

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

General Crop Insurance Regulations, Canning and Processing Bean Endorsement; and Common Crop Insurance Regulations, Processing Bean Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of processing beans. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current canning and processing bean crop insurance endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current canning and processing bean crop insurance endorsement to the 1997 and prior crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business June 2, 1997 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131.

FOR FURTHER INFORMATION CONTACT: Ron Nesheim, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

The amendments set forth in this proposed rule contain information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Processing Bean Crop Insurance Provisions." The information to be collected includes a crop insurance application and an acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of processing beans that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. For the crop insurance program as a whole, the reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

FCIC is requesting comments on the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB.

Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a

claim for indemnity. The insured must also annually certify to the number of acres and the previous years production, if adequate records are available to support the certification, or receive a transitional yield. The producer must maintain the production records to support the certified information for at least 3 years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.155, Processing Bean Crop Insurance Provisions. The new provisions will be

effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring processing beans found at 7 CFR 401.118 (Canning and Processing Bean Endorsement). FCIC also proposes to amend 7 CFR 401.118 to limit its effect to the 1997 and prior crop years.

This rule makes minor editorial and format changes to improve the Canning and Processing Bean Endorsement's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring processing beans as follows:

1. Remove the words "Canning and" from the title of the policy. "Canning and processing" is redundant because "processing" includes those beans that are processed for canning.

2. Section 1—Add definitions for the terms "base contract price," "bypassed acreage," "days," "FSA," "final planting date," "good farming practices," "interplanted," "irrigated practice," "planted acreage," "practical to replant," "processor," "processor contract," "production guarantee (per acre)," "replanting," "timely planted," "ton," and "written agreement" for clarification.

3. Section 2—Describe the requirements for dividing basic units into optional units. Also, subsection 2(f)(4)(ii) clarifies unit division for non-irrigated corners of center-pivot irrigation systems.

4. Section 3—Specify that the producer may select only one price election for all the processing beans in the county insured under the policy unless the Special Provisions provide different price elections by type, in which case the producer may select one price election for each processing bean type designated. The price election chosen for each type must have the same percentage relationship to the maximum price available.

5. Section 4—Change the contract change date from December 31 to November 30, to allow adequate time for producers to become aware of contract changes and make informed choices before the sales closing date, which was moved back 30 days to comply with the Federal Crop Insurance Reform Act of 1994.

6. Section 5—Change the cancellation and termination dates from April 15 to March 15, to coincide with the statutory change in the sales closing date.

7. Section 6—Require the insured to provide a copy of the processor contract to the insurance provider on or before the acreage reporting date to establish

liability and insurability before a loss is likely to occur.

8. Section 7(a)—Specify that the crop insured will be processing beans that are grown under a processor contract executed before the acreage reporting date.

9. Section 7(a)(4)—Permit consideration for requests for a written agreement to insure processing beans that are interplanted with another crop or planted into an established grass or legume. This provision makes insurance available, on a case-by-case basis (written agreement), for processing beans grown with a production practice that is not normally followed in an area.

10. Section 7(b)—Specify that a producer will be considered to have a share in the insured crop, if under the processor contract, the producer retains possession of the acreage on which the processing beans are grown, is at risk of loss, and the processor contract provides for delivery of the processing beans under specified conditions and at a stipulated base contract price.

11. Section 7(c)—Specify that a commercial bean producer who is also a processor may establish an insurable interest if certain requirements are met. This provision is added to other processor policies.

12. Section 8(a)—Require that any acreage damaged prior to the final planting date must be replanted unless the insurance provider agrees that replanting is not practical.

13. Section 8(b)—Require that rotation requirements shown on the Special Provisions be met for acreage to be insured.

14. Section 9—Add a provision for the insurance to end when the processing beans should have been harvested or when the amount of processing beans delivered to the processor fulfills the producer's processing contract. Also, specify that October 30 is the calendar date for the end of insurance period for Arkansas.

15. Section 10(a)(1)—Clarify that loss of production due to adverse weather conditions is an insurable cause of loss when (1) excessive moisture prevents harvesting equipment from entering the field or prevents timely operation of harvesting equipment, and (2) abnormally hot or cold temperatures cause the insured acreage to be bypassed.

16. Section 10(a)(3)—Clarify that insect damage as an insurable cause of loss does not include damage due to insufficient or improper application of pest control measures.

17. Section 10(a)(4)—Clarify that plant disease as an insurable cause of loss does not include damage due to

insufficient or improper application of disease control measures.

18. Section 10(b)—Clarify that the insurance provider does not cover loss of production due to: (1) bypassed acreage if the acreage is bypassed due to the breakdown or non-operation of equipment or facilities; (2) bypassed acreage if acreage to be bypassed is selected based on the availability of a crop insurance payment; (3) beans not being timely harvested, unless the delay in harvesting is directly due to an insured cause of loss; (4) failure to follow the requirements contained in the processor contract; and (5) damage that occurs to unharvested production after the producer delivers the production required by the processor contract.

19. Section 11—Require that the producer give notice of loss within 3 days of the date harvest should have begun on any acreage that will not be harvested, and document why the acreage was bypassed. Failure to provide such information may result in the insurance provider's determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested, the producer must leave representative samples of the unharvested crop for the insurance provider's inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit and must not be destroyed until the earlier of the insurance provider's inspection or 15 days after notice of loss is given.

20. Section 12(a)—Clarify actions to be taken when acceptable records of production are not provided regarding optional and basic units.

21. Section 12(c)—Clarify that the total production to count will include bypassed acreage unless adequate evidence is provided to show the acreage was bypassed for insurable reasons.

22. Section 12(d)—Clarify determination of production to count for acreage that is not timely harvested due to an uninsured cause of loss.

23. Section 14—Add provisions for providing insurance coverage by written agreement. FCIC has a long-standing policy of permitting certain modification of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover application for, and duration of, written agreements.

Good cause is shown to allow 30 days for comments after this rule is published in the **Federal Register**. This rule improves processing bean crop

insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. Although the contract change date is December 31, 1997, the final rule must be published by July 7, 1997. Publication is required by this date to achieve revision and timely distribution of the actuarial documents thereby allowing the reinsured companies and insureds sufficient time to implement the new provisions. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Canning and processing beans, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 401 and 457 as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The introductory text of Section 401.118 is revised to read as follows:

§ 401.118 Canning and processing bean endorsement.

The provisions of the Canning and processing bean endorsement for the 1988 through 1997 crop years are as follows:

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PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

3. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

4. Section 457.155 is added to read as follows:

§ 457.155 Processing bean crop insurance provisions.

The Processing Bean Crop Insurance Provisions for the 1998 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:

Processing Bean Crop Insurance Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Base contract price. The price stipulated in the contract executed between you and the processor for the grade factor or sieve size that is designated in the Special Provisions without regard to discounts or incentives that may apply.

Bypassed acreage. Land on which production is ready for harvest but is not harvested. Bypassed acreage upon which an indemnity is payable will be considered to have a zero yield for Actual Production History (APH) purposes.

Days. Calendar days.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Final planting date. The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those required by the bean processor contract with the processing company and recognized by the Cooperative State Research, Education, and Extension Service, as compatible with agronomic and weather conditions in the county.

Harvest. The mechanical picking of bean pods from the vines.

Interplanted. Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Planted acreage. Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Processing beans must initially be placed in rows far enough apart to permit mechanical cultivation. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Practical to replant. In lieu of the definition of "Practical to replant" contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability,

condition of the field, time to crop maturity, and marketing window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the processor contract.

Processor. Any business enterprise regularly engaged in processing beans for human consumption, that possesses all licenses and permits for processing beans required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted beans within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow processing beans, and to deliver the bean production to the processor;

(b) The processor's commitment to purchase all the production stated in the contract; and

(c) A base contract price.

Production guarantee (per acre). The number of tons determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

Replanting. Performing the cultural practices necessary to prepare the land to replace the processing bean seed and then replacing the bean seed in the insured acreage with the expectation of growing a successful crop.

Timely planted. Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

Ton. Two thousand (2000) pounds avoirdupois.

Written agreement. A written document that alters designated terms of this policy in accordance with section 14.

2. Unit Division

(a) In addition to the criteria stated in the definition of unit in section 1 (Definitions) of the Basic Provisions (§ 457.8), and if provided for in the Special Provisions, snap type beans will form a basic unit and lima type beans will form a basic unit.

(b) Unless limited by the Special Provisions, these basic units may be divided into optional units if, for each optional unit, you meet all the conditions of this section or if a written agreement to such division exists. Basic units may not be divided into optional units on any basis other than as described in this section.

(c) Optional units will be available only if the processor contract stipulates the number of acres that are under contract and not a specific amount of production. This provision may not be changed by written agreement.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these

provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you.

(e) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(f) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(4) Each optional unit must meet one or more of the following criteria as applicable:

(i) **Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:** Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) **Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:** In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage and non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except the corners of a field in which a center-pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit, they will be a part of the unit containing the irrigated acreage. Non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all other requirements of this section are met.

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

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one price election for all the processing beans 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 processing bean 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 one type, you must choose 100 percent of the maximum price election for all other types.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are March 15.

6. Report of Acreage

In addition to the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the processing beans in the county for which a premium rate is provided by the actuarial table:

(1) In which you have a share;

(2) That are planted for harvest to be canned or frozen;

(3) That are grown under and in accordance with the requirements of a processor contract executed on or before the acreage reporting date and are not excluded from the processor contract at any time during the crop year; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain possession of the acreage on which the processing beans are grown, you are at risk of loss, and the processor contract provides for delivery of the processing beans under specified conditions and at a stipulated base contract price per unit of delivery.

(c) A commercial bean producer who is also a processor may establish an insurable interest if the following requirements are met:

(1) The processor must meet the requirements as defined in these crop provisions;

(2) The Board of Directors, or officers of the processor, must have executed a resolution

that sets forth essentially the same terms as a processor contract. Such resolution will be considered a contract under the terms of the processing bean crop insurance policy; and

(3) Our inspection of the processing facilities determines that they satisfy the definition of a processor contained in these crop provisions.

8. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that the majority of growers in the area would normally not 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.

9. Insurance Period

In lieu of the provisions contained in section 11 (Insurance Period) of the Basic Provisions (§ 457.8), regarding the end of the insurance period, insurance ceases at the earlier of:

(a) The date the processing beans:

- (1) Were destroyed;
- (2) Should have been harvested;
- (3) Were abandoned; or
- (4) Were harvested;

(b) The date you harvested sufficient production to fulfill your processor contract;

(c) Final adjustment of a loss; or

(d) The date for the end of the insurance period in the calendar year in which the processing beans would normally be harvested, unless otherwise agreed to in writing, as follows:

- (1) October 30 for all processing beans in the state of Arkansas;
- (2) October 15 for all processing beans in the states of Delaware, Maryland, and New Jersey;
- (3) September 30 for fresh snap beans in the state of New York;
- (4) September 20 for fresh snap beans in all other states; or
- (5) October 5 for fresh lima beans in all other states.

10. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8):

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions, including but not limited to:

(i) Excessive moisture that prevents the harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures, as determined by us, that causes insured acreage to be bypassed because of an unexpected number of acres over a large producing area are ready for harvest at the same time, and the total production is beyond the normal capacity of the processor to timely harvest or process;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease on acreage not planted to the processing beans the previous crop year, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to an insured cause of loss referred to in section 10(a)(1) through (7), above, that occurs during the insurance period; or

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we do not insure any loss of production:

(1) On bypassed acreage if the acreage is bypassed due to the breakdown or non-operation of equipment or facilities;

(2) On bypassed acreage if acreage to be bypassed is selected based on the availability of a crop insurance payment;

(3) Due to processing beans not being timely harvested unless such delay in harvesting is solely and directly due to an insured cause of loss;

(4) Due to your failure to follow the requirements contained in the processor contract; or

(5) Due to damage that occurs to unharvested production after you deliver the production required by the processor contract.

11. Duties In The Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the processing beans on the unit; or

(2) Discontinuance of harvest on a unit;

(b) Within 3 days of the date harvest should have started on any acreage that will not be harvested and document why the acreage was bypassed. Failure to provide such information will result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested and you wish to destroy the crop, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in each unit and must not be destroyed until the earlier of our inspection or 15 days after notice is given to us.

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during harvest, so that we may inspect any damaged production. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You do not have to delay harvest if notification is timely given.

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 such 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, by type if applicable;

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

(3) 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) Totaling the results in section 12(b)(4);

(6) Subtracting the results in section 12(b)(5) from the results in section 12(b)(3); and

(7) Multiplying the result in section 12(b)(6) by your share.

(c) The total production to count, specified in tons, 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;

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

(E) That is bypassed unless the acreage was bypassed due to a cause of loss stated in section 10(a).

(ii) Production lost due to uninsured causes;

(iii) 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 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 processing bean production from the insurable acreage. The

amount of such production will be determined by dividing the dollar amount as required by the contract for the quality and quantity of the processing beans delivered to the processor by the base contract price per ton.

(d) If any acreage is not timely harvested due to an uninsured cause of loss but is later harvested, the production to count will be the greater of:

(1) The harvested amount of production with no adjustment for quality; or

(2) The amount determined by dividing the dollar amount as required by the contract for the quality and quantity of the processing beans delivered to the processor by the base contract price per ton.

13. Late Planting

Late planting provisions are not applicable to processing beans.

14. Written Agreement

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 14(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy.); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on April 25, 1997.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance Corporation.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 416 and 457

Pea Crop Insurance Regulations; and Common Crop Insurance Regulations, Green Pea Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of green peas. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, separate green peas and dry peas into separate crop insurance provisions, include the current pea crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current pea crop insurance regulations to the 1997 and prior crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business June 2, 1997 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

The amendments set forth in this proposed rule contain information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Green Pea Crop Insurance Provisions." The information to be collected includes a crop insurance application and an acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of green peas that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. For the crop insurance program as a whole, the reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

FCIC is requesting comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.