

Proposed Rules

Federal Register

Vol. 62, No. 1

Thursday, January 2, 1997

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 443 and 457

RIN 0563-AA78

Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations, Hybrid Corn Seed Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of hybrid corn seed. 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 Hybrid Seed 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 hybrid corn seed crop insurance regulation to the 1997 and prior crop years.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business March 3, 1997 and 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 March 3, 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, S.W., Washington, D.C., 8:15

a.m. to 4:45 p.m., est, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Ron Nesheim, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

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

Paperwork Reduction Act of 1995

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Hybrid Corn Seed Crop Insurance Provisions." The information to be collected includes a crop insurance application and an acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of hybrid corn seed 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 of Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

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

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism 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 producer must also annually certify to the previous years production if adequate records are available to support the certification. The producer must maintain the production records to support the certified information for at least three years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order No. 12372

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

Executive Order No. 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 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

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.152, Hybrid Corn Seed Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring hybrid corn seed found at 7 CFR part 443 (Hybrid Seed Crop Insurance Regulations). FCIC also proposes to amend 7 CFR part 443 to limit its effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove part 443 and reserve that part.

This rule makes minor editorial and format changes to improve the Hybrid Corn Seed Crop Insurance Regulation's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring hybrid corn seed as follows:

1. Section 1—Add definitions for the terms *adjusted yield*, *bushel*, *certified seed test*, *county yield*, *FSA*, *field run*, *good farming practices*, *hybrid corn seed processor contract*, *insurable interest*, *interplanted*, *local market price*, *minimum guaranteed payment*, *planted acreage*, *planting pattern*, *practical to replant*, *seed amount*, and *written agreement* for clarification.

2. Section 2—Unit division provisions are amended to include a producer's reporting responsibilities to qualify for optional units. In addition, section 2(e)(4)(ii) clarifies that non-irrigated acreage that is not part of a field in which a center pivot irrigation system is used may qualify as a separate optional unit. This makes unit division consistent with other row crops. Also, clarifies that optional units are available if the hybrid corn seed processor contract specifies that it is a specific number of acres that are under contract and not a specified amount of production.

3. Section 4—Change the contract change date to November 30 in order to maintain an adequate time period between the contract change date and the revised cancellation date.

4. Section 5—Change the cancellation and termination dates to March 15. This change is necessary to standardize the cancellation and termination dates with the sales closing dates which were changed to 30 days earlier for spring planted crops to comply with the requirements of the Federal Crop Insurance Reform Act of 1994.

5. Section 6—Require the producer to certify that a hybrid corn seed processor contract has been executed and certify the amount of any minimum guaranteed payment from the seed company. Certification of a hybrid corn seed processor contract on or before the acreage reporting date is needed to establish insurability of the crop before a loss is likely and ensures a market for the crop. The producer must also certify to any minimum guaranteed payment under the contract because a minimum guaranteed payment will affect insurance premium and the amount of indemnity.

6. Section 7(c)—Specify conditions under which a seed producer who is also a seed company can establish an insurable interest in the insured crop. There is an inherent conflict of interest when the producer is also the processor who will provide the records of the producer. These conditions are needed to ensure the eligibility of the processor for crop insurance.

7. Section 8(c)—Clarify that any acreage damaged prior to the final planting date must be replanted unless it is not practical to replant.

8. Section 9(b)—Specify that the calendar date for the end of the insurance period is October 31. The current policy language refers to the date contained in the Actuarial Table.

9. Section 11(a)—Clarify the size of representative crop samples required when damage is discovered.

10. Section 12(e)—Clarify the types of production that will be considered seed production to count.

11. Section 12(g)—Change the adjustment level for high-moisture shelled hybrid corn seed from 15.5 percent to 15.0 percent. This change is consistent with changes in provisions for insuring field corn. Moisture adjustment calculations for ear corn are also changed. The current policy states "the weight of ear corn to equal one bushel of shelled corn will be increased 2 pounds for each percentage point of moisture in excess of 14.0 percent." This conversion factor is changed to 1.5 pounds for each percentage point of moisture in excess of 14.0 percent because research has shown the existing formula overcompensates insureds for high moisture seed corn. The proposed provisions also allow use of the seed company's moisture conversion charts if the charts were used to determine the "approved yield."

12. Section 14. Add provisions for providing insurance coverage by written agreement. FCIC has a longstanding policy of permitting certain modification of the insurance contract by written agreement for some policies.

This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover application for, and duration of, written agreements.

List of Subjects in 7 CFR Parts 443 and 457

Crop insurance, Hybrid seed crop insurance regulations, Hybrid corn seed.

Proposed Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 443 and 457 as follows:

PART 443—HYBRID SEED CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 443 continues to read as follows:

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

2. The subpart heading preceding § 443.1 is revised to read as follows:

Subpart—Regulations for the 1986 through 1997 Crop Years.

3. Section 443.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 443.7 The application and policy

* * * * *

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

* * * * *

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

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

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

4. 7 CFR part 457 is amended by adding a new § 457.152 to read as follows:

§ 457.152 Hybrid Corn Seed Crop Insurance Provisions

The Hybrid Corn Seed Crop Insurance Provisions for the 1998 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:

Hybrid Corn Seed 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

Adjusted yield—The yield per acre that results from multiplying the approved yield by the coverage level percentage.

Amount of insurance per acre—The number of dollars determined by multiplying the county yield for the coverage level you select by the price election you select, and subtracting any minimum guaranteed payment. If the minimum guaranteed payment is stated in a unit of measure other than dollars, it will be converted to a dollar amount by multiplying the number of bushels guaranteed by the price election you selected.

Approved yield—The yield per acre that a specific type or variety is expected to produce determined from yield records provided by the seed company or other acceptable information.

Bushel—Fifty-six pounds avoirdupois of shelled corn, 70 pound avoirdupois of ear corn, or the number of pounds determined under the seed company's normal conversion chart when the company's conversion chart is used to determine the approved yield and the claim for indemnity.

Certified seed test—A warm germination test performed according to specifications of the "Rules for Testing Seeds" of the Association of Official Seed Analysts.

Commercial hybrid corn seed—The offspring produced by crossing a male and female parent plant, each having a different genetic character. This offspring is the product intended for use by an agricultural producer to produce a commercial field corn crop for grain.

County yield—A yield contained in the Actuarial Table that is used to calculate your amount of insurance.

Days—Calendar days.

Dollar value per bushel—The value determined by dividing your amount of insurance for timely planted acreage by the adjusted yield.

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

Female parent plants—Corn plants that are grown for the purpose of producing commercial hybrid corn seed and have had their stamens removed.

Field run—Commercial hybrid corn seed production before it has been processed or screened.

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 amount of insurance per acre.

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 amount of insurance, or are required by the hybrid corn seed processor contract and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—Combining, threshing or picking of the female parent plants to obtain commercial hybrid corn seed.

Hybrid corn seed processor contract—A written agreement between the hybrid corn seed crop producer and a seed company containing, at a minimum:

(a) The producer's promise to plant and grow male and female parent plants, and to deliver all commercial hybrid corn seed produced from such plants to the seed company;

(b) The seed company's promise to purchase all the commercial hybrid corn seed produced by the producer; and

(c) Either a fixed price per unit of measure (bushels, hundredweight, etc.) of the commercial hybrid corn seed or a formula to determine the value of such seed. Any formula for establishing the value must be based on data provided by a public third party that establishes or provides pricing information to the general public, based on prices paid in the open market (e.g., commodity futures exchanges) to be acceptable for the purpose of this policy.

Inadequate germination—Germination of less than 80 percent of the commercial hybrid corn seed as determined by using a certified seed test on clean seed.

Insurable interest—Your share of the financial loss that occurs in the event seed production is reduced by a cause of loss defined under this crop insurance contract.

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 amount of insurance 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 offered by buyers in the area for any production from the female parent plants that is not considered commercial hybrid corn seed under the terms of this policy.

Male parent plants—Corn plants grown for the purpose of pollinating female parent plants.

Minimum guaranteed payment—A minimum amount (usually stated in dollars or bushels) specified in your hybrid corn seed processor contract that will be paid or credited to you by the seed company regardless of the quantity of seed produced.

Non-seed amount—The dollar amount obtained by multiplying the number of bushels of non-seed production to count by

the local market price determined on the earlier of the date the non-seed production is sold or the date of final inspection for the unit.

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. The insured crop must be planted in rows wide enough to permit mechanical cultivation. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Planting pattern—The arrangement of the rows of the male and female parent plants in a field. An example of a planting pattern is four consecutive rows of female parent plants, two consecutive rows of male parent plants.

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 to the insured crop will allow the crop to adequately pollinate and 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. Determinations of practical to replant will take into consideration the planting dates specified in the hybrid corn seed processor contract in accordance with section 8(c).

Prevented planting—Inability to plant:

(a) The female parent plant seed with proper equipment by:

(1) The final planting date designated in the Special Provisions for the insured crop in the county; or

(2) The end of the late planting period; or

(b) The male parent plant seed with proper equipment at a time sufficient to assure adequate pollination of the female parent plants in accordance with the production management practices of the seed company.

You must have been unable to plant the female or male parent plant seed due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

Sample—For the purpose of the certified seed test, at least 3 pounds of field run shelled corn for each variety of commercial hybrid corn seed grown on the unit.

Seed amount—The dollar amount obtained by multiplying the number of bushels of seed production to count for each type or variety of commercial hybrid corn seed grown on the unit by the applicable dollar value per bushel for that type or variety, and totaling the products of each type or variety.

Seed company—A corporation that possesses all licenses for marketing commercial hybrid corn seed required by the state in which it is domiciled or operates, and which possesses or has contracted facilities with enough storage and drying capacity to accept and process the insured

crop within a reasonable amount of time after harvest.

Seed production—All seed produced by female parent plants with a germination rate of at least 80 percent, as determined by a certified seed test.

Shelled corn—Kernels that have been removed from the cob.

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

Variety—The name, number or code assigned to a specific genetic cross by the seed company or the Special Provisions for the insured crop in the county.

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

2. Unit Division

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

(b) Optional units are available if the hybrid corn seed processor contract specifies that it is a specific number of acres that are under contract and not a specified amount of production.

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

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

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

(1) You must have 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 amount of insurance.

(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 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 unique FSA Farm Serial Number.

(ii) **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 hybrid corn seed in the county insured under this policy unless the Special Provisions provide different price elections by type or variety, in which case you may select one price election for each hybrid corn seed type or variety designated in the Special Provisions. The price election you choose for each type or variety must have the same percentage relationship to the maximum price offered by us for each type or variety. For example, if you choose 100 percent of the maximum price election for one specific type or variety, you must also choose 100 percent of the maximum price election for all other types or varieties.

(b) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8) are not applicable to this contract.

4. Contract Changes

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

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the

Basic Provisions (§ 457.8), the cancellation and termination dates are March 15.

6. Report of Acreage

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must:

- (a) Report, by type and variety, the location and insurable acreage of the insured crop;
- (b) Report any acreage that is uninsured, including that portion of the total acreage occupied by male parent plants; and
- (c) Certify that you have a hybrid corn seed processor contract and, if applicable, report the amount of any minimum guaranteed payment.

7. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the female parent plants in the county for which a premium rate is provided by the actuarial table:

- (1) In which you have a share;
- (2) That are grown under a hybrid corn seed processor contract executed before the acreage reporting date;
- (3) That are planted for harvest as commercial hybrid corn seed in accordance with the requirements of the hybrid corn seed processor contract; and
- (4) That are not (unless allowed by the Special Provisions or by written agreement):
 - (i) Planted with a mixture of female and male parent seed in the same row;
 - (ii) Planted for any purpose other than for commercial hybrid corn seed;
 - (iii) Interplanted with another crop; or
 - (iv) Planted into an established grass or legume.

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

(c) A commercial hybrid corn seed producer who is also a commercial hybrid corn seed company may be able to establish an insurable interest if the following requirements are met:

- (1) The seed company must be a corporation and have an insurable interest in the hybrid corn seed crop;
- (2) The Board of Directors of the seed company must have instituted a corporate resolution that sets forth essentially the same terms as a hybrid corn seed processor contract. Such corporate resolution will be considered a contract under the terms of the hybrid corn seed crop insurance policy;
- (3) Sales records for at least the previous years' seed production must be provided to confirm that the seed company has produced and sold seed. If such records are not available, the crop may only be insured under the Coarse Grains Crop Provisions; and
- (4) Our inspection of the storage and drying facilities determines that they satisfy the requirements for a seed company.

8. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), we will not insure any acreage:

(a) Planted and occupied exclusively by male parent plants;

(b) Not in compliance with the rotation requirements contained in the Special Provisions or, if applicable, required by the hybrid corn seed processor contract; or

(c) Of the insured crop damaged before the final planting date, to the extent that the remaining stand will not produce at least 90 percent of the adjusted yield, unless such acreage is replanted or we agree that it is not practical to replant. If we determine that it is practical to replant and the seed company will not extend the planting date stipulated in the hybrid corn seed processor contract, we will delete the affected acreage from your report of acreage, and that acreage will not be insured under these crop provisions.

9. Insurance Period

(a) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), insurance attaches after:

- (1) The female parent plant seed is completely planted in accordance with the hybrid corn seed processor contract and the production practices of the seed company, on or before the final planting date designated in the Hybrid Corn Seed Special Provisions, except as allowed in section 13(c); and
- (2) The male parent plant seed is completely planted in accordance with production practices for the variety being produced.

(b) 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 October 31 immediately following planting.

10. Causes of Loss

(a) 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 within 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 irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss not insured against under section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against any loss of production due to:

- (1) The use of unadapted, incompatible, or genetically deficient male or female parent plant seed;
- (2) Frost or freeze after the date set by the Special Provisions;
- (3) Failure to follow the requirements stated in the hybrid corn seed processor contract or production management practices of the seed company;
- (4) Inadequate germination, even if it's the result of an insured cause of loss, unless you have provided adequate notice under section

11(b)(1) and the crop is inspected and the loss is appraised by us before harvest is completed; or

(5) Failure to plant the male parent plant seed at a time or in a manner sufficient to assure adequate pollination of the female parent plants, unless you are prevented from planting the male parent plant seed.

11. Duties in the Event of Damage or Loss

(a) 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 one complete planting pattern of the male and female parent plant rows, 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.

(b) In addition to your duties under section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8):

- (1) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate inadequate germination on any unit; and
- (2) You must provide a completed copy of your hybrid corn seed processor contract.

12. Settlement of Claim

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

- (1) For any optional units, we will combine all optional units for which such production records were not provided; or
- (2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) You will not receive an indemnity payment on a unit if the seed company refuses to provide us with records we require to determine the dollar value per bushel of production for each variety.

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

- (1) Multiplying the insured acreage by its respective amount of insurance per acre;
- (2) Subtracting the total of production to count for the seed amount and the non-seed amount from the result of section 12(c)(1); and
- (3) Multiplying the result of section 12(c)(2) by your share.

(d) The total production (bushels) to count from all insurable acreage on the unit will include all seed and non-seed production as specified in section 12 (e) through (g) below.

(e) Production to be counted as seed production will include:

- (1) All appraised production as follows:
 - (i) Not less than the adjusted yield 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;
 - (ii) Production lost due to uninsured causes;
 - (iii) Mature unharvested production with a germination rate of at least 80 percent of the

commercial hybrid corn seed as determined by a certified seed test. Any such production may be adjusted in accordance with section 12(g);

(iv) Immature appraised production;

(v) 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 if 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) Harvested production that you deliver as commercial hybrid corn seed to the seed company stated in your hybrid corn seed processor contract, regardless of quality, unless the production has inadequate germination.

(f) Production to be counted as non-seed production will include all harvested or mature appraised production that does not qualify as seed production to count as specified in section 12(e). Any such production may be adjusted in accordance with section 12(g).

(g) For the purpose of determining the quantity of mature production:

(1) Shelled commercial hybrid corn seed will be:

(i) Increased 0.12 percent for each 0.1 percentage point of moisture below 15 percent; or

(ii) Decreased 0.12 percent for each 0.1 percentage point of moisture in excess of 15 percent.

(2) The weight of ear corn required to equal one bushel of shelled corn seed will be increased 1.5 pounds for each full percentage point of moisture in excess of 14 percent, and any portion of a percentage point will be disregarded. The moisture content of ear corn will be determined from a shelled sample of the ear corn.

(3) When records of commercial hybrid corn seed production provided by the seed company have been adjusted to a shelled corn basis of 15.0 percent moisture and 56 pound avoirdupois bushels, sections 12(g) (1) and (2) above will not apply to harvested production. In such cases, records of the seed company used for determining the next year's approved yield will be used to determine the amount of production to

count; provided, such production records are calculated on the same basis as that used to determine the approved yield.

13. 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 13(c)), and acreage you were prevented from planting (see section 13(d)). These coverages provide reduced amounts of insurance. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. 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) You must provide written notice to us not later than the acreage reporting date if you were prevented from planting.

(c) Late Planting

(1) For hybrid corn seed acreage planted during the late planting period, the amount of insurance for each acre will be reduced for each day planted after the final planting date by:

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

(ii) Two percent per day 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 hybrid corn seed 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 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 hybrid corn seed, you may elect:

(i) To plant hybrid corn seed during the late planting period. The amount of insurance for such acreage will be determined in accordance with section 13(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 amount of insurance for such acreage will be 40 percent of the amount of insurance for timely planted acres. For example, if your amount of insurance for timely planted acreage is \$300 per acre, your prevented planting amount of insurance would be \$120 per acre (\$300 multiplied by 0.40). 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 12; or

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

(A) No prevented planting amount of insurance 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) An amount of insurance equal to 20 percent of the amount of insurance 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 amount of insurance for timely planted acreage is \$300 per acre, your prevented planting amount of insurance would be \$60 per acre (\$300 multiplied by 0.20). 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) Amounts of insurance for timely, late, and prevented planting acreage within a unit will be combined to determine the amount of insurance for the unit. For example, assume you insure one unit in which you have a 100 percent share. The unit consists of 185 acres of the same type and variety of which 150 acres are occupied by the female parent plants. (The acreage occupied by the male parent plants (35 acres) is not insurable, and is not eligible for coverage under this section.) 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 amount of insurance. The amount of insurance for the unit will be computed as follows:

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

(ii) For the late planted acreage, multiply the per acre 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 amount of insurance for timely planted acreage by:

(A) Forty 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 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 13(d)(1)(iii)).

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

(3) You must have the inputs available to plant and produce the intended crop with the expectation of at least producing the approved yield. Proof that these inputs were available may be required.

(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 hybrid corn seed for the 1998 crop year, prevented planting coverage will begin on the 1998 sales closing date for hybrid corn seed in the county. If the coverage remains in effect for the 1999 crop year (is not terminated or canceled during or after the 1998 crop year), prevented planting coverage for the 1999 crop year began on the 1998 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 number of acres planted to hybrid corn seed on the FSA Farm Serial Number during the previous crop year; or

(B) One-hundred percent of the simple average of the number of acres planted to hybrid corn seed 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 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 in which the insured crop was grown on the acreage;

(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 paragraph (d)(2)(iii)(A) of this section, or a substitute crop allowed in paragraph (d)(2)(iii)(B) of this section), unless you provide adequate records of acreage and production showing that the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage;

(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 hybrid corn seed 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 hybrid corn seed on one optional unit and 40 acres of hybrid corn seed 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 amount of insurance, 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.

14. Written Agreement

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 14(e);

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

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

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

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

Signed in Washington, D.C., on December 20, 1996.

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

[FR Doc. 96-33067 Filed 12-31-96; 8:45 am]

BILLING CODE 3410-FA-P