

§ 457.161

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(C) That is damaged solely by uninsured causes; or

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

(ii) Production lost due to uninsured causes;

(iii) Production on acreage that is bypassed unless the acreage was bypassed due to an insured cause of loss which resulted in production which would not be acceptable under the terms of the processor contract;

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

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us, (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

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

(2) All harvested production (in tons) delivered to the processor which meets the quality requirements of the processor contract (expressed as usable or payable weight).

(3) All harvested tomato production delivered to processor which does not meet the quality requirements of the processor contract due to not being timely delivered.

(d) Once harvest has begun on any acreage covered by a processor contract that specifies the number of tons to be delivered, the total indemnity payable will be limited to an amount based on the lesser of the guaranteed tons, or the tons remaining unfulfilled under the processor contract.

15. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 54342, Oct. 20, 1997, as amended at 62 FR 65177, Dec. 10, 1997; 69 FR 44576, July 27, 2004]

§ 457.161 Canola and rapeseed crop insurance provisions.

The canola and rapeseed crop insurance provisions for the 2003 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Canola and Rapeseed Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

1. Definitions

Canola. A crop of the genus Brassica as defined in accordance with the Official United States Standards for Grain—Subpart C—U.S. Standards for Canola.

Harvest. Combining or threshing for seed. A crop that is swathed prior to combining is not considered harvested.

Local market price (Canola). The cash price per pound for U.S. No. 2 grade canola that reflects the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade canola.

Planted acreage. In addition to the definition contained in the Basic Provisions, land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Price of damaged production. The cash price per pound available if the production were sold for canola that qualifies for quality adjustment in accordance with section 12 of these crop provisions.

Rapeseed. A crop of the genus Brassica that contains at least 30 percent of an industrial type of oil as shown on the Special Provisions and that is measured on a basis free from foreign material.

Swathed. Severance of the stem and seed pods from the ground and placing into windrows without removal of the seed from the pod.

2. Unit Division

In addition to optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated practices, optional units may be by type if the type is designated on the Special Provisions.

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

In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the canola and rapeseed in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each canola and rapeseed type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for a specific type, you must also choose 100 percent of the maximum price election for all other types.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date for counties with a March 15 cancellation date, and June 30 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates

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

State and county	Cancellation and Termination dates
All counties in Georgia	Sept. 30.
All other counties without fall planted types specified on the actuarial table.	Mar. 15.
All other counties with fall planted types specified on the actuarial table.	Aug. 31.

6. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all canola and rapeseed in the county for which a premium rate is provided by the actuarial table:

- (a) In which you have a share;
- (b) That is planted for harvest as seed; and
- (c) That is not, unless allowed by Special Provisions or by written agreement:
 - (1) Interplanted with another crop; or
 - (2) Planted into an established grass or legume.

7. Insurable Acreage

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

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that most producers producing crops on similarly situated acreage in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure any acreage that does not meet the rotation requirements contained in the Special Provisions.

8. Insurance Period

In accordance with the provisions of section 11 of the Basic Provisions, the end of the insurance period is October 31 of the calendar year in which the crop is normally harvested.

9. Causes of Loss

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

- (a) Adverse weather conditions;
- (b) Fire;
- (c) Insects, but not damage due to insufficient or improper application of pest control measures;
- (d) Plant disease, but not damage due to insufficient or improper application of disease control measures;
- (e) Wildlife;
- (f) Earthquake;
- (g) Volcanic eruption; or
- (h) Failure of the irrigation water supply, if applicable, caused by an insured cause of loss that occurs during the insurance period.

10. Replanting Payment

(a) In accordance with section 13 of the Basic Provisions, a replanting payment is allowed if the insured crop is damaged by an insurable cause of loss to the extent that most producers producing the crop on similarly situated acreage in the area, would not continue to care for the crop and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 175 pounds, multiplied by your price election, multiplied by your insured share.

(c) When the canola or rapeseed is replanted using a practice or type that is uninsurable as an original planting, the liability for the unit will be reduced by the amount of the replanting payment that is attributable to your share. The premium amount will not be reduced.

11. Duties in the Event of Damage or Loss

In accordance with the requirements of section 14 of the Basic Provisions, the representative samples of the unharvested crop that we may require must be at least 10 feet wide and extend the entire length of each

field in the unit. If you intend to put the acreage to another use or not harvest the acreage, the samples must not be harvested or destroyed until our inspection.

12. Settlement of Claim

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

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

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

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

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result in section 12(b)(1) by the respective price election for each type, if applicable;

(3) If there are more than one type, totaling the results in section 12(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 12(c)) by the respective price election;

(5) If there are more than one type, totaling the results in section 12(b)(4);

(6) If there are more than one type, subtracting the total in section 12(b)(5) from the total in section 12(b)(3);

(7) If there is only one type, subtracting the total in section 12(b)(4) from the total in section 12(b)(2); and

(8) Multiplying the result in section 12(b)(6) and 12(b)(7), as applicable, by your share.

(c) The total production to count (pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 12(d)); and

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

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

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

(2) All harvested production from the insurable acreage.

(d) Mature canola may be adjusted for excess moisture and quality deficiencies. Mature rapeseed may be adjusted for excess moisture only. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Canola and rapeseed production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 8.5 percent. We must be permitted to obtain samples of the production to determine the moisture content.

(2) Canola production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in the canola not meeting the grade requirements for U.S. No. 3 or better (U.S. Sample grade) because of kernel damage (excluding heat damage), or a musty, sour, or commercially objectionable foreign odor; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss in canola production only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these Crop Provisions and which occurs within the insurance period;

(ii) The deficiencies, substances, or conditions result in a net price for the damaged production that is less than the local market price;

(iii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us;

(iv) With regard to deficiencies in quality, the samples are analyzed by:

(A) A grain grader licensed under the United States Grain Standards Act or the United States Warehouse Act;

(B) A grain grader licensed under State law and employed by a warehouse operator who has a storage agreement with the Commodity Credit Corporation; or

(C) A grain grader not licensed under State law, but who is employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation and is in compliance with State law regarding warehouses; and

(v) With regard to substances or conditions injurious to human or animal health, the samples analyzed by a laboratory approved by us.

(4) Canola production that is eligible for quality adjustment, as specified in sections 12(d)(2) and (3), will be reduced:

(i) In accordance with the quality adjustment factors contained in the Special Provisions; or

(ii) As follows if quality adjustment factors are not contained in the Special Provisions:

(A) Divide the price of damaged production by the local market price to determine the quality adjustment factor.

(B) The number of pounds remaining after any reduction due to excessive moisture (the moisture-adjusted gross pounds) of the damaged or conditioned production will then be multiplied by the quality adjustment factor to determine the net production to count.

(5) For canola, the price of damaged production and the local market price will be determined at the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit subject to the following conditions:

(i) Discounts used to establish the price of damaged production will be limited to those that are usual, customary, and reasonable.

(ii) The price of damaged production will not be reduced for:

(A) Moisture content;

(B) Damage due to uninsured causes;

(C) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the canola; except, if the price of damaged production can be increased by conditioning, we may reduce the price of damaged production after the production has been conditioned by the cost of conditioning but not lower than the price of damaged production before conditioning. We may obtain prices of damaged production from any buyer of our choice. If we obtain prices of damaged production from one or more buyers located outside your local market area, we will reduce such price of damaged production by the additional costs required to deliver the canola to those buyers; or

(D) Erucic acid or glucosinolates in excess of the amount allowed under the definition of canola contained in the Official United States Standards for Grain; and

(iii) Factors not associated with grading under the Official United States Standards for Grain including, but not limited to protein and oil, will not be considered.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on an unadjusted weight basis.

For example:

You have 100 percent share in 25 acres of Fall Oleic Canola in a unit with a 650 pound production guarantee and a price election of \$0.11 per pound. You are only able to harvest 14,700 pounds and there is no appraised production. Your indemnity would be calculated as follows:

(1) 25 acres × 650 pounds = 16,250 pounds of Fall Oleic Canola;

(2) 16,250 pounds × \$0.11 price election = \$1,788 value of guarantee for Fall Oleic Canola;

(3) 14,700 pounds × \$0.11 price election = \$1,617 total value of production to count for Fall Oleic Canola;

(4) \$1,788 value of guarantee – \$1,617 value of production to count = \$171 value of loss; and

(5) \$171 value of loss × 100 percent = \$171 indemnity payment.

You also have a 100 percent share in 50 acres of Fall High Erucic Rapeseed in the same unit with a production guarantee of 750 pounds per acre and a price election of \$0.15 per pound. You are only able to harvest 14,000 pounds and there is no appraised production. Your total indemnity for both Fall Oleic Canola and Fall High Erucic Rapeseed would be calculated as follows:

(1) 25 acres × 650 pounds = 16,250 pounds guarantee for the Fall Oleic Canola, and 50 acres × 750 pounds = 37,500 pounds guarantee for the Fall High Erucic Rapeseed;

(2) 16,250 pounds guarantee × \$0.11 price election = \$1,788 value of the guarantee for the Fall Oleic Canola, and 37,500 pounds guarantee × \$0.15 price election = \$5,625 value of the guarantee for the Fall High Erucic Rapeseed;

(3) \$1,788 + \$5,625 = \$7,413 total value of the guarantees;

(4) 14,700 pound × \$0.11 price election = \$1,617 value of production to count for the Fall Oleic Canola, and 14,000 pounds × \$0.15 price election = \$2,100 value of production to count for the Fall High Erucic Rapeseed;

(5) \$1,617 + \$2,100 = \$3,717 total value of production to count;

(6) \$7,413 value of guarantee – \$3,717 value of production = \$3,696 loss; and

(7) \$3,696 value of loss × 100 percent = \$3,696 indemnity payment.

13. Late Planting

In lieu of section 16(a) of the Basic Provisions, the production guarantee for each acre planted to the insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date unless otherwise specified in the Special Provisions.

14. Prevented Planting

In addition to the provisions contained in section 17 of the Basic Provisions, your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to the levels specified in the actuarial documents.

[62 FR 65997, Dec. 17, 1997, as amended at 67 FR 43526, June 28, 2002]

§ 457.162 Nursery crop insurance provisions.

The Nursery Crop Insurance Provisions for the 2006 and succeeding crop years are as follows:

FCIC Policies

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and Reinsured Policies

Nursery Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Act. The Federal Crop Insurance Act, 7 U.S.C. 1501 et seq.

American Standard for Nursery Stock. A publication of the American Nursery and Landscape Association, or a subsequent successor organization, issued in accordance with the rules of the American National Standards Institute, Inc. that provides common terminology and standards for nurseries.

Amount of insurance. For each basic unit, your basic unit value multiplied by the coverage level percentage you elect and multiplied by your share.

Basic unit value. The full value of all insurable plants in each basic unit as shown on your PIVR, including any revision that in-

creases the value of your insurable plant inventory.

Container grown. Nursery plants planted and grown in standard nursery containers either above ground or that are placed in the ground, either directly or when placed in another pot in the ground (i.e., pot-in-pot).

Crop year. The period beginning the day insurance attaches and extending until the following May 31. Crop year is designated by the year in which the insurance period ends.

Crop year deductible. The deductible percentage multiplied by the sum of all plant inventory values for each basic unit. The crop year deductible will be increased for any increases in the inventory value on the PIVR or through the purchase of a Peak Inventory Endorsement, if in effect at the time of loss. The crop year deductible will be reduced by any previously incurred deductible, except any incurred under the Rehabilitation Endorsement, if you timely report each loss to us.

Deductible percentage. An amount equal to 100 percent minus the percent of coverage you select.

Eligible Plant List. A list that includes the botanical and common names of insurable plants, the winter protection requirements for container grown material and the areas in which they apply, the hardiness zone to which field grown material is insurable, the designated hardiness zone for each county, and the unit classification for each plant on the list, published by FCIC on RMA's Web site at <http://www.rma.usda.gov>. It is also available on compact disk from your crop insurance agent.

Fabric grow bag. A fabric bag (including a woven or matted bag with a plastic or fabric bottom) used for growing woody plants in-ground or as an above-ground nursery plant container that provides adequate drainage and is appropriate in size for the plant.

FCIC. The Federal Crop Insurance Corporation, a wholly owned corporation within the USDA, or a successor agency.

Field grown. Nursery plants planted and grown in the ground without the use of an artificial root containment device. Plants grown in in-ground fabric grow bags, plants that are balled and burlapped or plants grown in containers that allow the plants to root (excluding fibrous roots) into the ground (for example, a container without a bottom) are also considered field grown.

Field market value A. The value of undamaged insurable plants, based on the lesser of: (1) The prices contained in the Plant Price Schedule; or (2) the prices contained in your catalog or price list in the basic unit immediately prior to the occurrence of any loss, as determined by our appraisal. This allows the amount of insurance under the policy to be divided among the individual units in accordance with the actual value of the plants in the unit at the time of