Rules and Regulations

Federal Register
Vol. 63, No. 119
Monday, June 22, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 447 and 457

RIN 0563–AB48

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

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of popcorn. The provisions will be used in conjunction with the Common Crop Insurance Policy, Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current popcorn 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 popcorn crop insurance regulations to the 1998 and prior crop years.

EFFECTIVE DATE: July 22, 1998.

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

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through October 31, 2000.

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. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The amount of work required of the insurance companies will not increase because the information used to determine eligibility is already maintained at their office and the other information now required is already being gathered as a result of the present policy. No additional actions are required as a result of this action on the part of either the insured or the insurance companies. Additionally, this regulation does not require any greater action on the part of small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

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

National Performance Review

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

Background

On Wednesday, April 9, 1997, FCIC published a notice of proposed rulemaking in the **Federal Register** at 62 FR 17103 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.126, Popcorn Crop Insurance Provisions. The new provisions will be effective for the 1999 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring popcorn found at 7 CFR part 447 (Popcorn Crop Insurance Regulations). FCIC also amends 7 CFR part 447 to limit its effect to the 1998 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to

submit written comments and opinions. A total of 31 comments were received from an insurance service organization and reinsured companies. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization and two reinsured companies asked whether, under the definition of ''good farming practices,'' there may exist acceptable cultural practices that are not necessarily recognized (or possibly not known) by the Cooperative State Research, Education, and Extension Service. The commenters recommended changing the term ''county'' in the definition of ''good farming practices'' to ''area.'' The insurance service organization also recommended adding the word ''generally'' before ''recognized by the Cooperative State Research, Education, and Extension Service * * *''

Response: The Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing popcorn. If a producer is following practices currently not recognized as acceptable by the CSREES, such recognition can be sought by interested parties. Use of the term ''generally'' will only make the definition ambiguous and more difficult to administer. Although the cultural practices recognized by the CSREES may only pertain to specific areas within a county, the actuarial documents are on a county basis. However, the definition of ''good farming practices'' has been moved to the Basic Provisions.

Comment: A reinsured company expressed concern about the definition of ''final planting date'' because it infers that coverage is provided after the final planting date; however, there are no provisions for ''late planting.''

Response: The definition of ''late planting'' as well as provisions for late and prevented planting coverages common to most crops have been moved to the Basic Provisions. FCIC has added late planting provisions, section 14, and prevented planting provisions, section 15, to these popcorn crop provisions.

Comment: A reinsured company recommended adding the words ''and quality'' after the word ''quantity'' in the definition of ''irrigated practice.''

Response: There are no clear criteria regarding the quality of water necessary to produce a crop. The highly variable factors involved would make such criteria difficult to develop and administer. The provisions regarding good farming practices can be applied in situations in which the insured person failed to exercise due care and diligence. The definition of ''irrigated practice'' has been moved to the Basic Provisions.

Comment: An insurance service organization and a reinsured company stated the definition of ''replanting'' is confusing and awkward. One of the commenters recommended revising the definition to specify ''* * * growing a successful popcorn crop.''

Response: The definition of ''replanting'' clearly describes the steps required to replant the crop. The producer must first perform the cultural practices needed to replant the seed before replanting the seed. FCIC has revised the definition to specify that the crop be replanted with the expectation of producing at least the guarantee. The definition of ''replanting'' has been moved to the Basic Provisions.

Comment: A reinsured company recommended that the reference contained in the definition of ''written agreement'' should be section 14 rather than section 15.

Response: The provisions for written agreements have been moved to the Basic Provisions with reference to the correct section.

Comment: An insurance service organization and a reinsured company recommended amending section 2 of the proposed rule to clarify whether optional units may be established if the processor contract stipulates the number of contracted acres, or only if the contract does not specify an amount of production.

Response: FCIC has amended section 2 to specify that processor contracts that stipulate a specific amount of production to be delivered, the basic unit will consist of all the acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor, and optional units will not be established for such production-based processor contracts. The language in section 2 has also been revised and reformatted to clearly state the requirements for both the acreage-based and production-based processor contracts. In addition, language in this section that is common with other Crop Provisions has been moved to the Basic Provisions.

Comment: An insurance service organization recommended removal of the opening phrase in section 2(b)(5)(iv)(B) that states ''In addition to, or instead of establishing optional units by section, section equivalent, or FSA Farm Serial Number, * * * ''since section 2(b)(5)(iv) specifies that ''Each optional unit must meet one or more of the following criteria* * *.''

Response: FCIC has revised the language accordingly. However, the optional unit provisions common to most crops have been moved to the Basic Provisions.

Comment: An insurance service organization stated that the language in section 3(a) which provides guidelines for selection of price elections should be moved to the Basic Provisions.

Response: The requirement that the price election (for each type, varietal group, etc.) have the same percentage relationship to the maximum prices does not apply to all crop policies. However, this clause applies to a sufficient number of policies so as to make it an item for consideration whenever 7 CFR part 457 is amended. This recommendation will be considered at that time, and no change has been made to these popcorn provisions.

Comment: An insurance service organization expressed concern that the November 30 contract change date is not early enough for counties with a January 15 sales closing date.

Response: The January 15 cancellation and termination dates are applicable only to counties in the most southern part of Texas. The commenter did not provide specific details as to why the November 30 contract change date is not sufficient. FCIC believes that the 45 days between the contract change date and the cancellation date allows an ample period of time for the insured to make a decision regarding subsequent crop year coverages considering the small number of policies and areas involved. Therefore, no change has been made.

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

Response: There is no evidence that allowing the producer to provide a copy of the processor contract as late as the acreage reporting date has resulted in producers waiting to decide until the acreage reporting date if they want coverage. Popcorn producers will have processor contracts much sooner to ensure that they have a market before expending the costs to plant the crop. The requirement to provide a copy of the processor contract with the acreage report is also most convenient for the producer. Language in section 6 has been revised to clarify that a copy of all processor contracts must be provided on or before the acreage reporting date.

Comment: An insurance service organization recommended changing the word ''before'' in section 7(a)(3) to ''by'' or ''on or before'' the acreage reporting date. This would allow for the processor contract to be established that day.

Response: FCIC has amended the provision accordingly.

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

Response: Popcorn has seldom, if ever, been interplanted with another crop or planted into an established grass or legume. However, production practices are constantly evolving. FCIC chooses to retain the provisions of section 7(a)(4) to accommodate such developments if they should occur. In addition, interplanting provisions are not the same among the crop policies and, therefore, will be retained in the Crop Provisions.

Comment: An insurance service organization indicated that the provisions contained in section 7(b) are confusing and seem to indicate that only a landlord would have a share in the insured crop and that a tenant cannot have a share since that person does not retain possession of the acreage. The commenter questioned whether the provision in section 7(b) is already covered in sections 7(a) (1) and (3).

Response: The language in section 7(b) was intended to cover producers who have a crop share agreement, rent, or owns acreage. The word ''possession'' has been changed to ''control'' for clarification and FCIC has added that the insured must have a risk of loss. Section 7(a) specifies requirements for insurance coverage on the crop, while section 7(b) specifies requirements for an insurable share in the crop. Therefore, both provisions are necessary.

Comment: Two comments from an insurance service organization and one from a reinsured company questioned whether the provisions in section 9(b), which state that the insurance period ceases on the date sufficient production is harvested to fulfill the producer's processor contract, conflicts with the provisions in section 13(a), that states ''We will determine your loss on a unit basis.'' The commenters questioned how the insured will know enough production has been harvested before acceptance by the processor. One commenter stated that the insured may not be aware of discounts and production modifications (*e.g.*, shrinkage, foreign material, etc.) that may be imposed by the processor. The insured may believe the contracted amount of production has been harvested and later learn that the amount harvested is short of the production guarantee. The insurance service organization asked if any production in excess of the contracted amount will be considered as production to count for APH purposes, or is the production only counted when there is a processor settlement sheet? The insurance service organization recommended the language in section 9(b) be made similar to the language contained in the sugar beet policy, such as, ''* * * the insurance period ends when the production delivered to the processor equals the amount of production stated in the popcorn processor contract.'' The insurance service organization also questioned whether ''delivered to'' is the same as ''accepted by'' the processor and suggested adding wording to include ''whether delivered or not.''

Response: Section 9(b) does not conflict with section 13(a). For processor contracts based on a stated amount of production, FCIC is only insuring the contracted amount, and the producer can only establish one basic unit per processor contract. Therefore, once the contracted amount is fulfilled, insurance ceases on the unit and there is no payable loss. If the contract is not fulfilled and there still is unharvested production, any insurable cause of loss is covered up to the contracted amount, assuming it has not been abandoned. With respect to the issue of when the producer would know when the processor contract was fulfilled, records are kept as production is delivered to the processor. As a result, both the producer and processor are aware of the amount of production that has been delivered. All production from the unit, including any in excess of the amount stated in the contract, will be considered as production to count when determining the producer's approved yield. The claim settlement provisions have been clarified to state that, for the purposes of loss adjustment, the amount shown on the settlement sheet, plus any appraised or harvested production lost due to uninsured causes that rendered the production unacceptable to the processor, will be included as production to count. FCIC has also revised section 9(b) to clarify that the insurance period ceases when the production accepted by the processor equals the contracted amount of production if the processor contract stipulates a specific amount of production to be delivered. However, rejected production will be considered as production to count unless it was damaged by an insurable cause of loss occurring during the insurance period.

Comment: An insurance service organization questioned a discrepancy between section 9(b), which states that insurance ceases on ''The date you harvested sufficient production to fulfill your processor contract,'' and section 10(b)(3) of the proposed rule, which states that loss of production will not be insured due to ''damage that occurs to unharvested production after you deliver the production required by the processor contract.'' The commenter indicated that this provision is not necessary since any damage occurring after delivery would be outside the insurance period as indicated in section 9(b).

Response: FCIC has deleted the provision contained in section 10(b)(3) accordingly.

Comment: An insurance service organization stated that some crop policies allow the entire replanting payment to be paid to the person incurring the entire expense (usually the tenant) when landlord and tenant are insured by the same company. However, the commenter questioned why this language is not contained in section 11 of the proposed Popcorn Crop Provisions.

Response: It is true that a few crop provisions allow the entire replanting payment to be paid to the person incurring the entire expense (usually the tenant) when the landlord and tenant are insured with the same company. However, due to comments received on other regulations, FCIC reevaluated this provision and has concluded it is not equitable to all insureds. Specifically, if a landlord and tenant are insured with one company, the provisions apply, but if the landlord and tenant are insured with different companies, the provisions do not apply. Any Crop Provisions containing these terms will be amended to eliminate them. Therefore, no change has been made.

Comment: An insurance service organization suggested that language contained in section 11(b) should include 20 acres as a minimum qualifier in addition to the others.

Response: The commenter misunderstood the provisions contained in section 11(b). Section 13 of the Basic Provisions contains the 20 acre or 20 percent rule referenced by the commenter which is applicable to this policy. Section 11(b) of the Popcorn Crop Provisions establishes the

maximum amount of the replanting payment (20 percent of the production guarantee or 150 pounds, multiplied by the price election, multiplied by the share). Therefore, no change has been made.

Comment: An insurance service organization stated the indemnity calculation contained in section 13(b) was wordy, difficult to follow, and should be simplified for crops without separate prices by type.

Response: Since some of the calculations involved are not performed in sequential order, it is necessary to refer to specific section numbers. Removal of the section reference would make the provisions less clear. However, an example has been added to clarify section 13.

Comment: An insurance service organization stated that section 13(c)(1)(iv) should not allow the insured to defer settlement and wait for a later, generally lower appraisal, especially on crops that have a short ''shelf life.''

Response: This provision allows deferment of a claim only if the insurance provider agrees that representative samples should be left or if the insured elects to continue to care for the entire crop in order to obtain a more accurate determination of the production to count for the unit. In either case, if the insured does not provide sufficient care for the crop or crop samples, the original appraisal will be used. Therefore, no change has been made.

Comment: An insurance service organization and two reinsured companies recommended removal of the requirement contained in section 15 that a written agreement be renewed each year if there are no significant changes to the farming operation. Two of the commenters stated a written agreement should be continuous and the effective period should be specified in the written agreement.

Response: Written agreements are intended to supplement policy terms or permit insurance in unusual situations that require modification of the otherwise standard insurance provisions. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize written agreement exceptions to ensure that the insured is well aware of the specific terms of the policy. The written agreement provisions have been moved to the Basic Provisions since they apply to most crops.

Comment: An insurance service organization and two reinsured companies stated the proposed rule did not contain provisions for late planting and prevented planting coverages. The commenters questioned whether popcorn was intended to have late and prevented planting coverages?

Response: Provisions for late and prevented planting coverages are now contained in the Basic Provisions which are applicable to popcorn. FCIC has added to the Popcorn Crop Provisions, a new section 14, which specifies that late planting provisions are applicable to popcorn if written approval is obtained from the processor by the acreage reporting date. FCIC has also added a new section 15, providing the available prevented planting coverage.

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

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

2. Section 1—Amended the definition of ''planted acreage'' to add a requirement that popcorn must be planted in rows far enough apart to permit mechanical cultivation, unless otherwise excepted. Amended the definition of ''practical to replant'' to clarify that it will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the processor contract, or the processor agrees in writing that it will accept the production from the replanted acreage. Clarified the definition of ''processor contract'' to specify that multiple contracts with the same processor, each of which stipulates a specific amount of production to be delivered under the terms of the specified contract, will be considered as a single processor contract. Removed the definitions of ''approved yield,'' ''days,'' ''FSA,'' ''interplanted,'' ''production guarantee (per acre),'' and ''timely planted'' because these definitions now appear in the Basic Provisions.

3. Section 2—Moved all the provisions common to most crops to the Basic Provisions.

4. Section 7(a)—Revised ''actuarial table'' to ''actuarial documents'' to be consistent with language in other crop provisions.

5. Section 7(c)(2)—Amended and clarified that the Board of Directors or officers of the processor must, prior to the sales closing date, execute and adopt a resolution that contains the same terms as an acceptable processor contract.

6. Section 14—Revised provisions to address only late planted acreage.

7. Section 15—Deleted provisions for written agreements and added provisions for prevented planting coverage.

List of Subjects in 7 CFR Parts 447 and 457

Crop insurance, Popcorn.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends the Popcorn Crop Insurance Regulations (7 CFR part 447) and the Common Crop Insurance Regulations (7 CFR part 457) as follows:

PART 447—POPCORN CROP INSURANCE REGULATIONS FOR THE 1987 THROUGH THE 1998 CROP YEARS

1. The authority citation for 7 CFR part 447 is revised to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

Part Heading [Revised]

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

Subpart Heading [Removed]

3. The part heading ''Subpart—Regulations for the 1987 and Succeeding Crop Years is removed.

4. Section 447.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 447.7 The application and policy.

* * * * *

(d) The application is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Popcorn Insurance Policy for the 1987 through 1998 crop years are as follows:

* * * * *

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

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

Authority: 7 U.S.C. 1506(1), 1506(p).

6. Section 457.126 is added to read as follows:

§ 457.126 Popcorn Crop Insurance Provisions.

The Popcorn Crop Insurance Provisions for the 1999 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Popcorn Crop Insurance Provisions

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

1. Definitions

Base contract price. The price stipulated on the contract executed between you and the processor before any adjustments for quality.

Harvest. Removing the grain or ear from the stalk either by hand or by machine.

Merchantable popcorn. Popcorn that meets the provisions of the processor contract.

Planted acreage. In addition to the definition contained in the Basic Provisions, popcorn must initially be planted in rows far enough apart to permit mechanical cultivation, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Pound. Sixteen (16) ounces avoirdupois.

Practical to replant. In addition to the definition contained in the Basic Provisions, it will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the popcorn processor contract, or the processor agrees in writing that it will accept the production from the replanted acreage.

Processor. Any business enterprise regularly engaged in processing popcorn that possesses all licenses, permits or approved inspections for processing popcorn required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process the contracted popcorn within a reasonable amount of time after harvest.

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

(a) The producer's commitment to plant and grow popcorn, and to deliver the popcorn production to the processor;

(b) The processor's commitment to purchase all the production stated in the processor contract;

(c) A date, if specified on the processor's contract, by which the crop must be harvested to be accepted; and

(d) A base contract price.

Multiple contracts with the same processor, each of which stipulates a specific amount of production to be delivered under the terms of the processor contact, will be considered as a single processor contract.

2. Unit Division

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

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

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

(ii) In accordance with section 13 of these Crop Provisions, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

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

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

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

In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the popcorn 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 for each popcorn type designated in the Special Provisions. The price elections you choose for each type must 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 must also choose 100 percent of the maximum price election for all other types.

4. Contract Changes

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

5. Cancellation and Termination Dates

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

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson counties Texas, and all Texas counties lying south thereof.	January 15.
All other Texas counties and all other states.	March 15.

6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the popcorn in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That is planted for harvest as popcorn;

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

(4) That is not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the popcorn is grown, you have a risk of loss, and the processor contract provides for delivery of popcorn under specified conditions and at a stipulated base contract price.

(c) A popcorn producer who is also a processor may be able to establish an insurable interest if the following requirements are met:

(1) The producer must comply with these Crop Provisions;

(2) The Board of Directors or officers of the processor must, prior to the sales closing date, execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a processor contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions, 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.

9. Insurance Period

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases on each unit or part of a unit at the earliest of:

(a) The date the popcorn:

(1) Was destroyed;

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

(3) Was abandoned; or

(4) Was harvested;

(b) When the processor contract stipulates a specific amount of production to be delivered, the date the production accepted by the processor equals the contracted amount of production;

(c) Final adjustment of a loss; or

(d) December 10 immediately following planting.

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

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

(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply, if caused by a cause of loss specified in sections 10(a)(1) through (7) that occurs during the insurance period.

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

(1) Damage resulting from frost or freeze after the date designated in the Special Provisions; or

(2) Failure to follow the requirements contained in the processor contract.

11. Replanting Payment

(a) In accordance with section 13 of the Basic Provisions, a replanting payment is allowed if the crop is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 150 pounds, multiplied by your price election, multiplied by your insured share.

(c) When popcorn is replanted using a practice that is uninsurable as an original planting, our liability for the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

12. Duties in the Event of Damage or Loss

In accordance with the requirements of section 14 of the Basic Provisions, 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 destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

13. Settlement of Claim

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

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

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

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

(1) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee;

(2) Multiplying the result of section 13(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results of section 13(b)(2) if there is more than one type;

(4) Multiplying the total production to count (see section 13(c)), of each type if applicable, by its respective price election;

(5) Totaling the results of section 13(b)(4) if there is more than one type;

(6) Subtracting the result of section 13(b)(4) from the result in section 13(b)(2) if there is only one type or subtracting the result of section 13(b)(5) from the result of section 13(b)(3) if there is more than one type; and

(7) Multiplying the result of section 13(b)(6) by your share.

For example:
You have a 100 percent share in 100 acres of Type A popcorn in the unit, with a guarantee of 2,500 pounds per acre and a price election of $.12 per pound. You are only able to harvest 150,000 pounds. Your indemnity would be calculated as follows:
1 ..... 100 acres × 2,500 pounds = 250,000 pound guarantee;
2 ..... 250,00 pounds × $.12 price election = $30,000 value of guarantee;
4 ..... 150,000 pounds production to count × $.12 price election = $18,000 value of production to count;
6 ..... $30,000 − $18,000 = $12,000 loss; and
7 ..... $12,000 × 100 percent share = $12,000 indemnity payment.
You also have a 100 percent share in 150 acres of type B popcorn in the same unit, with a guarantee of 2,250 pounds per acre and a price election of $.10 per pound. You are only able to harvest 70,000 pounds. Your total indemnity for both popcorn types A and B would be calculated as follows:
1 ..... 100 acres × 2,500 pounds = 250,000 guarantee for type A and 150 acres × 2,250 pounds = 337,500 pound guarantee for type B;
2 ..... 250,000 pound guarantee × $.12 price election = $30,000 value of guarantee for type A and 337,500 pound guarantee × $.10 price election = $33,750 value guarantee for type B;
3 ..... $30,000 + $33,750 = $63,750 total value guarantee;
4 ..... 150,000 pounds × $.12 price election = $18,000 value of production to count for type A and 70,000 pounds × $.10 price election = $7,000 value of production to count for type B;
5 ..... $18,000 + $7,000 = $25,000 total value of production to count;
6 ..... $63,750 − $25,000 = $38,750 loss; and
7 ..... $38,750 × 100 percent = $38,750 indemnity payment.

(c) The total 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 for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide production records;

(ii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 13(d));

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

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

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

(2) All harvested production from the insurable acreage in the unit;

(3) All harvested and appraised production lost or damaged by uninsured causes; and

(4) For processor contracts that stipulate the amount of production to be delivered, all harvested popcorn production from any other insurable unit that has been used to fulfill your processor contract applicable to this unit.

(5) Any production from yellow or white dent corn will be counted as popcorn on a weight basis and any production harvested from plants growing in the insured crop may be counted as popcorn production on a weight basis.

(6) Any ear production for which we cannot determine a shelling factor will be considered to have an 80 percent shelling factor.

(d) Mature popcorn may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point for moisture in excess of 15 percent. We may obtain samples of the production to determine the moisture content.

(2) Popcorn production will be eligible for quality adjustment if, due to an insurable cause of loss that occurs within the insurance period, it is not merchantable popcorn and is rejected by the processor. The production will be adjusted by:

(i) Dividing the value per pound of the damaged popcorn by the base contract price per pound for undamaged popcorn; and

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

14. Late Planting

Late planting provisions in the Basic Provisions are applicable for popcorn if you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest.

15. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Signed in Washington, D.C., on June 11, 1998.

Robert Prchal,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–16147 Filed 6–19–98; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–5]

Revision of Class E Airspace; Kotzebue, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule modifies Class E airspace at Kotzebue, AK. The establishment of Global Positioning system (GPS) instrument approaches to runway (RWY) 8 and RWY 26 at Kotzebue, AK, made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Kotzebue, AK.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert.van.Haastert@faa.dot.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On April 10, 1998, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Kotzebue, AK, was published in the **Federal Register** (63 FR 17743). The proposal was necessary due to the establishment of GPS instrument approaches to RWY 8 and RWY 26.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received, thus the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9E, *Airspace Designations and Reporting Points,* dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 (62 FR 52491; October 8, 1997). The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises the Class E airspace at Kotzebue, AK, due to the establishment of GPS instrument approaches to RWY 8 and RWY 26. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Kotzebue, AK.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points,* dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kotzebue, AK [Revised]

Kotzebue, Ralph Wien Memorial Airport, AK
(Lat. 66°53′05″ N., long. 162°35′55″ W.)
Kotzebue VOR/DME
(Lat. 66°53′08″ N., long. 162°32′24″ W.)
Hotham NDB
(Lat. 66°54′05″ N., long. 162°33′52″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8 mile radius of the Ralph Wien Memorial Airport and within 14 miles of the Kotzebue VOR/DME extending clockwise from the 206° radial to the 130° radial and within 4 miles southeast and 8 miles northwest of the Hotham NDB 039° bearing extending from the NDB to 16 miles northeast of the NDB and within 4 miles north and 8 miles south of the Kotzebue VOR/DME 278° radial extending from the VOR/DME to 20 miles west of the VOR/DME; and that airspace extending upward from 1,200 feet above the surface within 18 miles of the Kotzebue VOR/DME clockwise from the 020° radial to the 130° radial and within 38 miles of the Kotzebue VOR/DME clockwise from the 130° radial to the 314° radial and within 4.3 miles each side of the Kotzebue VOR/DME 103° radial extending from the VOR/DME to 34 miles east of the VOR/DME; and that airspace extending upward from 5,500 feet MSL within 4.3 miles each side of the Kotzebue VOR/DME 103° radial extending from 34 miles east of the VOR/DME to 51.3 miles east of the VOR/DME; and that airspace extending upward from 7,500 feet MSL within 4.3 miles each side of the Kotzebue VOR/DME 103° radial at 51.3 miles east of the Kotzebue VOR/DME widening to 7.4 miles each side of the 103° radial at 96 miles east of the Kotzebue VOR/DME.

* * * * *