Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Pea Crop Insurance Regulations; and Common Crop Insurance Regulations, Dry Pea 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 dry peas. 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, separate dry peas and green peas into separate crop insurance provisions, include the current pea crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current pea crop insurance regulations to the 1997 and prior crop years.

EFFECTIVE DATE: December 16, 1997.

FOR FURTHER INFORMATION CONTACT: Arden Routh, 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, has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

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. Therefore, 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 various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than on large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity.

The insured must also annually certify to the previous 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. 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. 12998

This final rule has been reviewed in accordance with Executive Order No. 12998 on civil justice reform. 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 Thursday, May 15, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 26750 to add to the Common Crop Insurance Regulations (7 CFR part 457) a new section, 7 CFR 457.140, Dry Pea 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 dry peas found at 7 CFR part 416 (Pea Crop Insurance Regulations).

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. A total of 42 comments were received from an insurance service organization and reinsured companies. The comments received, and FCIC's responses, are as follows:

Comment: An insurance service organization recommended that FCIC consider combining contract seed peas and contract seed beans into one crop provision.

Response: FCIC will consider combining insurance provisions for these two crop types in the future.

Comment: An insurance service organization was concerned about late and prevented planting coverage for dry peas if revisions to the Basic Provisions are not finalized in time to be effective for the 1998 crop year.

Response: The late and prevented planting provisions in the Basic Provisions, will be applicable to this policy.

Comment: An insurance service organization questioned if the plant population is determined per unit or per acre within the unit in the definition of ''adequate stand.''

Response: FCIC has clarified the definition of ''adequate stand'' to specify that the plant population is determined on a per acre basis.

Comment: An insurance service organization questioned if the term ''contract seed peas'' had replaced ''wrinkled varieties of dry peas'' in the 1986–CHIAA 713 policy.

Response: The term ''contract seed peas'' has replaced ''wrinkled varieties of dry peas'' in those crop provisions.

Comment: An insurance service organization questioned if item (1) in the definition of ''dry peas'' includes peas grown for seed that do not qualify as contract seed for the purpose of the policy, and if this allows such peas to be included in the same unit as the dry edible types.

Response: Peas grown for seed that do not qualify as contract seed peas under the policy terms are treated the same as dry edible peas for purposes of the policy. Therefore, the peas grown for seed could be included in the same unit.

Comment: A reinsured company and an insurance service organization indicated that cultural practices may exist that are not recognized (or possibly known) by the Cooperative State Research, Education and Extension Service (CSREES). The comments indicated that the definition of ''Good farming practices'' is too restrictive since it limits acceptable farming practices to those recognized by the CSREES. The comments also suggested changing the last word of the definition from ''county'' to ''area.''

Response: CSREES recognizes farming practices that are considered acceptable for producing dry peas. If a producer is following practices currently not recognized as acceptable by CSREES, such recognition can be sought by interested parties. The actuarial documents are on a county basis. No changes have been made.

Comment: A reinsured company 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. No change has been made.

Comment: An insurance service organization questioned the definition of ''local market price'' which refers to grades and prices for ''dry peas or lentils.'' The definition of ''dry peas'' includes lentils as one dry pea type. It seems unnecessary to specify ''or lentils'' if the language in the definition of ''local market price'' is intended to exclude contract seed peas. The commenter recommended changing the words ''dry peas or lentils'' to ''dry edible peas or lentils,'' but if there is no change, ''lentils'' should be defined separately from the ''dry peas.''

Response: Under the definition of ''dry peas,'' peas grown for seed may be insured as dry edible peas. FCIC has amended the definition of local market price by deleting the words ''and lentils.''

Comment: A reinsured company questioned whether the reference to ''late planting period'' in the definition of ''practical to replant'' is still appropriate since there is not a section in these provisions for late and prevented planting. The commenter also asked if late planting period will be defined in the late and prevented planting provisions of the proposed Basic Provisions.

Response: Since the late planting period is no longer defined in these Crop Provisions, the words ''late planting period'' have been changed to ''25 days.'' The Basic Provisions contain a definition for ''late planting period'' as well as sections with provisions for late and prevented planting.

Comment: An insurance service organization stated that a nurse crop is not always intended to be harvested separately, but may be removed with a herbicide or other means. The commenter recommended deleting the phrase ''that is intended to be harvested separately,'' in the definition of ''nurse crop.''

Response: The primary reason that a nurse crop is planted is to improve the growing conditions of the crop with which it is grown. The definition has been revised to specify that the nurse crop is not intended to be harvested with the insured crop.

Comment: An insurance service organization questioned if the phrase ''marketing window'' in the definition of ''practical to replant'' applies to dry peas.

Response: The Federal Agriculture Improvement and Reform Act of 1996 requires FCIC to consider marketing window when determining whether it is practical to replant. No change has been made.

Comment: A reinsured company and an insurance service organization are concerned with the definition of ''replanting.'' The reinsured company indicated that the phrase replace the pea seed and then replacing the pea seed is awkward and cumbersome. The insurance service organization recommended clarifying the definition of ''replanting'' by specifying the crop name as follows: ''with the expectation of growing a successful pea crop.''

Response: The definition of ''replanting'' clearly describes the steps required to replant the crop. The producer must first perform the cultural practices needed to replant the seed before replanting the seed. FCIC has revised the definition to specify that the crop be replanted with or expectation of producing at least the guarantee. No change has been made.

Comment: An insurance service organization stated that the definition of ''salvage value'' appears to be unnecessary as the term is not used elsewhere in these provisions.

Response: FCIC has deleted the phrase ''salvage value'' from these Crop Provisions.

Comment: An insurance service organization questioned whether the defined dry pea types are the same as the varietal groups of dry peas that qualify for basic units in the current 1986–CHIAA 713 provisions.

Response: The dry pea types defined in these Crop Provisions are the same as the varietal groups of dry peas that qualify for basic units in the current 1986–CHIAA 713 provisions, except that Austrian Winter Peas are added under these Crop Provisions. A basic unit may be divided into optional units by type.

Comment: An insurance service organization stated that section 2 allows basic units to be divided into optional units by type (varietal group). The proposed change would require an insured to keep separate production records to qualify for optional units by type and the insured would no longer qualify for the basic unit discount. The commenter asked whether there would be any corresponding rate adjustment?

Response: Insureds have the option of selecting optional units by type. It is not required. To qualify for optional units, the insured must maintain separate production records by type. The premium rate charged will depend on the unit structure selected by the insured.

Comment: An insurance service organization recommended removal of the opening phrase in section 2(e)(4)(iii) of the proposed rule that states ''In addition to, or instead of, establishing optional units by section, section equivalent or FSA Farm Serial Number since section 2(e)(4) of the proposed rule specifies that ''Each optional unit must meet one or more of the following criteria.

Response: FCIC has revised this provision in the Basic Provisions.

Comment: An insurance service organization questioned if the various types of peas listed in the ''dry pea'' definition have similar growing seasons and harvest dates.

Response: With the exception of Austrian Winter Peas, the various types of peas listed in the ''dry pea'' definition have similar growing seasons and harvest dates. Austrian Winter Peas have a different growing season since they are normally planted in the fall. This difference should be no more complex than is the case for winter and spring wheats that also are grown in the Pacific Northwest.

Comment: A reinsured company and an insurance service organization questioned why the provisions in section 3 allow different price election percentages by dry pea type. This is not consistent with most other Crop Provisions unless each type is treated as a separate crop. They stated that this inconsistency may lead to confusion on the part of the insureds and agents.

Response: Producer groups have requested the flexibility to select a different percentage of the maximum price election for each type. The economic significance of different types of dry peas can vary considerably to a producer. Insurance providers have already programmed computer systems to allow variation in price election percentages for dry beans. There should be no significant costs if the same system is used for dry peas. No changes have been made.

Comment: An insurance service organization questioned why peas would be excluded from the seed contract ''during'' the crop year.

Response: The processor may modify the terms of the contract to exclude acreage or production because of over-production. If, for any reason, peas are excluded, they may not be covered under these Crop Provisions.

Comment: An insurance service organization questioned whether, under section 7(a)(3), interplanting would be limited to certain acres and whether this practice would require a growing season inspection.

Response: If the Special Provisions allow for interplanted dry peas, insurance coverage for this practice would apply to all acreage in a county. If a written agreement provides coverage for interplanted dry peas, the agreement itself would specify any limitations. In neither case, would a growing season inspection be required.

Comment: An insurance service organization stated that the term ''lease'' in section 7(b) is confusing. It questioned if this section should be moved to the definition of ''seed company.''

Response: FCIC agrees that the provisions are confusing and has revised section 7(b) to specify that the insured must retain control of the leased acreage.

Comment: An insurance service organization questioned the provisions in section 7(c) that reference an adequate stand as one capable of producing ''at least the production guarantee'' which conflicts with the definition of ''adequate stand.''

Response: Section 7(c) has been revised to refer to adequate stand.

Comment: An insurance service organization questioned the provisions of section 7(c), which permit insurance for Austrian Winter Peas, if provided for on the Special Provisions, the insured requests insurance on or before the sales closing date, and if the insurance provider agrees in writing that there is an adequate stand in the spring to produce the yield used to establish the production guarantee. The commenter asked if a growing season inspection would be required.

Response: A preliminary inspection will be required to determine if there is an adequate stand for insurance coverage. Once it is determined that there is an adequate stand, and insurance has attached, it will be up to the insurance provider to determine if a growing season inspection should be performed.

Comment: An insurance service organization recommended clarifying the provisions of section 7(d) to specify that coverage for replanted acreage will be based on the originally planted type, and to move this provision to section 8(b).

Response: To be consistent with other Crop Provisions, FCIC has added a provision to specify that the guarantee and premium for acreage replanted to a different insurable type will be based on the replanted type. Since this provision describes the insured crop, it will remain in section 7.

Comment: A reinsured company and an insurance service organization recommended deleting the phrase in section 8(b) to the extent that the majority of producers in the area would normally not further care for the crop as this phrase is subjective and meaningless, and causes problems if acreage of the crop is damaged after the final planting date, but other producers in the area are still replanting.

Response: FCIC has revised this provision to require replanting when most producers of the crop on acreage with similar characteristics are replanting.

Comment: A reinsured company questioned whether the phrase at the beginning of section 9 should be ''In addition to'' instead of ''In accordance with.''

Response: FCIC has amended the beginning of section 9 accordingly.

Comment: A reinsured company and an insurance service organization questioned if the provisions of section 9(b) applied only to Austrian Winter Peas or to all dry pea types.

Response: Section 9(b) has been clarified to indicate that the provisions apply to all dry pea types unless otherwise specified in the Special Provisions.

Comment: An insurance service organization indicated that the calculation sequence in section 12(b)(1)–(13) is difficult to follow because it is so wordy. They stated that it seems unnecessary to refer to the previous item by number as if it were on another page.

Response: Since some of the calculations involved are not performed in sequential order, it is necessary to refer to specific section numbers. Removal of the references would make the provisions less clear. FCIC will add an example for clarity.

Comment: An insurance service organization questioned if the reference to ''each contract seed pea type,'' in section 12(b)(4), meant the same as each type that qualifies for a separate optional unit according to section

2(e)(4)(i), or if the optional unit division is applicable to only the ''types'' listed in the definition or ''dry peas.'' If this is the case, the commenter recommended that another term should be used in this section as well as section 12(c).

Response: The provisions in sections 12(b)(4) and 12(c) should have referred to contract seed pea varieties. This section has been clarified accordingly.

Comment: A reinsured company questioned if the terms ''value'' and ''actual value'' in section 12(c) should be defined. The commenter also wanted to know how cull value is incorporated into the calculations to determine the value of production to count.

Response: FCIC has revised section 12(c) to refer to the ''highest local market price'' instead of ''actual value'' in order to set an objective standard for determining the value of damaged production. The provisions clearly indicate that the value of production to count is based on the new term local market price. The local market price of any ''cull'' production will be included when determining the amount of any indemnity.

Comment: An insurance service organization questioned how the ''actual value'' is determined for mature production that does not meet the minimum quality requirements contained in the seed pea contract. The commenter asked if the value of production that does not meet the minimum quality requirements contained in the seed pea contract would be considered to be the ''salvage value.''

Response: The ''local market price'' for contract seed pea production not meeting the minimum quality requirements contained in the seed pea contract will be the highest price obtainable for the production regardless of its ultimate disposition. If a salvage use proves to provide the highest value obtainable, then that ''salvage value'' will be used to determine the value of the production to count.

Comment: An insurance service organization received one comment stating that the policy should not allow the insured to defer settlement and wait for a later, generally lower appraisal.

Response: A later appraisal will only be necessary if the insurance provider and the insured do not agree on the appraisal or if the insurance provider believes that the crop needs to be carried farther to make a more accurate appraisal. If the insured does not provide sufficient care for the remaining crop, the insurance provider may use the original appraisal or assess an appraisal for an uninsured cause of loss. Therefore, no change has been made.

Comment: A reinsured company questioned if the term ''condition'' should be defined as this term is used in section 12(e)(3)(i)(C).

Response: FCIC has defined ''conditioning'' in section 1 of these Crop Provisions.

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. The written agreement provisions are deleted and moved to the Basic Provisions.

In addition to the changes described above, FCIC has made the following editorial changes to the Dry Pea Crop Insurance Provisions:

1. Amended the paragraph preceding section 1 (Definitions) to include the Catastrophic Risk Protection Endorsement.

2. Section 1—Amended the definition of ''combining,'' ''contract seed peas,'' ''local market price,'' ''practical to replant,'' and ''seed company contract'' for clarification. Deleted the definition of ''contract price'' since this term is not used in these provisions. Deleted the definition of ''days,'' ''FSA,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''production guarantee (per acre),'' ''replanting,'' ''USDA,'' ''timely planting,'' and ''written agreement'' because these definitions were moved to the Basic Provisions. Revised the definition of ''planted acreage'' and ''practical to replant'' to delete those provisions moved to the Basic Provisions.

3. Section 2—Deleted those provisions moved to the Basic Provisions.

4. Section 3—Removed the provision in section 3 regarding administrative fees because it is duplicative of provisions contained in 7 CFR part 400, subpart T.

5. Section 6—Deleted the requirements of ''spring-planted'' and ''grown under contract with a seed company'' since they are included in the definition of ''contract seed peas.''

6. Section 7(c)—Clarified that Austrian Winter Peas will be insured if authorized by the Special Provisions, if the insured requests insurance in writing for such dry peas, and if the insurance provider agrees in writing to provide coverage.

7. Section 12(d)(1)(iv)(B)—Clarified language to indicate that if the producer continues to care for the crop, the amount of production to count will be the harvested production or the reappraised amount if the crop is not harvested.

In general, FCIC has clarified some language to make these provisions easier to read.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the dry pea 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 December 31, 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 1998 crop year.

List of Subjects in 7 CFR Part 457

Crop insurance, Dry pea, Pea crop insurance regulations.

Final Rule

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

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

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

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

2. Section 457.140 is added to read as follows:

§ 457.140 Dry pea crop insurance provisions.

The Dry Pea 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:

Dry Pea Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions.

Adequate stand. A population of live plants per acre that will produce at least the yield used to establish your production guarantee.

Base price. The price per pound stipulated in the processor contract without regard to discounts or incentives that may apply, and that will be paid to the producer for at least 50 percent of the total production under contract with the seed company.

Combining. A mechanical process that separates the peas from the pods and other vegetative matter and place the peas into a temporary storage receptacle.

Conditioning. A process that improves the quality of production by screening or any other operation commonly used in the dry pea industry to remove dry peas that are deficient in quality.

Contract seed peas. Dry peas produced for seed to be planted at a future date and that:

(a) Are grown on acreage enrolled in the seed certification program administered by the state in which the peas are produced;

(b) Are grown on acreage planted in the spring; and

(c) Are under a seed company contract.

Dry peas. Peas of the following types:

(a) All spring-planted smooth green and yellow varieties of commercial dry edible peas, and peas grown to produce seed to be planted at a future date that do not meet the requirements contained in the seed company contract;

(b) All fall-planted varieties of Austrian Winter Peas only if provided for in the Special Provisions;

(c) All spring-planted varieties of lentils; and

(d) All varieties of contract seed peas.

Harvest. Combining of dry peas.

Local market price. The cash price per pound for the U.S. No. 2 grade of dry peas as determined by us. Such price will be the prevailing dollar amount these buyers are willing to pay for dry peas containing the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade. Factors not associated with grading under the United States Standards for Whole Dry Peas, Split Peas and Lentils will not be considered.

Nurse crop (companion crop). A crop planted into the same acreage as another crop, that is intended to improve the growing conditions for the crop with which it is grown and that is not intended to be harvested with the insured crop.

Planted acreage. In addition to the definition contained in the Basic Provisions, dry peas must initially be planted in rows 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 addition to the definition contained in the Basic Provisions, it will not be considered practical to replant dry peas, except for seed peas, more than 25 days after the final planting date unless replanting is generally occurring in the area. For seed peas, it will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the seed pea processor contract or the seed company agrees in writing to accept such production.

Price election. In addition to the provisions of the definition contained in the Basic Provisions, the price election for contract seed peas will be a percentage (not to exceed 100 percent) of the base price that you elect.

Seed company. Any business enterprise regularly engaged in the processing of contract seed peas, that possesses all licenses and permits for marketing contract seed peas required by the state in which it operates, and that owns, or has contracted, sufficient drying, screening, and bagging or packaging equipment to accept and process the contract seed peas within a reasonable amount of time after harvest.

Seed company contract. A written agreement between the producer and the seed company, executed by the acreage reporting date, containing at a minimum:

(a) The producer's promise to plant and grow one or more specific varieties of contract seed peas, 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 fixed price, or a method to determine such price based on published information compiled by a third party, that will be paid to the producer for at least 50 percent of the production stated in the contract.

2. Unit Division.

(a) In addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions, a separate optional unit may be established for each pea type listed in section 1 of these Crop Provisions.

(b) Contract seed peas may qualify for optional units only if the seed company contract specifies the number of acres under contract. Contract seed peas produced under a seed company contract that specifies only an amount of production or a combination of acreage and production, are not eligible for optional units.

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

In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the dry peas, including contract seed peas, 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 pea type so 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 choose 80 percent of the maximum price election for another type. However, if you elect the Catastrophic Risk Protection level of insurance for any dry pea type, the same level of coverage will be applicable to all insured acreage in the county.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage.

In addition to the provisions of section 6 of the Basic Provisions, you must submit a copy of the seed company contract to us on or before the acreage reporting date if you are insuring contract seed peas.

7. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the dry pea types in the county (including Austrian Winter Peas if you request insurance for such peas in accordance with section 7(c)) for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are planted for harvest as dry peas and which, if grown under a seed company contract, are not excluded from such contract during the crop year;

(3) That are grown in accordance with the requirements of the seed company contract, if applicable;

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop;

(ii) Planted into an established grass or legume; or

(iii) Planted as a nurse crop.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the contract seed peas are grown, you are at risk of loss, and the processor contract is in effect.

(c) Austrian Winter Peas are only insurable if you request insurance in writing for such dry peas, and we agree in writing to provide coverage. Your request to insure Austrian Winter Peas must be submitted to us not later than the sales closing date. We will not agree to insure Austrian Winter Peas unless an adequate stand exists in the spring.

(d) Any acreage of dry peas that is destroyed and replanted to a different insurable type of dry peas will be considered insured acreage. 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 and 7 of the Basic Provisions and section 3 of these Crop Provisions.

8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions:

(a) We will not insure any acreage that does not meet the rotation requirements, if applicable, contained in the Special Provisions; or

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that most producers of the crop or acreage with similar characteristics in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant. We will not require you to replant if it is not practical to replant the type of dry peas originally planted.

9. Insurance Period.

In addition to the provisions of section 11 of the Basic Provisions:

(a) Coverage for Austrian Winter Peas, will begin on the earlier of March 16 or the date we agree to accept the acreage for insurance, but not before March 1; and

(b) The calendar date for the end of the insurance period for all insurable types of dry peas in the county is September 30 of the crop year in which the crop normally is harvested unless otherwise specified in the Special Provisions.

10. Causes of Loss.

In accordance with the provisions of section 12 of the Basic Provisions, 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 due to a cause of loss contained in section 10(a) through (g) that occurs during the insurance period.

11. Duties In The Event of Damage or Loss.

In accordance with the requirements of section 14 of the Basic Provisions, the representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. If you intend to destroy the crop prior to harvest, the samples must not be destroyed until after our inspection.

12. Settlement of Claim.

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

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

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

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

(1) Multiplying the insured acreage of each dry pea type, if applicable, excluding contract seed peas, by its respective production guarantee;

(2) Multiplying each result of section 12(b)(1) by the respective price election;

(3) Totaling the results of section 12(b)(2);

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

(5) Multiplying each result of section 12(b)(4) by the applicable base price;

(6) Multiplying each result of section 12(b)(5) by your selected price election percentage;

(7) Totaling the results of section 12(b)(6);

(8) Totaling the results of section 12(b)(3) and section 12(b)(7);

(9) Multiplying the total production to be counted of each dry pea type, excluding contract seed peas, if applicable (see section 12(d)), by the respective price elections;

(10) Totaling the value of all contract seed pea production (see section 12(c));

(11) Totaling the results of section 12(b)(9) and section 12(b)(10);

(12) Subtracting the result of section 12(b)(11) from the result in section 12(b)(8); and

(13) Multiplying the result of section 12(b)12 by your share.

For example:

You have a 100 percent share in 100 acres of spring-planted smooth green dry edible peas in the unit, with a guarantee of 4,000 pounds per acre and a price election of $0.09 per pound. You are only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000 pounds guarantee;

(2) 400,000 pounds × $0.09 price election = $36,000.00 value of guarantee;

(9) 200,000 pounds × $0.09 price election = $18,000.00 value of production to count; $36,000.00 value of guarantee − $18,000.00 value of production to count = $18,000.00 loss; and

(13) $18,000.00 × 100 percent = $18,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of contract seed peas in the same unit, with a guarantee of 5,000 pounds per acre and a base price of $0.40 per pound. Your selected price election percentage is 75 percent. You are only able to harvest 450,000 pounds. Your total indemnity for both spring-planted smooth green dry edible peas and contract seed peas would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000 pounds guarantee for the spring-planted smooth green dry edible pea type, and

(4) 100 acres × 5,000 pounds = 500,000 pounds guarantee for the contract seed pea type;

(2) 400,000 pounds guarantee × $0.09 price election = $36,000.00 value of guarantee for the spring-planted smooth green dry edible pea type, and

(5) 500,000 pounds guarantee × $0.40 base price = $200,000.00 gross value of guarantee for the contract seed pea type;

(6) $200,000 × .75 price election percentage = $150,000 net value of guarantee for the contract seed pea type;

(8) $36,000.00+$150,000.00 = $186,000.00 total value of guarantee;

(9) 200,000 pounds × $0.09 price election = $18,000.00 value of production to count for the spring-planted smooth green dry edible pea type, and

(10) 450,000 pounds × $0.30 = $135,000.00 value of production to count for the contract seed pea type;

(11) $18,000.00+$135,000.00 = $153,000.00 total value of production to count;

(12) $186,000.00 − $153,000.00 = $33,000.00 loss; and

(13) $33,000.00 loss × 100 percent = $33,000.00 indemnity payment.

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

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

(i) Multiplying the local market price 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 mature production not meeting the minimum quality requirements contained in the seed pea processor contract due to insurable causes, and immature production that is appraised:

(i) Multiplying the highest local market price available for such dry peas by the price election percentage you selected; and

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

(d) The total pea 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 peas, excluding Austrian Winter Peas, may be adjusted for quality deficiencies in accordance with section 12 (c) or (e), if applicable); 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 the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(e) Mature production of smooth green and yellow peas, lentils, and seed peas that do not qualify as contract seed peas under the policy terms, and that are not deliverable under the contract or are sold under the contract for less than the contract price, may be adjusted for quality deficiencies. No adjustment for quality deficiencies will be allowed for Austrian Winter Peas.

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

(i) Deficiencies in quality, in accordance with the United States Standards for Whole Dry Peas, Split Peas, and Lentils, result in production grading U.S. No. 2 or worse because of defects, color, skinned production (lentils only), odor, material weathering, or distinctly low quality; or

(ii) 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.

(2) 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 peas 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.

(3) Dry Pea production that is eligible for quality adjustment, as specified in sections 12(e) (1) and (2), will be reduced as follows:

(i) The highest local market price for the qualifying damaged production will be determined on the earlier of the date such damaged production is sold or the date of final inspection for the unit. The highest local market price for the qualifying damaged production will be determined in the local area to the extent feasible. We may obtain prices from any buyer of our choice. If we obtain prices from one or more buyers located outside your local market area, we will reduce such prices by the additional costs required to deliver the dry peas to those buyers. Discounts used to establish the net value of the damaged production will be limited to those that are usual, customary, and reasonable.

The value will not be reduced for:

(A) Moisture content;

(B) Damage due to uninsured causes; or

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

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

(iii) The number of pounds of the damaged or conditioned production will then be multiplied by the quality adjustment factor to determine the production count to be included in section 12(d); and

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

13. Prevented Planting.

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Signed in Washington, D.C., on December 9, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 97–034–3]

Change in Disease Status of The Netherlands Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that added The Netherlands to the list of countries where bovine spongiform encephalopathy (BSE) exists. We took this action because BSE was detected in a cow in The Netherlands. The effect of the interim rule was to prohibit or restrict the importation of live ruminants and certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts from ruminants which have been in The Netherlands. The interim rule was necessary to reduce the risk that BSE could be introduced into the United States.

EFFECTIVE DATE: The interim rule was effective on March 21, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Animal Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3399; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective April 10, 1997, and published in the **Federal Register** on April 15, 1997 (62 FR 18263–18264, Docket No. 97–034–1), we amended our regulations by adding The Netherlands to the list of countries where BSE exists. We took this action because BSE was detected in a cow born in The Netherlands. We also published another interim rule in the **Federal Register** on May 7, 1997 (62 FR 24802, Docket No. 97–034–2), that changed the effective date of the April 1997 interim rule from April 10, 1997, to March 21, 1997. The change in effective date was necessary to ensure that the prohibitions and restrictions established by the April 1997 interim rule applied to animal products and byproducts that were shipped to the United States from The Netherlands between March 21, 1997, when BSE was detected in The Netherlands, and April 10, 1997, when the first interim rule was signed.

Comments on the interim rule were required to be received on or before June 16, 1997. We received two comments by that date. They were from a company that imports cattle semen and an importer of meat and meat byproducts. They are discussed below.

The commenters did not oppose adding The Netherlands to the list of countries where BSE exists. However, one comment expressed concerns about Animal and Plant Health Inspection Service regulations that restrict the importation of veal from countries where BSE is known to exist. The other comment concerned the trade protocols of the United States and other countries for importing cattle semen from countries where BSE exists. Both comments are outside the scope of the interim rule. However, we continually review and update our regulations to make them consistent with current scientific data. We will consider these comments as we review our regulations. If we decide to make any changes to our regulations in response to these comments, we will publish a proposed rule in the **Federal Register**.