production to count will be allocated to the unit contributing 500 hundredweight and 750 hundredweight to the unit contributing 1500 hundredweight to the stored production. This provision does not eliminate or change any other requirement contained in this policy to provide or maintain separate records of acreage or production by unit.

5. The extended coverage provided by this endorsement will be applicable only if:

(a) Insured potatoes are damaged within the insurance period by an insured cause other than freeze that later results in:

(1) Tuber rot as defined in the Northern Potato Crop Provisions, to the extent that 5.1 percent (by weight) or more of the insured production is affected;

(2) Internal defects to the extent that such defects are in excess of the amount allowed for the U.S. grade standard you elected for purposes of coverage under the Northern Potato Crop Insurance Quality Endorsement. Such defects must not be separable from undamaged production using methods used by the packers or processors to which you normally deliver your potato production. This coverage is applicable only to production covered under the Northern Potato Crop Insurance Quality Endorsement; or

(3) A specific gravity lower than the lesser of 1.074 or the minimum acceptable amount specified in the processor contract, or a fry color of No. 3 or darker due to either sugar exceeding 10 percent or sugar ends exceeding 19 percent. This coverage is applicable only to production covered under the Northern Potato Crop Insurance Processing Quality Endorsement.

(b) You notify us within 72 hours of your initial discovery of any damage that has or that may later result in the quality deficiencies specified in section 5(a);

(c) The percentage of production that has any of the quality deficiencies specified in section 5(a) is determined no later than 60 days after the end of the insurance period; and

(d) The potatoes are evaluated and quality (grade) determinations are made by us, a laboratory approved by us, or a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, in accordance with the United States Standards for Grades of Potatoes. Samples of damaged production must be obtained by us or party approved by us prior to the sale or disposal of any lot of potatoes. Or, if production is not sold or disposed of within 60 days of the end of the insurance period, samples must be obtained within 60 days of the end of the insurance period.

Signed in Washington, D.C., on December 5, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–32491 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 437 and 457

Sweet Corn Insurance Regulations; and Common Crop Insurance Regulations, Processing Sweet Corn 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 sweet corn. 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 sweet corn 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 sweet corn crop insurance regulations to the 1997 and prior crop years.

DATES: Effective December 12, 1997.

FOR FURTHER INFORMATION CONTACT: Stephen Hoy, 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 for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

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 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 reform. The provisions of this rule will not have a retroactive effect. 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 action against FCIC 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 23690–23695 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.154, Processing Sweet Corn 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 sweet corn found at 7 CFR part 437 (Sweet Corn Crop Insurance Regulations). FCIC also amends 7 CFR part 437 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, data, and opinions. A total of 30 comments were received from an insurance service organization, a reinsured company, and a crop insurance agent. 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 include definitions of commonly used terms, and we have revised this rule to remove the definitions of ''approved yield,'' ''days,'' ''FSA,'' ''final planting date,'' ''interplanted,'' ''irrigated practice,'' ''production guarantee (per acre),'' ''replanting,'' ''timely planted,'' and ''written agreement.'' The definition of ''planted acreage'' is amended to remove language that is contained in the Basic Provisions.

Comment: An insurance service organization recommended that the sentence in the definition of ''bypassed acreage'' that states ''Bypassed acreage on 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, as unnecessary, the second sentence of the definition of bypassed acreage. A provision addressing when acreage will be considered to have a zero yield for APH purposes is included in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities).

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 sweet corn. If a producer is following practices currently not recognized as acceptable by 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 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 ''sweet corn'' between the last two words (''successful'' and ''crop'') of the sentence.

Response: This definition is contained in the Basic Provisions, and is, therefore, removed from these crop provisions.

Comment: An insurance service organization recommended that section 2(b) of the proposed rule 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 to specify that for processor contracts that stipulate a specific amount of production to be delivered, the basic unit will consist of all the acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor, and optional units will not be established for production based processor contracts. 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. In addition, language in this section that is common with other crop provisions has been removed since it is contained in the Basic Provisions.

Comment: An insurance service organization questioned whether verification of production from an optional unit using ''measurement of stored production,'' as specified in section 2(e)(3) of the proposed rule applies to processing sweet corn.

Response: Sweet corn is 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(e)(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(e)(4) of the proposed rule specifies that ''Each optional unit must meet one or more of the following criteria, * * *''

Response: The unit division provisions for any processor contract that stipulates the number of acres to be planted have been removed from these provisions, since the provisions are contained in the Basic Provisions.

Comment: An insurance service organization stated that the language in section 3(a), which provides guidelines for selection of price elections, should be moved to the Basic 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. Therefore, section 3 should not be part of the Basic Provisions.

Comment: An insurance service organization questioned whether the sentence ''Any other measured production will be converted to an unhusked ear weight equivalent'' is needed in section 3(b) since it is stated in section 12(c)(2).

Response: Section 3(b) addresses the insurance guarantee while section

12(c)(2) addresses production to count. The provisions clarify that both are expressed as unhusked ear weight, and any other measured production will be converted to unhusked ear weight. Therefore, no change has been made.

Comment: An insurance service organization stated that requiring the producer 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 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. Sweet corn 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 sweet corn or sweet corn 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 sweet corn has 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 sweet corn is 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) of the proposed rule.

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 coverage on the crop, while section 7(b) specifies requirements for an insurable share in the crop. Therefore, both provisions are necessary.

Comment: An insurance service organization and a reinsured company questioned whether the provision in section 9(b), which states that the insurance period ceases on the date sufficient production is harvested to fulfill the producer's processor contract, conflicts with the provision in 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 questioned whether the insured would know when enough production is harvested to fulfill the processor contract. This commenter asked if production exceeding the contracted amount is considered production to count for APH or loss adjustment or whether the processor settlement sheet is the only acceptable record. The insurance service organization suggested 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 sweet corn contract.'' However, the commenter also 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 a basic unit 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 will 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 whether the producer will know when the processor contract is fulfilled, records are kept as production is delivered to the processor. Therefore, the producer can determine when the contract is 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 sweet corn the previous crop year * * *.'' The commenter assumed this would apply even if a rotation requirement was not specified in the Special Provisions.

Response: FCIC agrees that if a rotation requirement is not specified in the Special Provisions, insurance coverage should be provided against plant disease if sweet corn was planted the previous crop year. Section 10(a)(4) has been revised accordingly.

Comment: An insurance service organization suggested changing the wording in section 10(a)(8) to eliminate the reference to 10(a)(1) through (7) and state ''Failure of the irrigation water supply, if due to an insured cause of loss.''

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 the provision in section 10(b)(1)(ii), which states that insurance coverage is not provided if acreage is bypassed based on the availability of a crop insurance payment, is to be enforced.

Response: The adjuster should be able to make this determination based on various factors such as if 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 bypassed acreage was due to the availability of a crop insurance payment.

Comment: An insurance service organization questioned a discrepancy between section 9(b) of the proposed rule, which states that insurance ceases on ''The date you harvest sufficient production to fulfill your processor

contract,'' and section 10(b)(5) of the proposed rule, which states that loss of production will not be insured if ''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 has deleted section 10(b)(5).

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 indicated that payments by the processor for bypassed acreage should be considered to have value to count as is done with salvaged 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 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 only be necessary if the company and the insured do not agree on the appraisal or if the company believes that the crop needs to be carried further. The producer must continue to care for the crop in accordance with recognized good farming practices 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: An insurance service organization commented on section 12(c)(2) of the proposed rule which includes the statement ''* * * production will be determined by dividing the dollar amount as required by the contract for the quality and quantity of sweet corn delivered to the processor by the base contract price per ton.'' The commenter did not oppose this method but requested to know why it was used to determine production to count.

Response: FCIC has revised section 12(c)(2) to specify that production to count of harvested sweet corn should be determined from the usable tons specified on the processor settlement sheet. In addition, FCIC has amended the language in section 12(c) to clarify that, in the absence of a processor settlement sheet, production to count is determined by dividing the dollar amount paid, payable, or which should have been paid under the terms of the processor contract for the quantity of sweet corn delivered to the processor by the base contract price per ton. Since premiums or discounts for quality are not normally included in processor contracts for sweet corn, the term ''quality'' was removed from this provision.

Comment: A crop insurance agent stated that late planting provisions should be available for processing sweet corn since some sweet corn is planted late in most years. The insurance agent stated that late planting provisions will not affect the processor's ability to timely harvest and process the sweet corn. A reinsured company asked if provisions will be available for late and prevented planting. An insurance service organization expressed support for eliminating the late planting option and asked if prevented planting would be available.

Response: FCIC agrees that a late planting period for processing sweet corn 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 if the producer provides written approval from the processor by the acreage reporting date that it will accept the production from the late planted acreage. Section 14 provides a prevented planting coverage of 40 percent of the producers production guarantee for timely planted acreage. If the producer has limited or additional coverage and pays an additional premium, the prevented planting coverage may be increased to the levels specified in the actuarial documents.

Comment: An insurance service organization and a reinsured company recommended removal of the requirement that written agreements be renewed each year if there are no significant changes to the farming operation. The insurance service organization stated that section 14(d) should perhaps refer to the date specified in the agreement instead of limiting the agreement for one year. An insurance service organization recommended that section 14 be put into the Basic Provisions.

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 will be made to the requirement that written agreements be renewed each year. The written agreement provisions are contained in the Basic Provisions and, therefore, have been removed from these crop provisions.

In addition to the changes described above, FCIC has made minor editorial changes and has amended the following Processing Sweet Corn Provisions:

1. Amended and clarified the paragraph preceding section 1 to include the Catastrophic Risk Protection Endorsement.

2. Section 1—Amended the definitions of ''base contract price,'' ''bypassed acreage,'' and ''processor'' for clarity. 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. This provision guards against the situation where a loss is claimed under one contract, but a surplus is grown under the other contract for the same crop. The definition of ''usable tons'' is amended to clarify that the amount includes the quantity of sweet corn for which the producer is compensated or should have been compensated by the processor.

3. Section 3(b)—Clarified that the insurance guarantee per acre is expressed as tons of unhusked ear weight.

4. Section 3(c)—Added a provision to clarify that appraised production on bypassed acreage that is not bypassed due to an insurable cause of loss will be

considered when determining the producer's approved yield.

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

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. Assuming the acreage is not intentionally bypassed, FCIC believes that processors make sound harvesting decisions based on the condition and economic value of the crop as a whole. Therefore, FCIC believes that section 10(b)(3) is unnecessary and adds no value to these provisions.

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

8. Section 12—Deleted section 12(c)(1)(i)(E) of the proposed rule, and inserted amended language as a new section 12(c)(1)(iii) of the final rule to clarify when appraised production will include production on bypassed acreage. 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).

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the processing sweet corn insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The contract change date for the 1998 crop year is December 31, 1997. It is, therefore, imperative that these provisions be made final before that date so that the reinsured companies and insureds may have 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 437 and 457

Crop insurance, Processing sweet corn, Sweet corn crop insurance regulations.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 437 and 457, as follows:

PART 437—SWEET CORN CROP INSURANCE REGULATIONS FOR THE 1985 THROUGH 1997 CROP YEARS

1. The authority citation for 7 CFR part 437 is revised to read as follows:

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

2. The part heading is revised to read as set forth above.

3. The subpart heading ''Subpart-Regulations for the 1985 and Succeeding Crop Years'' is removed.

4. Section 437.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 437.7 The application and policy.

* * * * *

(d) The application is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Sweet Corn Insurance Policy for the 1985 through 1997 crop years are as follows:

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

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

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

6. Section 457.154 is added to read as follows:

§ 457.154 Processing sweet corn crop insurance provisions.

The Processing Sweet Corn 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 Sweet Corn Crop Provisions

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

1. Definitions.

Base contract price. The price stipulated on the processor contract without regard to discounts or incentives that may apply.

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

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 sweet corn 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 removal of the ears from the stalks for the purpose of delivery to the processor.

Planted acreage. In addition to the definition contained in the Basic Provisions, sweet corn 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.

Processor. Any business enterprise regularly engaged in canning or freezing processing sweet corn for human consumption, that possesses all licenses and permits for processing sweet corn 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 processing sweet corn 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 sweet corn, and to deliver the sweet corn production to the processor;

(b) The processor'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.

Ton. Two thousand (2,000) pounds avoirdupois.

Unhusked ear weight. Weight of the seed-bearing spike of sweet corn including the membranous or green outer envelope.

Usable tons. The quantity of sweet corn for which the producer is compensated or should have been compensated by the processor.

2. Unit Division.

(a) For processor contracts that stipulate the amount of production to be delivered:

(1) In lieu of the definition contained in 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 contracts with each processor;

(i) There will be no more than one basic unit for all production contracted with each processor contract;

(ii) 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

(2) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable.

(b) For any processor contract that stipulates the number of acres to be planted, the provisions contained in section 34 of the Basic Provisions will apply.

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 sweet corn 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 insurance guarantee per acre is expressed as tons of unhusked ear weight. Any other measured production will be converted to an unhusked ear weight equivalent.

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

(d) 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 sweet corn in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

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

(3) That is 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 sweet corn is grown, you are at risk of loss, and the processor contract provides for delivery of sweet corn under specified conditions and at a stipulated base contract price.

(c) A commercial sweet corn producer who is also a processor 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 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 any acreage that does not meet the 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 sweet corn:

(1) Was destroyed;

(2) Should have been harvested but was not harvested;

(3) Was abandoned; or

(4) Was 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) Unless otherwise agreed to in writing, the calendar date for the end of the insurance period in which the sweet corn would normally be harvested as follows:

(1) September 30 in Malheur County, Oregon, all Idaho counties, and all Iowa counties;

(2) October 20 in all other Oregon counties, and in all Washington counties; or

(3) September 20 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 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, but not damage due to insufficient or improper application of disease control measures or as otherwise limited by the Special Provisions;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss listed 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 requirements of section 14 of the Basic Provisions, you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the sweet corn 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, 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 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) Totaling 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) Totaling 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 type A processing sweet corn in the unit, with a guarantee of 3.0 tons per acre and a price election of $50.00 per ton. You are only able to harvest 200 tons. Your indemnity would be calculated as follows:

(1) 100 acres×3.0 tons=300 tons guarantee;
(2) 300 tons×$50.00 price election=$15,000.00 value of guarantee;
(4) 200 tons×$50.00 price election=$10,000.00 value of production to count;
(6) $15,000.00 − $10,000.00=$5,000.00 loss;
(7) $5,000.00×100 percent=$5,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of type B processing sweet corn in the same unit, with a guarantee of 4.0 tons per acre and a price election of $45.00 per ton. You are only able to harvest 350 tons. Your total indemnity for both types A and B would be calculated as follows:

(1) 100 acres×3.0 tons=300 tons guarantee for type A, and
100 acres×4.0 tons=400 tons guarantee for type B;
(2) 300 tons×$50.00 price election=$15,000.00 value of guarantee for type A, and
400 tons×$45.00 price election=$18,000.00 value of guarantee for type B;
(3) $15,000.00 + $18,000.00=$33,000.00 total value of guarantee;
(4) 200 tons×$50.00 price election=$10,000.00 value of production to count for type A, and
350 tons×$45.00 price election=$15,750.00 value of production to count for type B;
(5) $10,000.00+$15,750.00=$25,750.00 total value of production to count;
(6) $33,000.00 − $25,750.00=$7,250.00 loss;
(7) $7,250.00 loss×100 percent=$7,250.00 indemnity payment.

(c) The total production to count, specified in tons of unhusked ear weight, 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 sweet corn production from the insurable acreage. The amount of such production will be:

(i) The usable tons of processing sweet corn 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 quantity of the sweet corn delivered to the processor by the base contract price per ton; and

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

The total production to count will be expressed as an unhusked ear weight. Any other measure of production will be converted to an unhusked ear weight equivalent.

13. Late Planting.

A late planting period is not applicable to processing sweet corn 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.

14. Prevented Planting.

Your prevented planting coverage will be 40 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to the levels specified in the actuarial documents.

Signed in Washington, D.C., on December 5, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–32493 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 443 and 457

RIN 0563–AA78

Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations, Hybrid Seed Corn 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 hybrid seed corn. 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 hybrid seed crop insurance regulations under the Common Crop