determine that expenses associated with the harvest or preparation of a commodity would be greater than the allowable revenue from the sale of the commodity, we will not include the potential revenue of the commodity when determining revenue-to-count if you do not harvest the crop.

(d) If you fail to comply with any of the notice requirements of this section:

- (1) We will consider any loss on the portion of the commodity (damaged acres or other applicable unit of measure for the commodity) for which you failed to provide notice to be due solely to uninsured causes, unless we determine that we have the ability to accurately determine the amount and cause of loss; and
- (2) You will still be required to pay all premiums owed for your policy, including premium for any portion of the commodity we consider damaged due solely to uninsured causes.

23. Our Duties in the Event of Damage or Loss.

(a) We will recognize and apply the claim adjustment and other procedures established or approved by FCIC.

(b) We will verify the information on your Whole-Farm History Report, Farm Operation Report, Inventory Report, Beginning and Ending Accounts Receivable and Accounts Payable, and any other supporting information used to complete the Claim for Indemnity Report.

(c) We will use your farm tax forms for the year of insurance to calculate your allowable revenue and allowable expenses for the insurance year on the Allowable Revenue Worksheet and the Allowable Expense Worksheet.

(d) If you have complied with all the policy provisions, we will pay your loss within 30 days after:

- (1) We reach agreement with you;
- (2) Completion of arbitration or appeal proceedings;
- (3) Completion of any investigation by USDA, if applicable, of your current or past claim for indemnity if no evidence of wrongdoing has been found. (If any evidence of wrongdoing has been discovered, the amount of any indemnity, or replant overpayment as a result of such wrongdoing may be offset from any indemnity owed to you); or
- (4) The entry of a final judgment by a court of competent jurisdiction.

(e) In the event we are unable to pay your loss within 30 days, we will give you notice of our intentions within the 30-day period.

24. Replant Payment

(a) To be eligible for a replant payment:

- (1) The damaged commodity must be an annual plant;
- (2) Damage to the commodity must be due to an insured cause of loss;
- (3) We must agree it is practical to replant and give our consent to replant the commodity;
- (4) The acreage replanted must be at least 20 acres or 20 percent of the insured planted acreage, applied separately to each commodity to be planted;
- (5) You must submit verifiable records showing your actual cost of replanting; and
- (6) We may inspect the acreage prior to making the replant payment.

(b) The maximum amount of a replant payment will be the lesser of:

- (1) 20 percent of the expected revenue times your coverage level for the commodity as reported on the Farm Operation Report per acre; or
- (2) Your actual costs of replanting per acre;

(c) No replant payment will be made:

- (1) If we are unable to determine your actual cost of replanting;

- (2) On acreage on which one replanting payment has been made for the insurance year; and
- (3) For any commodity on your farm operation that is also insured by another policy issued under the authority of the Act if replant payments are also available under the other policy.

25. Claim for Indemnity.

(a) You must submit a claim for indemnity declaring the amount of your loss not later than 60 days after the original date that your farm tax forms for the insurance year must be provided to the IRS, as specified by the IRS, except as provided in section 25(a)(3).

- (1) You must have completed and filed your farm taxes with the IRS before you may submit a claim for indemnity.
- (2) You must file your farm tax forms on or before the first day of the seventh month after the end of the insurance period, unless you have requested a Federal tax filing extension.
- (3) If you have requested a Federal tax filing extension:
 - (i) You must submit a claim for indemnity declaring the amount of your loss not later than 60 days after the final extended tax due date;
 - (ii) Your request for extension must have been filed by the date required by the IRS;

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- (iii) You must 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; and
- (iv) You must file your taxes on or before the final extended tax due date.

(b) With respect to your completed Claim for Indemnity Report:

- (1) You must provide:
 - (i) Your farm tax forms for the insurance year, any farm tax amendments applicable to the insurance year, and any additional documentation we require to adjust the revenue and expenses to complete the Allowable Revenue Worksheet and the Allowable Expense Worksheet for the insurance year;
 - (ii) An Ending Inventory Report;
 - (iii) An Ending Accounts Receivable and Payable Report;
 - (iv) Upon our request:
 - (A) Verifiable records that comprise a complete marketing record of each commodity on your farm operation, except for commodities sold through direct marketing;

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- (B) Direct marketing sales records that comprise a complete marketing record of each commodity on your farm operation sold through direct marketing; and
 - (C) For commodities that produced less actual revenue than expected revenue, additional verifiable records sufficient to determine the loss of revenue was caused by perils covered under this policy; and
- (v) Information to complete the Farm Operation Report with final production and revenue information;
- (2) You must submit to examination under oath, if requested (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); and
- (3) If the amount of loss cannot be accurately determined from the information submitted, no indemnity will be paid but premium will still be owed.
- (c) A claim cannot be settled:
 - (1) Unless all conditions of subsections (a) and (b) have been met;
 - (2) Until the insurance year's farm tax forms are filed with the IRS; and

- (3) Until indemnities are received, as applicable, from all other policies issued under the authority of the Act that cover commodities insured under this policy.
- (d) To calculate your expense reduction factor we will:
 - (1) Determine your allowable expenses for the insurance year on the Allowable Expense Worksheet:
 - (i) Your allowable expenses will be determined from information on your farm tax forms for the insurance year and any additional documentation we require to complete the Allowable Expense Worksheet; and
 - (ii) If you use a cash accounting method and prepay expenses and supplies to a greater extent than you have in the past, or if losses in the insurance period prevent you from paying or prepaying for expenses and supplies to the extent you have in the past, we will adjust your expenses using accrual accounting methods, including adjustments for beginning and ending accounts payable, if applicable;
 - (2) Divide your allowable expenses for the insurance year by your approved expenses;
 - (i) If the result of paragraph (2) is equal to or larger than .70, there is no expense reduction so your expense factor equals

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1.000 and no further calculations are needed;

- (ii) If the result of paragraph (2) is less than .70, subtract the result of paragraph (2) from .70 to determine the amount your approved revenue will be reduced due to below average expenses (This number will not be less than zero); and
- (iii) Multiply the result of clause (ii) by the approved revenue to calculate the expense reduction dollar amount.

(e) To calculate your revenue-to-count we will:

- (1) Determine your allowable revenue from your farm tax forms for the insurance year using the Allowable Revenue Worksheet;
- (2) We will adjust the revenue determined in paragraph (1) by making the following adjustments:
 - (i) Adding or subtracting, as applicable, to paragraph (1) the dollar amount of your ending accounts receivable minus 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);

- (ii) Adding or subtracting, as applicable, to paragraph (2)(i), for all commodities produced on your farm operation, 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. 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 will be used); and
- (iii) Adding or subtracting, as applicable, to paragraph (2)(ii), for all animals and other commodities you purchased for resale, the amount calculated by:
 - (A) Determining the expected value of your ending inventory on the last day of the insurance period;
 - (B) Subtracting the cost basis of the commodities in the ending inventory from the result of subclause (A);
 - (C) Determining the expected value of your beginning inventory on the first day of the insurance period;
 - (D) Subtracting the cost basis of the commodities in the beginning inventory from the result of subclause (C); and
 - (E) Subtracting the result of subclause (D) from the result of subclause (B).

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- (3) Adding to the result of paragraph (2)(iii) any allowable revenue that was lost because commodities were damaged or destroyed by causes of loss not covered under this policy;
 - (4) Adding to paragraph (3) the expected revenue of any commodity you abandon;
 - (5) Adding to the result of paragraph (4) any insurance indemnity received from a policy covering insured commodities or for program payments from other programs such as disaster payment programs (For example, an insurance payment from a multiple peril policy covering any commodity also covered under this policy would be included). NAP payments are specifically not included in revenue-to-count because NAP payments may not be received if a WFRP indemnity is paid (see section 30(d)); and
 - (6) Adding to the result of paragraph (5) any gain from commodity hedging and speculation.
- (f) The amount of indemnity will be calculated by:
- (1) Multiplying the expense reduction factor by the approved revenue to determine the expense reduction dollar amount;
 - (2) Subtracting the expense reduction dollar amount from your approved revenue;
 - (3) Multiplying the result of paragraph (2) by your coverage level; and

- (4) Subtracting your revenue-to-count from the result of paragraph (3). For example:

You have approved expenses of \$100,000 and allowable expenses for the insurance year are \$68,000. Your approved revenue is \$130,000 and you elected a coverage level of 75 percent.

Your revenue to count is \$25,000. Indemnity is calculated as follows:

- (1) Your allowable expenses of \$68,000 fall below 70 percent of your approved expenses of \$100,000.

$\$68,000/\$100,000 = .68$ (or 68 percent of approved expenses).

$.70 - .68 \text{ percent} = .02$ expense reduction factor, (a 2 percent reduction).

$\$130,000 * .02$ equals \$2,600 which is the expense reduction dollar amount.

- (2) The expense reduction dollar amount is subtracted from the approved revenue.

To recalculate the insured revenue-

$\$130,000 \text{ minus } \$2,600 = \$127,400$; $\$127,400 * .75 \text{ coverage level} = \$95,550$ insured revenue; $\$95,550 - \$25,000$ revenue to count = \$70, 550 which is the amount of indemnity paid.

(g) If the farm tax forms used to determine your indemnity are amended before or up to three years after the claim is settled, or an IRS audit before or up to three years after the claim is settled indicates

the amount of allowable revenue or allowable expenses on such forms was incorrect:

- (1) You must notify us and provide a copy of the amended farm tax forms or audit results; and
- (2) We will 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, if the amended forms result in a five percent or greater change in your approved revenue or revenue-to-count for the insurance year.

26. (Reserved)

27. (Reserved)

ADMINISTRATIVE PROVISIONS

28. Assignment of Indemnity.

(a) You may assign your right to an indemnity for the insurance year only to creditors or other persons to whom you have a financial debt or other monetary obligation. You may be required to provide proof of the debt or other pecuniary obligation before we will accept the assignment of indemnity.

(b) All assignments must be on our form and must be provided to us. Each assignment form may contain more than one creditor or other person to whom you have a financial debt or other pecuniary obligation.

(c) Unless you have provided us with a properly executed assignment of indemnity, we will not make any payment to a lienholder or other person to whom you have a financial debt or other pecuniary obligation even if you may have a lien or other assignment recorded elsewhere. Under no circumstances will we be liable:

- (1) To any lienholder or other person to whom you have a financial debt or other pecuniary obligation where you have failed to include such lienholder or person on a properly executed assignment of indemnity provided to us; or
- (2) To pay to all lienholders or other persons to whom you have a financial debt or other pecuniary obligation any amount greater than the total amount of indemnity owed under the policy.

(d) If we have received the properly executed assignment of indemnity form:

- (1) Only one payment will be issued jointly in the names of all assignees and you; and
- (2) Any assignee will have the right to submit all notices and forms as required by the policy.

(e) If you have suffered a loss from an insurable cause and fail to file a claim for indemnity within the period specified in section 25 of this policy the assignee may submit the claim for indemnity not later than 30 days after the period for filing a claim 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.

29. Transfer of Coverage and Right to Indemnity.

You will not be allowed to transfer your coverage to any other person, except in the case of death, disappearance, judicially declared incompetence, or dissolution of an insured person, transfer of coverage may occur in accordance with section 13.

30. Other Insurance.

(a) Except as provided in section 9(d), you may obtain other insurance issued under the authority of the Act on your insurable interest of any commodity insured under this policy unless otherwise specified in the Special Provisions.

(b) Any other crop insurance policy authorized under the Act purchased will become the primary insurance and any indemnity payment received from such policy(s) will be considered to be revenue-to-count under this policy.

(c) Nothing in this section prevents you from obtaining other insurance not authorized under the Act.

(d) While you may also purchase Noninsured Disaster Assistance (NAP) coverage, you may not receive benefits from NAP and receive an indemnity under this policy for the same crop year. You must select one or the other payment. If you receive a NAP payment prior to receiving an indemnity payment under this policy, you must refund the NAP payment to FSA prior to receiving any indemnity under this policy. If you participate in NAP and WFRP and elect

to keep a NAP payment, you still owe premium for WFRP even if you elect not to take a WFRP indemnity payment.

31. Amounts Due Us.

(a) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, on any unpaid amount due us or on any unpaid administrative fees owed to FCIC.

- (1) For the purpose of premium amounts owed to us or administrative fees owed to FCIC, interest will start to accrue on the first day of the month following the premium billing date specified in the actuarial documents, provided a minimum of 30 days have passed from the premium billing date.
- (2) We will collect any unpaid amounts owed to us and any interest owed thereon and any administrative fees and interest owed thereon to FCIC.

(b) 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.

- (1) 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.
- (2) The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us.

(c) All amounts paid will be applied first to expenses of collection (see subsection (d)), if any, second to the reduction of accrued interest, and then to the reduction of the principal balance.

(d) 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.

(e) The portion of the amounts owed by you for a policy authorized under the Act that are owed to FCIC may be collected in part through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37. Such amounts include all administrative fees, and the share of the overpaid indemnities and premiums retained by FCIC plus any interest owed thereon.

32. Commodities as Payment.

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

33. 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 this section 33(d) or (e), the disagreement may be resolved through mediation in accordance with section 33(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 33(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 33(d) or (e), 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, arbitration, or National Appeals Division.
 - (ii) Failure to obtain, or comply with, 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 determination that is a matter of general applicability.
 - (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.
 - (i) The statement must also include any amounts awarded for interest.
 - (ii) Failure of the arbitrator to provide such written statement will result in the nullification of all determinations of the arbitrator.
 - (iii) 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 33(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 33(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 33(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 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 in accordance with paragraph (2).

- (ii) If you disagree with our determination of the amount of assigned revenue, 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:
 - (1) Of the determination; or
 - (2) Reconsideration is completed, if reconsideration was requested under section 33(d)(2)(i).

(e) Except as provided in section 33(d) or (k), if you disagree with any other determination made by FCIC or any claim where FCIC is directly involved in the claims process or directs us in the resolution of the claim:

- (1) You may obtain an administrative review in accordance with 7 CFR part 400, subpart J or appeal in accordance with 7 CFR part 11.
 - (i) If you elect to bring suit after completion of any appeal, such suit must be filed against FCIC in the United States district court for the district in which the insured acreage is located not later than one year after the date of the decision rendered in such appeal.
 - (ii) Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from FCIC.
- (2) You cannot bring an arbitration, mediation, or litigation action against us.

(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 37. 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 (Once mediation is agreed to, you cannot avoid mediation by failing to agree to 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 33(i), no award or settlement in mediation, arbitration, appeal, administrative review or reconsideration process or judicial review can exceed the amount of insured revenue established or which should have been established under the policy, except for interest awarded in accordance with section 34.

(i) Any determination made by FCIC that is a matter of general applicability is not subject to administrative review under 7 CFR part 400, subpart J or appeal under 7 CFR part 11. If you want to seek judicial review of any FCIC determination that is a matter of general applicability, you must request a determination of non-appealability from the Director of the National Appeals Division in accordance with 7 CFR 11.6 before seeking judicial review.

34. Interest Limitations.

(a) 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.

(b)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.

(c)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.

35. 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.

36. Controlled Substance.

(a)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 void if you are determined to be ineligible to receive benefits due to a conviction of the controlled substance provisions of the Food Security Act of 1985 (Pub. L. 99-198).

(b)Your policy will, as determined by the court, be void if you are convicted under Federal or State law of possession of or trafficking in a controlled substance.

(c) Controlled substances are not insurable under WFRP and your farm operation will not be eligible for WFRP if you produce any controlled substance, regardless of the legal status of the substance in the state where the commodity will be produced.

37. 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.

38. 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 void; and
- (2) You may be subject to remedial sanctions in accordance with 7 CFR part 400, subpart R.

(b) Voidance will be effective on the first day of the insurance period for 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 insurance years.

(c) If you willfully and intentionally provide false or inaccurate information to us or FCIC or you fail to comply with a requirement of FCIC, in accordance with 7 CFR part 400, subpart R, FCIC may impose on you:

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- (1) A civil fine for each violation in an amount not to exceed the greater of:
 - (i) The amount of the monetary gain obtained as a result of the false or inaccurate information provided or the noncompliance with a requirement of this title; or
 - (ii) \$10,000; and
- (2) A disqualification for a period of up to 5 years from receiving any monetary or nonmonetary benefit provided under each of the following:
 - (i) Any crop insurance policy offered under the Act;
 - (ii) The Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7333 et seq.);
 - (iii) The Agricultural Act of 1949 (7 U.S.C. 1421 et seq.);
 - (iv) The Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.);
 - (v) The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.);
 - (vi) Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq.);
 - (vii) The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.); and
 - (viii) Any federal law that provides assistance to a producer of a commodity affected by a crop loss or a decline in the prices of commodities.

39. Multiple Benefits.

(a) If you are eligible to receive an indemnity under this policy and are also eligible to receive benefits for the same loss under any other USDA program, you may receive benefits under both programs in accordance with subsection (b), unless specifically limited by the crop insurance contract or by law.

(b) Any amount received for the same loss from any USDA program, in addition to the crop insurance payment, will not exceed the difference between the crop insurance payment and the actual amount of the loss, unless otherwise provided by law.

(1) The amount of the actual loss is the difference between the total expected value summed for all commodities on the farm operation, without regard to coverage level, before the loss and the total revenue-to-count for all commodities on the farm operation after the loss.

(2) If the other program benefits are only available for a single crop or several crops but are less than the entire farm operation, you may be required to provide verifiable records establishing the total expected value and the revenue for each commodity for which you are eligible for another benefit.

(c) FSA or another USDA agency, as applicable, will determine and pay the additional amount due you for any applicable USDA program, after first considering the amount of any crop insurance indemnity.

40. Death, Disappearance, Judicial Incompetence, and Dissolution.

(a) In cases where there has been a death, disappearance, judicially declared incompetence, or dissolution of any insured person:

- (1) If any married insured dies, disappears, or is judicially declared incompetent, the policy will automatically convert to the name of the spouse if:
 - (i) The spouse was included on the policy as having a substantial beneficial interest in the insured; and
 - (ii) The spouse has a share of the farm operation.
- (2) The provisions in section 40(a)(3) will be applicable only if:
 - (i) Any partner, member, shareholder, etc., of an insured dies, disappears, or is judicially declared incompetent, and such event automatically dissolves the tax entity; or
 - (ii) An individual whose estate is left to a beneficiary other than a spouse or left to the spouse and the criteria in section 40(a)(1) are not met, dies, disappears, or is judicially declared incompetent.
- (3) If section 40(a)(2) applies and the death, disappearance, or judicially declared incompetence occurred:
 - (i) More than 30 days before the cancellation date, the policy is automatically canceled

as of the cancellation date and a new application must be submitted; or

- (ii) Thirty days or less before the cancellation date, or on after the cancellation date, the policy will continue in effect through the insurance year immediately following the cancellation date and be automatically canceled as of the cancellation date immediately following the end of the insurance period for the insurance year, unless canceled by the cancellation date prior to the start of the insurance period:
 - (A) A new application for insurance must be submitted on or before the sales closing date for coverage for a subsequent insurance year; and
 - (B) Any indemnity or replant payment will be paid to the person or persons determined to be beneficially entitled to the payment provided such person or persons comply with all policy provisions and timely pays the premium.

(b) If any insured tax entity is dissolved for reasons other than death, disappearance, or judicially declared incompetence:

- (1) Before the cancellation date, the policy is automatically canceled as of the cancellation date and a new application must be submitted; or

- (2) On or after the cancellation date, the policy will continue in effect through the insurance year immediately following the cancellation date and be automatically canceled as of the cancellation date immediately following the end of the insurance period for the insurance year, unless canceled by the cancellation date prior to the start of the insurance period.
 - (i) A new application for insurance must be submitted on or before the sales closing date for coverage for the subsequent insurance year; and
 - (ii) Any indemnity or replant payment will be paid to the person or persons determined to be beneficially entitled to the payment provided such person or persons comply with all policy provisions and timely pay the premium.
- (3) With respect to termination and ineligibility, a remaining member of the insured person or the beneficiary is required to report to us the death, disappearance, judicial incompetence, or other event that causes dissolution of the tax entity not later than the next cancellation date, except if regaining eligibility applies, notice must be provided by the cancellation date for the next insurance year.

41. Correction of Errors.

(a) In addition to any other corrections allowed in your policy and subject to section 41(b), we may correct:

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- (1) Within 60 days after the sales closing date, any incorrect information on your application or provided by the sales closing date, including identification numbers for you and any person with a substantial beneficial interest in you, to ensure that the eligibility information is correct and consistent with information reported by you to any USDA agency;
- (2) Within 30 days after the Revised Farm Operation Report, information reported to reconcile errors in the information with correct information that has been determined by any USDA agency;
- (3) Within 30 days of any subsequent correction of data by FSA, erroneous information corrected as a result of verification of information; and
- (4) At any time, any incorrect information if the incorrect information was caused by electronic transmission errors by us or errors made by any agency within USDA in transmitting the information provided by you for purposes of other USDA programs.

(b) Corrections may be made but will not take effect for the current insurance year if the correction would allow you to:

- (1) Avoid ineligibility requirements for insurance or obtain a disproportionate benefit under the crop insurance program or any related program administered by the Secretary;

- (2) Obtain, enhance, or increase an insurance guarantee or indemnity if a cause of loss exists or has occurred before any correction has been made, or avoid premium owed if no loss is likely to occur; or
- (3) Avoid an obligation or requirement under any Federal or State law.

42. Voided Policies

(a) If avoidance of your policy occurs for any reason you must repay any indemnity or replant payment that may have been paid for all applicable insurance years;

(b) Even though the policy is void, you will still be required to pay an amount equal to 20 percent of the premium that you would otherwise be required to pay to offset costs incurred by us in the service of this policy; and

(c) If you previously paid premium or administrative fees, any amount in excess of the amount required in (b) will be returned to you.

43. (Reserved)

SPECIAL CIRCUMSTANCES ORGANIC COMMODITY REQUIREMENTS

44. Organic Commodities.

(a) Organic prices can be used as expected values for certified organic acreage, and for certified organic animals or animal products.

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- (1) You may not use organic prices for commodities that are not certified organic.
- (2) All requirements as published in 7 CFR 205, National Organic Program, must be met in order to be considered a certified organic operation. However if your farm is not required to have an organic certification because your gross agricultural income from organic sales is \$5,000 or less and you follow all organic standards including having an organic production or handling system plan, you may also use organic prices and your farm will be considered to be certified under this policy.

(b) By the Revised Farm Operation Reporting date, you must have, for certified organic acreage or organic animals or animal products, a valid certification in effect as shown on the National Organic Program website or you must have a written certification from a certifying agent (A certificate issued to an operator/tenant may be used to qualify the same acreage for a landlord or other similar arrangement.) The following items are required;

- (1) You must have a current certification if a claim is made. If your farm was certified organic previously but you have not received an updated organic certification, the previous certification may not be used at claim time. If you do not have the appropriate certificate at claim time, your insured revenue will be recalculated without the organic expected values; and

- (2) We will document on the Farm Operation Report which acres and commodities are certified organic. You must be able to provide your organic plan or information identifying the organic fields, if required by us.

(c) If any acreage or animals or animal products qualifies as certified organic, by the Revised Farm Operation Reporting date, and the certification is subsequently surrendered by the farm, suspended, revoked or denied by the certifying agent, during the insurance period, that acreage or animals or animal products will remain insured but the expected value for the acreage or animals or animal products will be recalculated to non-organic expected values because the failure to comply with organic standards is not an insured cause of loss.

(d) Contamination by application or drift of prohibited substances (non-synthetic or synthetic) onto land on which crops are grown using organic farming practices will not be an insured peril on any certified organic acreage.

POST-PRODUCTION OPERATIONS AND ADDED VALUE

45. Post-Production Operations and Added Value.

(a) Revenue from post-production operations including those that add value to the commodity must be adjusted out of farm revenue and expenses, to determine the allowable revenue and allowable expenses.

(b) Market readiness operations are not required to be removed from allowable revenue and allowable expenses.

(c) Post-production operation adjustments to remove the value and costs of inputs and activities that are post-production costs and value will occur:

- (1) For the allowable revenue and allowable expenses, on the Allowable Revenue Worksheet and the Allowable Expense Worksheet for each year for the Whole-Farm History Report;
- (2) To the expected values used in the Farm Operation Reports (with adjustments noted on the report);
- (3) For the allowable revenue and expenses on the Allowable Revenue Worksheet and the Allowable Expense Worksheet; for the insurance year to determine any indemnity due;

(d) If market readiness expenses are not removed from allowable revenue they will also not be removed from allowable expenses.

ANIMALS AND ANIMAL PRODUCTS REQUIREMENTS

46. Animals and Animal Products.

(a) Eligibility for insurance for operations with animals and animal products is limited in accordance with section 3.

(b) Inventory information for animals and animal products must be provided on the Market Animal and Nursery Inventory Report and this report will be provided in addition to the Inventory Report.

(c) A Market Animal and Nursery Inventory Report must include a complete inventory of both breeding and market animals.

- (1) The inventory of breeding animals will be kept separate from inventory of the market animals.
- (2) Breeding animals you do not intend to sell, including culls, are not included in insured revenue and the breeding animal inventory will be used to support the number of market animals, and to document culled breeding animals so they can be removed from the approved revenue.

(d) The insured revenue will be based on the revenue produced during the insurance period. Animals and animal products carried over from the previous year will be valued at the beginning of the insurance period and only the value gained during the insurance period will be part of the insured revenue.

(e) The animal and animal product beginning inventory will be used to value the animals and animal products at the beginning of the insurance period. 'Net value' from the beginning inventory for the commodity must be subtracted from the expected revenue on the Farm Operation Report for the insurance year.

(f) Animal and animal product inventory adjustments to allowable revenue at the end of the year measure revenue from production for the insurance period and are calculated by:

- (1) Subtracting the beginning inventory from the ending inventory; and

- (2) Adding the result, negative or positive, that reflects increases or decreases in inventory values, to the allowable revenue for the insurance year.

(g) The cost for animals purchased for resale during the insurance period must be removed from the expected value on the Farm Operation Report.

(h) If a commodity on the commodity list in the actuarial documents has multiple expected values for the farm such as cattle having different prices for steers and heifers, separate lines must be entered on the Farm Operation Report for each commodity.

(i) The expected value of any animal will not exceed the local market price of the same breed and type being valued.

- (1) For registered livestock, local market value will be determined by the value of other registered livestock of the same breed and type (for example: weaned heifers, bred heifers, or mature cows) from other livestock producers in the area.
- (2) If production methods result in variances in prices, the production method, such as grain-fed beef or pasture raised poultry, may also be considered when determining the local market price, if applicable.

(j) If you have revenue from animals and animal products included in your WFRP insured revenue and:

- (1) We are notified by FCIC that the underwriting capacity for this plan of insurance has been exceeded, your application will be reject-

ed and your farm operation will not be eligible for insurance under WFRP; or

- (2) The RMA underwriting capacity manager website, or the RMA website is not operational, coverage under the policy is not available and no coverage can be purchased.

(k) If your application was accepted and WFRP coverage began and you later make revisions to the amount of animals and animal products on your farm that exceed the animal and animal product limitation provided in section 3(b)(2), your revenue from animals and animal products will be capped as provided in section 17(c)(2)(i)(B) with all allowable revenue included as revenue to count under the WFRP policy.

NURSERY REQUIREMENTS

47. Nursery and Greenhouse Commodities.

(a) Eligibility for insurance for operations with nursery and greenhouse commodities is limited in accordance with section 3.

(b) Inventory information for nursery and greenhouse commodities must be provided on the Market Animal and Nursery Inventory Report and this report will be provided in addition to the Inventory Report.

(c) The inventory must show the plants on hand at the beginning of the insurance period, corresponding expected values, the cost or basis of the plants, and the total value of each plant or category of plant (such as pot sizes).

(d) The insured revenue will be based on the revenue produced during the insurance period. Plants

carried over from the previous year will be valued at the beginning of the insurance period and only the value gained during the insurance period will be part of the insured revenue.

(e) The nursery and greenhouse beginning inventory will be used to value the nursery and greenhouse commodities at the beginning of the insurance period. 'Net value' from the beginning inventory for the commodity must be subtracted from the expected revenue on the Farm Operation Report for the insurance year.

(f) Nursery and greenhouse inventory adjustments to allowable revenue at the end of the year measure revenue from production for the insurance year and are calculated by:

- (1) Subtracting the beginning inventory from the ending inventory; and
- (2) Adding the result, negative or positive, that reflects increases or decreases in inventory values, to the allowable revenue for the insured year.

(g) The cost of plants purchased for resale will be removed from the value of the plant for beginning inventory purposes.

(h) If a commodity on the commodity list in the actuarial documents has multiple expected values for the farm such as having different prices for different types of plants, separate lines must be entered on the Farm Operation Report for each commodity.

(i) If your application was accepted and WFRP coverage began and you later make revisions to the amount of nursery and greenhouse commodities on

your farm that exceed the nursery and greenhouse limitation provided in section 3(b)(3), your revenue from nursery and greenhouse will be capped as provided in section 17(c)(2)(i)(C) with all allowable revenue included as revenue to count under the WFRP policy.

(j) Trees, shrubs, bushes, and other plants, must be grouped according to the genus and container size.

MARKETING CONTRACT REQUIREMENTS

48. Marketing Contracts

(a) If you produce a commodity under a marketing contract, the expected value will be the price contained in the marketing contract (see section 18(a)(1)(i)).

(b) To be considered a marketing contract under WFRP, there must be a written agreement between you and a buyer, containing at a minimum:

- (1) Your commitment to produce the commodity on your farm operation during the insurance period;
- (2) Your commitment to deliver the production to the buyer;
- (3) The buyer's commitment to purchase all of the production stated in the contract; and
- (4) A contract price, including a specified price for the commodity or an amount over a base price that will be paid for the production. The contract price is the amount specified without regard to any discount or incentive that may apply.

(c) Multiple contracts with the same buyer may be reported on separate lines for the commodity or, if

they are for the same type of the commodity, can be considered a single marketing contract, with the contract price reported as a weighted average of all the applicable contract prices.

(d) Contracts that do not meet the requirements of section (b) are not considered marketing contracts for WFRP.

EXPANDED OPERATIONS REQUIREMENTS

49. Expanded Operations

(a) If you can show us your farm operation has physically expanded during the insurance period or lag year by adding production capacity to your farm operation (*e.g.*, by adding land or an addition of a greenhouse) or increasing use of existing production capacity (*e.g.*, by double-cropping existing land or beginning production on certified organic acreage), we may at our discretion approve your farm operation as an expanding operation. If so:

- (1) You must provide verifiable records that we agree are sufficient to determine the amount of revenue an expansion can be expected to generate during the insurance period;
- (2) We will determine the amount of revenue from the expansion approved for the purpose of determining your expanding operation factor; and
- (3) If more than one expansion is applicable to your farm operation, we will determine the amount of revenue approved for each expansion separately.

(b) If your farm operation is expanding during the current insurance period you must provide all required records no later than the date you are required to submit your Revised Farm Operation Report.

(c) If an expansion of your farm operation occurred in your lag year:

- (1) You must provide all required records by the later of the sales closing date or the first day of your insurance period; and
- (2) We will determine the amount of revenue from the expansion based on information applicable to the insurance period. For example, the expected value for each commodity will be based on the price in the current year, regardless of the price of the commodity at the time the expansion occurred.

(d) If we have approved your farm operation as an expanding operation, your expanding operation factor will be calculated by:

- (1) Adding the amount of revenue from the physical expansion of your farm operation during the insurance period, as determined by us, to your Average Allowable Revenue;
- (2) Adding to paragraph (1) the amount of revenue from any expansions that occurred in your lag year, as determined by us; and
- (3) Dividing the result of paragraph (2) by your Average Allowable Revenue to determine your expanding operation factor, not to exceed 1.35.

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(e) Your expanded operation adjusted revenue will be your average allowable revenue multiplied by your expanding operation factor.

(f) If your whole-farm historic average revenue is equal to your expanding operation adjusted revenue, your average allowable expenses will be multiplied by your expanding operation factor to calculate your whole-farm historic average expenses.

50. (Reserved)