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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: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes 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.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Nesheim, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt from the purposes of Executive

Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions on information collection requirements currently being reviewed by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under OMB control number 0563-0053. No public comments were received.

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 implications 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 economic impact on a substantial number of small entities. The amount of work required of insurance companies will not increase because the information used to determine eligibility is already maintained at their office and the other information required is already being gathered as a result of the present policy. No additional actions are required as a result of this action on the part of either the producer or the reinsured company. Additionally, the regulation does not require any action on the part of the small entities than is required on the part of the large entities. 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

This final rule has been reviewed in accordance with Executive Order No. 12988 on Civil Justice Reforms. 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

On Thursday, May 1, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 23675 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 amends 7 CFR

401.118 to limit its effect to the 1997 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 27 comments were received from a reinsured company and an insurance service organization. The comments received, and FCIC's responses, are as follows:

Comment: An insurance service organization recommended that several definitions common to most crops be put into the Basic Provisions.

Response: The Basic Provisions, which are currently in the regulatory review process, will include definitions of commonly used terms, and this rule will be revised to delete these definitions when the Basic Provisions are published as a final rule.

Comment: An insurance service organization recommended that the sentence in the definition of "bypassed acreage" that states "Bypassed acreage upon which an indemnity is payable will be considered to have a zero yield for Actual Production History (APH) purposes" be deleted since it is addressed elsewhere and does not belong in the definition.

Response: FCIC has deleted the second sentence from, and revised, the definition of bypassed acreage. Provisions have been added in section 3 to explain bypassed acreage when determining approved yield.

Comment: An insurance service organization and a reinsured company expressed concern with the definition of "good farming practices" which makes reference to "cultural practices generally in use in the county * * * recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county." The commenters questioned whether cultural practices that are not explicitly recognized (or possibly known) by the Cooperative State Research, Education, and Extension Service might exist. The commenters indicated that the term "county" in the definition of "good farming practice" should be changed to "area." The insurance service organization also recommended adding the word "generally" before "recognized by the Cooperative State Research, Education, and Extension Service * * *."

Response: The Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing processing beans. If a producer is following practices currently not recognized as acceptable by the CSREES, such recognition can be

sought by interested parties. Use of the term "generally" will only create an ambiguity and make the definition more difficult to administer. Although the cultural practices recognized by the CSREES may only pertain to specific areas within a county, the actuarial documents are on a county basis. Therefore, no change has been made.

Comment: An insurance service organization recommended that the definition of "replanting" be clarified by inserting "processing beans" between the last two words ("successful" and "crop") of the sentence.

Response: To be consistent with language contained in the proposed rule of the Basic Provisions, FCIC has revised the definition to clarify that "replanting" is performing the cultural practices necessary to prepare the land to replace the seed of the damaged or destroyed crop and then replacing the seed in the insured acreage.

Comment: An insurance service organization recommended that section 2(c) clarify whether optional units are available if the processor contract stipulates the number of contracted acres, or only if the contract does not specify an amount of production.

Response: FCIC agrees and has amended section 2(a) to clarify that for processor contracts that stipulate a specific amount of production to be delivered, the basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill the processor contract, and optional units will not be established. The language in section 2 has also been revised and reformatted to clearly state the requirements for both the acreage based and production based processor contracts.

Comment: A reinsured company and an insurance service organization asked if, in section 2(f)(3) of the proposed rule, measurement of stored production is applicable to processing beans.

Response: Processing beans are not put into storage before processing. Therefore, FCIC has removed this provision.

Comment: An insurance service organization recommended removal of the opening phrase in section 2(f)(4)(ii) of the proposed rule that states "In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, * * *" since section 2(f)(4) of the proposed rule specifies that "Each optional unit must meet one or more of the following criteria, * * *."

Response: FCIC agrees and has revised section 2(b)(5) of the final rule accordingly.

Comment: An insurance service organization suggested that section 3 should be part of the Basic Provisions since it appears to be standard language in most crop provisions.

Response: The requirement that the price election (for each type, varietal group, etc.) have the same percentage relationship to the maximum price does not apply to all crop policies. FCIC considered this suggestion when it revised the Basic Provisions. Section 3(a) is revised to clarify that the percentage of the maximum price election the insured chooses for one type will be applicable to all other types insured under this policy.

Comment: An insurance service organization stated that section 6, which requires the insured to provide a copy of the processor contract no later than the acreage reporting date, could provide a loophole by allowing producers to wait until acreage reporting time to decide if they want to have coverage.

Response: There is no evidence that allowing the producer to provide a copy of the processor contract as late as the acreage reporting date has resulted in producers waiting to decide until the acreage reporting date if they want coverage. Processing bean producers usually have a processor contract in force by the final planting date. The requirement to provide a copy of the processor contract with the acreage report is convenient for the producer. Therefore, no change has been made.

Comment: An insurance service organization questioned whether any processor contract would allow interplanted processing beans or processing beans planted into an established grass or legume. The commenter further indicated that consideration should be given to inserting the language in section 7(a)(4) of the proposed rule into the Basic Provisions.

Response: FCIC agrees that processing beans have seldom, if ever, been interplanted with another crop or planted into an established grass or legume. However, production practices are constantly evolving. FCIC chooses to retain the provisions of section 7(a)(3) of the final rule to accommodate such developments if they should occur. In addition, the interplanted language is not consistent among the crop policies and, therefore, will be retained in the crop provisions.

Comment: An insurance service organization indicated that language in section 7(b) that states "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, * * * suggests that only a landlord would have a share in the insured crop. The commenter questioned whether the provision in section 7(b) is already covered in sections 7(a)(1) and (3).

Response: The language in section 7(b) was intended to cover producers who have a crop share agreement, rent, or own acreage. The word "possession" has been changed to "control" for clarification. Section 7(a) specifies requirements for insurance, while section 7(b) specifies requirements for a share in the crop. Therefore, both provisions are necessary.

Comment: A reinsured company and an insurance service organization questioned whether section 9(b), which states that the insurance period ceases on the date you harvested sufficient production to fulfill your processor contract, conflicts with section 12(a) that states, "We will determine your loss on a unit basis." The commenters questioned whether production to count from an appraisal prior to harvest would be included when determining fulfillment of the processor contract. The insurance service organization also questioned if the insured would know when enough production is harvested to fulfill the processor contract. This commenter asked if production in excess of the contracted amount is considered production to count for APH or loss adjustment or whether the processor settlement sheet is an acceptable record. The insurance service organization noted that the provisions in section 9(b) state "* * * the insurance period ends when the production delivered to the processor equals the amount of production stated in the processor contract." However, the commenter questioned whether "delivered to" is the same as "accepted by" the processor.

Response: Section 9(b) does not conflict with section 12(a). For processor contracts based on a stated amount of production, FCIC is only insuring the contract amount and the producer can only obtain basic units by processor contract. Therefore, once the contract is fulfilled, insurance ceases on the unit and there is no payable loss. If the contract is not fulfilled and there is still unharvested production, any insurable cause of loss is covered. With respect to the issue of production from appraised acreage, such production will not count toward fulfillment of the processor contract, although it may be used to determine production to count for the unit or the producer's approved yield if the acreage is not bypassed due to an insurable cause of loss that renders

such production unacceptable to the processor. With respect to when the producer would know when the processor contract was fulfilled, records are kept as production is delivered to the processor. Therefore, the producer can determine when the contract was fulfilled. All production from the unit, including any excess of the amount stated in the contract, will be considered as production to count when determining the producer's approved yield. For the purposes of loss adjustment, the amount shown on the settlement sheet, plus any appraised production that was not bypassed due to an insurable cause that rendered the production unacceptable to the processor, will be included as production to count. FCIC has revised section 9(b) to clarify that insurance ceases when the contract is fulfilled if the processor contract stipulates a specific amount of production.

Comment: An insurance service organization questioned the provision in section 10(a)(4), which states that insurance is provided against "Plant disease on acreage not planted to the processing beans the previous crop year, * * *". The commenter assumed this would apply even if a rotation requirement was not specified in the Special Provisions.

Response: This provision has been revised to specify that insurance coverage will be provided against plant disease on acreage not planted to processing beans the previous crop year, unless provided for in the Special Provisions or by written agreement, but not damage due to insufficient or improper application of disease control measures.

Comment: An insurance service organization suggested changing the wording in section 10(a)(8) to eliminate reference to 10(a)(1) through (7) because the causes of loss have been identified.

Response: Referencing 10(a)(1) through (7) makes it clear that failure of the irrigation water supply must be due to these specific causes of loss.

Therefore, no change has been made.

Comment: An insurance service organization questioned how to determine or enforce the provision in section 10(b) which states that insurance coverage is not provided if acreage is bypassed based on "* * * the availability of a crop insurance payment."

Response: The adjuster should be able to make this determination based on factors such as a harvest pattern exists that clearly indicates the processor is bypassing producers with crop insurance coverage in favor of producers without crop insurance, even though the

quality of the crop is similar. Language has been added to state that an indemnity will be denied or have to be repaid if it is determined that the bypassed acreage was due to the availability of a crop insurance payment.

Comment: An insurance service organization questioned a need for section 9(b) of the proposed rule, which states that the insurance period ends on "The date you harvested sufficient production to fulfill your processor contract," because section 10(b)(5) of the proposed rule states that loss of production will not be insured if it is "Due to damage that occurs to unharvested production after you deliver the production required by the processor contract." The commenter indicated that this provision is not necessary since any damage occurring after delivery would be outside the insurance period, as indicated in section 9(b).

Response: FCIC agrees and section 10(b)(5) has been deleted.

Comment: An insurance service organization stated that the language in section 11(c) does not address timely notice if damage is discovered less than 15 days prior to harvest.

Response: FCIC agrees and has revised section 11(c) to clarify that an immediate notice of loss is required if damage is discovered within 15 days prior to harvest or during harvest.

Comment: An insurance service organization stated that section 12(b), which explains how a claim is settled, is too wordy and difficult to follow.

Response: This section has been revised to clarify the settlement of claims calculation, including the addition of an example.

Comment: An insurance service organization suggested that bypassed acreage payments by the processor be considered to have some value to count as with salvage grains.

Response: There is nothing in this policy which precludes a producer from obtaining any other form of insurance against losses as long as such insurance is not under the Federal Crop Insurance Act. Since the producer contributes to the unharvested acreage pool, such payment will not be considered when determining production to count.

Comment: An insurance service organization asked if section 12(c)(1)(i)(E) of the proposed rule permits bypassed acreage to be appraised as production to count.

Response: FCIC has removed section 12(c)(1)(i)(E) of the proposed rule and added section 12(c)(1)(iii) of the final rule to clarify that production to count includes appraised production on

acreage that is bypassed unless the acreage was bypassed due to a cause of loss which would not be acceptable under the terms of the processor contract.

Comment: An insurance service organization stated that section 12(c)(1)(iii) of the proposed rule should not allow the insured to defer settlement and wait for a later, generally lower, appraisal, especially on crops that have a short "shelf life."

Response: A later appraisal will be necessary only if the insurance provider agrees that such an appraisal would result in a more accurate determination and if the producer continues to care for the crop. If the producer does not continue to care for the crop, the original appraisal will be used. Therefore, no change has been made.

Comment: A reinsured company and an insurance service organization asked if there will be any provisions for late or prevented planting.

Response: FCIC agrees that a late planting period for processing beans may be appropriate for some growing areas. Therefore, section 13 is revised to provide a late planting period if allowed by the Special Provisions and the insured provides written approval from the processor by the acreage reporting date that it will accept the production from the late planted acreage. Prevented planting provision has also been added if available in the Basic Provisions.

Comment: A reinsured company and an insurance service organization suggested that written agreements should not be limited to one year. If no substantive changes occur from one year to the next, allow the written agreement to be continuous.

Response: Written agreements are intended to supplement policy terms or permit insurance in unusual situations that require modification of the otherwise standard insurance provisions. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize written agreement exceptions to assure that the insured is well aware of the specific terms of the policy. Therefore, no change has been made to the requirement that written agreements be renewed each year. FCIC has proposed that the Written Agreement provisions be included in the Basic Provisions.

In addition to the changes described above, FCIC has made the following minor editorial changes and has amended the following Processing Bean Crop Insurance Provisions:

1. Amended and clarified the paragraph preceding section 1 to

include the Catastrophic Risk Protection Endorsement.

2. Amended the definitions of "base contract price," "bypassed acreage," "processor," and "processor contract" for clarification. The definition of "practical to replant" is amended to clarify that it will not be considered practical to replant unless the acreage can produce at least 75 percent of the approved yield and the processor agrees in writing that it will accept the production from the replanted acreage. The definition of "processor contract" is amended to clarify that multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract unless the contracts are for different types of processing beans. Added the definitions of "approved yield," "processing beans," and "type." A definition of "broker" is added and pertinent sections of the policy have been revised to accommodate those producers who have a broker as an intermediary with a processor.

3. Section 2—Removed the provision in section 2(a) of the proposed rule that allowed for establishment of a basic unit by snap type beans or lima type beans, if provided for in the Special Provisions. Section 2(b)(5)(C) of the final rule is added to provide optional units by processing bean type. This change makes the provision consistent with other crop provisions offering optional units by type. In addition, the reference to "written agreement" was removed from section 2(b) of the proposed rule and was added to section 2(b)(5) of the final rule to clarify which provision may be revised by written agreement.

4. Section 7—Removed section 7(a)(2) of the proposed rule. This provision is not necessary since section 7(a)(3) of the proposed rule stated that the processing beans must be grown under, and in accordance with, the requirements of a processor contract. If grown under a processor contract, the processing beans will be canned or frozen. Section 7(c) is amended for clarity.

5. Section 9—Changed the end of insurance to October 5 for all processing beans in the states of Idaho, Oregon, and Washington. Section 9(a)(2) is amended to clarify that the insurance period ends when the crop should have been harvested but was not harvested. Also, the word "fresh" has been removed from sections 9(d)(3), (4) and (5) because these Crop Provisions are not applicable to fresh market crops.

6. Section 10—Amended section 10(a) for clarity. Section 10(b) is reformatted and amended for clarity. Also, removed section 10(b)(3) of the proposed rule which stated "Due to processing beans

not being timely harvested unless such delay in harvesting is solely and directly due to an insured cause of loss;" because it is unnecessary.

7. Section 11—Clarified that the insured must give notice of loss within 3 days after the date harvest should have started if the acreage will not be harvested. The insured must also provide documentation stating why the acreage is bypassed.

8. Section 12—A new section 12(c)(3) of the final rule is added to clarify that appraised production will include all harvested production from any other insurable units that have been used to fill the processor contract for a unit. Section 12(d) of the proposed rule is deleted because of duplication with section 12(c)(2).

9. Section 14—Clarified that only terms of this policy that are specifically designated for the use of written agreements may be altered by written agreement if the listed conditions are met.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Canning and processing beans, Canning and processing bean endorsement.

Final Rule

Accordingly, for reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 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 § 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:

* * * * *

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:

UNITED STATES DEPARTMENT OF AGRICULTURE**Federal Crop Insurance Corporation**

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Processing Bean Crop Provisions

If a conflict exists among the policy provisions the order of priority is as follows: (1) the Catastrophic Risk Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions (§ 457.8) with (1) controlling (2), etc.

1. Definitions

Approved yield. Your yield determined in accordance with 7 CFR part 400 subpart G.

Base contract price. The price stipulated in the processor contract for the grade factor or sieve size that is designated in the Special Provisions, if applicable, without regard to discounts or incentives that may apply.

Broker. A business enterprise that has all the licenses and permits required by the state in which it operates, and has a long term agreement in writing with a processor to purchase and deliver processing beans.

Bypassed acreage. Land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

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, 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 the replanted acreage can produce at least 75 percent of the approved yield, and the processor agrees in writing that it will accept the production from the replanted acreage.

Processing beans. Lima, snap, or other bean types identified in the Special Provisions that are grown under a processor contract to be canned or frozen and sold for human consumption.

Processor. Any business enterprise regularly engaged in canning or freezing 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 the contracted beans within a reasonable amount of time after harvest.

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

- (a) The producer's commitment to plant and grow processing beans, and to deliver the bean production to the processor or broker;
- (b) The processor's, or broker's, commitment to purchase all the production stated in the processor contract; and
- (c) A base contract price.

Multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract unless the contracts are for different types of processing beans.

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

Replanting. Performing the cultural practices necessary to prepare the land to replace the seed of the damaged or destroyed crop and then replacing the seed in the insured acreage.

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 (2,000) pounds avoirdupois.

Type. A category of processing beans identified as a type in the Special Provisions.

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

2. Unit Division

For processor contracts that stipulate:

(a) The amount of production to be delivered:

(1) In lieu of the definition of unit in section 1 of the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill the processor contract;

(2) There will be no more than one basic unit for each processor contract;

(3) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(4) Optional units will not be established.

(b) The number of acres to be planted:

(1) Unless limited by the Special Provisions, a unit as defined in section 1 of the Basic Provisions (basic unit) may be divided into optional units if, for each optional unit, you meet all the conditions of this section. Basic units may not be divided into optional units on any basis other than as described in this section;

(2) 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;

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

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

(i) 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;

(ii) 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; and

(iii) You must maintain records of marketed 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

(5) Each optional unit must meet one or more of the following criteria, as applicable, unless otherwise specified by written agreement:

(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, such

as Spanish grants, as the equivalent of sections for unit purposes. In areas that have not been surveyed using sections or their equivalent systems 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:* 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.

(iii) *Optional Units by Types:* Optional units may be established by type. To qualify as separate optional units, the acreage of one type may not continue into the acreage of another type in the same rows or planting pattern.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) 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. The percentage of the maximum price elections you choose for one type will be applicable to all other types insured under this policy.

(b) The appraised production from bypassed acreage that could have been accepted by the processor will be included when determining your approved yield.

(c) Acreage that is bypassed because it was damaged by an insurable cause of loss will be considered to have a zero yield when determining your approved yield.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, 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 of the Basic Provisions, 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 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
- (3) 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 control 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.

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

- (1) The producer must comply with these Crop Provisions;
- (2) Prior to the sales closing date, the Board of Directors or officers of the processor or the broker must execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a processor contract under this policy; and
- (3) Our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

8. 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 the majority of producers 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 acreage that does not meet any rotation requirements, if applicable, contained in the Special Provisions.

9. Insurance Period

In lieu of the provisions contained in section 11 of the Basic Provisions, 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 but were not harvested;
 - (3) Were abandoned; or
 - (4) Were harvested;
- (b) The date you harvest sufficient production to fulfill your processor contract

if the processor contract stipulates a specific amount of production to be delivered;

- (c) Final adjustment of a loss; or
- (d) The date shown below 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) October 5 for all processing beans in the states of Idaho, Oregon, and Washington;
 - (4) September 30 for snap beans in the state of New York;
 - (5) September 20 for snap beans in all other states; or
 - (6) October 5 for lima beans in all other states.

10. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions:

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

- (1) Adverse weather conditions, including:
 - (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 that cause an unexpected number of acres over a large producing area to be ready for harvest at the same time, affecting the timely harvest of a large number of such acres or the processing of such production is beyond the capacity of the processor, either of which causes the acreage to be bypassed.
- (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 processing beans the previous crop year. (In certain instances, contained in the Special Provisions or in a written agreement, acreage planted to processing beans the previous year may be covered. Damage due to insufficient or improper application of disease control measures is not covered);

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss contained in section 10 (a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure any loss of production due to:

- (1) Bypassed acreage because of:
 - (i) The breakdown or non-operation of equipment or facilities; or
 - (ii) The availability of a crop insurance payment. We may deny any indemnity immediately in such circumstance or, if an indemnity has been paid, require you to repay it to us with interest at any time acreage was bypassed due to the availability of a crop insurance payment; or
- (2) Your failure to follow the requirements contained in the processor contract.

11. Duties In The Event of Damage or Loss

In addition to the notice required by section 14 of the Basic Provisions, 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 on which unharvested production remains.

(b) Within 3 days after the date harvest should have started on any acreage that will not be harvested unless we have previously released the acreage. You must also provide acceptable documentation of the reason the acreage was bypassed. Failure to provide such documentation 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. The samples must not be destroyed until the earlier of our inspection or 15 days after notice is given to us; and

(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 the 15 day period or during harvest. 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 are not required to delay harvest.

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 of section 12(b)(1) by the respective price election, by type if applicable;

(3) Totalling the results of section 12(b)(2) if there are more than one type;

(4) Multiplying the total production to count (see section 12(c)), for each type if applicable, by its respective price election;

(5) Totalling the results of section 12(b)(4) if there are more than one type;

(6) Subtracting the results of section 12(b)(4) from the results of section 12(b)(2) if there is only one type or subtracting the results of section 12(b)(5) from the result of section 12(b)(3) if there are more than one type; and

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

For example:

You have a 100 percent share in 100 acres of snap type processing beans in the unit, with a guarantee of 3.0 tons per acre and a price election of \$110.00 per ton. You are

only able to harvest 200 tons. Your indemnity would be calculated as follows:

- (1) 100 acres \times 3.0 tons = 300 tons guarantee;
- (2) 300 tons \times \$110.00 price election = \$33,000.00 value of guarantee;
- (3) 200 tons \times \$110.00 price election = \$22,000.00 value of production to count;
- (4) \$33,000.00 - \$22,000.00 = \$11,000.00 loss; and
- (5) \$11,000.00 \times 100 percent = \$11,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of lima type processing beans in the same unit, with a guarantee of 1.0 ton per acre and a price election of \$225.00 per ton. You are only able to harvest 75 tons. Your total indemnity for both snap and lima types processing beans would be calculated as follows:

- (1) 100 acres \times 3.0 tons = 300 tons guarantee for the snap type, and 100 acres \times 1.0 ton = 100 tons guarantee for the lima type;
- (2) 300 tons \times \$110.00 price election = \$33,000.00 value of guarantee for the snap type, and 100 tons \times \$225.00 price election = \$22,500.00 value of guarantee for the lima type;
- (3) \$33,000.00 + \$22,500.00 = \$55,500.00 total value of guarantee;
- (4) 200 tons \times \$110.00 price election = \$22,000.00 value of production to count for the snap type, and 75 tons \times \$225.00 price election = \$16,875.00 value of production to count for the lima type;
- (5) \$22,000.00 + \$16,875.00 = \$38,875.00 total value of production to count;
- (6) \$55,500.00 - \$38,875.00 = \$16,625.00 loss; and
- (7) \$16,625.00 loss \times 100 percent = \$16,625.00 indemnity payment.

(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; 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 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:

(i) The usable tons of processing beans shown on the processor settlement sheet, if available; or

(ii) Determined by dividing the dollar amount paid, payable, or which should have been paid under the terms of the processor contract for the quality and quantity of beans to be delivered to the processor by the base contract price per ton; and

(3) All harvested processing bean production from any other insurable units that have been used to fulfill your processor contract for this unit.

13. Late and Prevented Planting

Late planting provisions are not applicable to processing beans unless allowed by the Special Provisions and you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest. Prevented planting insurance will be available if contained in the Basic Provisions.

14. Written Agreement

Terms of this policy that are specifically designated for the use of written agreements 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 October 27, 1997.

Suzette M. Dittrich,

Deputy Manager, Federal Crop Insurance Corporation.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 450 and 457

Prune Crop Insurance Regulations; and Common Crop Insurance Regulations, Prune Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of prunes. 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 prune 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 prune crop insurance regulations to the 1997 and prior crop years.

EFFECTIVE DATE: October 30, 1997.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64313, 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

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions on information collection requirements currently being reviewed by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

under OMB control number 0563-0053. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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. Therefore, 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 implications 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 economic impact on a substantial number of small entities. The amount of work required of insurance companies will not increase because the information used to determine eligibility is already maintained at their office. The other information required is already being gathered as a result of the present policy. No additional requirements are imposed on the producer or reinsured company as a result of this regulation. Additionally, the regulation does not impose any burden on small entities than it does on large entities. 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

This rule has been reviewed in accordance with Executive Order No. 12988 on civil justice reform. 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

On Thursday, July 10, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 37000 to add to the Common Crop Insurance Regulations (7 CFR part 457) a new section, 7 CFR 457.133, Prune 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 prunes found at 7 CFR part 450 (Prune Crop Insurance Regulations). FCIC also amends 7 CFR part 450 to limit its effect to the 1997 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 13 comments were received from the reinsured companies and an insurance service organization. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization recommended that several definitions common to most crops be put into the Basic Provisions.

Response: The Basic Provisions, which are currently in the regulatory review process, will include definition of commonly used terms and this rule will be revised to delete those definitions when the Basic Provisions are published as a final rule.

Comment: A reinsured company and an insurance service organization expressed concern with the definition of "good farming practice," which states