

Proposed Rules

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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 401 and 457

General Crop Insurance Regulations, Fresh Market Sweet Corn Endorsement; and Common Crop Insurance Regulations, Fresh Market Sweet Corn 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 fresh market sweet corn. 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 Fresh Market Sweet Corn Endorsement under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Fresh Market Sweet Corn Endorsement to the 1997 and prior crop years.

DATES: Written comments, data and opinions on this proposed rule will be accepted until close of business February 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:

Linda Williams, 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; Fresh Market Sweet Corn 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 fresh market sweet corn that are eligible for Federal crop insurance.

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

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

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

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

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

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB.

Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

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

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among 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. 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 subsections 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 457.129, Fresh Market Sweet Corn 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 fresh market sweet corn found at 7 CFR 401.138 (Fresh Market Sweet Corn Endorsement). FCIC also proposes to amend § 401.138 to limit its effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve § 401.138.

This rule makes minor editorial and format changes to improve the Fresh Market Sweet Corn Crop Insurance Endorsement's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring fresh market sweet corn as follows:

1. Section 1—Add definitions for the terms "crate," "days," "excess rain," "excess wind," "FSA," "good farming practices," "interplanted," "irrigated practice," "planted acreage," "practical to replant," "replanting," and "written agreement" for clarification.

Clarify the definition of crop year to specify that the crop year begins on the first day of the earliest planting period for fall-planted sweet corn and continues through the end of the insurance period for spring-planted sweet corn.

Change the definition of freeze to specify that freeze occurs when low air temperatures cause ice to form in the cells of the plant or its fruit to encompass conditions found in both frost and freeze.

Change the definition of harvest to clarify and remove the term marketable. Sweet corn picked from the stalk is considered harvested whether marketable or not.

2. Section 3(a)—Clarify that an insured may select only one coverage level (and the corresponding amount of insurance designated in the Actuarial Table for the applicable planting period and practice) for all the sweet corn in the county insured under the policy.

3. Section 3(b)—Clarify that the amounts of insurance the insured chooses for each planting period and practice must have the same percentage relationship to the maximum amount of insurance offered by FCIC for each planting period and practice.

4. Section 5—Change the cancellation and termination dates to March 15 for all States that currently have an April 15 date. This change is necessary to standardize the cancellation and termination dates with the sales closing dates that were changed for spring planted crops to comply with the requirements of the Federal Crop Insurance Reform Act of 1994. To allow

sweet corn crop expansion into other areas, Berrien County, Georgia, has been added to the Georgia Counties that have July 31 cancellation and termination dates. The July 31 cancellation and termination dates for Berrien County, Georgia coincide with production practices of other Georgia counties with that same date.

5. Section 9(a)—Add a provision that will provide coverage on newly cleared land or former pasture land that is planted to fresh market sweet corn. It is a recognized practice to plant the insured crop on tilled acreage that has been newly cleared or has been pasture land to eliminate some of the risk of disease and insect damage. This change also will standardize current regulations for the fresh market vegetable crops.

6. Section 9(b)(2)—Allow an insured to elect not to replant damaged sweet corn that is initially planted within the fall or winter planting periods, provided the final planting date for the planting period has passed. With this election, the insured may collect an indemnity and that particular acreage will be uninsurable for the next planting period. The insured may also elect to replant such sweet corn acreage, collect a replanting payment under section 12, and maintain the initial planting period coverage. This change incorporates and standardizes procedures utilized in the fresh market vegetable crops.

7. Section 10(f)—The calendar date for the end of the insurance period is now included in the sweet corn crop provisions and has been established as 100 days after the date of planting or replanting. This change incorporates the actual number of days for sweet corn to reach maturity and for the crop to be harvested. This change will also standardize provisions to that of other crop insurance policies. Currently, the calendar date for the end of the insurance period is contained in the Actuarial Table.

8. Section 11(a)—Add excess rain and excess wind as insurable causes of loss. Current regulations allow these causes to be covered only if they occur in conjunction with a cyclone. Removal of the requirement that these causes of loss must occur in conjunction with a cyclone will provide coverages for crop damage that is not associated with a cyclone.

9. Section 13—Change notice of damage or loss requirements to require that if the insured intends to claim an indemnity on any unit, notice must be given within 72 hours after the earliest of: discontinuance of harvest of any acreage on the unit; the date harvest would normally start if any acreage on the unit will not be harvested; or the

calendar date for the end of the insurance period. This change will standardize provisions found in all fresh market vegetable crop policies.

10. Section 14(b)(2)—Modify claim for indemnity calculations by providing calculations for catastrophic risk protection coverage and for coverage other than catastrophic risk protection. This provision includes the use of the catastrophic risk protection price election equivalent to determine the total dollar of production to count for indemnity purposes. This change is necessary to assure that producers that are insured based on a dollar amount of insurance are indemnified comparable to producers that are insured based on an actual production history (APH) yield basis.

11. Section 14(c)(1)—Clarify that the insured will receive not less than the amount of insurance per acre for the applicable stage for acreage that is: Abandoned; put to another use without the insurance provider's consent; damaged solely by uninsured causes; or for which the insured fails to provide production records. Current regulations require that not less than the final stage dollar amount of insurance be assessed for such acreage. This change allows for either the first stage amount of insurance or the final stage amount of insurance to be assessed against such acreage, depending on the growth stage of the crop when the event occurred. This change will standardize the provisions found in all fresh market vegetable crops.

12. Section 14(c)(2)(iii)—Require the insured to continue to care for acreage when the insured does not agree with the appraisal on that acreage. Production to count for such acreage will be determined using the harvested production if the crop is harvested, or our reappraisal if the crop is not harvested.

13. Section 14(c)(3)—Change the value to count for harvested production to the dollar amount obtained by subtracting the allowable cost from the price received (this resulting price must not be less than the minimum value shown in the Special Provisions), and multiplying this result by the number of crates harvested. Current regulations allow the value of sold production to be as low as zero. Also, clarify that harvested mature sweet corn that is damaged or defective due to insurable causes and is not marketable will not be counted as production. These changes are made to assure that the minimum value specified in the Special Provisions will be the lowest value considered for any marketable harvested production

unless the insured selected the minimum value option.

14. Section 15—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover the procedures for and duration of written agreements.

15. Section 16—A minimum value option is added. The option allows the value of each harvested crate to be as low as zero. This option is selected on the insurance application. This change will provide consistency in regulations found in other fresh market vegetable crops.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Fresh market sweet corn endorsement, Fresh market sweet corn.

Proposed Rule

For the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 401 and 457 as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 401 continues to read as follows:

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

2. In § 401.138, the introductory text is revised to read as follows:

§ 401.138 Fresh market sweet corn endorsement.

The provisions of the Fresh Market Sweet Corn Endorsement for the 1991 through the 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), 1506(p).

4. 7 CFR part 457 is amended by adding a new § 457.129 to read as follows:

§ 457.129 Fresh Market Sweet Corn Crop Insurance Provisions.

The Fresh Market Sweet Corn Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Fresh Market Sweet Corn 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.

Crate—Forty-two (42) pounds of the insured crop.

Crop year—In lieu of the definition of "crop year" contained in section 1 (Definitions) of the Basic Provisions (§ 457.8), crop year is a period of time that begins on the first day of the earliest planting period for fall-planted sweet corn and continues through the last day of the insurance period for spring-planted sweet corn. The crop year is designated by the calendar year in which spring-planted sweet corn is harvested.

Days—Calendar days.

Direct marketing—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

Excess rain—An amount of precipitation sufficient to directly damage the crop.

Excess wind—Wind speed strong enough to cause lodging of stalks and prevent a normal harvest.

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

Freeze—The formation of ice in the cells of the plant or its fruit, caused by low air temperatures.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity, and are those recognized by the Cooperative State Research, Education and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—The picking of sweet corn on the unit.

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 for the insured crop to make normal progress toward maturity.

Marketable sweet corn—Sweet corn that meets the standards for grading U.S. No. 1 or better and will withstand normal handling and shipping.

Plant stand—The number of live plants per acre prior to the occurrence of an insurable cause of loss.

Planted acreage—Land in which, for each planting period, 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. For each planting period, fresh market sweet corn must initially be planted in rows far enough apart 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 period—The period of time designated in the Actuarial Table in which fresh market sweet corn must be planted to be considered fall, winter, or spring-planted sweet corn.

Potential production—The number of crates of sweet corn that the sweet corn plants will or would have produced per acre by the end of the insurance period, assuming normal growing conditions and practices.

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, marketing windows, and time to crop maturity, that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period (inability to obtain seed will not be considered when determining if it is practical to replant).

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

Sweet corn—A type of corn with kernels containing a high percentage of sugar that is adapted for human consumption as a vegetable.

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

2. Unit Division.

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) will be divided by planting period.

(b) Unless limited by the Special Provisions, these basic units may be further divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement for such further division exists.

(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 premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(d) All optional units established for a 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 in which the crop was planted;

(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 be 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.

3. Amounts of Insurance and Production Stages.

(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 coverage level (and the corresponding amount of insurance designated in the Actuarial Table for the applicable planting period and practice) for all the sweet corn in the county insured under this policy.

(b) The amount of insurance you choose for each planting period and practice must have the same percentage relationship to the maximum price offered by us for each planting period and practice. For example, if you choose 100 percent of the maximum amount of insurance for a specific planting period and practice, you must also choose 100 percent of the maximum amount of insurance for all other planting periods and practices.

(c) The amount of insurance available under the catastrophic risk protection plan of insurance will be specified in the Actuarial Table.

(d) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), do not apply to fresh market sweet corn.

(e) The amounts of insurance are progressive by stages as follows:

Stage	% of amount of insurance per acre that you selected	Length of time
1	65	From planting through the beginning of tasseling (which is when the tassel becomes visible above the whorl).
Final	100	From tasseling until the acreage is harvested.

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

4. Contract Changes.

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date shown below is the date preceding the cancellation date:

State and county	Date
All Florida counties; and all Georgia counties for which the Special Provisions designate a fall planting period ...	Apr. 30.
Alabama; South Carolina; all Georgia counties for which the Special Provisions do not designate a fall planting period; and all other States	Nov. 30.

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
Florida; Atkinson, Baker, Berrien, Brantley, Camden, Colquitt, Cook, Early, Mitchell, and Ware Counties Georgia and all counties south thereof for which the Special Provisions designate a fall planting period	July 31.
Alabama; South Carolina; and all Georgia Counties for which the Special Provisions do not designate a fall planting period	Feb. 15.
All other States	Mar. 15.

6. Report of Acreage.

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report on or before the acreage reporting date contained in the Special Provisions for each planting period, all the acreage of sweet corn in the county

insured under this policy in which you have a share.

7. Annual Premium.

In lieu of the premium amount determinations contained in section 7 (Annual Premium) of the Basic Provisions (§ 457.8), the annual premium amount for each cultural practice (e.g. fall planted irrigated) is determined by multiplying the final stage amount of insurance per acre by the premium rate for the cultural practice as established in the Actuarial Table, by the insured acreage, by your share at the time coverage begins, and by any applicable premium adjustment factors contained in the Actuarial Table.

8. Insured Crop.

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the sweet corn in the county for which a premium rate is provided by the Actuarial Table:

- (a) In which you have a share;
- (b) That is:
 - (1) Planted to be harvested and sold as fresh market sweet corn;
 - (2) Planted within the planting periods designated in the Actuarial Table;
 - (3) Grown under an irrigated practice;
 - (4) Grown by a person who in at least one of the three previous crop years:
 - (i) Grew sweet corn for commercial sale; or
 - (ii) Participated in managing a sweet corn farming operation;
 - (c) That is not:
 - (1) Interplanted with another crop;
 - (2) Planted into an established grass or legume; or
 - (3) Grown for direct marketing.

9. Insurable Acreage.

(a) In lieu of the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching if a crop has not been planted in at least one of the three previous crop years, we will insure newly cleared land or former pasture land planted to fresh market sweet corn.

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

(1) You must replant any acreage of sweet corn damaged during the planting period in which initial planting took place whenever less than 75 percent of the plant stand remains: and

(i) It is practical to replant: and

(ii) If, at the time the crop was damaged, the final day of the planting period has not passed.

(2) Whenever sweet corn initially is planted during the fall or winter planting periods and the condition specified in section 9(b)(1)(ii) is not satisfied, you may elect:

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

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

10. Insurance Period.

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions

(§ 457.8), coverage begins on each unit or part of a unit the later of the date we accept your application, or when the sweet corn is planted in each planting period. Coverage ends at the earliest of:

- (a) Total destruction of the sweet corn on the unit;
- (b) Abandonment of the sweet corn on the unit;
- (c) The date harvest should have started on the unit on any acreage which will not be harvested;
- (d) Final adjustment of a loss on the unit;
- (e) Final harvest; or
- (f) 100 days after the date of planting or replanting.

11. 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 during the insurance period:

- (1) Excess rain;
 - (2) Excess wind;
 - (3) Fire;
 - (4) Freeze;
 - (5) Hail;
 - (6) Tornado; or
 - (7) Failure of the irrigation water supply,
- if caused by an insured cause of loss that occurs during the insurance period.

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

- (1) Disease;
- (2) Insect infestation; or
- (3) Failure to market the sweet corn, unless such failure is due to actual physical damage caused by an insured cause of loss that occurs during the insurance period.

12. Replanting Payments.

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment is allowed if, due to an insured cause of loss, more than 25 percent of the plant stand will not produce sweet corn and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the result obtained by multiplying \$65.00 by your insured share.

(c) In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), limiting a replanting payment to one each crop year, only one replanting payment will be made for acreage planted during each planting period within the crop year.

13. Duties In The Event of Damage or Loss.

In addition to the requirements contained in section 14 (Duties In The Event of Damage or Loss) of the Basic Provisions (§ 457.8), if you intend to claim an indemnity on any unit you also must give us notice not later than 72 hours after the earliest of:

- (a) The time you discontinue harvest of any acreage on the unit;
- (b) The date harvest normally would start if any acreage on the unit will not be harvested; or
- (c) The calendar date for the end of the insurance period.

14. 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 covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage in each stage by the amount of insurance per acre for the final stage;

(2) Multiplying each result in section 14(b)(1) by the percentage for the applicable stage (see section 3(e));

(3) Total the results of section 14(b)(2);

(4) Subtracting either of the following values from the result of section 14(b)(3): (i) For other than catastrophic risk protection coverage, the total value of production to be counted (see section 14(c)); or

(ii) For catastrophic risk protection coverage, the result of multiplying the total value of production to be counted (see section 14(c)) times:

(A) Sixty percent for the 1998 crop year; or

(B) Fifty-five percent for 1999 and subsequent crop years; and

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

(c) The total value of production to count from all insurable acreage on the unit will include:

- (1) Not less than the amount of insurance per acre for the stage for any acreage:
 - (i) That is abandoned;
 - (ii) Put to another use without our consent;
 - (iii) That is damaged solely by uninsured causes; or

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

(2) The value of the following appraised production will not be less than the dollar amount obtained by multiplying the number of crates of appraised sweet corn times the minimum value per crate shown in the Special Provisions for the planting period:

(i) Unharvested production (unharvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count);

(ii) Production lost due to uninsured causes; and

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

(A) We may require you to continue to care for the crop so that a subsequent appraisal may be made or the crop harvested to determine actual production (If we require you to continue to care for the crop and you do not do so, the original appraisal will be used); or

(B) You may elect to continue to care for the crop, in which case the amount of production to count for the acreage will be the harvested production, or our reappraisal if the crop is not harvested.

(3) The total value of all harvested production from the insurable acreage will be

the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each crate of sweet corn (this result may not be less than the minimum value shown in the Special Provisions for any crate of sweet corn), and multiplying this result by the number of crates of sweet corn harvested. Harvested mature sweet corn that is damaged or defective due to insurable causes and is not marketable, will not be counted as production to count.

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, and premium rate;

(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.

16. Minimum Value Option

(a) The provisions of this option are continuous and will be attached to and made a part of your insurance policy, if:

(1) You elect the Minimum Value Option on your application, or on a form approved by us, on or before the sales closing date for the initial crop year in which you wish to insure fresh market sweet corn under this option, and pay the additional premium indicated in the Actuarial Table for this optional coverage; and

(2) You have not elected coverage under the Catastrophic Risk Protection Endorsement.

(b) In lieu of the provisions contained in section 14(c)(3), the total value of harvested production will be determined as follows:

(1) For sold production, the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each crate of sweet corn (this result may not be less than zero for any crate of sweet corn), and multiplying this result by the number of crates of sweet corn sold; and

(2) For marketable production that is not sold, the dollar amount obtained by multiplying the number of crates of such sweet corn on the unit by the minimum value shown in the Special Provisions for the planting period (harvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production).

(c) This option may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding the crop year for which the cancellation of this option is to be effective.

Signed in Washington, D.C., on December 24, 1996

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

[FR Doc. 97-62 Filed 1-2-97; 8:45 am]

BILLING CODE 3410-FA-P

7 CFR Parts 445 and 457

Pepper Crop Insurance Regulations; and Common Crop Insurance Regulations, Fresh Market Pepper 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 fresh market peppers. 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 Pepper Crop Insurance Regulations under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Pepper Crop Insurance Regulations to the 1997 and prior crop years.

DATES: Written comments, data and opinions on this proposed rule will be accepted until close of business February 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: Linda Williams, 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; Fresh Market Pepper 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 fresh market peppers 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