

Proposed Rules

Federal Register

Vol. 61, No. 229

Tuesday, November 26, 1996

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 433 and 457

RIN 0563-AB02

Common Crop Insurance Regulations, Dry Bean Crop Insurance Provisions; and Dry Bean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of dry beans, including dry beans produced under seed bean processor contracts. 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, to include the current Dry Bean Crop Insurance Regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the application to the current Dry Bean Crop Insurance Regulations effective for the 1997 and succeeding crop years.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business December 26, 1996, will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through January 24, 1997.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building,

United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC., 8:15 a.m. to 4:45 p.m., est, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:

Arden Routh, Program Analyst, Research and Development Division, Product Development Branch, FCIC, at the Kansas City, MO address listed above, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 1, 2001.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (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 Bean Crop Insurance Provisions." The information to be collected includes a crop insurance application, an acreage report, and a continuous contract. Information collected from the application and acreage report is electronically submitted to FCIC by reinsured companies. Potential respondents to this information collection are producers of dry beans 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 and to Bonnie Hart, Farm Service Agency, United States Department of Agriculture, Advisory and Corporate Operations Staff, Regulatory Review Group, P.O. Box 2415, STOP 0572, Washington, D.C. 20013-2415, telephone (202) 690-2857. Copies of the information collection may be obtained from Bonnie Hart at the above address.

The Office of Management and Budget (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 Mandate 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 implication 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 impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than 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 year's production if adequate records are available to support the certification, or receive an assigned yield. The producer must maintain the production records to support the certified information for at least 3 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. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a 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 parts 11 and 780 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have any 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

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.150, Dry Bean Crop Insurance Provisions. The new provisions will be effective for the 1997 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring dry beans found at 7 CFR part 433 (Dry Bean Crop Insurance Regulations). FCIC also proposes to amend 7 CFR part 433 to limit its effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve part 433.

This rule makes minor editorial and format changes to improve the Dry Bean Crop Insurance Regulations compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring dry beans 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 "actual value," "base price," "beans," "combining," "contract seed beans," "days," "dry beans," "FSA," "final planting date," "good farming practices," "interplanted," "irrigated practice," "late planted," "late planting period," "local market price," "net price," "planted acreage," "practical to replant," "prevented planting," "production guarantee (per acre)," "seed bean processor contract," "seed company," "swathing or knifing," "timely planted," "type," "variety," and "written agreement" for clarification purposes. The Definition of "Harvest" is clarified to indicate that beans which are swathed or knifed and left in the field for drying prior to combining are not considered harvested.

2. Section 2—Allow separate bean types to qualify for optional units rather than basic units as previously allowed. Basic units will be provided as specified in section 1 of the Basic Provisions (§ 457.8). This change makes basic unit division provisions for dry beans consistent with provisions for other crops. Contract seed beans are only eligible for optional units if the seed company contracts on an acreage basis and not on a contract of production basis. Clarify unit division for non-irrigated corners of center-pivot irrigation systems.

3. Section 3—Specify that the insured may select only one price election for all the dry beans 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 bean type designated in the Special Provisions. The price elections selected are not required to have the same percentage relationship to the maximum price offered for each type.

4. Section 4—The contract change date has been changed to November 30 for all counties to maintain an adequate time period between this date and the revised cancellation dates (see item 7 below).

5. Section 5—Change the cancellation and termination dates from March 31 to February 28 in California and from April 15 to March 15 in all other States. These changes are made to standardize the cancellation and termination dates with the sales closing dates. The sales closing dates were previously amended

to comply with the requirement of the Federal Crop Insurance Reform Act of 1994 that spring planted crop sales closing dates be moved 30 days earlier. California dates are earlier than in other States because dry beans are planted earlier in California than they are in other States.

6. Section 6—Add a requirement for the insured to submit a copy of any applicable seed bean processor contract with the report of acreage. This change is made to allow the insurance provider to verify that the policy requirement for a contract has been met when establishing the liability under the policy.

7. Section 7(a)(4)(ii)—Clarify that dry beans planted into an established grass or legume are not insurable unless allowed by the Special Provisions or by written agreement because of the adverse impact such plants would have on the dry bean production.

8. Section 7(b)—Clarifies that any acreage of contract seed beans produced by a seed company are not insurable, such seed beans are usually produced for experimental purposes and experimental crops are not insurable.

9. Section 7(c)—Clarifies the number of years that test plot results must be provided to insure dry bean types not shown in the Special Provisions. Previous provisions did not indicate the number of years test results were required.

10. Section 9—Establishes the end of the insurance period dates by State in accordance with the latest usual harvest dates published by National Agricultural Statistics Service. The previous policy contained only one calendar date for the end of the insurance period and was too late in some areas.

11. Section 10—Clarifies that insect or disease damage due to insufficient or improper application of pest or disease control measures are not an insurable cause of loss.

12. Section 11(b)—Change the replant payment factor from 100 pounds to the lesser of 10 percent of the production guarantee or 120 pounds for dry beans or contract seed beans. This amount will be multiplied by the price election for the newly seeded beans and the insured's share to determine the maximum replant payment per acre. This change will result in replant payment amounts that more accurately represent the costs of replanting and seeding rates in various production areas.

13. Section 13(b)—Modify the calculations used to determine dry bean claim amounts to allow the aggregation of production guarantees and

production to count when more than one bean type is in one unit or the unit has both contract seed beans and other bean production.

14. Section 13(e)—Add provisions that require the value of contract seed production to be multiplied by the elected price election percentage. The value of production to count must also be multiplied by the elected price election percentage to be consistent with the amount of insurance for the insured acreage.

15. Section 13(f)—Allow adjustments in production to count containing excessive moisture to be made separately from any adjustments for quality deficiencies. Previous provisions combined adjustments for moisture and quality when both were applicable. This change is made because wide variations in charges associated with the drying and handling of high moisture production have caused production of equal quality and moisture content to be valued differently. Also, quality adjustment procedures are clarified for situations in which the pick exceeds the percentage shown on the Special Provisions or the production does not meet the grade requirements for U.S. No. 2. Such production to count will be adjusted using either a conversion factor shown in the Special Provisions or, if this is not available, the production will be multiplied by a factor that results from dividing the value per hundredweight of the damaged production by the local market price.

16. Section 14—Add late planting provisions that cover acreage not planted by the final planting date but is planted within 25 days after the final planting date to standardize the dry bean policy with all other policies which had previously offered late planting coverage as a separate option. This provision will also provide for reduction in the guarantee to reflect the increased risk associated with planting the crop late. The late planting period is also extended from 20 to 25 days to conform the late planting period of other crop policies. New provisions providing coverage for acreage that is prevented from being planted by the final planting date or during the late planting period have also been added in this section.

17. Section 15—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting modification of certain provisions of insurance contracts by written agreement. Written agreements are not specifically permitted under the current Dry Bean Crop Insurance Regulations. The new

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

List of Subjects

7 CFR part 433

Crop insurance, Dry beans.

7 CFR part 457

Crop insurance, Dry beans.

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations (7 CFR part 457); and the Dry Bean Crop Insurance Regulations (7 CFR part 433), effective for the 1997 and succeeding crop years, as follows:

PART 433—[AMENDED]

1. The authority citation for 7 CFR part 433 is revised to read as follows:

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

2. The heading of the subpart is revised to read as follows:

Subpart—Regulations for the 1986 through 1996 Crop Years.

3. Section 433.7 is amended by revising the introductory text of paragraph (d) of the Dry Bean Crop Insurance Regulations to read as follows:

§ 433.7 The application and policy.

* * * * *

(d) The application for the 1986 and succeeding crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Dry Bean Insurance Policy for the 1986 through 1996 crop years are as follows:

* * * * *

PART 457—[AMENDED]

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

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

5. 7 CFR part 457 is amended by adding a new § 457.150 to read as follows:

§ 457.150 Dry Bean Crop Insurance Provisions.

The Dry Bean Crop Insurance Provisions for the 1997 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Dry Bean 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.

Actual value—The dollar value received, or that could be received, for contract seed beans under a seed bean processor contract if the contract seed bean production is properly handled.

Base price—The price per pound that is stated in the seed bean processor contract and that is paid to the grower for at least 50% of the total production under contract with the seed company.

Beans—Means dry beans and contract seed beans.

Combining—A harvesting process that is completed using a machine that separates the beans from the pods and other vegetative matter and places the beans into a temporary storage receptacle.

Contract seed beans—Dry beans grown under the terms of a seed bean processor contract for the purpose of producing seed to be used for producing dry beans or vegetable beans in a future crop year.

Days—Calendar days.

Dry beans—The crop defined by the official United States Standards for Beans.

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 the beans. Beans which are swathed or knifed prior to combining are not considered harvested.

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.

Late planted—Acreage planted to the insured crop during the late planting period.

Late planting period—The period that begins the day after the final planting date for the insured crop and ends 25 days after the final planting date.

Local market price—The cash price per hundredweight for the U.S. No. 2 grade of dry beans offered by buyers in the area in which you normally market the dry beans. Factors not associated with grading under the United States Standards for Beans, such as moisture content, will not be considered.

Net price—The dollar value of dry bean production after reductions in value due to insurable causes of loss are considered.

Pick—The percentage, on a weight basis, of defects such as splits, damaged (including discolored) beans, contrasting types, and foreign material remaining in the dry beans after dockage has been removed by the proper use of screens or sieves.

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. Beans must initially be planted in rows far enough apart to permit cultivation 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.

Prevented planting—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured

crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

Production guarantee (per acre)—The number of pounds determined by multiplying the approved yield per acre by the coverage level percentage you elect, and multiplying the result by any applicable adjustment factor specified in the Special Provisions.

Replanting—Performing the cultural practices necessary to replace the bean seed and then replacing the bean seed in the insured acreage with the expectation of growing a successful crop.

Seed bean processor contract—A written agreement between the contract seed bean producer and the seed company, containing at a minimum:

(a) The contract seed bean producer's promise to plant and grow one or more specific varieties of contract seed beans, 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; and

(c) A base price or a method to determine such price, that will be paid to the contract seed bean producer for the production stated in the contract.

Seed company—A corporation that possesses all licenses and permits for marketing seed beans required by the State in which it is domiciled or operated, and that possesses facilities, or has contractual access to such facilities, with enough drying, screening and bagging equipment to accept and process the seed beans within a reasonable amount of time after harvest.

Swathing or knifing—Severance of the bean plant from the ground, including the pods and beans, and placing them into windrows.

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

Type—A category of beans identified as a type in the Special Provisions.

Variety—A kind of contract seed bean specified in the Special Provisions and named in the seed bean processor contract.

Written agreement—A written document that alters designated terms of this policy in accordance with section 15.

2. Unit Division.

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) the Basic Provisions (§ 457.8), a basic unit, may be divided

into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

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

(c) Optional units will only be available for contract seed beans if the seed bean processor contract specifies that it is a specified number of acres that are under contract and not a specified amount of production.

(d) 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, that portion of the premium paid for the purpose of electing optional units will be refunded to you pro rata for the units combined.

(e) All optional units established for a crop year must be identified on the acreage report for that crop year.

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

(1) You must have records, 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, as applicable:

(i) *Optional Units by bean type:* A separate optional unit may be established for each bean type shown in the Special Provisions.

(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 the 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.

(a) 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 for all the dry beans 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 dry bean type 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 also choose 75 percent of the maximum price election for another type.

(b) For contract seed beans only, the dollar amount of insurance is obtained by multiplying the production guarantee per acre for each variety in the unit by the insured acreage of that variety, times the applicable base price, and times the price election percentage you selected. The total of these results will be the amount of insurance for contract seed beans in the unit.

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:

State and county	Cancellation and termination dates
California	Feb. 28.
All other States	Mar. 15.

6. Report of Acreage.

For contract seed beans only, in addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must submit a copy of the seed bean processor contract at the time you file your report of acreage.

7. Insured Crop.

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the beans in the county 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:

(i) Dry beans; or

(ii) If applicable, contract seed beans, if the seed bean processor contract is executed before the acreage reporting date;

(3) That are not volunteer beans; and

(4) That are 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) For contract seed beans only:

(1) 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 bean processor contract may be treated as a contract

under which you have an insurable interest in the crop; and

(2) We will not insure any acreage of contract seed beans produced by a seed company.

(c) In addition to the types of beans designated in the Special Provisions, we will insure other types provided:

(1) The type you intend to plant has been demonstrated to be adapted to the area. Evidence of adaptability must include:

(i) Results of test plots for 2 years and recommendations by a university or seed company; or

(ii) Two years of production reports that indicate your experience producing the type in your production area;

(2) You submit on or before the sales closing date your production reports and prices received, or the test plot results and evidence of market potential, including the price buyers are willing to pay for the type; and

(3) We provide you a written agreement allowing insurance on the type.

(d) Any acreage of beans that is destroyed and replanted to a different insurable type of beans 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 growers in the area would normally not further care for the crop, must be replanted unless we agree that replanting is not practical. We will not require you to replant if it is not practical to replant to the same type of beans as originally planted.

9. Insurance Period.

In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the calendar date for the end of the insurance period is the date immediately following planting as follows:

(a) October 15 in Oklahoma, New Mexico, and Texas;

(b) November 15 in California; and

(c) October 31 in all other States.

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. Replanting Payments.

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment is allowed if the bean 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 10 percent of the production guarantee or 120 pounds for dry beans or contract seed beans, times your price election for the newly seeded type, times your insured share.

(c) When beans are replanted using a practice that is uninsurable as an original planting, the 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 (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.

13. 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 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 to your bean crop covered by this policy, we will settle your claim on by:

(1) Multiplying the insured acreage of each dry bean type by the respective production guarantee;

(2) Multiplying each result in section 13(b)(1) by the respective price election for the type;

(3) Totaling the results in section 13(b)(2);

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

(5) Multiplying each result in section 13(b)(4) by the applicable base price;

(6) Multiplying each result in section 13(b)(5) by your selected price election percentage;

(7) Totaling the results in section 13(b)(6);

(8) Totaling the results in section 13(b)(3) and section 13(b)(6);

(9) Multiplying the total production to be counted of each dry bean type if applicable, (see section 13(d)) by the respective price election;

(10) Totaling the value of all contract seed bean production (see section 13(c));

(11) Totaling the results in section 13(b)(9) and section 13(b)(10);

(12) Subtracting the total in section 13(b)(11) from the total in section 13(b)(8); and

(13) Multiplying the result by your share.

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

(1) For production meeting the minimum quality requirements contained in the seed bean 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 production not meeting the minimum quality requirements contained in the seed bean processor contract due to insurable causes:

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

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

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production of dry beans

may be adjusted for quality deficiencies and excess moisture in accordance with section 13(e); 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 dry bean production to count may be adjusted for excess moisture and quality deficiencies. Adjustment for excess moisture and quality deficiencies will not be applicable to contract seed beans. 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 of moisture in excess of 18 percent. We may obtain samples of the production to determine the moisture content.

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

(i) A pick is designated in the Special Provisions and the pick of the damaged production exceeds this designation; or

(ii) A pick is not designated in the Special Provisions and deficiencies in quality, in accordance with the United States Standards for Beans, result in dry beans not meeting the grade requirements for U.S. No. 2 (grades U.S. No. 3 or worse) because the beans are damaged or badly damaged; or

(iii) 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.

(3) 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 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 beans 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.)

(4) Dry bean production that is eligible for quality adjustment, as specified in sections 13(e) (2) and (3), will be reduced:

(i) If a conversion factor is designated by the Special Provisions, by multiplying the number of pounds of eligible production by the conversion factor designated in the Special Provisions for the applicable grade or pick; or

(ii) If a conversion factor is not designated by the Special Provisions as follows:

(A) The market price of the qualifying damaged production and the local market price will be determined on the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit. If a local market price is not available for the insured crop year, the current years' maximum price election available for the applicable type will be used. The price for the qualifying damaged production will be the market price for 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 beans to those buyers. Discounts used to establish the net price of the damaged production will be limited to those that are usual, customary, and reasonable. The price of

the damaged production will not be reduced for:

(1) Moisture content;
(2) Damage due to uninsured causes;
or

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

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

(C) The number of pounds remaining after any reduction due to excessive moisture (the moisture-adjusted gross pounds) of the damaged or conditioned production will then be multiplied by the quality adjustment factor to determine the net production to count.

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

14. Late Planting and Prevented Planting.

(a) In lieu of provisions contained in the Basic Provisions (§ 457.8), regarding acreage initially planted after the final planting date and the applicability of a Late Planting Agreement Option, insurance will be provided for acreage planted to the insured crop during the late planting period (see section 14(c)), and acreage you were prevented from planting (see section 14(d)). These coverages provide reduced production guarantees. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted. If the amount of premium you are required to pay (gross premium less our subsidy) for late planted acreage or prevented planting acreage exceeds the liability on such acreage, coverage for those acres will not be provided, no premium will be due, and no indemnity will be paid for such acreage.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

(c) Late Planting

(1) For bean acreage planted during the late planting period, the production guarantee or amount of insurance for each acre will be reduced for each day planted after the final planting date by:

(i) One percent for the 1st through the 10th day; and

(ii) Two percent for the 11th through the 25th day.

(2) In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of beans continues after the final planting date, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Special Provisions for the insured crop; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from timely planting beans, you may elect:

(i) To plant beans during the late planting period. The production guarantee or amount of insurance for such acreage will be determined in accordance with section 14(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee or amount of insurance for such acreage will be 50 percent of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 1,500 pounds per acre, your prevented planting production guarantee would be 750 pounds per acre (1,500 pounds multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with section 13; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the 10th day following the final planting date for the insured crop; or

(B) A production guarantee equal to 25 percent of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the 10th day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 7.5 bushels per acre

(30 bushels multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Production guarantees for timely, late, and prevented planting acreage within a unit will be combined to determine the production guarantee for the unit. For example, assume you insure one unit in which you have a 100 percent share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres were not planted but are eligible for a prevented planting production guarantee or amount of insurance. The production guarantee for the unit will be computed as follows:

(i) For the timely planted acreage, multiply the per acre production guarantee or amount of insurance for timely planted acreage by the 50 acres planted timely;

(ii) For the late planted acreage, multiply the per acre production guarantee or amount of insurance for timely planted acreage by 93 percent and multiply the result by the 50 acres planted late; and

(iii) For prevented planting acreage, multiply the per acre production guarantee or amount of insurance for timely planted acreage by:

(A) Fifty percent and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(B) Twenty five percent and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This paragraph (B) is not applicable, and prevented planting coverage is not available under these crop provisions, if you elected the Catastrophic Risk Protection

Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see section 14(d)(1)(iii)).

Your premium will be based on the result of multiplying the per acre production guarantee/amount of insurance for timely planted acreage by the 150 acres in the unit.

(3) We may require proof that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee or amount of insurance.

(4) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase insurance for dry beans for the 1997 crop year, prevented planting coverage will begin on the 1997 sales closing date for dry beans in the county. If the dry bean coverage remains in effect for the 1998 crop year (is not terminated or canceled during or after the 1997 crop year), prevented planting coverage for the 1998 crop year began on the 1997 sales closing date. Cancellation for the purpose of transferring the policy to a different insurance provider when there is no lapse in coverage will not be considered terminated or canceled coverage for the purpose of the preceding sentence.

(5) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all FSA Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date,

eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to dry beans on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent of the simple average of the number of acres planted to dry beans during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) A prevented planting production guarantee or amount of insurance will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage was double-cropped in each of the last 4 years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in section 14 (d)(2)(iii)(A), or a substitute crop allowed in section 14(d)(2)(iii)(B)), unless you provide adequate records of acreage and production showing that the acreage was double-cropped in each of the last 4 years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop

for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double-cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or:

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of dry bean acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of dry beans on one optional unit and 40 acres of dry beans on the second optional unit, your prevented planting eligible acreage would be reduced to zero (*i.e.*, 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(6) In accordance with the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee, the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

15. Written Agreements.

Designated terms of this policy 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 15(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 provisions.

Done in Washington, D.C., on November 18, 1996.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 96-29864 Filed 11-25-96; 8:45 am]

BILLING CODE 3410-FA-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

[Docket No. PRM-70-7]

Nuclear Energy Institute; Receipt of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Nuclear Energy Institute (NEI). The petition has been docketed by the Commission and assigned Docket No. PRM-70-7. The petitioner requests that the NRC amend its regulations to require uranium processing, uranium enrichment, and fuel fabrication licensees to use an integrated safety assessment (ISA), or an acceptable alternative, to confirm that adequate controls are in place to protect public health and safety. The petitioner also requests that a backfitting provision be established to ensure regulatory stability for these types of licensees.

DATES: Submit comments by February 10, 1997. Comments received after this date will be considered if it is practical