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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC02

Common Crop Insurance Regulations; Fresh Market Sweet Corn Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Fresh Market Sweet Corn Crop Insurance Provisions to make policy revisions that would allow expansion of the fresh market sweet corn coverage into additional areas where the crop is produced, and will allow coverage for fresh market sweet corn that is sold through direct marketing. The changes will be effective for the 2008 and succeeding crop years for all counties with a contract change date on or after the effective date of this rule and for the 2009 and succeeding crop years for counties with a contract change date prior to the effective date of this rule.

DATES: *Effective Date:* October 26, 2007.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility—Mail Stop 0812, PO Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through November 30, 2007.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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 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 UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

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 final 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. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

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

Background

On Friday, July 28, 2006, FCIC published a notice of proposed rulemaking in the **Federal Register** at 71 FR 42770–42775 to amend § 457.129 Fresh Market Sweet Corn Crop Insurance Provisions. The intended effect of the action is to provide policy changes to allow for the expansion of fresh market sweet corn coverage into additional areas where the crop is produced and to allow coverage for fresh market sweet corn when it is marketed through direct marketing. The changes will be effective for the 2008 and succeeding crop years for all counties with a contract change date on or after November 30, 2007. The public was afforded 60 days to submit written comments and opinions.

A total of 66 comments were received from 3 commenters. The commenters were an insurance service organization and two approved insurance providers. The comments received and FCIC's responses are as follows:

Comment: Two commenters stated the definition of ''allowable cost'' may vary by region as is shown in the Special Provisions. For example, the Special Provisions in Adams County, Colorado states ''* * * harvesting, grading, packing containers, hauling and selling'' * * *, while the Broward County, Florida Special Provisions has ''* * * picking, grading, packing containers, hauling and selling * * *''. The commenters indicated the definition could be beneficial in the Crop Provisions, especially if the intent is to move more of the common details from the Special Provisions to this definition.

Response: The definition will be beneficial to allow producers to see the types of costs that are considered allowable costs. However, the specifics must still be contained in the Special Provisions because the costs associated with harvesting fresh market sweet corn vary by region and because terminology also varies by region. The definition has been retained in the final rule.

Comment: Two commenters stated in the definition of ''allowable cost'' it is allowed to deduct ''any additional charges specified in the Special Provisions.'' They questioned how the average net value is determined when only some of the containers incurred additional charges such as cooling charges.

Response: The commenter is correct that not all harvested sweet corn production incurs additional charges such as cooling charges. However, although the average net value per container is used, the net value is established for each container. Therefore, some containers will have the additional costs subtracted and others will not. Once the net values are all totaled and divided by the total number of containers sold, the result should be approximately the same.

Comment: Three commenters stated the definition of ''crop year'' is confusing for a county that has only a spring planted practice. They questioned when the crop year begins for such a practice.

Response: The commenter is correct that the definition of ''crop year'' fails to address those counties where there may only be a spring planting practice. While no change was proposed for the definition of ''crop year,'' FCIC has revised the definition to clarify the crop year for counties where there is only a spring planting practice.

Comment: Three commenters found the definition of ''minimum value'' to be useful in the Crop Provisions but questioned if each reference of ''minimum value'' should be followed by the term ''contained in the actuarial documents'' as the term is contained in the definition.

Response: The commenter is correct that the term ''contained in the actuarial documents'' is not needed when referencing the ''minimum value'' since the definition of ''minimum value'' specifies where it can be found, and FCIC has removed the term accordingly. FCIC has also revised the definition to state the amount can be found in the Special Provisions since this is the specific document where the information will be contained.

Comment: All of the commenters stated it would be more appropriate to revise the term ''net value per container'' to ''average net value per container'' as that is how the term is used in the Crop Provisions. The commenters also questioned why the proposed rule stated a net value for each container would never be calculated as it would be a complex and time consuming process. The commenters suggested if the definition is not applicable to direct marketing, it should be clearly noted as such.

Response: The commenter is correct that the term used is ''average net value per container.'' However, since the term ''net value'' is used in the term ''average net value per container,'' it is appropriate to also define this term and FCIC has revised the definition accordingly. FCIC has also added a definition of ''average net value per container'' to specify it is a dollar amount obtained by totaling the net value of all containers sold and dividing this total by the number of containers of all sweet corn production sold. It would be cumbersome, time consuming, and create vulnerabilities to list and itemize on the worksheet each and every individual container of sweet corn and subtract from each the allowable cost. Further, the difference in the results from using the average versus the individual net values is not significant.

Comment: Two commenters suggested while revising the definition of ''practical to replant'' was not in the proposed rule, it may be a good time to revise the provisions so that it is consistent with other Crop Provisions. The comments suggested removing the phrase '' In lieu of the definition of 'Practical to Replant' contained in section 1 of the Basic Provisions, practical to replant is defined as * * *'' and replacing it with ''In lieu of the definition contained in section 1 of the Basic Provisions, our determination * * *

Response: While no changes were proposed to the definition of ''practical to replant,'' the recommended changes are not substantive in nature and will make the provision more readable. Therefore, FCIC has revised the definition accordingly.

Comment: Two commenters suggested removing the comma after ''Basic Provisions'' contained in section 3(c).

Response: While no changes were proposed to the definition of ''practical to replant,'' the recommended changes are not substantive in nature and will make the provision more readable. Therefore, FCIC has revised the definition accordingly.

Comment: Two commenters suggested section 3(d) be revised from ''* * * one of the most recent three crop years'' to ''* * * one of the three most recent crop years.''

Response: FCIC has made the change accordingly.

Comment: Three commenters expressed concern with the text in section 3(f) ''will be deemed to have been destroyed.'' They each stated the language is contained in several other Crop Provisions and have been advised the term means that no production will be counted against such acreage and would hold true if such acreage was later harvested. They believed this is a conflict with section 14(c)(3) of these Crop Provisions which states ''The value of all harvested production of sweet corn from the insurable acreage'' is included as the total value of production to count for the unit. This would also apply to the amount of appraised production determined during an appraisal for unharvested acreage. The commenters recommended the text be revised and clarified so that all parties understand the provision

with the same meaning. Two of the commenters suggested in section 3(f) to add a comma in front of ''to the extent * * *'' and revise the phrase ''even though'' to ''even if.''

Response: The purpose of proposed section 3(f) is to limit the liability for any acreage of sweet corn that is damaged in the first stage. If the producer's sweet corn, as well as other sweet corn acreage in the area, is damaged in the first stage to the extent most producers would not provide further care for their sweet corn, the indemnity payable for the insured producer's sweet corn acreage will be based on the amount of insurance for the first stage. This will make the provision consistent with section 14(c) of the Crop Provisions, and allow the damaged sweet corn to be appraised to determine the value of production to count for such acreage. At that time the insured must either agree or not agree with the appraised potential production. If such an agreement is not reached, in accordance with section 14(c)(2), insurance will continue until the crop is harvested; however, any indemnity will be paid based on an amount of insurance for the first stage. FCIC has revised section 3(f) to clarify the provisions and remove reference to ''deemed to be destroyed''. FCIC will clarify all other Crop Provisions containing this language when proposed revisions are made.

Comment: One commenter stated section 4 should be revised to move the contract change date for all counties in Georgia to November 30.

Response: FCIC did not include any revisions to section 4 in the proposed rule, the recommended change is substantive in nature, and the public was not provided an opportunity to comment. Therefore, no change will be made.

Comment: One commenter requested the cancellation and termination dates contained in section 5 for all counties in Georgia be moved to February 15. If the change is made, the sales closing date for all Georgia counties must also be changed to February 15 and the fall planting period for Georgia should be moved to the end of the crop year rather than have the crop year begin with the fall planting period.

Response: The impact of moving the fall planting period to the end of the crop year would be a major change and would affect multiple processes including actuarial, data and financial accounting systems. Since no changes to section 5 were proposed, the recommended change is substantive in nature, and the public was not provided an opportunity to comment on the recommended changes, the recommendations cannot be incorporated in the final rule. No change has been made.

Comment: Two commenters stated they agreed with the provisions contained in section 8(c) that will allow coverage for direct marketed sweet corn as long as the necessary procedures are in place for determining and documenting the amount of production to count.

Response: When direct marketing is allowed by the Special Provisions or by written agreement, producers will be required to provide a 15-day notice before harvest begins so insurance providers may conduct an appraisal of the sweet corn in accordance with section 13. If notice is not provided, section 13(c) specifically states such failure ''* * * will result in an appraised amount of production to count of not less than the dollar amount of insurance (per acre) * * *'' An appraisal of the sweet corn and/or any acceptable records of harvest will be used to compute the value of production to count. As with other crops that allow insurance for direct marketing, FCIC approved loss adjustment procedures will provide the requirements for documenting production that is sold by direct market.

Comment: Two commenters suggested deleting the ''If'' at the beginning of section 9(a)(3) because the redesignated (a) now ends with the word ''if:'' They also thought it might read better if the two phrases in section 9(a)(3) were reversed to ''The final day of the planting period has not passed at the time the crop was damaged.''

Response: FCIC agrees with the commenters and has revised section 9(a)(3).

Comment: Two commenters suggested section 9(b) should contain language to specify the crop is damaged in order to lead in to provisions 9(b)(1) and (2). The commenters asked what would happen if the crop is damaged towards the end of the planting period and moisture that came with the storm would not allow the acreage to dry out to be replanted until after the final planting date for the planting period. They asked if this situation would require the crop be replanted per the provisions contained in section 9(a) assuming it is still practical, or would the insured have the option as indicated in provisions 9(b).

Response: It is unnecessary for section 9(b) to specify damage to the crop has occurred. The definition of ''practical to replant'' contained in these Crop Provisions specifically states there must be ''loss or damage to the insured crop * * *'' With respect to the commenters' question as to which of the provisions would be applicable when excess moisture occurs at the end of one planting period and the acreage cannot be replanted until after the final planting date, section 9(b) would apply provided that the acreage is located in a county that has fall or winter planting periods. If only spring planted sweet corn is insured in the county, the three criteria contained in section 9(a) must be applicable to determine if the acreage should be replanted.

Comment: Two commenters recommend section 11(a)(2) be revised to clarify fire as a cause of loss must be due to natural causes.

Response: In addition to the Fresh Market Sweet Corn Crop Provisions, the Common Crop Insurance Policy, Basic Provisions are applicable for sweet corn. Section 12 of the Basic Provisions states all specified causes of loss must be due to a naturally occurring event. Adding the suggested language could be redundant and could cause confusion by suggesting that the other listed causes of loss do not have to be due to natural causes. Therefore, no change has been made.

Comment: Two commenters suggested removing from section 11(b)(2), the phrase ''that occurs during the insurance period'' as it is already contained in section 11(a).

Response: FCIC has made the change accordingly.

Comment: Two commenters suggested the replant provisions contained in section 12 should be revised to align with proposed changes in the Basic Provisions.

Response: Since the final rule has not been published for the Basic Provisions and FCIC is still reviewing all comments, it would be premature to make any changes to the replant provisions. Once the Basic Provisions final rule is published, FCIC will determine whether conforming changes need to be made in the Fresh Market Sweet Corn Crop Provisions. No change has been made.

Comment: According to three commenters, section 13(a)(3) references the calendar date for the end of the insurance period; however, the closest thing to a calendar date is section 10(f) which states ''100 days after the date of planting or replanting * * * ''

Response: Growing conditions are not the same in all areas where sweet corn is grown. Therefore, it is not possible to provide a single calendar date to end the insurance period. Instead, FCIC revised section 10 to allow the end of the insurance period to be either 100 days after planting or replanting, or a specified date contained in the Special

Provisions. If a specific calendar date is not provided in the Special Provisions, insurance providers can still determine the calendar date by calculating the date that is 100 days after the producer reports the crop was planted or replanted. No change has been made.

Comment: Two commenters stated it would be costly for insurance providers to conduct a pre-harvest appraisal as required in section 13(b) for all direct marketed policies that are in a loss situation. They asked if there was a better way to handle these situations. Another commenter questioned why the proposed rule contained language requiring production records from producers as the sweet corn crop insurance program is not based on producer's actual production history (APH). The commenter indicated insurance providers cannot assume the list of record types and requirements contained in the Crop Insurance Handbook are acceptable since the list is for APH based crops.

Response: Without appraising the sweet corn crop before it is sold by direct market there is no way to adequately determine if the value or amount of production was accurately reported because there are no independent sources to verify production associated with direct market sales. If the commenter knows of another way to accurately determine the production, FCIC is willing to consider it for any future rulemaking. FCIC approved loss adjustment procedures will be updated to provide guidelines in what types production records can be used to verify harvested production that is sold by direct marketing. No changes have been made.

Comment: Two commenters suggested section 14(b)(3) should be consistent with other steps in the claim for indemnity calculation and should be changed from ''total the results * * *'' to ''Totaling the results * * *''

Response: Although no changes were proposed, the recommended change is not significant and would make the provisions read more consistently.

Comment: Three commenters indicated in the example of a claim for indemnity contained in section 14(b)(5), there is no production to count for the 15.0 acres of Stage 1 acreage. They stated it gives the reader the impression no production will ever be assessed for acreage damaged in Stage 1. If this is the case, then why are there appraisal procedures for sweet corn acreage in Stage 1, and why under section 14(c) must insurance providers account for potential production when agreement is established on the appraised amount of production? They asked whether the agreed amount will always be zero.

Response: FCIC did not intend for the example of a claim for indemnity to imply sweet corn acreage damaged in Stage 1 will always be zero production to count. As provided in section 14(c), the value of all potential production and harvested production will be used to determine the amount of the indemnity. FCIC has revised the example contained in section 14(b) to clarify the 15.0 acre field was destroyed by flood and the appraisals determined that there was no potential production to count.

Comment: One commenter stated the language in section 14(c)(2) was confusing. While it appeared the intent or meaning of the sentence did not change, the sentence does not read well as altered.

Response: FCIC has rephrased the language in section 14(c)(2).

Comment: A commenter indicated the final sentence in section 14(c)(3)(ii) which states ''Harvest production that is damaged [* * *] will not be counted as production to count unless such production is sold'' needs further clarification. The commenter stated some insured producers who cannot market the corn as fresh market sweet corn will sell it as chopped/silage, and in this case, the crop was sold but was not sold as fresh market sweet corn.

Response: The language in section 14(c)(3)(ii) pertains to harvested marketable sweet corn production that is not sold and unmarketable production that is later sold. Section 1 of these Crop Provisions defines ''marketable sweet corn'' as ''Sweet corn that is sold or grades U.S. No. 1 or better in accordance with the requirements of the United States Standards for Grades of Sweet Corn.'' There is nothing in the definition that requires the sweet corn to be sold as fresh market sweet corn before being considered marketable. This means that production that was previously unmarketable due to damage is considered marketable if it is sold and, even though it was sold for use other than fresh market sweet corn, it counts as production to count in accordance with section 14(c)(3)(ii). No change has been made.

Comment: Three commenters stated section 14(c)(4) is the only reference in the Settlement of Claim to direct marketed production, it gives the impression it is the only method by which direct marketed production will be accounted for and valued. The provision does not give any regard to the requirement that if any acreage will be direct marketed, such acreage will be appraised and such appraised production and any acceptable records will be used to value the amount of production. The commenters questioned why this is a change from current Special Provision statements which specifies the value of production to count that is sold by direct marketing will be the greater of the actual value or the provisions contained in section 14(c)(2). The commenters asked why the Crop Provisions do not allow for the deduction of allowable costs for production that is sold by direct marketing when the Strawberry Crop Provisions do allow the deduction.

Response: Regarding the omission in section 14(c)(4) of provisions concerning appraised potential production for direct marketed production, FCIC has revised the provisions to specify the total value of production sold by direct marketing will be the greater of the actual value received, or dollar amount obtained by multiplying the total number of containers of appraised sweet corn that is sold by direct marketing by the minimum value. The strawberry crop insurance program is a pilot program administered by FCIC. Strawberries are unique from other crops since strawberries that are sold by direct marketing or through brokers must be packed in containers. Fresh market sweet corn sold by direct marketing does not have a packing standard like strawberries and in most cases, direct marketed sweet corn production does not incur many of the costs of harvesting, such as grading and packing containers.

Comment: Two commenters did not agree with the proposed language contained in section 16(b)(1) to average the net value of all containers sold and then apply the minimum value. The commenter did not agree with the approach and recommended the minimum value be applied to the net value of each container sold individually.

Response: While the commenters suggested a change to the proposed language contained in section 16, no information was provided to support why such change should be made in calculating the value of harvested production. As stated above, it would be time consuming and burdensome to calculate the net value for each container separately. FCIC has determined that using the average net values will still provide the appropriate value for the containers. No change has been made.

List of Subjects in 7 CFR Part 457

Crop insurance, Fresh market sweet corn, Reporting and recordkeeping requirements.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 for the 2008 and succeeding crop years 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(1), 1506(p).

■ 2. Amend 457.129 as follows:
■ A. Revise the introductory text.
■ B. Remove the paragraph regarding priority preceding section 1.
■ C. Remove the reference of ''(§ 457.8)'' from the definitions of ''Crop year,'' and ''Practical to replant'' in section 1; and from sections 3(a), 3(c), 4, 5, 6, 7, 8, 9(a), 9(b), 10, 11(a), 11(b), 12(a), 12(c), and 13.
■ D. Remove the reference to ''fresh market'' where it appears in the definition of ''planting period'' in section 1, and section 16(a)(1).
■ E. Add definitions in section 1 for ''allowable cost,'' ''amount of insurance (per acre),'' ''average net value per container,'' ''minimum value,'' and ''net value;'' remove the definitions of ''excess rain,'' ''excess wind,'' and ''freeze;'' and revise the definitions of ''container,'' ''crop year,'' ''harvest,'' ''marketable sweet corn,'' and ''practical to replant.''
■ F. Revise section 2.
■ G. Amend section 3(a) by removing the phrase ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)''.
■ H. Revise section 3(c).
■ I. Redesignate section 3 paragraphs (d) and (e) as paragraphs (e) and (f), add a new paragraph (d), and revise newly redesignated paragraph (f).
■ J. Amend section 4 by removing the phrase ''(Contract Changes)''.
■ K. Amend section 5 by removing the phrase ''(Life of Policy, Cancellation, and Termination)''.
■ L. Amend section 6 by removing the phrase ''(Report of Acreage)''.
■ M. Amend section 7 by removing the phrase ''(Annual Premium)''.
■ N. Amend the introductory text of section 8 by removing the phrase ''(Insured Crop)''.
■ O. Revise section 8(c)(3).
■ P. Revise section 9.
■ Q. Amend the introductory text in section 10 by removing the phrase ''(Insurance Period)''.
■ R. Revise section 10(f).
■ S. Revise section 11.
■ T. Amend sections 12(a) and (c) by removing the phrase ''(Replanting Payment)''.
■ U. Revise section 13.
■ V. Amend section 14(b)(2) by removing the phrase ''(see section 3(d))'', and adding in its place ''(see section 3(e))''.
■ W. Amend section 14(b)(3) by removing the words ''Total the'' and adding in its place ''Totaling the'';
■ X. In section 14, revise paragraphs (b)(4)(ii), (b)(5), (c)(1)(iii), (c)(1)(iv), (c)(2) introductory text, (c)(2)(i), and (c)(3). Add new paragraphs (c)(1)(v), (c)(4), and add an example immediately following paragraph (b)(5).
■ Y. In section 16, revise paragraph (b); redesignate current paragraph (c) as (d), and add a new paragraph (c).

The revisions and additions to § 457.129 read as follows:

§ 457.129 Fresh market sweet corn crop insurance provisions.

The fresh market sweet corn crop insurance provisions for the 2008 and succeeding crop years for all counties with a contract change date on or after the effective date of this rule and for the 2009 and succeeding crop years for all counties with a contract change date prior to the effective date of this rule, as follows:

* * * * *

1. Definitions

Allowable cost. The dollar amount per container for harvesting, packing, and handling as shown in the Special Provisions.

Amount of insurance (per acre). The dollar amount of coverage per acre obtained by multiplying the reference maximum dollar amount shown on the actuarial documents by the coverage level percentage you elect.

Average net value per container. The dollar amount obtained by totaling the net values of all containers of sweet corn sold and dividing the result by the total number of containers of all sweet corn sold.

Container. The unit of measurement for the insured crop as specified in the Special Provisions.

Crop year. In lieu of the definition of ''crop year'' contained in section 1 of the Basic Provisions, for counties with fall, winter, and spring planting periods or counties with fall and spring planting periods, the period of time that begins on the first day of the earliest planting period for fall planted sweet corn and continues through the last day of the insurance period for spring planted sweet corn. For counties with only spring planting periods, the period of time that begins on the earliest planting period for spring planted sweet corn and continues through the last day of the insurance period for spring planted sweet corn. The crop year is designated by the calendar year in which spring planted sweet corn is harvested.

* * * * *

Harvest. Separation of ears of sweet corn from the plant by hand or machine.

Marketable sweet corn. Sweet corn that is sold for any purpose or grades U.S. No. 1 or better in accordance with the requirements of the United States Standards for Grades of Sweet Corn.

Minimum value. The dollar amount per container shown in the Special Provisions we will use to value marketable production to count.

Net value. The dollar value of packed and sold sweet corn obtained by subtracting the allowable cost and any additional charges specified in the Special Provisions from the gross value per container of sweet corn sold. This result may not be less than zero.

* * * * *

Practical to replant—In lieu of the definition in section 1 of the Basic Provisions, our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, marketing windows, and time to crop maturity, that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period (inability to obtain seed will not be considered when determining if it is practical to replant).

* * * * *

2. Unit Division

A basic unit, as defined in section 1 of the Basic Provisions, will also be established for each planting period.

3. Amounts of Insurance and Production Stages

* * * * *

(c) The production reporting requirements contained in section 3 of the Basic Provisions do not apply to sweet corn.

(d) If specified in the Special Provisions, we will limit your amount of insurance per acre if you have not produced the minimum amount of production of sweet corn contained in the Special Provisions in at least one of the three most recent crop years.

* * * * *

(f) The indemnity payable for any acreage of sweet corn will be based on the stage the plants had achieved when damage occurred. Any acreage of sweet corn damaged in the first stage to the extent that the majority of producers in the area would not normally further care for it will have an amount of insurance based on the first stage for the purposes

of establishing an indemnity even if you continue to care for the damaged sweet corn.

* * * * *

8. Insured Crop

* * * * *

(c) * * *

(3) Grown for direct marketing, unless otherwise provided in the Special Provisions or by written agreement.

9. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions any acreage of sweet corn damaged during the planting period in which initial planting took place:

(a) Must be replanted if:

(1) Less than 75 percent of the plant stand remains;

(2) It is practical to replant; and

(3) The final day of the planting period has not passed at the time the crop was damaged.

(b) Whenever sweet corn is initially planted during the fall or winter planting periods and the final planting date for the planting period has passed, but it is considered practical to replant, you may elect:

(1) To replant such acreage and collect any replant payment due as specified in section 12. The initial planting period coverage will continue for such replanted acreage; or

(2) Not to replant such acreage and receive an indemnity based on the stage of growth the plants had attained at the time of damage. However, such an election will result in the acreage being uninsurable in the subsequent planting period.

10. Insurance Period

* * * * *

(f) 100 days after the date of planting or replanting, unless otherwise provided in the Special Provisions.

11. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Wildlife;

(4) Volcanic eruption;

(5) Earthquake;

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

(7) Plant disease, but not damage due to insufficient or improper application of disease control measures; or

(8) Failure of the irrigation water supply, if caused by an insured cause of loss 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 against damage or loss due to:

(1) Failure to harvest in a timely manner unless harvest is prevented by one of the insurable causes of loss specified in section 11(a); or

(2) Failure to market the sweet corn unless such failure is due to actual physical damage caused by an insured cause of loss as specified in section 11(a). For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

* * * * *

13. Duties in the Event of Damage or Loss

In addition to the requirements contained in section 14 of the Basic Provisions, if you intend to claim an indemnity on any unit:

(a) You also must give us notice not later than 72 hours after the earliest of:

(1) The time you discontinue harvest of any acreage on the unit;

(2) The date harvest normally would start if any acreage on the unit will not be harvested; or

(3) The calendar date for the end of the insurance period.

(b) If insurance is permitted by the Special Provisions or by written agreement on acreage with production that will be sold by direct marketing, you must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine the value of your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal if you notify us that additional damage has occurred. These appraisals, and/or any acceptable production records provided by you, will be used to determine the value of your production to count.

(c) Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the dollar amount of insurance (per acre) for the applicable stage if such failure results in our inability to accurately determine the value of production.

14. Settlement of Claim

* * * * *

(b) * * *

(4) * * *

(ii) For catastrophic risk protection coverage, the result of multiplying the total value of production to be counted (see section 14(c)) by fifty-five percent; and

(5) Multiplying the result of section 14(b)(4) by your share.

For example:

You have a 100 percent share in 65.3 acres of fresh market sweet corn in the unit (15.0 acres in stage 1 and 50.3 acres in the final stage), with a dollar amount of insurance of $600 per acre. The 15.0 acre field was damaged by flood and appraisals of the crop determined there was no potential production to be counted. From the 50.3 acre field, you are only able to harvest 5,627 containers of sweet corn. The net value of all sweet corn production sold ($3.11 per container) is greater than the Minimum Value per container ($2.50). The 5,627 containers sold × $3.11 average net value per container = $17,500 value of your production to count. Your indemnity would be calculated as follows:

1 15.0 acres × $600 amount of insurance = $9,000 and
50.3 acres × $600 amount of insurance = $30,180;
2 $9,000 × .65 (percent for stage 1) = $5,850 and
$30,180 × 1.00 (percent for final stage) = $30,180;
3 $5,850 + $30,180 = $36,030 amount of insurance for the unit;
4 $36,030 − $17,500 value of production to count = $18,530 loss;
5 $18,530 × 100 percent share = $18,530 indemnity payment.

(c) * * *

(1) * * *

(iii) That is damaged solely by uninsured causes;

(iv) For which you fail to provide acceptable production records; or

(v) From which insurable production is sold by direct marketing and you fail

to meet the requirements contained in section 13(b) of these Crop Provisions;

(2) The value of the following appraised sweet corn production will not be less than the dollar amount obtained by multiplying the number of containers of appraised sweet corn by the minimum value for the planting period:

(i) Unharvested marketable sweet corn production (unharvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count unless such production is later harvested and sold for any purpose);

* * * * *

(3) The value of all harvested production of sweet corn from the insurable acreage, except production that is sold by direct marketing as specified in section (c)(4) below:

(i) For sold production, will be the greater of:

(A) The dollar amount obtained by multiplying the total number of containers of sweet corn sold by the minimum value; or

(B) The dollar amount obtained by multiplying the average net value per container from all sweet corn sold by the total number of all containers of sweet corn sold.

(ii) For marketable sweet corn production that is not sold, will be the dollar amount obtained by multiplying the number of containers of such sweet corn by the minimum value for the planting period. Harvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count unless such production is sold.

(4) If all the requirements of insurability are met, the value of insurable production that is sold by direct marketing will be the greater of:

(i) The actual value received by you for direct marketed production; or

(ii) The dollar amount obtained by multiplying the total number of containers of appraised sweet corn sold by direct marketing by the minimum value.

* * * * *

16. Minimum Value Option

* * * * *

(b) In lieu of the provisions contained in section 14(c)(3) of these Crop Provisions, the total value of harvested production that is not sold by direct marketing will be determined as follows:

(1) The dollar amount obtained by multiplying the average net value per container from all sweet corn sold by the total number of all containers of sweet corn sold (this result may not be less than the minimum value option amount shown in the actuarial documents);

(2) For marketable sweet corn production that is not sold, the value of such production will be the dollar amount obtained by multiplying the total number of containers of such sweet corn by the minimum value for the planting period. Harvested production that is damaged or defective due to insurable causes and is not marketable will not be included as production to count.

(c) If all the requirements of insurability are met, the value of insurable production that is sold by direct marketing will be the greater of:

(1) The actual value received by you for direct marketed production; or

(2) The dollar amount obtained by multiplying the total number of containers of sweet corn sold by direct marketing by the minimum value.

* * * * *

Signed in Washington, DC, on September 12, 2007.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E7–18781 Filed 9–25–07; 8:45 am]

BILLING CODE 3410–08–P

FARM CREDIT ADMINISTRATION

12 CFR Part 627

RIN 3052–AC38

Title IV Conservators, Receivers, and Voluntary Liquidations; Priority of Claims—Subordinated Debt

AGENCY: Farm Credit Administration.

ACTION: Direct final rule with opportunity to comment.

SUMMARY: The Farm Credit Administration (FCA, Agency, we), issues a direct final rule amending its priority of claims regulations. The effect of the amendments is to provide that, when the assets of a Farm Credit System (FCS or System) institution in liquidation are distributed, the claims of holders of subordinated debt will be paid after all general creditor claims.

DATES: If no significant adverse comment is received on or before October 26, 2007, these regulations will be effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**. If significant adverse comment is received on an amendment, paragraph, or section of this rule, and that provision may be addressed separately from the remainder of the rule, the FCA will withdraw that amendment, paragraph, or section and adopt as final those provisions of the rule that are not the subject of a significant comment. In such case, we will then tell you how we expect to continue further rulemaking on the provisions that were the subject of significant adverse comment.

ADDRESSES: We offer a variety of methods for you to submit comments. For accuracy and efficiency reasons, we encourage commenters to submit comments by e-mail or through the Agency's Web site or the Federal eRulemaking Portal. As faxes are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, please consider another means to submit your comment if possible. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *reg-comm@fca.gov.*
- *Agency Web site: http://www.fca.gov.* Once you are at the Web site, select ''Public Commenters,'' then ''Public Comments.''
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.
- *FAX*: (703) 883–4477. Posting and processing of faxes may be delayed. Please consider another means to comment, if possible.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Public Commenters,'' then select ''Public Comments,'' then select ''Submitting a Comment'' and follow the instructions there. We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Christopher D. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4434, or