DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Onion 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 onions. The intended effect of this action is to provide policy changes to better meet the needs of the insured by adding provisions that allow flexibility in setting stage guarantees, allow optional units by section, section equivalent or farm serial numbers, modify the termination date for one county in Oregon and one county in Washington, and reduce the production to count for ''damaged onions'' that are subsequently sold. The changes will be effective for the 2000 and subsequent crop years.

EFFECTIVE DATE: June 23, 1999.

FOR FURTHER INFORMATION CONTACT: William Klein, Insurance Management Specialist, 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 12866

This rule has been determined to be exempt for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through April 30, 2001.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 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 UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 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 the insurance companies will not increase because the information used to determine eligibility must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Additionally, the regulation does not require any action on the part of small entities than is required on the part of 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 12372

This program is not subject to the provisions of Executive Order 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 12988

This rule has been reviewed in accordance with Executive Order 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 any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic 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 duplicate regulations and improve those that remain in force.

Background

On Thursday, February 18, 1999, FCIC published a notice of proposed rulemaking in the **Federal Register** at 63 FR 46706–46708 to revise 7 CFR 457.135, Onion Crop Insurance Provisions, effective for the 2000 and succeeding crop years.

Following publication of the proposed rule on February 18, 1999, the public was afforded 45 days to submit written comments and opinions. A total of 28 comments were received from 2 reinsured companies, an insurance service organization, a producer association, a county cooperative association, and an onion producer. The comments received and FCIC's responses are as follows:

Comment: A reinsured company expressed concern the proposed language for ''production guarantee'' states in part ''unless otherwise specified in the Special Provisions'' and likewise the language in the definition of ''unit division'' references type '' if the type is designated in the Special Provisions.'' The company stated that these references make it difficult to fully evaluate the proposed program. The commenter suggests FCIC take steps to make its intent known on the specifics of these issues.

Response: An important purpose of the Special Provisions is to allow modification of certain terms of the policy when such terms are not appropriate in certain counties because of farming practices used, the topography, soil conditions, climate, or other factors that may affect producers of the crop. This is especially important when a single policy is used nationwide. In this case, the stages included in the Crop Provisions are generally applicable to all areas but there may be a location where such amounts are not appropriate. This is the same for units by type. There are locations where such units are not appropriate.

Comment: A reinsured company and an insurance service organization expressed concern that the proposed language for the definition of ''Production Guarantee'' and the description of stages in Section 3 do not provide enough stages for the crop. They recommend at least one to two additional stages be added. They state that this would better reflect the costs incurred by the producer and the applicable liability in effect. Specifically, they propose a first stage of 20 percent for seed onions and 40 percent for transplanted onions through the second leaf. They point out that additional stages will result in more gradual changes in the production guarantee. They also questioned why there is a 10 percent difference between seeded onions (70 percent) and transplanted onions (60 percent) in the second stage.

Response: FCIC believes that adding additional stages will not benefit the onion program. When establishing stages and stage guarantees, FCIC requested production costs from regions throughout the country. The production cost data and other agronomic and insurance considerations led FCIC to establish 3 stages rather than 2 or 4 stages, which were also considered. For seeded onions, data indicates a 20 percent production guarantee would probably be too low for most regions of the country. The proposed stage structure in this rule most accurately reflects the appropriate guarantees for most regions. By allowing flexibility in stage percentage guarantees in the Special Provisions, the percentage guarantee will take into account any regional differences. The primary reason for distinguishing between seeded and transplanted onions in the second stage (70 percent versus 60 percent) is that all transplanted onions are hand harvested. Hand harvesting is more expensive than machine harvesting. Onion data in budgets provided by agricultural colleges and our field offices consistently show harvest and harvest related expenses are approximately 40 percent for hand harvested production. With approximately 60 percent of the production costs incurred through the second stage, a 60 percent guarantee for onions that are hand harvested is appropriate. Therefore, no change has been made.

Comment: A reinsured company and an insurance service organization acknowledged providing for stage guarantees to be increased through the Special Provisions is intended to allow for regional differences, however, they expressed concern that allowing the stage percentages to be increased in this manner may backfire. They contend that probably no area will reduce the guarantee below 35 percent but they believe second stages might be significantly increased, perhaps to as high as 90 percent for the Northeast. The reinsured company contended even percentage guarantees as high as 70 percent in the second stage seem excessive when considering the lower input costs a producer has when the crop is lost early in that stage. In addition, the company stated that these high percentages could render CAT coverage more attractive and make it difficult to justify the purchase of buy-up coverage.

Response: While FCIC acknowledges the company's concern, allowing flexibility in stage guarantees through the Special Provisions enables FCIC to manage a diverse national program without creating multiple crop insurance policies on the same crop. Changes will only be made if justified by the cost data. The existing stages are also based on the best available cost data. It is possible that such cost will be incurred at different times during the stage depending on the producer but it is impossible to tailor the program so narrowly. Therefore no change has been made.

Comment: A grower association recommended that the definition of ''damaged onion production in section 1 include storage type onions that do not grade 85 percent U.S. No. 1 Jumbo or Colossal. They provided 5 years of data for a 5 county area that shows a pack out and shipping percentage of over 80 percent for Jumbo and larger onions. They claim that since the larger onions are much more profitable for them than smaller onions, the latter should be considered ''damaged onion production.'' Additionally, they recommended that the Special Provision statements for both damaged onion production and stage production guarantee percentages apply to only the five county area because this area is a unique onion producing area with the ability to track production.

Response: FCIC made a major improvement in the onion policy in 1998 when it went from ''field run'' to insuring only No. 1 onions. FCIC will consider the 5 county area recommended by the commenter. If sufficient data exists to justify a change, the Special Provisions in any applicable area(s) can be revised accordingly. While the policy definition of damaged production will not be changed based on the recommendation covering a limited area of the country, this provision could, as recommended by the onion grower's association, be modified in the Special Provisions. When FCIC considers areas for modification of the term ''damaged onion production'' through the Special Provisions, it will evaluate all areas with the ability to provide complete production and marketing data.

Comment: A reinsured company expressed concern with adding optional units by section, section equivalent or FSA number to the onion crop provisions due to the way the crop is handled, *ie.* when onions enter the pack shed, the production is often commingled during the sorting and packing process causing the production in many cases to lose its identity after it leaves the field. The commenter expressed concern that insureds may not maintain accurate production records making the addition of optional units harder to administer and, therefore it may not be in the long term best interest of the program.

Response: FCIC recognizes the concerns expressed. However, the additional effort that is required of producers to keep the damaged onion production separate does not warrant not allowing optional units by section, section equivalent, or FSA number. All onion production is routinely weighed prior to going into the pack shed and appraisals can be made at that time. FCIC insures a number of crops, including fresh market vegetables and sugar beets, that are delivered to a processor or packer and are insured on an optional unit basis and have not experienced significant problems with inability to determine production to count on a unit basis. Optional units by section, section equivalent or FSN is consistent with most other crops FCIC insures and provides opportunities for producers who only grow one type and have not previously qualified for optional units to now qualify for optional units on a section basis. Therefore, no change has been made.

Comment: A reinsured company suggested rates will need to increase substantially to address the accuracy of loss records that will result from adding optional units. They believe any inaccuracy will likely benefit the producer.

Response: FCIC disagrees the rates will need to increase substantially due to the addition of optional units by section, section equivalent or FSA number. As with other insurance policies, there will be a modest increase in rates due to additional unit exposure. It remains the insured's responsibility to timely report losses and maintain records of production on a unit basis. When the program is administered in a manner consistent with the crop policy and loss procedures, which require timely loss adjustment, the greatest potential for risk due to commingling of unit production will be mitigated. In the event that commingling does occur, the optional units will be combined into the basic unit from which they came. There will be no benefit to the producer and therefore no change has been made.

Comment: A New York county cooperative association suggests that while the addition of optional units by section, section equivalent or FSN is a step in the right direction, in reality few if any onion producers will be able to take advantage of the change because a section is 640 acres and the average size onion farm in his county is a little over 100 acres and no one in the entire State of New York farms 1280 acres of yellow onions. The association recommends that producers be able to separately insure noncontiguous acreage that is 1 or more miles apart.

Response: Based on producer and company requests, FCIC included optional units by section in the proposed rule. It is not necessary to have a full 1,280 acres (two 640 acre sections) to be eligible for two optional units. To qualify for two optional units, the acreage planted to onions simply needs to be located in two separate sections, section equivalents or FSNs and meet the other unit division requirements. There are no minimum acreage requirements for optional units. Allowing optional units by section, section equivalent or FSN accomplishes the same thing as if optional units based on non contiguous land more than 1 mile apart were allowed. Therefore, no change has been made.

Comment: A western onion growers' association recommended that units be added for individual fields in addition to ownership, and color (yellow, red, and white). They claim that most producers in their association grow more than one field and could sustain significant damage to a field in one area and be ineligible for compensation if onions in another field offset the damage. The commenter states that since premium is being paid over all the acres, compensation should be based on the smallest feasible definable division, which would be an individual field, ie. each field should stand on its own and premium and loss compensation paid accordingly.

Response: This rule provides for optional units by section, section equivalent or FSN, which will benefit producers represented by this growers' association and others. Premium rates are established taking into account the unit structure for a crop. Field-by-field insurance would substantially increase rates, and could adversely affect program integrity. Therefore no change has been made.

Comment: A New York county cooperative association expressed dissatisfaction with the presence of stages in the onion crop policy. The comment contends that stage percentage guarantees exist in only 6 other crop insurance policies. While New York stages were set higher than the remainder of the country for this past crop year, the commenter was concerned that FCIC could always revert to the lower policy levels in the future. The commenter ''fundamentally rejects a Staged Production Guarantee as being arbitrary and unfair * * * it should either be in all policies or removed from all policies. * * *'' The commenter acknowledges that no other onion growing area has voiced opposition to the stage guarantees, but believes this is the result of onion producers in these areas not realizing how bad the MPCI policy is and that, in general, the onion industry does not have a cohesive and well financed lobby as do the program crops.

Response: Stages would not be appropriate for most row crops where a majority of the costs are incurred early in the growing season. Stages are generally utilized for high liability crops that have varied production costs throughout the season, particularly late in the season. Onions in most regions of the country have extensive production costs during mid-season and high harvest costs. Removal of stages that reflect cumulative production costs at various points during the season would result in significant premium rate increases. Flexibility in modifying stage guarantees through the Special Provisions is designed to allow the onion program to fit regional differences. FCIC will not lower the stage guarantee percentages unless they have cost of production evidence that supports lower stage percentage guarantees. Therefore, no change has been made.

Comment: A New York county cooperative association expressed concern that a staged production guarantee increases the loss threshold. The commenter believes that the statute requires a 50 percent production loss to qualify for CAT coverage. However, the commenter argues that with a staged guarantee the loss deductible for stage 1 is 82.5 percent and for stage 2, 65 percent and questions how this is legally justified.

Response: Section 508(b)(2)(B) of the Federal Crop Insurance Act specifically authorizes FCIC to reduce the indemnity paid that is proportional to the out-of-pocket costs not incurred by the producer. To accomplish this, the guarantees are adjusted to reflect costs not incurred. Therefore, no change has been made.

Comment: A New York county cooperative association expressed concern over the change in language in section 3(b)(1)(i), which the commenter believes has extended the stage 1 to the 4th leaf with the percentage of coverage remaining the same. The commenter believes that this change ignores the realities of the New York onion producers who have heavy front-end loaded production costs. Stage guarantees, the commenter maintains, are totally inappropriate for onions in New York and this change worsens an already bad provision in the policy.

Response: This rule did not affect when the second stage begins. The second stage begins under both the current provisions and for the proposed provisions with the emergence of the fourth leaf. The language in the current provisions regarding the first stage reads * * * through the emergence of the third leaf and the second stage begins with the emergence of the fourth leaf. The proposed rule language regarding the first stage reads * * * until the emergence of the fourth leaf and the second stage thus begins with the emergence of the fourth leaf. The only difference is between the words ''through'' and ''until'' which were changed as a result of comments that this would make the provision clearer. If the cost of production evidence is available to support an even higher first stage for New York producers, FCIC will make that percentage of coverage available for onion producers via the Special Provisions.

Comment: A New York county cooperative association cites section 3(b)(2) which reads ''the second stage extends, for all onions, from the end of the first stage until the acreage has been subjected to topping and lifting.'' The association contends that the final stage is of little value to New York onion producers, since ''this stage only exists for 3 to 4 days in August when the onions are drying in the field. The commenter states that since no farmer lifts and tops his onions when it looks like rain storm, it is safe to assume New York onion farmers will not collect 100 percent of this policy.'' The commenter states this circumstance violates the statutory language and intent of the program.

Response: FCIC disagrees that the third stage exists only for the 3–4 days while the onions are drying. Due to insurable damage, a significant percentage of harvested onions may not grade number 1 and consequently the loss will result in an indemnity based on the final stage guarantee. FCIC acknowledges New York onions are normally dried for a shorter period of time than onions in other regions of the country. FCIC has significantly increased New York's second stage production guarantee in part to recognize the costs they have incurred up to harvesting the onions. FCIC is unaware of any provision in this proposed rule that violates either statutory language or the intent of the program.

Comment: A New York onion producer stated that as late as January, 1999, the New York onion producers were promised that stages, which they consider to be outrageous and fraudulent, would be removed when the Onion Crop Insurance Provisions proposed rule was published in the **Federal Register**. They were ''shocked'' to learn stage guarantees remained and that another key issue for them, production to count was even worse than before. In their opinion, the proposed rule will even further decrease the value of the MPCI onion policy. The commenter states that this will only weaken the ''safety net,'' which Secretary Glickman has repeatedly stated needs to be ''stitched stronger.''

Response: Stage guarantees are necessary in this policy in order to protect the integrity of the program and allow for affordable premium rates. Furthermore, there were no comments to the proposed rule from outside New York requesting that stages be removed. Adding provisions in section 1 to specify a different stage guarantee in the Special Provisions clearly benefits New York onion producers who have provided FCIC with cost data to justify higher first and second stage guarantees than contained in the policy. Further, as stated above, the production to count provisions have been greatly improved by allowing for quality adjustments that will reduce the production to count when ''damaged production'' as described in section 13(d) is subsequently sold. This change will benefit all onion producers. Units by section, section equivalent or FSN will also benefit New York onion producers who farm in more than one section or FSN. On balance, the producer safety net will be stronger under the amended onion policy than under the existing policy.

Comment: An onion growers' association maintains the price election is too low for their counties since outside of a loss year most of their onions grade Jumbo or Colossal. They claim the 5 year Jumbo price averaged $13.22 per cwt which translates to $8.22 for the producer. They state that the Colossals typically command an even higher price. The commenter argues that their price election for the 1999 crop year is $5.00, thus the price election needs to be raised.

Response: FCIC establishes the price for onions through the actuarial documents rather than in a regulation such as this. FCIC will consider this information for the 2000 and future crop years. Any change to the established price election for onion will be stated in the actuarial documents.

Comment: A grower's association recommended the percentage stage guarantees be raised in a five county area of the western United States to better reflect the producer's cost of production and that supporting stage language be slightly modified. They recommended that Stage 1 should be through the third leaf, and should have a guarantee of 60 percent. Further, the commenter suggested that the second stage should be ''up to topping and lifting'' and should have a guarantee of 90 percent. They provided a Yellow Onion Data Sheet and pointed out their stage guarantee recommendations are based on the land charge, management, general overhead, and one-half of the operating capital interest shifted into the first stage.

Response: FCIC welcomes producer data that helps establish the appropriate stage guarantee percentages for the various areas. This rule allows for stage percentage guarantees in the Special Provisions to modify the Crop Provisions in cases where this is warranted and FCIC will consider this information for future changes.

Comment: A western onion growers' association requested a more timely disclosure of their options once a loss has occurred. They do not believe that their agents and adjusters understand the policy sufficiently to advise them on all of their options, particularly as to whether to continue on with a damaged crop or to destroy the crop in the present stage. The association contends extensive producer investment requires the producer to be informed of all options.

Response: Producers, in an event of a loss, must be timely informed of all their options. FCIC requires companies to train their agents and loss adjusters and to provide a copy of the crop insurance provisions to each insured. Section 3(c) of the Crop Provisions now specifies when onions damaged in the first or second stage are deemed to be destroyed. FCIC also intends to provide additional guidelines in the loss procedures to further clarify when onions are deemed to have been destroyed. This should assist producers with their decision whether to continue to care for the crop.

Comment: A western onion growers' association asked for clarification of the provisions in section 3(c) that address onions damaged in the first or second stage to the extent that producers in the area would not normally further care for the crop. They would like to know how to determine when onions are ''deemed to be destroyed.''

Response: There are a number of criteria to be applied when determining whether producers in the area would normally continue to care for the crop. Such criteria includes whether the Extension Service considers continued care to be a good farming practice, whether the insured would make the same decision in the absence of insurance, etc. This criteria will be included in the loss adjustment procedure.

Comment: A reinsured company expressed concern over how to handle a peril that transcends stages, such as dry conditions that persist through the growing season. The commenter stated that such perils cause producer concern that they can never insure for the full value of the crop.

Response: Section 3(c) of the Onion Crop Provisions addresses this issue and states ''any acreage of onions damaged in the first or second stage, to the extent that producers in the area would not normally further care for the onions, will be deemed to have been destroyed even though you may continue to care for the onions.'' It further reads that the production guarantee for the acreage will not exceed the production guarantee for the stage in which the damage occurred. This language prevents insureds from continuing to care for a crop when it is not practical to do so, simply to advance the stage guarantee. The intent of the staged production guarantee is to generally cover the costs of production up to the time the onions are lost and not provide an indemnity for costs that have not been incurred. FCIC has routinely used stage guarantees for those crops that normally incur significant costs later in the growing season. Onions are another such crop and the use of stages makes the onion policy more affordable and results in a more manageable program. Therefore, no change has been made.

Comment: An insurance service organization expressed concern about moving the termination date one month later for one county in Oregon and one county in Washington. They claim that this results in different cancellation and termination dates for these counties. The commenter believes that this will lead to difficulties. For example, transfers must be requested by the cancellation date, but if the previous carrier terminates the policy for non-payment of premium, the new carrier will have done a month's work on the policy only to have it terminated. The commenter states that the program is easier to administer when the cancellation and termination dates are the same. They suggested that the solution to avoid different cancellation and termination dates in these counties is to move the spring acreage reporting date to mid-May instead of June 30, allowing 60 days between billing and termination.

Response: While it is easier to administer the program when the cancellation and termination dates are the same, it is not always feasible. Several options were considered to provide insureds with a period of time greater than the current 30 days between billing and termination in these counties. Changing the termination date was the least disruptive. Several years ago the acreage reporting dates varied for spring crops in these counties. At the request of the companies operating in this area, a common acreage reporting date of June 30 was established for spring crops in these counties. Currently no crops with either a November 30 or December 31 cancellation date have an acreage reporting date earlier than June 30. It would be more disruptive and generate more work if there are separate acreage reporting dates. Therefore, no change has been made.

Comment: An insurance service organization recommended changing one of the criteria for replanting onions in section 11 from 7 percent of the final stage production guarantee to perhaps 10 or 20 percent because this would be easier to remember and easier for the loss adjuster to figure. The commenter would also like to see the same percentage for all or most crops. They also recommended minor language changes in this section to avoid repetition.

Response: The percentage of the final stage production guarantee (production guarantee in many crops) is based on the approximate cost of replanting. Seven percent of the final stage production guarantee is appropriate for onions. For lower liability crops, 10 or 20 percent may be more appropriate. Standardizing these percentages for all crops could result in a replant payment that is either too high or too low. The provisions in section 11 were expanded to cover all the criteria that must be considered when determining a replant payment. Previously, field personnel were confused because part of the criteria for replant payments was in the Basic Provisions and part in the Crop Provisions. FCIC believes this language makes the onion replant provisions clear. Therefore, no change has been made.

Comment: A New York county cooperative association takes exception with the language in section 13(d) that reads when ''damage to harvested or unharvested onion production exceeds the percentage shown in the Special Provisions for the type, no production will be counted for the unit or portion of a unit unless such damaged onion production from that acreage is sold. The association expressed concern that, if sold, the damaged onion production will be counted on a pound-per-pound basis regardless of the quality. The commenter points out that based on this language, any production grading less than number 1 including undersized onions, if sold, are counted on a pound-per-pound basis. The commenter suggests it would be more advantageous for the producer to dump these onions than to sell them at a substantially lower price. The commenter's short term solution is to either count number 1 onions only, or if the onions were sold at less than the price election, reduce the onion production to count by a quality adjustment factor which would be derived by dividing the dollar per hundred weight sold by the established market price.

Response: FCIC originally established this provision in response to producers who stated that onions from fields that sustained damage exceeding 50 percent that could not be separated in a cost effective manner and consequently could not be sold. They stated the normal practice is to destroy the onions in the field. Producers made the case that under these circumstances no onion production should be counted against them even though there were some undamaged onions in the field. In implementing this concept, FCIC must not pay a full crop insurance indemnity when producers harvest, sort, and sell the damaged onions. Therefore, the first sentence of section 13(d) will not be changed. However, FCIC accepts the commenter's recommendation to adjust the production to count based on the price received for the damaged onion production and has amended the second sentence in 13(d) as follows ''* * * If sold, the hundred weight of production to be counted will be adjusted by dividing the price received for the damaged onions by the price election and multiplying the resulting factor times the hundred weight sold.''

Comment: A New York county cooperative association contends ''production to count'' is a fundamental problem with this policy as well as other MPCI policies. The association contends it violates the statuary language and ''eviscerates'' the value of the indemnities. The commenter further maintains no other policies, whether private crop insurance or insurance for home, property, etc. contain a feature like production to count, which subtracts what the policy is not covering from what it is covering. They argue that the proposed onion policy actually makes the production to count provision worse than it was in the previous policy.

Response: FCIC has statutory requirements with respect to what percent of the value it can insure. Section 508(c)(4) of the Federal Crop Insurance Act (Act) authorizes FCIC to offer up to an 85 percent coverage level. At this time FCIC limits onions to a 75 percent coverage level. This results in a minimum deductible of 25 percent. If there were no production-to-count provisions, the legally-required deductible could be breached, resulting in the combined indemnity and producer-sold production exceeding the total value of the crop. This situation is called overinsurance. Even with homeowners and automobile insurance, there is usually a deductible that must be met before an indemnity is paid. In addition, a set value is placed on the home to prevent overinsurance. FCIC has revised section 13(d) of the policy to permit reduction of production to count for quality adjustment. This process is used in many other crop policies.

Comment: A New York county cooperative association recommended a modification to the way FCIC considers production-to-count. The commenter suggested that FCIC only count the percentage of producer ''salvaged production'' that exceeds the deductible. Under this plan, the production guarantee plus salvaged production could not exceed 100 percent of the approved actual production history (APH). The commenter states that the advantage is that this would enable a producer to reach 100 percent of their APH approved yield in a disaster year. They state that with expenses for growing onions consuming up to 60 percent of the farmer's gross income, the crop insurance policy must count damage towards the ''insured portion'' of the crop first. Further they claim that, this way, a producer can be assured in the event of loss that he will be able to at least cover all or a portion of his expenses, and then assess how much risk he is willing to accept. The commenter maintains the current crop insurance policy ''guarantees a minimum loss'' if the producer collects on his insurance, because salvaged production counts as production to count. They state that with high production costs, producers do not need a ''guaranteed loss'' from the government. The producer does acknowledge this concept might make higher levels of coverage too expensive to offer but the commenter believes that producers would be more willing to accept the possibility of a loss from the weather rather than a guarantee of a loss from the government.

Response: There is no authority to adopt this recommendation. Under the Act, crop insurance only covers the loss in excess of the producer's deductible. Therefore, the guarantee can not exceed more than the coverage level times the APH. To operate a sound insurance program all production that is sold must be included as production to count. Under the policy as revised, all undamaged onions are included as production to count and the total production of damaged onions as defined in section 13(d), that are subsequently sold, are reduced by a factor determined by dividing the price received by the price they elected. Under the previous policy, such hundredweight of production was counted on a pound-per-pound basis. This is certainly a benefit to the producer.

Comment: A western onion growers' association recommended that the provisions in section 13(d) be modified because it is unfair to count all onions sold equally with no regard to reduction in price of the damaged onions.

Response: As discussed above and as the comment recommended, FCIC has amended the second sentence in 13(d) to allow adjustment of the production to count based on the reduced price for damaged onions.

Comment: An insurance service organization expressed concern about the language in section 13(d) that refers to ''* * * the percentage shown in the Special Provisions for the type.'' The commenter recognizes the language provides flexibility by type for geographical areas, but believes it would be simpler if the factor for ''damaged onions'' was standardized. In addition, the comment stated that loss adjusters would be able to use the factors more correctly and effectively if they were included in the crop's loss adjustment standards. The commenter suggested the following language ''* * * no production will be counted for that unit or portion of a unit if the production is destroyed in a manner acceptable to us.'' The comment stated that if the damaged production is sold, it would be counted on a pound-per-pound basis.

Response: It is not practical to include a single factor for all onions. The onion policy is used nationwide for different kinds of onions. The percentage that applies for any area and type is based on the percent of damage below which the onions normally cannot be sorted and sold. The percentage shown in the Special Provisions must be flexible to accommodate different situations. As stated above, FCIC has revised the provision regarding sold damaged production to permit a quality adjustment.

Comment: An insurance service organization recommended the prevented planting guarantee be changed to 30 percent of the final stage production guarantee for timely planted acreage instead of the current 45 percent. They contend that since the first stage guarantee for a loss is 35 percent, it doesn't seem appropriate to pay more than that for not planting. The commenter also questions whether the last sentence ''Additional prevented planting coverage levels are not available for onions'' is necessary. Instead, they recommend removing the current sentence that increased levels may be allowed in the actuarial documents. The commenter further recommends that the prevented planting guarantee should be based on a set dollar amount shown in the Special Provisions for all crops with prevented planting coverage. They contend that eligibility would be determined by subtracting this year's actual prevented planted acres for all insurable crops from the highest number of all insurable planted acres by crop year in the four prior Actual Production History (APH) years.

Response: When the prevented planting provisions were revised for the 1998 crop year, all preventing planting levels were raised 10 percent for the applicable crops including onions, which was raised from 35 percent to 45 percent. FCIC determined not to reduce the basic prevented planting coverage for onions, but determined that buy-up prevented planting (up to 55 percent of the final stage production guarantee) was not appropriate based on the economics of onions. Since other crops allow buy-up prevented planting, the last sentence in section 14 makes it clear that buy-up prevented planting is not available for onions. The commenter's recommendation to modify the way eligible prevented planting acreage is determined will be considered. However, not all crops are based on APH and basing a prevented planting payment on all insured crops, verses a single crop, would meet producer opposition. Therefore, no change has been made.

Comment: A New York county cooperative association cites the proposed rule language that reads in part ''the intended effect of this action (Onion Crop Insurance Provisions Proposed Rule) is to modify the existing policy so that it is actuarially sound and better meets the needs of the insureds.'' The association contends that the President and lawmakers have used the ''actuarially sound'' requirement as a justification to write valueless policies, and as a result the proposed onion policy changes do not meet the needs of insured onion producers.

Response: Foremost, the Federal Crop Insurance program is an insurance program. Therefore, the premium charged must cover the anticipated losses. FCIC must balance the need to create an affordable program with the need to provide meaningful coverage. This rule makes major strides toward meeting the needs of New York and other onion producers, by allowing flexibility in setting stage guarantees, adding optional units by section, section equivalent or FSN, and reducing the production to count by allowing a quality adjustment for ''damaged onions'' that are subsequently sold. We note that an actuarially sound policy includes a government subsidy approaching 50 percent. Since, overall indemnities paid by the Corporation exceed the premium paid by the producer, the program is hardly valueless.

Comment: A New York county cooperative association recommended an adjustment to the approved APH yield process. They recommended that if a county has been officially declared a disaster area, producers should be allowed to use the county average instead of their actual yield. They also suggested that with the disaster designation, the drop in the county yield should be cupped at 10 percent. They claim that this would lessen the effect of successive disaster years. The commenter states that under the current APH rules the producer's APH continues to drop drastically resulting in producers being unable to purchase an adequate amount of insurance.

Response: Actual Production History (APH) regulations are published at 7 C.F.R. Subpart G. Changes to APH cannot be considered in this regulation. Therefore, no change has been made in the Onion Crop Insurance Provisions.

In addition to the changes described above, FCIC has made minor editorial changes.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule must be effective prior to the June 30 contract change date to be effective for the 2000 crop year. Therefore, public interest requires the agency to act immediately to make these provisions available.

List of Subjects in 7 CFR Part 457

Crop insurance, Onion.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends the Common Crop Insurance Regulations (7 CFR part 457) by amending 7 CFR 457, for the 2000 and succeeding crop years, to read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

2. Revise the introductory text to section 457.135 to read as follows:

§ 457.135 Onion Crop Insurance Provisions.

The onion crop insurance provisions for the 2000 and succeeding crop years are as follows:

* * * * *

3. Amend § 457.135 as follows:

§ 457.135 Onion Crop Insurance Provisions.

a. Amend section 1 of the Onion Crop Provisions to add definitions for ''direct seeded'' and ''transplanted'' and to revise the definition of ''production guarantee (per acre)'' as follows:

1. Definitions.

* * * * *

Direct seeded. Placing onion seed by machine or by hand at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

* * * * *

Production Guarantee (per acre):

(a) First stage production guarantee—Thirty-five percent (35%) of the final stage production guarantee for direct seeded storage and non-storage onions and 45 percent of the final stage production guarantee for transplanted storage and non-storage onions, unless otherwise specified in the Special Provisions.

(b) Second stage production guarantee—Seventy percent (70%) of the final stage production guarantee for direct seeded storage onions and 60 percent of the final stage production guarantee for transplanted storage onions and all non-storage onions, unless otherwise specified in the Special Provisions.

* * * * *

Transplanted. Placing of the onion plant or bulb, by machine or by hand at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

* * * * *

b. Revise Section 2 of the Onion Crop Provisions to read as follows:

2. Unit Division.

In addition to, or instead of, establishing optional units as provided in section 34 of the Basic Provisions, optional units may be established by type, if the type is designated in the Special Provisions.

* * * * *

c. Revise sections 3(b)(1) and (2) of the Onion Crop Provisions to read as follows:

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

* * * * *

(b) * * *

(1) First stage extends:

(i) For direct seeded storage and non-storage onions, from planting until the emergence of the fourth leaf; and

(ii) For transplanted storage and non-storage onions, from transplanting of onion plants or sets through the 30th day after transplanting.

(2) Second stage extends:

(i) For direct seeded storage and non-storage onions, from the emergence of the fourth leaf; and

(ii) For transplanted storage and non-storage onions, from the 31st day after transplanting.

* * * * *

d. Revise section 5 of the Onion Crop Provisions to read as follows:

5. Cancellation and Termination Dates.

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

State & County	Termination Date	Cancellation Date
All Georgia Counties; Kinney, Uvalde, Medina, Bexar, Wilson, Karnes, Bee, and San Patrico Counties, Texas, and all Texas Counties lying south thereof.	August 31	August 31.
Umatilla County, Oregon; and Walla Walla County, Washington.	August 31	September 30.
All other states and counties.	February 1	February 1.

e. Revise section 11(b) of the Onion Crop Provisions to read as follows:

11. Replanting Payment.

* * * * *

(b) The maximum amount of the replanting payment per acre will be your actual cost for replanting, but will not exceed the lesser of:

(1) 7 percent of the final stage production guarantee multiplied by your price election for the type originally planted and by your insured share; or

(2) 18 hundredweight multiplied by your price election for the type originally planted and by your insured share.

* * * * *

f. Revise section 13(d) of the Onion Crop Provisions to read as follows:

13. Settlement of Claim.

* * * * *

(d) If the damage to harvested or unharvested onion production exceeds the percentage shown in the Special Provisions for the type, no production will be counted for that unit or portion of a unit unless such damaged onion production from that acreage is sold. If sold, the hundredweight of production to be counted will be adjusted by dividing the price received for the damaged onion production by the price election and multiplying the resulting factor times the hundredweight sold.

* * * * *

g. Revise section 14 of the Onion Crop Provisions to read as follows:

14. Prevented planting.

Your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. Additional prevented planting coverage levels are not available for onions.

Signed in Washington, D.C., on June 18, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

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