

# Proposed Rules

Federal Register

Vol. 62, No. 94

Thursday, May 15, 1997

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

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Parts 416 and 457

#### Pea Crop Insurance Regulations; and Common Crop Insurance Regulations, Dry Pea Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

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

**DATES:** Written comments on this proposed rule will be accepted until close of business June 16, 1997 and will be considered when the rule is to be made final.

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

**FOR FURTHER INFORMATION CONTACT:** Arden Routh, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, at Kansas City, MO, address listed above, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order No. 12866

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

##### Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563-0003 through September 30, 1998.

The amendments set forth in this proposed rule do not contain additional information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Dry Pea Crop Insurance Provisions."

The information to be collected includes a crop insurance application and an acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of dry peas that are eligible for Federal crop insurance.

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

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

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

clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

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

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

##### Unfunded Mandates Reform Act of 1995

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

##### Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism 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 various levels of government.

##### Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than on large entities. Under the current regulations, a producer is required to complete an application and acreage

report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity.

The insured must also annually certify to the previous years production if adequate records are available to support the certification. The producer must maintain the production records to support the certified information for at least three years. This regulation does not alter those requirements.

The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

#### **Federal Assistance Program**

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

#### **Executive Order No. 12372**

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

#### **Executive Order No. 12998**

This rule has been reviewed in accordance with Executive Order No. 12998. The provisions of this rule will not have retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

#### **Environmental Evaluation**

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

#### **National Performance Review**

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

#### **Background**

1. FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.140, Dry Pea Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring dry peas found at 7 CFR part 416 (Pea Crop Insurance Regulations). FCIC also proposes to amend 7 CFR part 416 to limit its effect for Dry Peas to the 1997 and prior crop years. FCIC proposes to separately publish crop provisions in Part 457 to cover Green Peas.

This rule makes minor editorial and format changes to improve the Pea Crop Insurance Regulations compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring dry peas as follows:

1. Section 1—Remove the definition of "county," to default to the definition contained in the Basic Provisions (§ 457.8). The current definition includes land identified by an FSA farm serial number for the county that is physically located in another county; the new definition does not. This change will require land in another county to be insured using the actuarial materials for the county where the land is located. Add definitions for the terms "adequate stand," "base price," "contract price," "contract seed peas," "days," "dry peas," "FSA," "final planting date," "good farming practices," "interplanted," "irrigated practice," "local market price," "nurse crop (companion crop)," "planted acreage," "practical to replant," "price election," "production guarantee (per acre)," "replanting," "salvage value," "seed company," "seed company contract," "timely planted," and "written agreement" for clarification purposes. The definition of "dry peas" includes fall-planted Austrian Winter Peas if we agree in writing. The definition also stipulates that peas grown for seed will be considered contract seed peas only if the insured acreage is enrolled in a state seed certification program and at least 50 percent of the expected production from the insured acreage is contracted at a fixed price. Contract seed peas not meeting these requirements will be insurable at the price election established for smooth green and yellow varieties of commercial dry edible peas.

2. Section 2—Allow separate dry pea types to qualify for optional units rather than only basic units as previously allowed. This change makes basic unit

division provisions for dry peas consistent with provisions for other crops. Clarify unit division for non-irrigated corners of acreage irrigated by center-pivot systems.

3. Section 3—Specify that the insured may select only one price election (percentage of the contract price for contract seed peas) for all the dry peas in the county insured under the policy, unless the Special Provisions provide different price elections by type, in which case the insured may select one price election for each dry pea type designated in the Special Provisions. This change is proposed to be consistent with other crop provisions that allow insurance by type. The price elections selected are not required to have the same percentage relationship to the maximum price offered for each type. Also specify that the price election for spring-planted contract seed peas produced under a seed company contract will be based on the contract price.

4. Section 4—Change the contract change date from December 31 to November 30 for all counties to provide adequate time to permit insured producers to become familiar with any changes and make informed decisions before the sales closing date. The sales closing date was moved up 30 days by the Federal Crop Insurance Reform Act of 1994.

5. Section 5—Change the cancellation and termination dates from April 15 to March 15 to standardize the cancellation and termination dates with the sales closing dates.

6. Section 6—Add a requirement that insureds who produce spring-planted contract seed peas under a seed company contract to submit a copy of the seed company contract on or before the report of acreage. This change is made to establish liability under the contract.

7. Section 7(a)(3)—Permit consideration for requests to insure dry peas interplanted with another crop or planted into an established grass or legume. This makes insurance available by written agreement for production practices that are not normally followed in an area.

8. Section 7(c)—Permit insurance of Austrian Winter Peas if the insurance provider agrees in writing that there is an adequate stand in the spring to produce the yield used to determine the production guarantee and the insured requested insurance on or before the sales closing date.

9. Section 8(b)—Clarify that any acreage damaged prior to the final planting date must be replanted unless

we agree that it is not practical to replant.

10. Section 9(a)—Provide that coverage on Austrian Winter Peas will begin on acreage that has an adequate stand on the earlier of March 16 or on the date the acreage is accepted for insurance; however, such coverage will not attach before March 1.

11. Section 9(b)—Change the end of insurance period date from September 15 to September 30 to ensure that coverage is provided through the normal harvest period.

12. Section 10(c)—Clarify that insect and disease damage due to insufficient or improper application of pest or disease control measures are not an insurable cause of loss.

13. Section 12(b)—Modify the calculations used to determine dry pea claim amounts to allow the aggregation of production guarantees and production to count when more than one dry pea type is in one unit. This modification is necessary to accommodate the insurance of multiple types of dry peas within a single unit.

14. Section 12—No adjustment for quality deficiencies will be allowed for Austrian Winter Peas since the type is commonly sold only after removing any deficiencies.

15. Section 12(e)—Allow quality adjustment for smooth green and yellow varieties (including peas grown for seed that do not qualify to be insured as seed peas) that grade lower than U.S. No. 2 instead of the current U.S. No. 3. This change is consistent with the crop quality anticipated by the dry pea industry, and specifically by the American Dry Pea and Lentil Association (ADPLA). The ADPLA assesses the Fair Average Quality (FAQ) of each crop years' production. The historical FAQ for smooth green and yellow varieties is between U.S. No. 1 and 2. FCIC will increase premium rates as appropriate if this change is adopted in the final rule.

16. Currently, coverage is provided for late planted acreage under The Late Planting Agreement Option. This option will not be applicable to the proposed provisions. FCIC will later propose late and prevented planting provisions that will be added to the Basic Provisions (§ 457.8). These provisions will provide late and prevented planting coverage for pea producers.

17. Section 13—Provide for insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section

will cover the procedures for, and duration of, written agreements.

Good cause is shown to allow 30 days for comments after this rule is published in the **Federal Register**. This rule improves dry pea crop insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. Although, the contract change date is December 31, 1997, the final rule must be published by July 7, 1997. Publication is required by this date to achieve revision and timely distribution of the actuarial documents thereby allowing the reinsured companies and insureds sufficient time to implement the new provisions. Therefore, public interests requires the agency to act immediately to make these provisions available for the 1998 crop year.

#### **List of Subjects in 7 CFR Parts 416 and 457**

Crop Insurance, Dry pea, Pea crop insurance regulations.

#### **Proposed Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 416 and 457 as follows:

#### **PART 416—PEA CROP INSURANCE REGULATIONS FOR THE 1986 THROUGH THE 1997 CROP YEARS**

1. The authority citation for 7 CFR part 416 is revised to read as follows:

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

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

3. The part heading "Subpart—Regulations for the 1986 through the 1997 Crop Years" is removed.

4. Section 416.7 is amended by revising the introductory text of paragraph (d) to read as follows:

##### **§ 416.7 The application and policy.**

\* \* \* \* \*

(d) The application for the 1986 and subsequent crop years is found at subpart D of part 400-General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Pea Insurance Policy for the 1986 through 1997 crop years are as follows:

\* \* \* \* \*

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

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

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

5. Section 457.140 is added to read as follows:

#### **§ 457.140 Dry pea crop insurance provisions.**

The Dry Pea Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

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Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Dry Pea Crop Provisions

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

##### **1. Definitions**

**Adequate stand.** A population of live plants per unit of acreage which will produce at least the yield used to establish your production guarantee.

**Base price.** The price per pound (excluding any discounts or incentives that may apply) that is stated in the contract seed pea processor contract and that will be paid to the producer for at least 50 percent of the total production under contract with the seed company.

**Combining.** A harvesting process that uses a machine to separate the peas from the pods and other vegetable matter and place the peas into a temporary storage receptacle.

**Contract price.** A fixed price per pound, (excluding any discounts or incentives that may apply), that is stated in the seed company contract.

**Contract seed peas.** Dry peas produced for the purpose of producing seed to be planted at a future date and that are grown:

(1) On acreage enrolled in the seed certification program administered by the state in which the peas are produced; and

(2) Under a contract with a seed company. The contract must stipulate a fixed price for at least fifty percent of the anticipated production from the acreage planted to the contract seed peas, and must be executed before you report your acreage.

**Days.** Calendar days.

**Dry peas.** Peas of the following types:

(1) All spring-planted smooth green and yellow varieties of commercial dry edible peas, and peas that are grown for the purpose of producing seed to be planted at a future date that do not meet the requirements contained in the definition of contract seed peas;

(2) All fall-planted varieties of Austrian Winter Peas (if we agree in writing (see section 7(c));

(3) All spring-planted varieties of lentils; and

(4) All spring-planted varieties of contract seed peas.

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

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

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

**Harvest.** Combining of dry peas.

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

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

**Local market price.** The cash price per pound for the U.S. No. 2 grade of dry peas or lentils offered by buyers in the area in which you normally market the insured crop. Such price will be the prevailing dollar amount these buyers are willing to pay for dry peas or lentils containing the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade. Factors not associated with grading under the United States Standards for Whole Dry Peas, Split Peas and Lentils will not be considered.

**Nurse crop (companion crop).** A crop planted into the same acreage as another crop, that is intended to be harvested separately, and which is planted to improve growing conditions for the crop with which it is grown.

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

**Practical to replant.** In lieu of the definition of "Practical to replant" contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, and marketing window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period unless replanting is generally occurring in the area.

**Price Election.** In addition to the provisions of the definition of price election in section 1 of the Basic Provisions (§ 457.8) the price election for spring-planted contract seed peas

produced under a seed company contract will be the result of multiplying the contract price by a percentage (not to exceed 100 percent) that you elect.

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

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

**Salvage value.** The highest price per pound that will be paid for the damaged dry peas as determined by us.

**Seed company.** Any business enterprise regularly engaged in the processing of contract seed peas, that possesses all licenses and permits for marketing contract seed peas required by the state in which it operates, and that possesses or has contracted for facilities, with enough drying, screening, and bagging or packaging equipment to accept and process the contract seed peas within a reasonable amount of time after harvest.

**Seed company contract.** A written agreement between the producer and the seed company, containing at a minimum:

(a) The producer's promise to plant and grow one or more specific varieties of contract seed peas, and deliver the production from those varieties to the seed company;

(b) The seed company's promise to purchase all the production stated in the contract;

(c) A date by which the crop must be harvested to be accepted by the processor; and

(d) A fixed price or a method to determine such price based on published independent information, that will be paid to the producer for the production stated in the contract.

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

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

## 2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) may be divided into optional units if, for each optional unit you meet all the conditions of this section.

(b) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, variety, and planting period, other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you.

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

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

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

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

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

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

(i) **Optional Units by Dry Pea Type:** A separate optional unit may be established for each dry pea type designated in section 1 (Definitions).

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

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

system is used may qualify as a separate optional unit provided that all requirements of this section are met.

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

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one price election (percentage of the contract price for spring-planted contract seed peas) for all the dry peas in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election (percentage of the contract price for spring-planted contract seed peas) for each dry pea type so designated in the Special Provisions. The price elections you choose for each type are not required to have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you may choose 80 percent of the maximum price election for another type. However, if you elect the Catastrophic Risk Protection level of insurance for any dry pea type, that level of coverage will be applicable to all insured acreage in the county. When you elect a price election for one or more dry pea type that is applicable to the limited level of coverage and a price election applicable to the additional level of coverage for the remaining dry pea types, the administrative fees applicable to both the limited and additional levels of coverage will apply.

### 4. Contract Changes

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

### 5. Cancellation and Termination Dates

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

### 6. Report of Acreage

In addition to the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), if you are insuring spring-planted contract seed peas grown under contract with a seed company you must submit a copy of the seed company contract to us on or before the acreage reporting date.

### 7. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the dry pea types in the county (except Austrian Winter Peas unless you request insurance for such peas in accordance with section 7(c)) for which a premium rate is provided by the actuarial table:

- (1) In which you have a share;
- (2) That are planted for harvest as dry peas and which, if grown under a seed company contract, are not excluded from such contract for or during the crop year; and
- (3) That are not (unless allowed by the Special Provisions or by written agreement):
  - (i) Interplanted with another crop;
  - (ii) Planted into an established grass or legume; or

(iii) Planted as a nurse crop.

(b) An instrument in the form of a "lease" under which you retain control of the acreage on which the insured crop is grown and that provides for delivery of the crop under substantially the same terms as a seed company contract may be treated as a contract under which you have an insurable interest in the crop.

(c) Austrian Winter Peas will be insured only if you request insurance in writing for such dry peas and we agree to provide coverage by written agreement. Your request to insure Austrian Winter Peas must be submitted to us not later than the sales closing date. We will not agree to insure Austrian Winter Peas unless an adequate stand exists in the spring to produce at least the production guarantee.

(d) Any acreage of dry peas which is destroyed and replanted to different insurable type of dry peas will be considered insured acreage.

### 8. Insurable Acreage

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

- (a) We will not insure any acreage that does not meet the rotation requirements shown in the Special Provisions; or
- (b) Any acreage of the insured crop damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant. We will not require you to replant if it is not practical to replant the type of dry peas originally planted.

### 9. Insurance Period

In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

- (a) Coverage for Austrian Winter Peas will begin on acreage that has an adequate stand on the earlier of March 16 or on the date we agree to accept the acreage for insurance; however, insurance will not begin before March 1; and
- (b) The calendar date for the end of the insurance period is September 30 of the calendar year in which the crop normally is harvested.

### 10. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

- (a) Adverse weather conditions;
- (b) Fire;
- (c) Insects, but not damage due to insufficient or improper application of pest control measures;
- (d) Plant disease, but not damage due to insufficient or improper application of disease control measures;
- (e) Wildlife;
- (f) Earthquake;
- (g) Volcanic eruption; or
- (h) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

### 11. Duties in the Event of Damage or Loss

In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

### 12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the unit.

(b) In the event of loss or damage to your pea crop covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage of each dry pea type, excluding contract seed peas, by its respective production guarantee;

(2) Multiplying each result in section 12(b)(1) by the respective price election for each insured type;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the insured acreage of each contract seed pea type by its respective production guarantee;

(5) Multiplying each result in section 12(b)(4) by the applicable base price;

(6) Multiplying each result in section 12(b)(5) by your selected price election percentage;

(7) Totaling the results in section 12(b)(6);

(8) Totaling the results in section 12(b)(3) and section 12(b)(7);

(9) Multiplying the total production to be counted of each dry pea type, excluding contract seed peas, if applicable, (see section 12(d)) by the respective price election;

(10) Totaling the value of all contract seed pea production (see section 12(c));

(11) Totaling the results in section 12(b)(9) and section 12(b)(10);

(12) Subtracting the result in section 12(b)(11) from the result in section 12(b)(8); and

(13) Multiplying the result by your share.

(c) The value of contract seed pea production to count for each type in the unit will be determined as follows:

(1) For production meeting the minimum quality requirements contained in the seed pea processor contract and for production that does not meet such requirements due to uninsured causes:

(i) Multiplying the actual value or base price per pound, whichever is greater, by the price election percentage you selected; and

(ii) Multiplying the result by the number of pounds of such production.

(2) For mature production not meeting the minimum quality requirements contained in the seed pea processor contract due to insurable causes, and immature production that is appraised:

(i) Multiplying the actual value by the price election percentage you selected; and

(ii) Multiplying the result by the number of pounds of such production.

(d) The total pea production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

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

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production of dry peas, excluding Austrian Winter Peas, may be adjusted for quality deficiencies in accordance with section 12 (c) or (e), if applicable); and

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(e) Mature production of smooth green and yellow peas, lentils, and contract seed peas that are not deliverable under the contract or are sold under the contract for less than the contract price, may be adjusted for quality deficiencies. No adjustment for quality deficiencies will be allowed for Austrian Winter Peas.

(1) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the United States Standards for Whole Dry Peas, Split Peas, and Lentils, result in production grading U.S. No. 3 or worse because of defects, color, skinned production (lentils only), odor, material weathering, or distinctly low quality; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(2) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions and which occurs within the insurance period;

(ii) The deficiencies, substances, or conditions result in a net price for the damaged production that is less than the local market price;

(iii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader licensed to grade dry peas under the authority of the United States Agricultural Marketing Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Test weight for quality adjustment purposes may be determined by our loss adjuster.

(3) Dry Pea production that is eligible for quality adjustment, as specified in sections 12(e) (1) and (2), will be reduced as follows:

(i) The value per pound of the qualifying damaged production and the local market price will be determined on the earlier of the date such damaged production is sold or the date of final inspection for the unit. The value per pound for the qualifying damaged production will be the value determined in the local area to the extent feasible. We may obtain prices from any buyer of our choice. If we obtain prices from one or more buyers located outside your local market area, we will reduce such prices by the additional costs required to deliver the dry peas to those buyers. Discounts used to establish the net value of the damaged production will be limited to those that are usual, customary, and reasonable. The value will not be reduced for:

(A) Moisture content;

(B) Damage due to uninsured causes; or

(C) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the dry peas; except, if the value of the damaged production can be increased by conditioning, we may reduce the value of the production after it has been conditioned by the cost of conditioning but not lower than the value of the production before conditioning;

(ii) The value per pound of the damaged or conditioned production will be divided by the local market price to determine the quality adjustment factor;

(iii) The number of pounds of the damaged or conditioned production will then be multiplied by the quality adjustment factor to determine the production to count to be included in section 12(d); and

(iv) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

### 13. Written Agreements

Terms of this policy which are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 13(e);

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

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

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

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

Signed in Washington, D.C., on May 8, 1997.

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 97-12707 Filed 5-14-97; 8:45 am]

BILLING CODE 3410-88-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1, 301, and 601

[REG-209837-96 and REG-105299-97]

RIN 1545-AU42 and 1545-AV20

#### Requirements Respecting the Adoption or Change of Accounting Method; Extensions of Time To Make Elections

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the procedure for requesting a change in accounting method and to the standards for granting an extension of time to request a change in accounting method. The regulations provide for a longer period of time for filing an application for change in accounting method with the Commissioner. The regulations also provide that an extension of time to file an application for change in accounting method will be granted only in unusual and compelling circumstances. The