

# Rules and Regulations

Federal Register

Vol. 62, No. 28

Tuesday, February 11, 1997

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

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Parts 433 and 457

RIN 0563-AB02

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

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of dry beans. 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 dry bean crop insurance regulation with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current dry bean crop insurance regulation to the 1996 and prior crop years.

**EFFECTIVE DATE:** February 11, 1997.

**FOR FURTHER INFORMATION CONTACT:** Arden Routh, Program Analyst, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

Executive Order 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, has not been reviewed by OMB.

#### Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments, data, and opinions on information collection requirements previously approved by OMB under OMB control number 0563-0003 through September 30, 1998. No public comments were received.

#### 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. The effect of this regulation on small entities will be no greater than on larger entities. Under the current regulations, a producer is required to complete an application and an acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity.

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

The amount of work required of the insurance companies delivering and

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

#### Federal Assistance Program

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

#### Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 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 part 11 must be exhausted before any action for judicial review may be brought.

#### Environmental Evaluation

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

#### National Performance Review

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

#### Background

On Tuesday, November 26, 1996, FCIC published a proposed rule in the Federal Register at 61 FR 60049-60057 to add to the Common Crop Insurance Regulations (7 CFR part 457) a new section, 7 CFR 457.150, Dry Bean Crop Provisions. The new provisions will be

effective for the 1997 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring dry beans found at 7 CFR part 433 (Dry Bean Crop Insurance Regulations). FCIC also amends 7 CFR part 433 to limit its effect to the 1996 and prior crop years. FCIC will later publish a regulation to remove and reserve part 433.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. A total of 80 comments were received from the crop insurance industry and FCIC. The comments received, and FCIC's responses, are as follows:

*Comment:* The crop insurance industry questioned if consideration had ever been given to having two bean policies, one for contract seed beans and one for dry beans. It would be easier for policyholders to have crop provisions that address only the kind of beans they are insuring.

*Response:* FCIC will consider this option for a future rule. However, there is not sufficient time to divide this policy for the 1997 crop year. Therefore, no change has been made.

*Comment:* The crop insurance industry recommended defining "properly handled."

*Response:* The requirements for handling seed beans are contained in the seed bean processor contract. Therefore, it would be difficult for FCIC to define "properly handled" due to the differing requirements of seed bean companies. However, FCIC will amend the definition of "actual value" to clarify that production must be handled in accordance with requirements contained in the seed bean processor contract.

*Comment:* The crop insurance industry recommended that the definition of "Base price" be amended to exclude any bonus offered when the germination percentage is above the minimum required by the seed contract.

*Response:* FCIC agrees with the comment and has amended the definition accordingly.

*Comment:* The crop insurance industry expressed confusion with the definitions of "beans," "dry beans," and "contract seed beans." The definition of "contract seed beans," is also covered by the "dry beans" definition which makes the definition of "beans" seem redundant. The commenter questions if the definition for "dry beans" needs to include the intended use of the production.

*Response:* Throughout these provisions the term "beans" applies to both dry beans and contract seed beans.

The term "dry beans" includes all classes of beans included in The United States Standards for Beans. The term "contract seed beans" distinguishes dry beans grown under a contract for the specific purpose of producing seed for a subsequent crop year. The definition of "dry beans" was changed to exclude contract seed beans.

*Comment:* The crop insurance industry agreed that the definition for "county" should be deleted in these provisions so that the definition in the Basic Provisions will be effective. The commenter emphasized that if these provisions are approved for the 1997 crop year, these changes and subsequent procedures need to be issued soon enough for companies to provide training to their agents, rearrange APH data bases for units that previously included land in another county, and to allow policyholders to decide whether to insure any land in another county in which they have an interest.

*Response:* FCIC will provide instructions for changing the data bases for units that previously included land in another county. These instructions will be made available at the time the policy is released. FCIC does not anticipate that a large number of producers farm in more than one county and, therefore, does not expect a large number of data base revisions to be necessary.

*Comment:* The crop insurance industry was concerned with the definition of "Good farming practices," which makes reference to "generally recognized by the Cooperative Extension Service." The commenters indicated that there are areas or situations where good, accepted farming practices may not necessarily be recognized by the Extension Service.

*Response:* FCIC has removed the word "generally" from this part of the definition. However, the Cooperative State Research, Education, and Extension Service recognizes most farming practices that are considered acceptable for producing beans. The use of practices not recognized as acceptable by the Cooperative State Research, Education, and Extension Service provides no standards by which to measure performance.

*Comment:* The crop insurance industry recommended adding the words "and quality" after the word "quantity" in the definition of "irrigated practice."

*Response:* Water quality is an important issue. However, since no standards or procedures have been developed to measure water quality for insurance purposes, quality cannot be

included in the definition. Therefore, no change has been made.

*Comment:* A representative of FCIC recommended changing the second sentence in the definition of "local market price" to "Moisture and factors \* \* \*" and delete "such as moisture content."

*Response:* FCIC agrees with the comment and has amended the definition accordingly.

*Comment:* The crop insurance industry recommended changing the definition of "net price" to read, "The dollar value of dry bean production received or that could have been received \* \* \*"

*Response:* FCIC agrees with comment and has amended the definition accordingly.

*Comment:* One comment received from the insurance industry recommended changing the definition of "pick" to consider defects based on the original grade of the beans.

*Response:* Dockage does not include defects to the beans and, therefore, should not be included in any calculation of the pick, which applies only to defects of the beans. Therefore, no change has been made.

*Comment:* The crop insurance industry recommended adding a final sentence to the definition of "prevented planting," which would require the insured to have past history of the bean type which the insured is declaring as being prevented from being planted.

*Response:* FCIC cannot penalize new producers of a bean type, who can prove that they had the inputs available to plant that particular bean type, by denying them prevented planting coverage. Therefore, no change has been made.

*Comment:* A representative of FCIC recommended replacing the reference to "Special Provisions" in the definition of "Production guarantee (per acre)" with "Actuarial Table," since the adjustment factors are in the Actuarial Table and not the Special Provisions.

*Response:* FCIC agrees with the comment and has amended the definition accordingly.

*Comment:* The crop insurance industry questioned if the term "production guarantee" applies only to dry beans and if the term "amount of insurance" is used only for contract seed beans. If so, it would be helpful to identify dry beans in the definition of "production guarantee" and include a definition for "amount of insurance" for contract seed beans.

*Response:* The term "production guarantee" applies to both dry beans and contract seed beans. The amount of insurance for contract seed beans is

obtained by using the production guarantee per acre for each contract seed bean variety in the unit, as provided in section 3(b) of these provisions. Therefore, no change has been made.

*Comment:* The crop insurance industry recommended changing the definition of "Replanting." The commenter indicated that the wording "\* \* \* replace the bean seed and then replacing the bean seed \* \* \*" is confusing and awkward.

*Response:* FCIC agrees with the comment and will clarify the definition accordingly. *Comment:* The crop insurance industry and a representative of FCIC indicated that the definition of "Seed company" should not limit the seed company to only being a corporation.

*Response:* FCIC agrees with the comments and has amended the definition.

*Comment:* The crop insurance industry questioned if the term "type" applies only to dry edible beans. If so, the definition should be clarified.

*Response:* For the purpose of establishing insurability of the crop, FCIC's Special Provisions identify classes of all beans as types. Contract seed beans are a specific type under a seed bean processor contract.

*Comment:* The crop insurance industry recommended clarifying the language of section 2(a) of the proposed rule by substituting language similar to that contained in section 2(a) of the Sugar Beet Crop Provisions. The wording of this section would be "Unless limited by the Special Provisions, a unit (basic unit) as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), may be divided \* \* \*"

*Response:* FCIC agrees with the comment and has amended section 2(a) of the proposed rule to indicate that a unit as defined in the Basic Provisions is a basic unit.

*Comment:* A comment from the crop insurance industry asked the following: (1) Are optional units available by type or variety for contract seed beans; (2) if an insured has a processor contract for one seed variety and another processor contract for another seed variety, would each variety be eligible for a separate unit; and (3) if the contract specifies an amount of production rather than the number of acres, are optional units available?

*Response:* Optional units are only available for contract seed beans if the contract specifies a number of acres under contract and all acreage under the seed bean processor contract will be included in the optional unit. There are no separate optional units by type for

contract seed beans. Optional units are not available for contract seed beans if the seed bean processor contract specifies an amount of production. Section 2 has been amended to clarify the available optional units for contract seed beans.

*Comment:* The crop insurance industry recommended that section 2(c) of the proposed rule be clarified to indicate that it affects only optional units by section and irrigated or non-irrigated practices and does not authorize separate optional units for different types of seed beans.

*Response:* Types of contract seed beans do not qualify for optional units. Optional units by type, section, or irrigation practice are available for contract seed beans if the seed bean processor contract specifies the number of acres under contract. The provisions in section 2 have been amended accordingly.

*Comment:* Representatives of FCIC questioned the need for the provisions contained in section 2(c) of the proposed rule, since the definitions of "base price," "contract seed beans," and "seed bean processor contract," specify that acreage is not eligible to be insured as seed beans if the total production is not contracted. The commenter recommended deleting section 2(c) of the proposed rule.

*Response:* Section 2(c) of the proposed rule is necessary to protect the integrity of the program. The insured production is determined based on the number of acres under contract. If FCIC allows optional units when the contract only specifies an amount of production, this amount of production is prorated over the optional units to determine the per unit amount of insurance. If the value of the production from any unit is less than the amount of insurance for that unit, an indemnity is paid, even though the insured may have fulfilled all obligations under the contract from production in other units. This will result in FCIC insuring amounts in excess of that under contract, which would adversely affect the actuarial soundness of the program.

*Comment:* The crop insurance industry and a representative of FCIC recommended clarifying the last sentence of section 2(d) of the proposed rule. The commenter believes that the current wording may lead the insured to believe that premium may be refunded any time optional units are combined. Premium is refunded when there are no optional units within a basic unit. One of the comments recommended changing the provisions to read as follows: "If failure to comply with the provisions is determined to be

inadvertent and if all of the optional units within a basic unit are combined, that portion of the premium paid for the purpose of electing optional units will be refunded to you."

*Response:* FCIC agrees with the comment and has amended the provision in redesignated section 2(e).

*Comment:* A representative of FCIC recommended clarifying the language in section 2(e) of the proposed rule to indicate that optional units not planted in the current crop year need not be identified on the acreage report.

*Response:* FCIC has clarified this provision in redesignated section 2(f) to indicate that only those optional units established for the specific crop year need be identified on the acreage report.

*Comment:* The insurance industry indicated that provisions in section 2(f)(4)(i) of the proposed rule authorize optional units by type for dry beans. The commenter questioned if optional units by bean type are available for contract seed beans, since the definition of "bean" suggests it applies to all types of dry beans. This language needs to be more clearly distinguished. The commenter recommended that contract seed beans and other dry beans should be handled as separate basic units since procedures will be more complicated under these provisions. Production of one type would count against the guarantee of another type if insured as one basic unit, which creates difficulties. The commenter also questioned if the premium rates are being adjusted to reflect the change from basic to optional units by type (will the premium rates be 10-11 percent higher than last year's premium rates)? Policyholders must be provided the necessary information and advance time to decide how to accommodate the extra costs and requirements involved.

*Response:* Optional units by type are only applicable to dry beans and the provision has been amended for clarification. Contract seed beans qualify as a basic unit. If the policyholder elects to obtain optional units, the premium rates will be adjusted to reflect any additional risk of loss. Any changes in the insurance coverage, including premium rates, will be available on or before the contract change date. This should provide the policyholder with ample time to make their business decisions. The provisions in section 2 have been amended accordingly.

*Comment:* The crop insurance industry and a representative of FCIC questioned if the language in section 2(f)(4)(ii) of the proposed rule should be amended to read "In addition to, or instead of \* \* \*" or if that phrase

should be omitted since the possibility of "besides or instead" is covered by the statement in section 2(f)(4) of the proposed rule that "one or more" of these criteria must be met for each optional unit.

*Response:* FCIC agrees that the phrase "In addition to, or instead of" should be incorporated into the first sentence of redesignated section 2(g)(4)(ii), and has modified this provision accordingly.

*Comment:* The crop insurance industry had the following comments regarding the provisions in section 3(a). The provisions allow different price election percentages by dry bean type, which is not consistent with other crop provisions unless each type is treated as a separate crop. Based on the provisions of section 3(a), one comment questioned the change that no longer allows dry bean basic units by type. The comment indicated that if different price election percentages are allowed, each type should continue to be a separate basic unit. One of the comments questioned if other crops will be changed to permit different price percentages within the same basic unit and how the computer edits will handle these situations.

*Response:* Producers can elect optional units for different types of dry beans. However, in those cases where multiple types are in a single unit, FCIC has provided producers the flexibility to select a different percentage of the maximum price election for each type. The costs to produce different types of dry beans can vary considerably as can the economic significance of each to the producer. It may be necessary for some insurance providers to reprogram computer systems to allow this variation in price election percentages.

*Comment:* The crop insurance industry questioned the new requirement that the producer submit a copy of the seed bean processor contract at acreage reporting time. What would happen if an acreage report is received without a copy of the processor contract? This requirement could lead to policyholders waiting until acreage reporting time to decide if they want to insure the crop as contract seed beans.

*Response:* FCIC has always required the seed bean processor contract to be executed on or before the acreage reporting date. Now, FCIC requires the insured to submit a copy of the contract no later than that date in order to ensure that such contract exists, prior to any likely loss. Thus, there is no greater effect upon the producer's decision as to how to insure the beans. If a copy of the contract is not provided at the time acreage is reported, the beans may be insurable as dry beans, but not as contract seed beans.

*Comment:* The crop insurance industry questioned the language of section 7(a)(2)(i), which references dry beans. The commenter explained that the definition of "dry beans" seems to include both dry edible beans and contract seed beans instead of distinguishing between the two.

*Response:* Contract seed beans are defined separately from dry beans so that they may be identified and treated differently in several sections of the policy, including price election determination, unit division, insured crop, and loss calculations. FCIC agrees that some contract seed beans would qualify under the definition of dry beans. Therefore, FCIC has amended the definition of dry beans to exclude contract seed beans.

*Comment:* A representative of FCIC stated that section 7(a)(3) of the proposed rule is not necessary because section 8(b)(4) of the Basic Provisions states that we do not insure volunteer crops.

*Response:* FCIC agrees and has deleted this provision and renumbered the remaining provisions.

*Comment:* The crop insurance industry questioned the reference to other "types of beans" in section 7(c) and whether it applies only to dry edible beans or if it also applies to contract seed beans.

*Response:* The reference to other "types of beans" in section 7(c) applies to classes of dry beans not listed as a type of dry beans in the Special Provisions. Section 7(c) has been amended to specify "dry beans."

*Comment:* The crop insurance industry recommended putting a period at the end of section 8(a) and deleting the word "or." As written, this provisions could be misunderstood to mean that as long as the rotation requirements are met, the insured would not have to replant even if practical, or vice versa. Presumably, each of the statements in section 8 (a) and (b) stand alone.

*Response:* The use of "or" has the effect of making these stand alone requirements as written, if the insured fails to comply with either requirement, the acreage would be uninsurable. Therefore, no change will be made.

*Comment:* The crop insurance industry asked the following questions: (1) Whether dry bean acreage that is replanted to another bean type would be insured as a separate optional unit, and if so, would there be an additional premium charged; (2) how the actual production history (APH) yield for the following year would be affected; and (3) whether the guarantee will be based on the type of dry bean originally

planted or the type of dry bean that was replanted. They also had the following recommendations: (1) keep the original guarantee for acreage that is replanted to another bean type; (2) that no additional premium be charged for the new optional unit; (3) that the APH form be updated based on the replanted type; and (4) by adding a sentence stating "If the crop is replanted, the price of the replanted type will determine your price election."

*Response:* The guarantee and premium must be based on the actual production capability and risks associated with the type planted and produced to maintain the actuarial soundness of the program. Optional unit division will be available for the replanted type in accordance with the provisions of section 2. Production from the replanted acreage will be used to update APH records for the type replanted. The original planted type will not be included in the APH data base for that particular year. Section 11(d) has been added to specify that the guarantee and premium amount for the replanted acreage will be based on the replanted type when acreage is replanted to a different insurable type. No premium will be due for the original type when acreage is replanted to a different type.

*Comment:* The crop insurance industry questioned if replanting payments are available for contract seed bean varieties.

*Response:* Provisions in section 11 allow a replanting payment for "the bean crop" which includes both dry beans and contract seed beans.

*Comment:* The crop insurance industry indicated that language in section 13(b) is not as clear as in other crop provisions. The comment recommended that the provisions start as 13(b)(1) "For each dry bean type:" followed by sub-items for the calculations in (1)-(3); then section 13(b)(2) would be "For each contract seed bean variety:" etc.

*Response:* The provisions were written in this format to demonstrate how to settle a claim when both dry beans and contract seed beans are insured in one unit. If a unit contains only contract seed beans or only dry beans the provisions that pertain to the kinds of beans that are not in the unit are disregarded. Therefore, no change has been made.

*Comment:* The crop insurance industry recommended revising section 13(c)(1)(i) to read "Multiply the actual value received, actual value at time of adjustment, or base price per pound, whichever is greater, by the price election percentage you selected; and"

*Response:* Adding the suggested language would be redundant with the language contained in the definition of "actual value." In addition, not all insurance providers require that the insured select a percentage. Therefore, no change has been made.

*Comment:* The crop insurance industry recommended adding the word "harvestable" to section 13(d)(1) so that it would read, "All appraised harvestable production as follows:"

*Response:* When making an appraisal, the loss adjuster considers whether the crop can be harvested. Therefore, no change has been made.

*Comment:* The crop insurance industry recommended clarifying section 13(d)(1)(i)(D). It is not necessary to use the word "acceptable" twice in this section.

*Response:* FCIC agrees with the comments and has amended the provision accordingly.

*Comment:* The crop insurance industry questioned whether the reference in section 13(d)(1)(iii), to "dry beans" excludes contract seed beans.

*Response:* The provisions allow adjustment for quality deficiencies and excess moisture for mature unharvested dry beans only.

*Comment:* The crop insurance industry recommended that section 13(d)(1)(iv) be revised as follows: (1) Add the phrase "harvestable beans" to section 13(d)(1)(iv)(A) which would make the section read: "\* \* \* (The amount of production to count for such acreage will be based on the harvested production or appraisals of harvestable beans from the samples at the time harvest should have occurred \* \* \*)" (2) Add the phrase "of harvestable beans" to section 13(d)(1)(iv)(B), which would make this section read: "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 of harvestable beans if additional damage occurs and the crop is not harvested; and" The comment also questioned the advisability of "leaving representative samples" when agreement on the appraised amount of production can not be reached. The commenter recommended the use of Arbitration (section 17 of the Basic Provisions) as the preferable process when agreement on the appraised amount of production can not be reached.

*Response:* The ability to harvest the crop is considered when making appraisals of the crop. Representative samples are the most accurate method available to determine an accurate representation of production when the parties disagree on the amount of

appraised production and it allows the insured to put most of the acreage to another use. If it is not practical to leave representative samples the insurance provider does not have to require such samples be left. Therefore, no change has been made.

*Comment:* The crop insurance industry recommended changing the order of the last two sentences of section 13(e) so the exclusion of these adjustments for contract seed beans does not interrupt the information that applies to dry edible beans.

*Response:* FCIC agrees with the comment and has amended the provision accordingly.

*Comment:* A representative of FCIC recommended deleting any reduction in the amount of production to count due to "pick" since it is not a term used in "The United States Standards for Beans" upon which quality adjustment is based. The reason for an excessive amount of "pick" in the beans (other than damage) is generally due to farming or cultural practices. "Pick" is normally controllable by the producer. "Pick" charts are never the same two years in a row and different charts are used each year by different bean dealers. "Pick" is driven by the market and supply and demand, depending on the size of the crop in a given area. The commenter further stated that numerous studies have been made on whether "pick" should be used as a reduction of production to count, and each time it has been determined that it is not feasible.

*Response:* "Pick" currently is used for quality adjustment procedures in certain areas and has been found to be an acceptable method to establish quality. It is defined in the rule. Therefore, no change has been made.

*Comment:* The crop insurance industry recommended adding the phrase: "and the beans are to be sold at time of adjustment or sold based on the original grade;" at the end of both sections 13(e)(2) (i) and (ii).

*Response:* Neither FCIC nor the insurance provider can require the insured to sell the production at the time of adjustment as a condition of obtaining quality adjustment. Quality adjustments are applied at the time of loss adjustment. Any further damage, whether the crop is sold or not, is not covered. Therefore, no change has been made.

*Comment:* The crop insurance industry questioned if it was necessary to say both "damaged" and "badly damaged" in section 13(e)(2)(ii). The commenter recommended just the term "damage" should suffice.

*Response:* The provisions are consistent with different degrees of damage defined in "The United States Standards for Beans." Therefore, no change has been made.

*Comment:* The crop insurance industry stated that dry beans are rarely stored in most states. The adjuster would be required to obtain a sample of the beans prior to or during harvest. Most samples of beans are provided by the facility storing or purchasing the beans. It is therefore unlikely that they are a "disinterested third party," as stated in section 13(e)(3)(iii). The commenter recommended that the language be revised to include the "place of storage or sale if the company feels the sample is consistent with the quality of beans in the surrounding area."

*Response:* All samples must be obtained by disinterested third parties to assure that such samples are genuinely representative of the total production. If the insurance provider believes the samples were not obtained in this manner, or that they are not representative, they should not accept the results. Therefore, no change has been made.

*Comment:* The crop insurance industry recommended adding the phrase "based on the applicable grade or pick which the production is to be sold or sold at time of adjustment;" at the end of section 13(e)(4)(i).

*Response:* As stated above, the insurance provider cannot require the sale of the production at the time of loss adjustment or at any other time. The amount of loss, including any quality adjustments, are made at the time of loss adjustment and any subsequent damage is not covered, so the time of sale should not affect this determination. Therefore, no change has been made.

*Comment:* The crop insurance industry stated that conversion factors adopted for several crops have provided the industry with consistent quality adjustment, generally unaffected by the marketplace, and questions whether FCIC intends to establish conversion charts for all states in which dry beans are insurable.

*Response:* FCIC agrees that studies should be made to determine if similar conversion charts for dry beans can be developed. Until this can be further analyzed, no change will be made.

*Comment:* The crop insurance industry: (1) Recommended adding "based on the applicable grade or pick for the production which you will receive \* \* \*" at the end of the first sentence and after the word "production" in the second sentence of section 13(e)(4)(ii)(A); and (2)

questioned whether the current year's maximum price election for the type should be used when a processor refuses to quote a No. 2 price.

*Response:* The price should be determined based on the quality and quantity of the production as it was originally delivered and the provisions clearly indicate that the value of the damaged production is used in this calculation. Therefore, the recommended change has not been made. Further, the current year's maximum price election is used only when a local market price is not available. A local market price may be established using price quotes from usual marketing outlets in the area. Refusal of one processor to quote a price does not automatically mean a local market price is not available.

*Comment:* One comment received from the crop insurance industry recommended adding "(to include trading tare for grade to obtain a higher grade and price)," after the word "processing" in section 13(e)(4)(ii)(A)(3).

*Response:* FCIC agrees with the comment and has amended the provisions accordingly.

*Comment:* The crop insurance industry recommended that late and prevented planting coverage should not be provided on crops grown under contract with a processor. The processor determines what the producer does if the insured crop is not planted during the normal planting period.

*Response:* The inclusion of late and prevented planting is appropriate for contract seed beans. As the comment indicates, the processor may or may not allow planting within the late planting period. Congress has determined that marketing windows should be a factor in determining whether a crop has been prevented from planting. The contracted planting period, and intended harvest period, is considered as a marketing window. However, if planting is allowed under the contract, and the crop can reach maturity, coverage should be provided. Therefore, no change has been made.

*Comment:* The crop insurance industry recommended adding the phrase "to a type for which you have history" after the word "planted" in section 14(c)(1).

*Response:* Changing the provision to require past history of the bean type would prevent a new producer from obtaining late planting coverage or diversifying their production. To protect the integrity of the program, the insurance provider should require the producer to prove that the producer had the inputs available to plant the new

bean type. Therefore, no change has been made.

*Comment:* The crop insurance industry recommended adding the phrase "type for which you have history" after the words "insured crop" in the second and last sentences of section 14(d)(1)(ii) and at the end of the first sentence of section 14(d)(1)(iii)(B).

*Response:* Changing the provision as suggested would prevent a new producer from having late or prevented planting coverage or diversifying their production. Therefore, no changes has been made.

*Comment:* The crop insurance industry and a representative of FCIC recommended eliminating late and prevented planting provisions that reference participating in a USDA program that limits acreage planted, compliance with conservation plans, and base acreage. These do not apply.

*Response:* FCIC agrees that acreage limiting programs and base acreage do not apply to dry beans and has amended the appropriate provisions. However, conservation plans may allow the insurance provider to verify an intent to produce or not produce the crop. Therefore, provisions regarding the use of conservation plans have not been changed.

*Comment:* The crop insurance industry and a representative of FCIC asked whether the prevented planting coverage available when a substitute crop is planted will be dropped, or at least revised, for all affected crops for the 1997 crop year, and whether it is possible to remove (or revise) redesignated sections 14(d)(1)(iii)(B) and 14(d)(2)(iii)(B).

*Response:* The provisions that allow a prevented planting guarantee when a substitute crop is planted are under review for all affected crops for the 1998 crop year. Any changes will be made in a separate rule for all affected crop provisions. No change will be made in these provisions to maintain consistency with prevented planting provisions for other crops.

*Comment:* The crop insurance industry questioned if the provisions in section 14(d)(4)(ii) apply to dry beans only since "dry beans" are referenced, or if this carryover prevented planting coverage would be different for contract seed beans due to the requirement that they are to be grown under a contract with a processor.

*Response:* The Federal Crop Insurance Act requires the insurance period for prevented planting to begin on the sales closing date for the previous crop year if coverage has been continuous. Therefore, this "tail coverage" would apply if any beans, including contract

seed beans, were insured previously. This provision has been clarified by replacing the term "dry beans" with the term "beans."

*Comment:* The crop insurance industry recommended limiting the number of contract seed bean acres eligible for prevented planting to the number of acres that are under the processor contract for the crop year.

*Response:* FCIC agrees with the comment and has amended the provisions in section 14(d)(5)(iv)(A) to limit the number of acres eligible for prevented planting to those specified in the seed bean processor contract or the number needed to produce the contracted production based on the APH yield for the acreage.

*Comment:* The crop insurance industry asked whether the language contained in section 14(d)(5)(iv)(E) regarding double-cropping would be liberalized or if proof that the acreage has a history of double-cropping in each of the last four years would still be required. The comment recommended changing the words "\* \* \* the acreage has a history \* \* \*" to "\* \* \* the farm has a history \* \* \*"

*Response:* The recommended change would allow double benefits on an entire farm even though a very small number of acres may have been double-cropped in the past. Therefore, no change has been made.

*Comment:* The crop insurance industry recommended revising section 14(d)(5)(v) if the current language allows use of total acreage from both dry edible beans and contract seed beans for determining eligible prevented planting acreage. The proposed provision could result in a prevented planting payment for more than the acreage under contract for contract seed beans.

*Response:* FCIC has revised section 14(d)(5)(iv)(A) to limit the number acres of contract seed beans that are eligible for prevented planting to the number of acres under contract in the current year.

*Comment:* The crop insurance industry suggested combining the provisions contained in section 15(e) with the provisions in section 15(a).

*Response:* Approval of written agreements requested after the sales closing date is the exception, not the rule. Therefore, these provisions should be kept separate.

*Comment:* The crop insurance industry recommended that the requirement for a written agreement to be renewed each year be removed. Terms of the agreement should be stated in the agreement to fit the particular situation for the policy, or if no substantive changes occur from one year

to the next, allow the written agreement to be continuous.

*Response:* Written agreements are intended to change policy terms or permit insurance in unusual situations where such changes will not increase risk. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize exceptions to assure that the insured is well aware of the specific terms of the policy. Therefore, no change will be made.

In addition to the changes described above, FCIC has made the following changes to the Dry Bean Provisions:

1. Section 1—Amended the definition of “practical to replant” to specify that it will not be considered practical to replant contract seed beans unless production from the replanted acreage can be delivered under the terms of the seed bean processor contract.

2. Section 14(d)(3)—Clarified that the insured must have possessed the inputs to plant and produce the insured crop.

3. Revised part 433 to restrict its effect to the 1996 and prior crop years.

Good cause is shown to make this rule effective upon publication in the Federal Register. This rule improves the dry bean insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The earliest contract change date that can be met for the 1997 crop year is February 15, 1997. It is therefore imperative that these provisions be made final before that date so that the reinsured companies and insureds may have sufficient time to implement these changes. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1997 crop year.

List of Subjects in 7 CFR Parts 433 and 457

Crop insurance, Dry bean crop insurance regulations, Dry bean.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 433 and 457 as follows:

#### **PART 433—DRY BEAN CROP INSURANCE REGULATIONS**

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

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

2. The subpart heading preceding § 433.1 is revised to read as follows:

#### **Subpart—Regulations for the 1986 Through 1996 Crop Years**

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

5. Section 457.150 is added to read as follows:

##### **§ 457.150 Dry bean crop insurance provisions.**

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

FCIC policies:

Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Dry Bean Crop Provisions

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

1. Definitions

*Actual value*—The dollar value received, or that could be received, for contract seed beans under a seed bean processor contract if the contract seed bean production is properly handled in accordance with the requirements of such contract.

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

*Beans*—Dry beans and contract seed beans.

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

*Contract seed beans*—Dry beans grown under the terms of a seed bean processor contract for the purpose of producing seed to

be used for producing dry beans or vegetable beans in a future crop year.

*Days*—Calendar days.

*Dry beans*—The crop defined by The United States Standards for Beans excluding contract seed beans.

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

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

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

*Harvest*—Combining the beans. Beans which are swathed or knifed prior to combining are not considered harvested.

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

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

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

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

*Local market price*—The cash price per hundredweight for the U.S. No. 2 grade of dry beans of the insured type offered by buyers in the area in which you normally market the dry beans. Moisture content and factors not associated with grading under the United States Standards for Beans will not be considered in establishing this price.

*Net price*—The dollar value of dry bean production received, or that could have been received, after reductions in value due to insurable causes of loss.

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

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

*Practical to replant*—In lieu of the definition of “Practical to replant” contained



in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, and marketing window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period unless replanting is generally occurring in the area. For contract seed beans, it will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the seed bean processor contract or the seed company agrees to accept such production.

**Prevented planting**—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

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

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

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

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

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

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

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

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

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

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

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

## 2. Unit Division

(a) In addition to section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) all acreage of contract seed beans qualifies as a separate basic unit. For production based seed bean processor contracts, the unit will consist of all the acreage needed to produce the amount of production under contract, based on the actual production history of the acreage. For acreage based seed bean processor contracts, the unit will consist of all acreage specified in the contract.

(b) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) and section 2(a) of these crop provisions, may be divided into optional units if, for each optional unit, you meet all the conditions of this section or if a written agreement to such division exists.

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

(d) Contract seed beans may only qualify for optional units as specified in section 2(g) of these Crop Provisions if the seed bean processor contract specifies the number of acres under contract. Contract seed beans produced under a seed bean processor contract that specifies only an amount of production are not eligible for optional units.

(e) 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.

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

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

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

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

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

(4) Subject to section 2(d) each optional unit must meet one or more of the following criteria, as applicable:

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

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

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

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

(a) In addition to the requirements of section 3(b) (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one price election for all the dry beans in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each dry bean type designated in the Special Provisions. The price elections you choose for each type are not required to have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you may also choose 75 percent of the maximum price election for another type.

(b) For contract seed beans only, the dollar amount of insurance is obtained by multiplying the production guarantee per



acre for each variety in the unit by the insured acreage of that variety, times the applicable base price, and times the price election percentage you selected. The total of these results will be the amount of insurance for contract seed beans in the unit.

4. Contract Changes

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

5. Cancellation and Termination Dates

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

State and county	Cancellation and termination dates
California .....	February 28.
All other States .....	March 15.

6. Report of Acreage

For contract seed beans only, in addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must submit a copy of the seed bean processor contract on or before the acreage reporting date.

7. Insured Crop

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

- (1) In which you have a share;
- (2) That are planted for harvest as:
  - (i) Dry beans; or
  - (ii) If applicable, contract seed beans, if the seed bean processor contract is executed on or before the acreage reporting date; and
- (3) That are not (unless allowed by the Special Provisions or by written agreement):
  - (i) Interplanted with another crop; or
  - (ii) Planted into an established grass or legume.

(b) For contract seed beans only:

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

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

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

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

- (i) Results of test plots for 2 years and recommendations by a university or seed company; or
- (ii) Two years of production reports that indicate your experience producing the type in your production area;

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

(3) Both parties (you and us) enter into a written agreement allowing insurance on the type in accordance with section 15.

(d) Any acreage of beans that is destroyed and replanted to a different insurable type of beans will be considered insured acreage in accordance with section 11.

8. Insurable Acreage

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

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

9. Insurance Period

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

- (a) October 15 in Oklahoma, New Mexico, and Texas;
- (b) November 15 in California; and
- (c) October 31 in all other States.

10. Causes of Loss

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

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

11. Replanting Payments

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment is allowed if the bean crop is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 10 percent of the production guarantee for the type to be replanted or 120 pounds

multiplied by your price election for the type to be replanted and by your insured share.

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

(d) The guarantee and premium for acreage replanted to a different insurable type will be based on the replanted type and will be calculated in accordance with sections 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) and 7 (Annual Premium) of the Basic Provisions (§ 457.8) and section 3 of these Crop Provisions.

12. Duties in the Event of Damage or Loss

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

13. Settlement of Claim

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) Multiplying the result by your share.

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

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

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

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

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

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

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

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

(1) All appraised production as follows:

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

(A) That is abandoned;

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

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

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

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production of dry beans may be adjusted for quality deficiencies and excess moisture in accordance with section 13(e)); and

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

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

to determine the amount of production to count); or

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

(2) All harvested production from the insurable acreage.

(e) Mature dry bean production to count may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality. Adjustment for excess moisture and quality deficiencies will not be applicable to contract seed beans.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 18 percent. We may obtain samples of the production to determine the moisture content.

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

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

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

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

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

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

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

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

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

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

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

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

(A) The market price of the qualifying damaged production and the local market

price will be determined on the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit.

If a local market price is not available for the insured crop year, the current year's maximum price election available for the applicable type will be used. The price for the qualifying damaged production will be the market price for the local area to the extent feasible. We may obtain prices from one or more buyers located outside your local market area, we will reduce such prices by the additional costs required to deliver the dry beans to those buyers. Discounts used to establish the net price of the damaged production will be limited to those that are usual, customary, and reasonable. The price of the damaged production will not be reduced for:

(1) Moisture content;

(2) Damage due to uninsured causes; or

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

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

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

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

#### 14. Late Planting and Prevented Planting

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

(b) 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 bean acreage planted during the late planting period, the production guarantee or

amount of insurance for each acre will be reduced for each day planted after the final planting date by:

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

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

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

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

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

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

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

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

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

(B) A production guarantee equal to 25 percent of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the 10th day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 7.5 bushels per acre (30 bushels multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will

remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

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

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

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

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

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

(B) Twenty five percent and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This paragraph (B) is not applicable, and prevented planting coverage is not available under these crop provisions, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see section 14(d)(1)(iii)). Your premium will be based on the result of multiplying the per acre production guarantee or 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 production guarantee or amount of insurance. 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 beans for the 1997 crop year, prevented planting coverage will begin on the 1997 sales closing date for beans in the county. If the bean coverage remains in effect for the 1998 crop year (is not terminated or canceled during or after the 1997 crop year), prevented planting coverage for the 1998 crop year began on the 1997 sales closing date. Cancellation for the purpose of transferring the policy to a different insurance provider when there is no lapse in coverage will not be considered terminated or canceled coverage for the purpose of the preceding sentence.

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

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

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

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

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

(A) Of contracted seed beans in excess of the number of acres required to be grown in the current crop year under a seed bean processor contract executed on or before the acreage reporting date, or the number of acres needed to produce the amount of contracted production, based on the APH yield for the acreage.

(B) 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);

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

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

(E) 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;

(F) On which the insured crop is prevented from being planted, if any other crop is

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

(G) 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

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

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

#### 15. Written Agreements.

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 15(e);

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

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

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

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

Signed in Washington, D.C., on February 6, 1997.

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

[FR Doc. 97-3327 Filed 2-10-97; 8:45 am]

BILLING CODE 3410-FA-P

## Agricultural Marketing Service

### 7 CFR Part 984

[Docket No. FV96-984-1 FIR]

#### Walnuts Grown in California; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule establishing an assessment rate for the Walnut Marketing Board (Board) under Marketing Order No. 984 for the 1996-97 and subsequent marketing years. The Board is responsible for local administration of the marketing order which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program.

**EFFECTIVE DATE:** August 1, 1996.

#### FOR FURTHER INFORMATION CONTACT:

Mary Kate Nelson, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, CA 93721, telephone 209-487-5901, FAX 209-487-5906, or Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO. Box 96456, room 2525-S, telephone 202-720-9918, FAX 202-720-5698. Small businesses may request information on compliance with this

regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone 202-720-2491; FAX 202-720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning August 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order