

7 CFR Parts 401 and 457**General Crop Insurance Regulations, Fresh Market Sweet Corn Endorsement; and Common Crop Insurance Regulations, Fresh Market Sweet Corn Crop Insurance Provisions**

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of fresh market sweet corn. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current Fresh Market Sweet Corn Endorsement under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Fresh Market Sweet Corn Endorsement to the 1997 and prior crop years.

EFFECTIVE DATE: March 28, 1997.

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

SUPPLEMENTARY INFORMATION:**Executive Order No. 12866**

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

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments 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. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements.

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

Federal Assistance Program

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

Executive Order No. 12372

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

Executive Order No. 12988

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 Friday, January 3, 1997, FCIC published a proposed rule making, in the **Federal Register** at 62 FR 333-338 to add to the Common Crop Insurance Regulations (7 CFR part 457) a new section, 7 CFR 457.129, Fresh Market Sweet Corn Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring fresh market sweet corn found at 7 CFR 401.138 (Fresh Market Sweet Corn Endorsement). This rule also amends § 401.138 to limit its effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve § 401.138.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data and opinions. A total of 21 comments were received from the crop insurance industry and FCIC Regional Service Offices (RSO). The comments received, and FCIC's responses, are as follows:

Comment: A representative of FCIC recommended adding carton to the definition of crate. To expand fresh market sweet corn insurance, the method of measuring production to count must be applicable to other areas. The commenter stated cartons containing 48 to 52 ears were used in the midwest.

Response: FCIC agrees that revising the unit of measure would allow expansion of fresh market sweet corn crop insurance into areas that utilize units of measure other than the standard crate. The provisions have been amended to replace the term "crate" with the term "container". The definition of "container" specifies the unit of measure and the number of pounds or number of ears of the insured crop will be specified in the Special Provisions.

Comment: A representative of FCIC recommended adding to the definition

of excess wind, "or an occurrence at a time that prevents adequate pollination".

Response: FCIC agrees with the comment and has amended the provision contained in section 1 accordingly.

Comment: One comment from the crop insurance industry recommended clarifying the language in section 2(a) by stating "Basic units, as defined in section 1 (Definitions) of the Basic Provisions, will be established by planting period."

Response: FCIC agrees with the comment and has amended section 2(a) to indicate a basic unit will be established by planting period. However, the definition of "unit" is contained in the Basic Provision and no change will be made in that portion of the provision.

Comment: One comment received from the crop insurance industry stated that the references to land measurements such as leagues and labors was unnecessary. These type of land measurement were not applicable to the Southeast and crop insurance for fresh market sweet corn is only available in the Southeast.

Response: Fresh market sweet corn insurance may be expanded into other areas where such measurements are applicable. Therefore, no change will be made.

Comment: The crop insurance industry questioned if it was necessary to specify in section 3(c) that the CAT amount of insurance will be in the Actuarial Table when all available amounts of insurance are specified in section 3(a).

Response: FCIC agrees section 3(a) states the coverage levels and amounts of insurance are contained in the Actuarial Table. As section 3(c) provides no additional statements or requirements, FCIC has deleted this provision and renumbered the remaining provisions.

Comment: One comment from the crop insurance industry stated section 3 contained a heading in the stage chart and a statement within the chart was misleading. The chart heading suggested the percentages represented coverage levels that the insured would select rather than the amount of insurance that is selected by the insured and that the chart statement "until the acreage is harvested" suggests there is a stage after the final stage for after harvest. The commenter suggested the chart heading should state, "Percent in effect of your amount of insurance."

Response: FCIC believes the wording in the stage chart is clearly stated. Therefore, no change will be made.

Comment: A representative of FCIC recommended the final stage contained in Section 3(d) should be the harvested stage. The commenter indicated they did not understand why the final stage would begin at tasseling.

Response: Fresh market sweet corn insurance is structured to cover most of the producer's pre-harvest costs in case of a crop failure. To assure indemnities are paid based on the costs incurred at the time of loss, the crop maturity stages and corresponding maximum dollar amount of insurance represent the levels at which a producer has incurred the pre-harvest cost. FCIC has determined that a producer has reached 100 percent of the pre-harvest costs when the sweet corn crop reaches tasseling and, therefore, receives 100 percent of the per acre dollar amount of insurance. FCIC believes the stage levels are representative of the program objectives and no changes will be made.

Comment: A representative of FCIC recommended deleting from the list of states with a contract change date of November 30, the specific state names of Alabama and South Carolina. The provision already specifies "all other states".

Response: FCIC agrees with the comment and has amended section 4 accordingly.

Comment: The crop insurance industry recommended a grammatical change in section 7, to add a comma and hyphen in "e.g., fall-planted irrigated."

Response: FCIC agrees with the comment and has amended the provision in section 7 accordingly.

Comment: An FCIC representative recommended changing section 8(b)(3) to allow insurance on non-irrigated acreage. Production of fresh market sweet corn on non-irrigated acreage is a recommended farming practice in Iowa, Minnesota and Wisconsin.

Response: FCIC has amended the provision contained in section 8(b)(3) to state that the insured crop will be "grown under an irrigated practice, unless otherwise provided in the Special Provisions" to allow expansion into other areas as appropriate.

Comment: The crop insurance industry stated the provision in section 9(a) that states we will insure newly cleared land or former pasture land planted to fresh market sweet corn is new to the crop provisions. The commenter questioned if a waiting period was required before planting the insured crop on newly cleared or former pasture land.

Response: To provide consistency among the fresh market vegetable crops, FCIC incorporated provisions contained in other fresh market crop endorsements

and also clarified that former pasture land planted to the insured crop is insurable. It is a recommended practice for the fresh market vegetable crops to be planted on newly cleared and former pasture land so no waiting period is required prior to planting the insured crop.

Comment: The crop insurance industry questioned if the phrase "coverage begins . . . the later of the date we accept your application, or when the sweet corn is planted in each planting period" means that an application could be accepted after the sales closing to have coverage for subsequent planting periods in the crop year. If so, what is the purpose of having one sales closing date for the crop?

Response: Section 10 of these provisions do not alter the requirement contained in section 11 of the Basic Provisions, which states the application must be submitted by the sales closing date. The sales closing date corresponds to the earliest planting period so only one application is filed for the crop year and covers all subsequent planting periods. Since there are multiple planting periods in each crop year, the date insurance attaches in each planting period must be established. Provisions in section 10 simply clarify when insurance will attach. Therefore, no change will be made.

Comment: Two comments from the crop insurance industry and two comments from FCIC representatives recommended removing disease and insect infestation as uninsured causes of loss. The commenters suggested that disease and insects should be an insured cause of loss if a producer exhausts all reasonable means to protect the crop. This would provide coverage for new diseases and insects that cannot presently be controlled by the chemicals that are available.

Response: FCIC agrees that coverage should be available for damage due to disease and insect infestation for which no effective control measure exists. Therefore, FCIC has amended the provisions contained in section 11(b)(1) accordingly.

Comment: Two comments from the crop insurance industry recommended raising the maximum amount of the replanting payment per acre. Both commenters stated the maximum amount provided in the current policy is not sufficient to cover actual costs.

Response: FCIC agrees there may be instances when replanting costs exceed \$65.00 per acre as provided in the current endorsement. Therefore, provisions contained in section 12(b) have been revised to state that the maximum amount of the replanting

payment per acre will be the lesser of your actual cost of replanting, or the result obtained by multiplying the maximum amount of the replanting payment contained in the applicable Special Provisions by your insured share.

Comment: The crop insurance industry suggested combining the provisions in section 15(e) with the provisions in 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 and no changes have been made.

Comment: The crop insurance industry recommended 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 written agreements 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.

Comment: One comment from the crop insurance industry expressed concerns regarding payment of additional premium under the provisions of the minimum value option. In prior years, producers received an allowable cost of \$2.50 per crate for no additional premium charge.

Response: FCIC believes the commenter misunderstood the provisions contained in the minimum value option. To provide consistency among the fresh market vegetable crops, FCIC incorporated the minimum value option into the sweet corn provisions. The minimum value option will, for an additional premium, allow the total value of production to count on a unit to be as low as zero. The additional premium charge will be for those producers who elect the minimum value option. For those producers who do not elect the minimum value option, section 14 provides that the total value of production to count will be the greater of: (1) the price received for each container minus the allowable cost; or (2) the minimum value per container. No changes will be made.

Good cause is shown to make this rule effective upon publication in the

Federal Register. This rule improves the fresh market sweet corn 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 1998 crop year is April 30, 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 make the rules effective upon publication.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Fresh market sweet corn crop insurance regulations, Fresh market sweet corn.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401 and 457 effective for the 1998 and succeeding crop years to read as follows:

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

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

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

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

§ 401.138 Fresh market sweet corn endorsement.

The provisions of the Fresh Market Sweet Corn Endorsement for the 1991 through the 1997 crop years are as follows:

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

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

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

4. Section 457.129 is added to read as follows:

§ 457.129 Fresh market sweet corn crop insurance provisions.

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

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Fresh Market Sweet Corn Crop Provisions

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

1. Definitions

Container—The unit for measurement of the insured crop as specified in the Special Provisions.

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

Days—Calendar days.

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

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

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

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

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

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

Harvest—The picking of sweet corn on the unit.

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

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed for the insured crop to make normal progress toward maturity.

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

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

Planted acreage—Land in which, for each planting period, seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

For each planting period, fresh market sweet corn must initially be planted in rows far enough apart to permit mechanical cultivation. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Planting period—The period of time designated in the Actuarial Table in which fresh market sweet corn must be planted to be considered fall, winter, or spring-planted sweet corn.

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

Practical to replant—In lieu of the definition of "Practical to replant" contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, marketing windows, and time to crop maturity, that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period (inability to obtain seed will not be considered when determining if it is practical to replant).

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

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

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

2. Unit Division

(a) In addition to the requirements contained in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit), a basic unit will also be established by planting period.

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

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

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

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

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

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

(3) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must

be kept separate until loss adjustment is completed by us; and

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

3. Amounts of Insurance and Production Stages

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one coverage level (and the corresponding amount of insurance designated in the Actuarial Table for the applicable planting period and practice) for all the sweet corn in the county insured under this policy.

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

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

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

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

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

4. Contract Changes

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

State and county	Date
All Florida counties; and all Georgia counties for which the Special Provisions designate a fall planting period.	April 30.
All Georgia counties for which the Special Provisions do not designate a fall planting period; and all other States.	November 30.

Basic Provisions (§ 457.8), the cancellation and termination dates are:

5. Cancellation and Termination dates

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

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

6. Report of Acreage

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

7. Annual Premium

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

8. Insured Crop

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

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

9. Insurable Acreage

(a) In lieu of the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching if a crop has not been planted in at least one of the three previous crop years, we will

insure newly cleared land or former pasture land planted to fresh market sweet corn.

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

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

(i) It is practical to replant; and
(ii) If, at the time the crop was damaged, the final day of the planting period has not passed.

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

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

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

10. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), coverage begins on each unit or part of a unit the later of the date we accept your application, or when the sweet corn is planted in each planting period. Coverage ends at the earliest of:

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

11. Causes of Loss

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

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

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

- (1) Disease or insect infestation, unless no effective control measure exists for such disease or insect infestation; or
- (2) Failure to market the sweet corn, unless such failure is due to actual physical damage caused by an insured cause of loss that occurs during the insurance period.

12. Replanting Payments

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

(b) The maximum amount of the replanting payment per acre will be the lesser of your actual cost of replanting or the result obtained by multiplying the per acre replanting payment amount contained in the Special Provisions by your insured share.

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

13. Duties In The Event of Damage or Loss

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

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

14. Settlement of Claim

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

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

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

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

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

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

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

(4) Subtracting either of the following values from the result of section 14(b)(3):

(i) For other than catastrophic risk protection coverage, the total value of production to be counted (see section 14(c)); or

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

(A) Sixty percent for the 1998 crop year; or
(B) Fifty-five percent for 1999 and subsequent crop years; and

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

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

(1) Not less than the amount of insurance per acre for the stage for any acreage:

- (i) That is abandoned;
- (ii) Put to another use without our consent;
- (iii) That is damaged solely by uninsured causes; or

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

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

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

(ii) Production lost due to uninsured causes; and

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

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

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

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

15. Written Agreements

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

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

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

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

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop

years will be in accordance with the printed policy); and

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

16. Minimum Value Option

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

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

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

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

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

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

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

Signed in Washington, DC, on March 24, 1997.

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

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BILLING CODE 3410-FA-P

7 CFR Parts 445 and 457

Pepper Crop Insurance Regulations; and Common Crop Insurance Regulations, Fresh Market Pepper Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of

fresh market peppers. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current Pepper Crop Insurance Regulations under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Pepper Crop Insurance Regulations to the 1997 and prior crop years.

EFFECTIVE DATE: March 28, 1997.

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

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

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

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments on information collection requirements previously approved by OMB under OMB control number 563-0003 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