(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.

§ 457.161 Canola and rapeseed crop insurance provisions.

The canola and rapeseed crop insurance provisions for the 2011 and succeeding crop years are as follows:

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:

(a) You must elect to insure your canola and rapeseed with either revenue protection or yield protection by the sales closing date; and

(b) In counties with both fall and spring sales closing dates for the insured crop:

(1) If you do not have any insured fall planted acreage of the insured crop, you may change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, until the spring sales closing date; or

(2) If you have any insured fall planted acreage of the insured crop, you may not change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, after the fall sales closing date.

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:

<table>
<thead>
<tr>
<th>State and county</th>
<th>Cancellation and Termination dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>All counties in Alabama and Georgia</td>
<td>Sept. 30.</td>
</tr>
<tr>
<td>All other counties without fall planted types specified on the actuarial table</td>
<td>Mar. 15.</td>
</tr>
<tr>
<td>All other counties with fall planted types specified on the actuarial table</td>
<td>Aug. 31.</td>
</tr>
</tbody>
</table>
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) We will not insure any acreage that does not meet the rotation requirements contained in the Special Provisions;
(b) Whenever the Special Provisions designate only a fall final planting date, any acreage of canola or rapeseed damaged before such final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a fall type of the insured crop unless we agree that replanting is not practical;
(c) Whenever the Special Provisions designate both fall and spring final planting dates:
(1) Any fall canola or rapeseed that is damaged before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a fall type of the insured crop unless we agree that replanting is not practical;
(2) Any fall canola or rapeseed acreage that is replanted to a spring type of the same crop when it was practical to replant the fall type will be insured as the spring type and the production guarantee, premium, projected price, and harvest price applicable to the spring type will be used. In this case, the acreage will be considered to be initially planted to the spring type; and
(d) Whenever the Special Provisions designate a spring final planting date, any acreage of spring canola or rapeseed damaged before such final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree that replanting is not practical; or
(e) Whenever the Special Provisions designate only a spring final planting date, any acreage of fall planted canola or rapeseed is not insured unless you request such coverage on or before the spring sales closing date, and we determine in writing that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. However, if we fail to inspect the acreage by the spring final planting date, insurance will attach as specified in section 7(e)(3):
(1) Your request for coverage must include the location and number of acres of fall planted canola or rapeseed;
(2) The fall planted canola or rapeseed will be insured as a spring type for the purpose of the production guarantee, premium, projected price, and harvest price, if applicable;
(3) Insurance will attach to such acreage on the date we determine an adequate stand exists or on the spring final planting date if we do not determine adequacy of the stand by the spring final planting date;
(4) Any acreage of such fall planted canola or rapeseed that is damaged after it is accepted for insurance but before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree it is not practical to replant; and
(5) If fall planted acreage is not to be insured it must be recorded on the acreage report as uninsured fall planted acreage.

8. Insurance Period

In accordance with the provisions of section 10 of the Basic Provisions, the calendar date for 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;
(h) Failure of the irrigation water supply due to a cause of loss specified in sections 9(a) through (g) that also occurs during the insurance period; or
(i) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.
10. Replanting Payment  
(a) A replanting payment is allowed as follows:  
(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these Crop Provisions;  
(2) Except as specified in section 10(a)(1), you must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions;  
(3) The insured crop must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage; and  
(4) The replanted crop must be seeded at a rate sufficient to achieve a total (undamaged and new seeding) plant population that is considered appropriate by agricultural experts for the insured crop, type and practice.  
(b) Unless otherwise specified in the Special Provisions, the amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 175 pounds, multiplied by your projected price, multiplied by your share.  
(c) When the crop is replanted using a practice that is uninsurable for an original planting, the liability on the unit will be reduced by the amount of the replanting payment.  
The premium amount will not be reduced.  
(d) If the acreage is replanted to an insured crop type that is different than the insured crop type originally planted on the acreage:  
(1) The production guarantee, premium, and projected price and harvest price, as applicable, will be adjusted based on the replanted type;  
(2) Replanting payments will be calculated using your projected price and production guarantee for the crop type that is replanted and insured; and  
(3) A revised acreage report will be required to reflect the replanted type, as applicable.  

11. Duties in the Event of Damage or Loss  
Representative samples are required in accordance with section 14 of the Basic Provisions.  

12. Settlement of Claim  
(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:  
(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or  
(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.  
(b) In the event of loss or damage covered by this policy, we will settle your claim by:  
(1) Multiplying the number of insured acres of each type, as applicable, by your respective:  
(i) Yield protection guarantee (per acre) if you elected yield protection; or  
(ii) Revenue protection guarantee (per acre) if you elected revenue protection;  
(2) Totaling the results of section 12(b)(1)(i) or 12(b)(1)(ii), whichever is applicable;  
(3) Multiplying the production to count of each type, as applicable, by your respective:  
(i) Projected price if you elected yield protection; or  
(ii) Harvest price if you elected revenue protection;  
(4) Totaling the results of section 12(b)(3)(i) or 12(b)(3)(ii), whichever is applicable;  
(5) Subtracting the result of section 12(b)(4) from the result of section 12(b)(2); and  
(6) Multiplying the result of section 12(b)(5) by your share.  
For example:  
You have 100 percent share in 50 acres of canola in the unit with a production guarantee (per acre) of 650 pounds, your projected price is $.1220, your harvest price is $.1110, and your production to count is 31,000 pounds.  
If you elected yield protection:  
(1) 50 acres x (650 pound production guarantee x $.1220 projected price) = $3,965.00 value of the production guarantee  
(2) 31,000 pound production to count x $.1220 projected price = $3,782.00 value of the production to count  
(3) 3,965.00-3,782.00 = $183.00  
(4) $183.00 x 1.000 share = $183.00 indemnity; or  
If you elected revenue protection:  
(1) 50 acres x (650 pound production guarantee x $.1220 projected price) = $3,965.00 revenue protection guarantee  
(2) 31,000 pound production to count x $.1110 harvest price = $3,441.00 value of the production to count  
(3) 3,965.00-3,441.00 = $524.00  
(4) $524.00 x 1.000 share = $524.00 indemnity; and  
(c) The total production to count (pounds) from all insurable acreage on the unit will include:  
(1) All appraised production as follows:  
(i) For yield protection, not less than the production guarantee and for revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (per acre) 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;
(i) Production lost due to uninsured causes;
(ii) Unharvested production (mature
unharvested production may be adjusted for
quality deficiencies and excess moisture in
accordance with section 12(d)); and
(iii) Potential production on insured acre-
age 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 agree-
ment 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 loca-
tions acceptable to us (The amount of pro-
duction to count for such acreage will be
based on the harvested production or ap-
praisals from the samples at the time har-
vest 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 con-
sent to put the acreage to another use will
be used to determine the amount of produc-
tion 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 oc-
curs and the crop is not harvested; and
(2) All harvested production from the in-
surable acreage.
(d) Mature canola may be adjusted for ex-
cess moisture and quality deficiencies. Ma-
ture rapeseed may be adjusted for excess
moisture only. If moisture adjustment is ap-
plicable, it will be made prior to any adjust-
ment for quality.
(1) Canola and rapeseed production will be
reduced by 0.12 percent for each 0.1 percent-
age 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 dam-
age (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 Ad-
ministration or other public health organiza-
tions 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 condi-
tions resulted from a cause of loss against
which insurance is provided under these Crop
Provisions and which occurs within the in-
surance period;
(ii) The deficiencies, substances, or condi-
tions result in a net price for the damaged
production that is less than the local market
price;
(iii) All determinations of these defi-
ciencies, 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 Com-
modity Credit Corporation; or
(C) A grain grader not licensed under State
law, but who is employed by a warehouse op-
erator who has a commodity storage agree-
ment with the Commodity Credit Corpora-
tion and is in compliance with State law re-
garding 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 in accordance
with the quality adjustment factors con-
tained in the Special Provisions.
(e) Any production harvested from plants
growing in the insured crop may be counted
as production of the insured crop on an
unaladjusted weight basis.
13. Late Planting
In lieu of section 16(a) of the Basic Provi-
sions, 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
Your prevented planting coverage will be
60 percent of your production guarantee for
timely planted acreage. If you have addi-
tional coverage and pay an additional pre-
mium, you may increase your prevented
planting coverage to a level specified in the
actuarial documents.
FR 63526, June 28, 2002; 75 FR 15889, Mar. 30,
2010]