

# Rules and Regulations

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

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563-AC14

#### Common Crop Insurance Regulations; Dry Pea Crop Provisions

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations; Dry Pea Crop Insurance Provisions by including the insurability of additional types of dry peas, by offering winter coverage, by allowing replanting payments, and by making chickpeas insurable under the Dry Pea Crop Provisions. The changes will apply for the 2009 and succeeding crop years for all Dry Pea counties with a contract change date on or after November 30, 2008.

**DATES:** *Effective Date:* This rule is effective October 6, 2008.

**FOR FURTHER INFORMATION CONTACT:** Claire White, Economist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141-6205, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

##### Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44

U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563-0053.

##### E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

##### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 UMRA.

##### Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

##### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or

1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

##### Federal Assistance Program

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

##### Executive Order 12372

This program is not subject to the provisions of Executive Order 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 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to requiring the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

##### Environmental Evaluation

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

##### Background

This rule finalizes changes to 7 CFR part 457.140 (Dry Pea Crop Insurance Provisions) that were published by FCIC

on January 18, 2008, as a notice of proposed rulemaking in the **Federal Register** at 73 FR 3411–3417. The public was afforded 60 days to submit comments after the regulation was published in the **Federal Register**.

A total of 119 comments were received from five commenters. The commenters were one insurance services organization, one grower association, and three insurance providers.

The public comments received regarding the proposed rule and FCIC's responses to the comments are listed below (under applicable subject headings) identifying issues and concerns, and the changes made, if any, to address the comments.

### General

*Comment:* One commenter stated contract seed peas and contract seed beans have their own unique method for properly calculating the actual production history (APH) as outlined in Exhibit 27 of the Crop Insurance Handbook (CIH). The commenter claims it has to track back and forth between dollars and pounds and receive 10 years of new Reference (Base) Year Adjustment Factors (RYAF) each year. All 10 numbers change every year. The commenter states that the intent of the procedure is good as it tries to provide coverage for contract seed peas that do not pass germination testing and, therefore, receive a reduced price. However, the commenter thought this could also be accomplished by using the same methodology as is used for green peas. This would simplify the administration of this program and remove the need for having Exhibit 27 of the CIH as the APH would be based on 'Dividing the dollar amount received by the contract price per pound for the base contract price.' Using the green pea methodology would allow the guarantee to be expressed in pounds rather than dollars and eliminate the need for RYAFs. The approved APH yield would no longer have to be converted from dollars per acre to pounds per acre for entry on the acreage report. The commenter states that this APH procedure has been in place only for contract seed pea types of dry peas and contract seed bean types of dry beans. The commenter recommended these procedures be reevaluated to see if they are still necessary and if this procedure could be revised to be consistent with what is being done for green peas. This would simplify the administration of this program.

*Response:* Since the recommended change involves APH procedure and not the Dry Pea Crop Provisions, no change

has been made in the final rule. FCIC will evaluate this recommendation to determine if APH procedures for contract seed dry peas can be made consistent with seed green peas.

*Comment:* Two commenters applauded FCIC for including chickpeas (a.k.a. garbanzo beans) in the Dry Pea Crop Provisions. Chickpeas are produced in dry pea and lentil growing regions and producers should have the option to purchase coverage for these crops under one policy.

*Response:* FCIC has retained the provisions in the final rule that allow chickpeas to be covered under the Dry Pea Crop Provisions in applicable States and counties as determined by FCIC.

*Comment:* Two commenters stated the words "fall planted" and "spring planted" are most often used without hyphens throughout the Crop Provisions, though hyphens are used in the section 13(b) example. It would be helpful to be consistent, and preferably use the hyphens to make it easier to read.

*Response:* FCIC has revised the provisions as suggested.

### Section 1—Definitions

*Comment:* One commenter recommended the definition of "base price" be revised to include both "seed company" and "processor" contracts because dry pea producers often have the choice to purchase seed from seed companies and processors.

*Response:* FCIC has revised the definition of "base contract price" to include processor contracts and now refers to "processor/seed company contract." FCIC has also removed the definitions of "seed company" and "seed company contract" and replaced the definitions with "processor/seed company" and "processor/seed company contract," respectively. Therefore, the phrases "seed company" and "seed company contract" have been replaced with the phrases "processor/seed company" and "processor/seed company contract," respectively, throughout the policy to be consistent with the definition of "base contract price."

*Comment:* Two commenters recommended replacing the word "place" with "places" in the definition of "combining."

*Response:* FCIC has revised the definition as suggested.

*Comment:* One commenter supported the revision to the definition of "dry peas" to allow insurability of additional types of dry peas in accordance with the Special Provisions. Three commenters also stated the word "and" before the word "Chickpeas" in the definition of

"dry peas" should be removed and replaced with a comma. Two commenters suggested rewording the phrase "and those types" to state "and any other types."

*Response:* FCIC has retained the provisions in the final rule, which allows insurability of additional types of dry peas via the Special Provisions. FCIC has removed the word "and" and replaced it with a comma. FCIC has reworded the phrase "and those types" as "and other types."

*Comment:* One commenter supported adding the sentence, "dry peas that are swathed prior to combining are not considered harvested," in the definition of "harvest."

*Response:* FCIC proposed this change in the proposed rule and will retain it in the final rule.

*Comment:* One commenter supported revising the definition of "local market price" to specify that factors not associated with grading factors under the United States Standards for Whole Dry Peas, Split Peas and Lentils will not be considered, unless specified in the Special Provisions.

*Response:* FCIC has retained the proposed definition in the final rule.

*Comment:* Two commenters asked, in the definition of "practical to replant," if the added statement that it will not be considered practical to replant fall-planted dry peas more than 25 days after the final planting date for the corresponding spring-planted type of dry pea conflicts with the last sentence of 8(b), which states "We will not require you to replant if it is not practical to replant the type of dry peas originally planted." The commenters also asked if fall-planted and spring-planted dry peas are different types or the same type planted at different times.

*Response:* The commenter is correct that the statement that fall-planted dry peas will not be considered practical to replant more than 25 days after the final planting date for the corresponding spring-planted type of dry pea conflicts with the last sentence of 8(b). FCIC has removed the referenced provisions of section 8(b). Fall-planted and spring-planted dry peas are different types planted at different times.

*Comment:* Two commenters suggested reformatting the definition of "practical to replant" so it is easier to read.

*Response:* FCIC has reformatted the definition of "practical to replant" to make it easier to read.

*Comment:* Three commenters suggested revising the definition of "price election" to change the term "base price" to "base contract price" to match the revised definition of "base contract price."

*Response:* FCIC has revised the definition as suggested.

*Comment:* One commenter suggested adding a definition of "sales closing date" to address the additional sales closing date that will be established for acreage insured under the Winter Coverage Option.

*Response:* A definition of "sales closing date" does not need to be added. Throughout the Dry Pea Crop Provisions, when reference is made to insurance attaching under the Winter Coverage Option, the Crop Provisions state the Winter Coverage Option must be elected by the sales closing date. Further, the Special Provisions will contain the sales closing date for counties with the Winter Coverage Option in effect. No change will be made.

*Comment:* One commenter stated the word "variety" in the definition of "seed company contract" has been changed to "type." The commenter stated the contracts they have received in years past make specific reference to a variety of seed and not a specific type. The commenter asked if it will be considered an invalid contract if the seed company contracts do not state the specific type or if the contract states the specific variety whether the insurance provider can determine the type.

The commenter also asked the following questions: (1) With the proposed change to have the contract state a specific type, will separate units by each type of dry pea seed under contract be allowed; (2) will the Special Provisions be changed to identify each specific type that is insurable by type for contract seed or will the Special Provisions remain the same and all varieties of dry peas under contract for seed will be insured as the contract seed pea type.

*Response:* The commenter is correct that processor contracts and seed company contracts make specific reference to varieties, rather than types. Therefore, FCIC has not retained the proposed changes. This means that contract seed peas may be insured as a separate optional unit only if contract seed peas are listed on the Special Provisions as an insurable type. The distinct varieties listed on the contract will not be eligible for separate optional units.

*Comment:* Two commenters suggested revising the definition of "swathed" in order to align it with the wording of "swathed" in other Crop Provisions. In the proposed context, one may conclude and argue that placing the crop into more than one windrow would not be considered swathed.

*Response:* FCIC has revised the definition for clarification.

#### *Section 2—Unit Division*

*Comment:* Two commenters stated this section may need to be clarified as they are not sure how contract seed peas fit into the unit structure as defined in this section of the policy. The commenters asked if Austrian peas grown under a seed company contract and other Austrian peas not grown under a seed company contract in the same section would qualify for separate optional units.

*Response:* Section 2 has been revised to clarify that separate optional units can be established for contract seed peas and dry peas not grown under a processor/seed company contract even if each type shares a common variety, provided each type is grown on separate acreage and the production is kept separate. This means that Austrian peas grown under a processor/seed company contract and other Austrian peas not grown under a processor/seed company contract in the same section qualify for separate optional units, provided the Austrian peas grown under a processor/seed company contract meet all policy requirements for insurability as contract seed peas, and the producer has elected optional units. Austrian peas grown for harvest as mature dry peas would be insurable as either a: (1) Fall Austrian pea type; or (2) spring Austrian pea type, whichever is applicable, if provided on the Special Provisions, and all qualifying acreage of seed peas (regardless of type, e.g. fall Austrian peas, spring smooth green and yellow peas, etc.) would be insurable as a separate optional unit when insured as a contract seed pea type. If the acreage of Austrian peas grown under contract for seed did not meet the policy requirements to be insured under the contract seed pea type, then this acreage and acreage of Austrian peas not grown under contract would be included in the same unit.

*Comment:* Two commenters said the proposed rule appears to delete section 2(b), which currently allows optional units for contract seed peas if the seed contract specifies the number of acres contracted. The commenter asked if this means contract seed peas will no longer qualify for separate optional units (unless there are separate contracts for the different dry pea types that qualify), or will contract seed peas be listed as a separate dry pea type on the Special Provisions. Since the Special Provisions are not included in the proposed rule, it is difficult to know what kind of change might be intended.

*Response:* Section 2 has been revised to clarify that contract seed peas will qualify for optional units if contract seed peas are listed as a separate type on the Special Provisions.

#### *Section 3—Insurance Guarantees, Coverage Levels and Prices for Determining Indemnities*

*Comment:* One commenter stated they believe the intent of this section is to limit the producer to the same single level of coverage for all types of dry peas that are planted in the county. It also does not change the requirement to report all acreage of dry peas planted in the county that are planted to insurable types as listed in the Special Provisions. This would make this policy consistent with the Dry Bean Crop Provisions in that it would require all acreage of dry peas to be insured and all types would be insured at the same coverage level. If this is not the intent, the commenters recommended that it be changed to match what is done for dry beans. Otherwise, if the insured is allowed to have separate coverage levels by type, each type should be treated as a different crop with a separate administrative fee, etc. (i.e., California grapes). If the intent is to limit producers to the same single level of coverage for all types, the language could be further clarified as follows: "In lieu of the requirements of section 3 of the Basic Provisions, you must select the same coverage level for all types listed on the Special Provisions." The current language indicates only a single level can be selected for each type but does not stipulate that it must be the same. The above language clarifies that only one level can be selected and it must be the same for all types.

*Response:* The intent of the proposed provisions in section 3(a) and 3(b) is to allow separate coverage levels and price election percentages by type listed on the Special Provisions. According to section 7 of the Dry Pea Crop Provisions, all dry pea types in the county for which there is a premium rate must be insured. Therefore, the requirement to report all acreage of dry peas planted to insurable types in the county remains the same. Offering a separate coverage level by type does not automatically imply each type be treated as a separate crop. No change has been made.

*Comment:* Two commenters also stated the language in proposed section 3(a) allows separate coverage levels by type and proposed section 3(b) allows separate price percentages by type. As is currently proposed, this would allow different coverage levels for different types even within the same unit. The

commenter does not know of any other crop that allows different coverage levels within the crop and objects to allowing separate coverage levels by type.

*Response:* The proposed provisions would allow different coverage levels for different types even within the same basic unit. However, since optional units are available by type, it is likely that most producers will opt for optional units for each of their insurable types of dry peas. Offering separate coverage levels by type provides the dry pea producers another method to manage their risk.

*Comment:* One commenter stated there seems to be missing information in proposed section 3(a) that surrounds the ability for the insured to select different coverage levels by type. For example, two different types of dry peas are listed on the application as being insured at a 70 percent and 65 percent coverage level, respectively. At acreage reporting time, the producer identifies a third type of dry pea planted that was not listed on the application. The commenter questions at what coverage level would the insurance provider insure that type. One suggestion is to allow the producer to select a coverage level for the crop and if the producer wants to insure a specific type of dry peas at a different coverage level, he must identify that separate coverage level on the application for that specific type. If the producer does not specify a separate coverage level for a specific type, the type will be insured under the coverage level selected at the crop level.

*Response:* The commenter is correct that there is missing information. FCIC has revised section 3 to include provisions stating if a dry pea type is added after the sales closing date, the dry pea type will be assigned a coverage level equal to the lowest coverage level selected for any other dry pea types; and a price election percentage equal to 100 percent if additional coverage is elected and 55 percent if catastrophic level of coverage is elected.

*Comment:* One commenter recommended that the last portion of the lead-in paragraph in proposed section 3(b) be revised as follows: “\* \* \* in which case you may select a different price election percentage for each such dry pea type so designated in the Special Provisions \* \* \*” This clarifies that if a different price election is offered by type that a different price election percentage could be elected for each such type and would be consistent with the Dry Bean Crop Provisions.

*Response:* FCIC has broken section 3(b) into separate paragraphs for clarity. FCIC has revised the newly designated

section 3(b)(2) to clarify if the Special Provisions designate a separate price election by type, the producer may select one price election for each type listed in the Special Provisions. The price election the producer chooses for one type is not required to have the same percentage relationship to the maximum price offered for another type.

*Comment:* Two commenters stated proposed section 3(b) says the producer may select only one price election for all dry peas in the county insured under this policy unless the Special Provisions provide different price elections for a particular type, in which case the producer may select one price election for each dry pea type so designated in the Special Provisions. The commenters asked whether this means that if the Special Provisions lists three dry pea types, with one type having a different price election from the other two types (which show the same price because of the market), those two types would have to have the same price percentage. In the alternative, the commenter asks whether it means that as long as the three types are listed on separate lines, each with its own price election, those are considered different price elections and producers can choose different price percentages as well as different coverage levels under proposed section 3(a). If it is the former, the commenter asks FCIC to consider revising to “\* \* \* unless the Special Provisions provide a different price election for a particular type \* \* \*” If the latter is correct, the commenter asks that FCIC consider going back to the current wording, “\* \* \* by type” [as in (b)(1) & (3)]. Depending on the response to these questions, the references in (b)(1) & (3) to “different price elections by type” may need to be reviewed as well.

*Response:* FCIC has revised the provisions in section 3(b) to clarify that if there is more than one type of dry pea listed on the Special Provisions, then each type may have a separate price election percentage, regardless if the price for one type is the same as the price for another type. For example, type A and type B are listed on the Special Provisions. The price for type A is \$0.12. The price for type B is also \$0.12. The price election percentage for type A and type B do not have to be the same even though the price election for type A is the same as the price election for type B.

*Comment:* Two commenters stated proposed section 3(b) states that if there are different price elections, then the producer “may select one price election for each dry pea type,” while proposed section 3(b)(1) states “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.” The commenter suggested the last phrase of (b) should be deleted from (b) and combined with (b)(1), which would then provide the additional options when separate price elections are designated.

*Response:* The commenter is correct that the last phrase of section 3(b) should be deleted from (b) and added to the provisions that state what options the producers have when separate price elections are designated on the Special Provisions. As stated above, FCIC has also reformatted section 3(b) to make it easier to read.

*Comment:* Two commenters stated proposed section 3(b)(2) should either be moved to the end of section 3(a) because it refers to the coverage level for catastrophic (CAT) level of coverage, instead of the percentage of price election, or it should be reworded to address the percentage of price election for CAT level of coverage. If it remains in section 3(b), the commenter suggested it should be the first or last of the three paragraphs under section 3(b) instead of between paragraphs (1) and (3).

*Response:* FCIC has moved the provisions related to CAT coverage proposed in section 3(b)(2) to section 3(a).

*Comment:* Two commenters suggested revising proposed section 3(b)(3) because the current wording suggests the producer has a choice of price elections even if price elections by type are not listed on the Special Provisions. The commenters suggested revising it to say “\* \* \* the same price election percentage applies for each dry pea type.”

*Response:* The commenter is correct that a producer does not have a choice of multiple price elections when the Special Provisions do not designate separate price elections by type. FCIC has revised section 3(b) to state if the Special Provisions do not designate separate price elections by type, the producer may select only one price election for all dry peas in the county.

*Comment:* One commenter supported the right of a producer to select his/her own separate coverage level on dry peas, lentils and chickpeas.

*Response:* FCIC has retained the provisions in the final rule. The producer is allowed to select a separate coverage level for each type of dry peas.

#### Section 7—Insured Crop

*Comment:* Two commenters suggested deleting the word “to” before the phrase “otherwise not harvest” in proposed section 7(a)(3)(iv).

*Response:* FCIC has revised the provisions as suggested.

#### Section 8—Insurable Acreage

*Comment:* Three commenters stated the last sentence of proposed section 8(b), which states, “We will not require you to replant if it is not practical to replant the type of dry peas originally planted,” indicates it is not required that the producer replant if it is not practical to replant to the same type of dry peas originally planted. The commenter questioned if this conflicts with the new language in proposed section 9(d).

*Response:* The commenters are correct that the provisions in section 8(b) conflict with the new language in section 9(d). FCIC has removed the current provisions in section 8(b) and moved the provisions proposed in section 9(c), 9(d), and 9(e) to section 8 as some of the language is duplicative and is more appropriate in section 8 regarding insurable acreage than in section 9 regarding the insurance period.

#### Section 9—Insurance Period

*Comment:* Two commenters suggested adding a comma after the middle phrase “section 11 of the Basic Provisions” and adding the word “the” before the word “provisions” in the introductory text of section 9.

*Response:* FCIC has revised the provisions as suggested.

*Comment:* Three commenters stated the provision proposed in section 9(c) states the following: “Any acreage of the insured crop damaged before the final planting date, to the extent that producers in the surrounding area would not further care for the crop, must be replanted unless we agree that it is not practical to replant.” This has the current language regarding replanting, but otherwise essentially duplicates provisions currently contained in proposed section 8(b). Two commenters also stated the last sentence in the provisions currently contained in section 8(b) states, “\* \* \* We will not require you to replant if it is not practical to replant the type of dry peas originally planted.” The commenter asked if this sentence, and proposed section 9(d), belong in section 9 or in section 8. The commenters also stated similar replanting language also has been added in proposed section 9(d), particularly (d)(1), and in section 9(e)(3). The commenter asked that FCIC consider if this language must be repeated in four different subsections.

*Response:* As stated above, the commenters are correct that section 9(c) duplicates provisions currently

contained in section 8(b). FCIC has removed the provisions currently contained in section 8(b) and the language proposed in section 9(c) has been moved to section 8(b). As stated above, the commenter is also correct that the entire proposed section 9(d) belongs in section 8 because it related to insurable acreage. The entire proposed section 9(e) has also been moved to section 8 because it is more appropriate in section 8.

*Comment:* One commenter supported the proposal to offer the Winter Coverage Option for dry peas and using the language from the Small Grains Crop Provisions as a starting point for developing similar language for dry peas. However, the commenter believed some of the language in the Small Grains Crop Provisions that deals with counties containing both fall and spring final planting dates is not appropriate for dry peas and should be clarified as indicated below to be more applicable for dry peas. The commenter stated the second part of proposed section 9(d)(1) indicates that if it is not practical to replant to a fall-planted type of dry peas that the insured must replant to a spring type in order to maintain coverage based on the fall-planted type. The commenter is concerned with the various different types of dry peas that could be insured in some areas and the different level of yields and prices that can exist between the different types of dry peas (particularly fall types versus spring types). The commenter recommended that in this situation, coverage would revert to the respective spring type that is planted rather than remain based on the fall-planted type, which may not be reflective of the yield or price potential of the spring-planted type. In addition, the current language would allow producers the ability to adversely select against the insurance provider by planting a lower yielding or priced spring type in these types of situations. The commenter also stated the above comments would impact proposed section 9(e) as well. The commenter references Austrian winter peas as an example of a fall-planted type and they are not aware of a spring-planted version of this same type of pea. The commenter stated that under this provision, if they received a request to insure Austrian winter peas in a county with only a spring final planting date, they would not be able to establish a yield etc., for a spring seeded type as it does not exist. The commenter recommended that coverage be based on the fall-planted dry pea type in these types of situations. In addition, if damage occurs after such acreage has

been accepted for coverage, and must be replanted to a spring-planted type, the commenter recommended the coverage revert to the spring-planted type in these situations.

*Response:* FCIC has retained the Winter Coverage Option provisions in the final rule. Coverage for the spring peas planted on failed fall acreage should not revert to the respective spring-planted type rather than remain based on the fall-planted type. Allowing spring-planted dry peas to be insured as fall-planted dry peas when it has been replanted on failed fall dry pea acreage is permitted because insurance has already attached to the fall dry pea crop and replanting to the spring crop is a means to mitigate the damages associated with the failed fall crop.

FCIC is aware of Austrian pea varieties that are spring-planted. Austrian peas (a.k.a black peas; dry peas with a dark and mottled seed coat) are a variety of peas typically characterized as having moderate to good winter survivability. Their cold temperature tolerance and subsequent reproductive phase do not have a vernalization requirement similar to winter wheat. Therefore, it can successfully be produced when sown in the fall or spring.

#### Section 10—Causes of Loss

*Comment:* One commenter suggested clarifying section 10(b) to state “Fire, due to natural causes.”

*Response:* No changes to this section were proposed. Further, the current introductory text of section 10 states the specified causes of loss are in accordance with the Basic Provisions. The Basic Provisions contain the requirement that all causes of loss must be due to a naturally occurring event. There is no reason to be repetitive. In addition, to explicitly state that fire must be due to natural causes while not including this language with the other listed causes losses could create the mistaken impression that such other causes do not have to be from natural causes. No change has been made.

#### Section 11—Replanting Payments

*Comment:* Two commenters stated the wording of the last phrase regarding compliance with all replanting payment requirements in the Basic Provisions “\* \* \* and in the Winter Coverage Option for which you are eligible and which you have elected” sounds as though every dry pea producer will be eligible and will elect the Winter Coverage Option. While the commenters realize this language was taken from the current Small Grains Crop Provisions, they suggested FCIC consider rephrasing

it something like “\* \* \* and in the Winter Coverage Option, if applicable.”

*Response:* FCIC has revised the provisions accordingly.

*Comment:* Two commenters suggested deleting the period at the end of section 11(a)(3) and replacing it with a semicolon to be consistent with the other subsections.

*Response:* FCIC has revised the provisions as suggested.

*Comment:* Two commenters suggested deleting “\* \* \* (see section 15) \* \* \*” in proposed section 11(a)(5) since the Winter Coverage Option has already been referenced in (a)(2). The commenter also suggested placing the parenthetical reference in proposed section 11(a)(2).

*Response:* FCIC has revised the provisions as suggested.

*Comment:* One commenter asked if the producer does not select the Winter Coverage Option, but does have insured fall-planted acreage in a county with a fall planting date, and damage occurs prior to insurance attaching, are those acres still eligible for a replanting payment.

*Response:* If a producer has insured fall-planted acreage in a county with a fall and spring final planting date, but does not elect the Winter Coverage Option, the producer is not eligible for a replanting payment. FCIC has revised the provisions in section 11 to clarify fall-planted acreage not covered under the Winter Coverage Option that is damaged after it is accepted for insurance but before the spring sales closing date must be replanted but no replanting payment will be made.

FCIC has also added provisions to section 11(a)(5) to clarify if the Winter Coverage Option is in effect, damage must occur after the fall final planting date for the acreage to be eligible for a replanting payment. This revision clarifies the Winter Coverage Option must be in effect in order for the fall acreage to be eligible for a replanting payment.

*Comment:* Two commenters stated proposed section 11(b) provides a maximum of “\* \* \* the lesser of 20.0 percent of the production guarantee or 200 pounds \* \* \*” The commenter asks whether the different dry pea types will have similar yields so that 200 pounds will be appropriate for all. For example, if chickpeas are shifted from the Dry Bean policy to the Dry Pea policy, they will have a much higher maximum than before.

*Response:* The data shows that all dry pea types will have similar yields and, therefore, the 200 pounds will be appropriate for all types. FCIC recognizes chickpeas will have a higher

maximum than they previously did under the Dry Bean Crop Provisions but it should not be excessive.

*Comment:* Two commenters stated the lead-in to proposed sections 11(d)(1) and (2) will read more smoothly with the word “for” added at the end of proposed section 11(d).

*Response:* The addition of “for” would make the sentence grammatically incorrect. No change has been made.

*Comment:* One commenter stated the last sentence of the lead-in paragraph of section 11(d) could be removed in addition to items (1) and (2). Damaged fall-planted acreage that is replanted to a spring-planted type should have the coverage revert to the applicable spring type that is planted. The commenter does not believe that item (d)(2) will occur and could be removed as well.

*Response:* As stated above, coverage on the acreage replanted to a spring type on failed fall-planted acreage should not revert to the spring type, instead of the fall-planted type that was originally planted. Allowing spring-planted dry peas to be insured as fall-planted dry peas when it has been replanted after a failed fall dry pea crop is permitted because insurance has already attached to the fall dry pea crop and replanting to the spring crop is a means to mitigate the damages associated with the failed fall crop. It is not considered a new crop. No change has been made in response to this comment.

#### *Section 12—Duties in the Event of Damage or Loss*

*Comment:* One commenter stated since there is no change being made to section 14 of the Basic Provisions, there does not appear to be a need to retain this provision and it could be removed.

*Response:* Section 14 of the Basic Provisions states representative samples must be left intact if the Crop Provisions require them. If the provisions in section 12 were removed, producers would not be required to maintain representative samples. Therefore, section 12 must remain in the Dry Pea Crop Provisions in order to require representative samples. FCIC is only removing provisions in section 12 of the Dry Pea Crop Provisions that duplicate the provisions in the Basic Provisions. No change has been made.

*Comment:* Two commenters supported changing the language in proposed section 12 to delete the details and simply refer to section 14 of the Basic Provisions regarding representative samples.

*Response:* FCIC has retained the provision in the final rule.

#### *Section 13—Settlement of Claim*

*Comment:* Two commenters recommended changing the word “variety” to “type” in proposed section 13(b)(4) to be consistent with provisions throughout the policy.

*Response:* The word “variety” should not be changed to “type” in section 13(b)(4). In the definition of “seed company contract,” which has been renamed as “processor/seed company contract,” the word “variety” has been retained because varieties, rather than types, are stated in the processor/seed company contracts. No change has been made.

*Comment:* Two commenters suggested adding the word “contract” between the words “base” and “price” in proposed section 13(b)(5) to be consistent with the revised definition of “base contract price.”

*Response:* FCIC has revised the provision as suggested.

*Comment:* Two commenters suggested changing “400,000 pounds guarantee” to “400,000-pound guarantee” in step (1) of both examples in proposed section 13(b), and step (2) of the second example in proposed section 13(b). The commenter also suggested making a similar change to “500,000-pound guarantee” in steps (4) and (5) of the second example in proposed section 13(b).

*Response:* FCIC has revised the provisions as suggested.

*Comment:* Two commenters suggested changing the word “variety” to “type” in subsection (c) to be consistent with provisions throughout the policy; changing “base price” to “base contract price” in proposed section 13(c)(1) to match the revised definition of “base contract price;” and changing “seed pea processor contract” to “seed company contract” in section 13(c)(2) to match the term used in the revised “base contract price” definition.

*Response:* As stated above, the word “variety” should not be changed to “type.” In the definition of “seed company contract,” which has been renamed as “processor/seed company contract,” the word “variety” has been retained because varieties, rather than types, are stated in the processor or seed company contracts. FCIC agrees “base price” should be changed to “base contract price” and “seed pea processor contract” should be changed to “seed company contract.” Based on a previous comment, FCIC has also revised the phrase “seed company contract” to “processor/seed company contract.” This phrase has also been added to section 13(c)(1).

*Comment:* One commenter recommended adding a reference to

“objective, measurable minimum quality requirements” for mature dry pea production in proposed section 13(c)(2) to be consistent with the same language that was added in proposed section 13(c)(1).

*Response:* FCIC has revised the provision as suggested. FCIC has also revised proposed section 13(c)(1) by adding the word “mature” between the words “for” and “production” to be consistent with the same language in proposed section 13(c)(2).

*Comment:* Two commenters suggested the reference in proposed section 13(d)(1)(iii) should be “section 13(c) or (3)” instead of “section 13l or (e).”

*Response:* FCIC has revised the provision as suggested.

*Comment:* Two commenters question if chickpeas are moved from the Dry Bean policy to the Dry Pea policy whether the reference to the United States Standards for Whole Dry Peas, Split Peas, and Lentils in proposed section 13(e)(1)(i) also need to refer to the United States Standards for Beans as in the Dry Beans policy.

*Response:* FCIC does not believe the reference to the United States Standards for Whole Dry Peas, Split Peas, and Lentils also needs to refer to the United States Standards for Beans. FCIC has provided for additional grade standards to be specified in the Special Provisions. Therefore, the United States Standards for Beans can be referenced in the Special Provisions, if needed. The flexibility of the Special Provisions also allows for different grade standards if other types, which require a different grade standard, are added on the Special Provisions in the future. No change has been made.

#### Section 14—Prevented Planting

*Comment:* One commenter recommended eliminating the option to increase prevented planting coverage levels (in the second sentence), as well as reviewing the amount that is being paid for prevented planting purposes.

*Response:* Since no changes to this section were proposed, the recommended changes are substantive in nature, and the public was not provided an opportunity to comment on the recommended changes, the recommendations cannot be incorporated in the final rule. No change has been made.

#### Section 15—Winter Coverage Option

*Comment:* One commenter supported the change to allow insurance on fall planted dry peas with a Winter Coverage Option. The commenter assumes the Winter Coverage Option

will be available for qualified lentil varieties planted in the fall.

*Response:* FCIC has retained the Winter Coverage Option in the final rule. Coverage for fall-planted lentils will be available under the Winter Coverage Option if they are designated as a type on the Special Provisions and the Winter Coverage Option is available in the county.

*Comment:* One commenter stated they are supportive of the proposal to offer the Winter Coverage Option for dry peas and using the language from the Small Grains Crop Provisions Wheat or Barley Winter Coverage Endorsement as a starting point for developing similar language for dry peas. However, the commenter believes some of the language in the Winter Coverage Endorsement is not appropriate for dry peas and should be clarified.

*Response:* As stated above, FCIC has retained the Winter Coverage Option in the final rule. Based on other comments FCIC has received regarding the Winter Coverage Option, FCIC has made revisions to section 15 to ensure the language is appropriate for dry peas.

*Comment:* One commenter asked if there would be any rules regarding acreage that is insured under the Winter Coverage Option and is planted after the fall final planting date. The commenter also asked if the acreage is still insurable under the Winter Coverage Option or does the Winter Coverage Option not apply to that acreage.

*Response:* Acreage planted after the fall final planting date is not covered under the Winter Coverage Option. However, that acreage is potentially insurable in the spring provided there is an adequate stand in the spring. The late planting provisions in the Dry Pea Crop Provisions are similar to the late planting provisions in the Wheat or Barley Winter Coverage Endorsement.

*Comment:* Two commenters stated the opening statement in the Winter Coverage Option that reads “(This is a continuous endorsement)” could be deleted since this a section of the proposed Dry Pea Crop Provisions, not a separate endorsement. The commenters also stated if the phrase, “(This is a continuous endorsement),” is not removed, then “endorsement” should be changed to “option.”

Two commenters also stated the Winter Coverage Option is referred to as an “endorsement” in the opening phrase “(This is a continuous endorsement)” but the more appropriate reference would be an “option.”

One commenter also stated, since this is a continuous option, there should be some reference to the possibility of canceling the Winter Coverage Option

without also having to cancel the dry pea coverage altogether.

*Response:* The commenters are correct that the phrase, “(This is a continuous endorsement),” is not necessary and has revised the provisions accordingly. Since the opening phrase has been removed, there is no need to change the word “endorsement” to “option.”

The commenters are also correct that there should be some reference to canceling the Winter Coverage Option without also having to cancel the dry pea coverage altogether. FCIC has added language in section 15(e) to state the option will continue in effect until canceled or coverage under the Dry Pea Crop Provisions is canceled or terminated.

*Comment:* Two commenters suggested removing proposed section 15(a). The commenters asked that since some of the subsections of section 15 state they are “in lieu of” other sections of the Dry Pea Crop Provisions whether there are any remaining that might conflict.

*Response:* Section 15(a) should not be removed to ensure that the terms of the Winter Coverage Option control in case FCIC has failed to catch any other conflicts. Under the priority in the Basic Provisions, since these provisions are all in the Crop Provisions, they would be given the same priority without the inclusion of section 15(a). However, language in redesignated sections 15(g) and 15(h) have been revised to remove the “in lieu of” language as it is no longer necessary because of the language in section 15(a). Redesignated sections 15(g) and 15(h) have been revised to be consistent with provisions in the Wheat or Barley Winter Coverage Endorsement.

*Comment:* Two commenters asked if it was necessary to state in proposed section 15(b) CAT level of coverage is not available under this option when the CAT Endorsement already states no options or endorsements can apply at the CAT level of coverage.

One commenter stated proposed section 15(b) should be reworded to state “This option is not available under Catastrophic Risk Protection (CAT).”

*Response:* Section 15(b) is necessary to make it clear because this is an endorsement offered under the Crop Provisions, not a stand alone endorsement. However, FCIC has reworded it to specify the insured must have purchased additional coverage under the Dry Pea Crop Provisions.

*Comment:* Two commenters stated the statement in proposed section 15(d) that “You must have a Dry Pea Crop Insurance Policy in effect and elect to insure the dry pea type under such policy” is unnecessary since the



proposed Winter Coverage Option will be part of the Dry Pea Crop Provisions, not a separate endorsement like the one for Wheat and Barley. Also, the reference to insuring "the dry pea type" is confusing, suggesting that producers would be able to insure one type but not have to insure all dry peas in the county.

One commenter suggested proposed sections 15(d) and (j) seem to be somewhat repetitive and could either be removed or combined into a single provision. Since this option is built into the Dry Pea Crop Provisions, it is obvious that the policy would have to be in effect and it appears that the intent of earlier sections is that, once the crop is insured, all insurable acreage of the various dry pea types planted in the county must be insured.

*Response:* Proposed section 15(d) is not necessary so FCIC has not retained that provision in the final rule.

*Comment:* Two commenters stated it is unclear if the different references in proposed sections 15(d), (e), (h), (j), (l) and (l)(3)(iii) to "dry pea type" and "dry pea crop" are intended or not. The commenters asked if some or all of these references could be revised to "dry peas" instead.

*Response:* FCIC has revised the phrases "dry pea type" and "dry pea crop" as "dry peas" in all cases in section 15, except for redesignated section 15(k)(3)(iii). "Dry pea type" in redesignated section 15(k)(3)(iii) has been retained because the provisions in that section pertain to individual dry pea types, rather than all dry peas.

*Comment:* Two commenters suggested changing the word "coverage" to "option" in proposed section 15(e).

*Response:* FCIC has revised the provision as suggested.

*Comment:* Two commenters stated proposed section 15(e) states "You must select this coverage on your application for insurance on or before the sales closing date \* \* \*" While 15(h) would change the contract change date to June 30, the cancellation date to September 30, and the termination date to November 30, there is no change of the sales closing date indicated for when the Winter Coverage Option is elected. The commenters asked if it is intended that Winter Coverage on dry peas can be applied for on March 15. The commenters stated according to proposed section 15(f), "Coverage \* \* \* begins on the later of the date we accept your application for coverage or on the fall final planting date \* \* \*" so an application signed on the March 15 sales closing date would not actually provide winter coverage that first year.

*Response:* The producer will be required to elect the Winter Coverage Option by the fall sales closing date, which will be listed on the Special Provisions. Coverage under the Winter Coverage Option will attach on the later of the date the application is accepted or on the fall final planting date. Section 15 has also been revised by adding a new paragraph (d) to clarify the Winter Coverage Option is only available in counties for which the Special Provisions designate both a fall final planting date and a spring final planting date.

*Comment:* One commenter expressed a concern about allowing the producer the ability to change the coverage level or price election percentage once this option is in effect, since it is a continuous option. For example, assume a producer elects this option and plants and insures fall-planted dry peas. The next year the same producer decides not to plant fall-planted dry peas but the option remains in effect since it is continuous (assume the producer does not remove it from the policy). The commenter asked if a producer in this situation could change the coverage level or percentage of price election up to the spring sales closing date since no acreage was planted in the fall. The commenter recommended that producers in this situation be allowed to make such changes up to the spring sales closing date (especially since there is a much larger amount of acreage that is planted to spring types as compared to fall types). The commenter stated this is allowed in the Small Grains Crop Provisions via the definition of 'Sales Closing Date'. The commenter recommended this be done by either adding a definition for 'Sales Closing Date' or by adding some language to this effect directly to section 15 to allow these types of changes to be made in the event that no fall-planted acreage is planted while this option is still in effect.

*Response:* The producer should be allowed to make policy changes until the spring sales closing date if the producer does not have any insured fall-planted dry pea acreage. Provisions have been added to section 15(e) to state producers may change their coverage level or percentage of price election for dry pea types until the spring sales closing date if the Winter Coverage Option is selected, but they do not have any insured fall-planted acreage or the fall-planted acreage is not eligible for this option. Provisions have also been added to section 15(e) to allow the producer to cancel coverage for any succeeding crop year by giving written notice on or before the cancellation date

preceding the crop year for which the cancellation of the option is to be effective. Without this additional language, the Winter Coverage Option would continue in effect as long as the Dry Pea Crop Provisions are in effect since the Winter Coverage Option is a continuous option. This language allows the producer to cancel the Winter Coverage Option if he desires.

*Comment:* One commenter stated proposed section 15(g) is establishing separate optional units for dry peas initially planted in the fall versus dry peas initially planted in the spring. The commenter stated they are not aware of any dual types of dry peas and question whether this provision is even necessary when separate units by type are currently allowed.

*Response:* As stated above, there are dual types of dry peas. An example is Austrian peas (a.k.a. black peas; dry peas with a dark and mottled seed coat), which are a variety of peas typically characterized as having moderate to good winter survivability. Their cold temperature tolerance and subsequent reproductive phase do not have a vernalization requirement similar to winter wheat. Therefore, they can successfully be produced when sown in the fall or spring.

Section 15(g) is not needed as the provisions in section 2 already allow separate units by type and it has been removed. Proposed sections 15(h) through 15(l) have been redesignated as 15(g) through 15(k), respectively.

*Comment:* One commenter stated proposed section 15(g) states "In addition to the provisions of section 34(b) of the Basic Provisions and section 2 of the Dry Pea Crop Provisions, optional units may be established for dry peas if each optional unit contains only dry peas initially planted in the fall or only dry peas initially planted in the spring." The commenter asked if the fall-planted acreage in a unit is Austrian Winter peas, and within that same unit, Lentils are planted in the spring, would these two separate types not be allowed to have separate optional units since one is fall-planted and one is spring-planted.

*Response:* As stated above, FCIC has removed the provisions in proposed section 15(g). If Austrian peas are planted in the fall and Lentils are planted in the same unit in the spring, then the Austrian peas and the Lentils could be separate optional units, provided the producer elected optional units, since the Austrian peas and the Lentils are different types.

*Comment:* One commenter stated since the Winter Coverage Option is not a separate option to the Dry Pea Crop



Provisions, the phrase "section 2 of the Dry Pea Crop Provisions" in section 15(g) should be changed to "section 2 of these Crop Provisions."

*Response:* As stated above, the provisions in section 15(g) have been removed from the Winter Coverage Option.

*Comment:* One commenter stated proposed section 15(h) establishes a separate contract change date, cancellation date, and termination date for coverage under this option. The commenter assumed the Special Provisions will also establish a separate sales closing date and acreage reporting date as well.

*Response:* Proposed section 15(h) is now section 15(g). The Special Provisions will provide a separate sales closing date and acreage reporting date for dry peas covered under the Winter Coverage Option. Additionally, provisions have been added to section 15(g) to handle situations that arise when a policy has amounts due and the sales closing date for the next crop year occurs before the termination date for the previous crop year. For example, dry peas insured under the Winter Coverage Option have a fall sales closing date of September 30, 2009 for the 2010 crop year and a termination date of November 30 for the 2009 crop year. If the insured purchases insurance for dry peas by September 30, 2009 for the 2010 crop year, and does not pay the premium by the termination date of November 30, 2009, the dry pea coverage would be terminated and no coverage would be effective for the 2010 crop year.

*Comment:* Two commenters stated according to proposed section 15(h), whenever a producer requests the Winter Coverage Option, the contract change date is changed to June 30, the cancellation date to September 30, and the termination date to November 30 for "\* \* \* all your fall planted and spring planted dry pea crop in the county." The commenter asks whether this means that all future policy changes to the Dry Pea Crop Provisions will have to be published by the June 30 contract change date or whether different versions could be in effect for producers with and without the Winter Coverage Option. The commenter also asks whether there will be a different sales closing date.

*Response:* Proposed section 15(h) is now section 15(g). Since the earliest contract change date is now June 30 for dry peas, all future policy changes to the Dry Pea Crop Provisions will have to be published by the June 30 contract change date. There will also be a separate sales closing date listed on the

Special Provisions for fall-planted acreage under the Winter Coverage Option.

*Comment:* Two commenters stated the reference to "Dry Pea Crop Insurance Provisions" in proposed section 15(l) should be changed to "these Crop Provisions" or "Dry Pea Crop Provisions" to be consistent with the other references in the policy.

*Response:* FCIC has revised the provision in redesignated section 15(k) to read "these Crop Provisions."

*Comment:* One commenter stated proposed section 15(l)(2) indicates that if it is not practical to replant to a fall-planted type of dry peas that the insured must replant to a spring type in order to maintain coverage based on the fall-planted type. The commenter is concerned with the various different types of dry peas that could be insured in some areas and the different level of yields and prices that can exist between the different types of dry peas (particularly fall types versus spring types). The commenter recommended that in this situation the coverage would revert to the respective spring type that is planted rather than remain based on the fall-planted type, which may not be reflective of the yield or price potential of the spring-planted type. In addition, the current language would allow producers the ability to adversely select against the insurance provider by planting a lower yielding or priced spring type in these types of situations.

*Response:* Proposed section 15(l)(2) is now section 15(k)(2). As stated above, coverage should not revert to the respective spring-planted type rather than remain based on the fall-planted type. Allowing spring-planted dry peas to be insured as fall-planted dry peas when they have been replanted after a failed fall dry pea crop is permitted because insurance has already attached to the fall dry pea crop and replanting to the spring crop is a means to mitigate the damages associated with the failed fall crop. No change has been made.

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

1. Revised the definition of "contract seed peas" in section 1 to remove the phrase "Dry Peas" and replace it with the phrase "Peas (*Pisum sativum* L.)." This revision clarifies contract seed peas are only insurable if they are of the genera *Pisum sativum*. The current phrase "Dry Peas" in the definition implies contract seed peas can be categorized as any dry peas type specified in the definition of "dry peas."

2. Amended proposed section 3 by revising paragraph (a). The proposed provision states "In lieu of the

requirements of section 3 of the Basic Provisions" but should state "In addition to the requirements of section 3 of the Basic Provisions." The phrase "In addition to" implies section 3 of the Dry Pea Crop Provisions supplements section 3 of the Basic Provisions; the phrase "In lieu of" implies section 3 of the Dry Pea Crop Provisions replaces section 3 of the Basic Provisions. The intent of the provision is to be a supplement to the Basic Provisions.

3. Revised the introductory text in redesignated section 13(b) by revising the phrase "your pea crop" to "your dry pea crop" and in redesignated section 13(d) by revising the phrase "total pea production" to "total dry pea production" to be consistent with the terminology used throughout the policy.

4. Revised the examples in redesignated section 13(b) to make them easier to read.

5. Revised the introductory text in redesignated section 13(d) to add the word "dry" before the word "pea." This change is consistent with the phrase "dry pea" used throughout the policy.

6. Revised the introductory text in redesignated section 13(e) to be consistent with the introductory text in redesignated sections 13(c)(1) and 13(c)(2).

7. Revised redesignated section 14 to remove the reference to "limited coverage," since it is no longer applicable.

8. Revised section 15(e). The proposed provisions state, "You must select this coverage on your application for insurance on or before the sales closing date." This language only addresses how to select the Winter Coverage Option if producers are applying for coverage; it does not address how to select the Winter Coverage Option if producers are renewing their coverage. The revised provisions state, "You must select this option on your application for insurance, or on a form approved by us, on or before the sales closing date for the initial year in which you wish to insure dry peas under this option." This language distinguishes how producers select the Winter Coverage Option if they are applying for coverage and if they are renewing their coverage.

#### List of Subjects in 7 CFR Part 457

Crop insurance, Dry peas, Reporting and recordkeeping requirements.

#### Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2009 and succeeding crop years as follows:

**PART 457—COMMON CROP INSURANCE REGULATIONS**

- 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 amended as follows:
  - A. Amend the introductory text by removing “2003” and adding “2009” in its place;
  - B. Remove the undesignated paragraph immediately preceding section 1;
  - C. In section 1:
    - 1. Remove the definition of “base price” and add the definition of “base contract price” in its place;
    - 2. Amend the definition of “combining” by removing the word “place” and adding the word “places” in its place;
    - 3. Revise the definition of “contract seed peas”;
    - 4. Revise the definition of “dry peas”;
    - 5. Add a new sentence at the end of the definition for “harvest”;
    - 6. Amend the definition of “local market price” by adding the phrase, “, unless otherwise specified in the Special Provisions” at the end of the last sentence;
    - 7. Revise the definition of “nurse crop (companion crop)”;
    - 8. Revise the definition of “practical to replant”;
    - 9. Revise the definition of “price election”;
    - 10. Remove the definitions of “seed company” and “seed company contract”;
    - 11. Add definitions for “processor/seed company”, “processor/seed company contract”, “swathed”, “type”, and “windrow”.
  - D. Revise sections 2 and 3;
  - E. Amend section 6 removing the phrase “seed company” and adding the phrase “processor/seed company” in its place;
  - F. Revise section 7;
  - G. In section 8, revise paragraph (b) and add paragraphs (c) and (d);
  - H. Amend section 9 by revising the introductory text and paragraph (a) and by removing the phrase “normally is harvested” from paragraph (b) and adding the phrase “is normally harvested” in its place;
  - I. Redesignate sections 11 through 13 as sections 12 through 14, respectively;
  - J. Add a new section 11;
  - K. Revise newly redesignated section 12;
  - L. In newly redesignated section 13:
    - 1. Throughout the section, remove the phrases “section 12” and “sections 12” and add the phrases “section 13” and

- “sections 13” in their place, respectively;
  - 2. Revise paragraph (a);
  - 3. Amend the introductory text of paragraph (b) by adding the word “dry” before the word “pea”;
  - 4. Amend paragraph (b)(5) by adding the word “contract” after the word “base”;
  - 5. Revise the examples in paragraph (b);
  - 6. Revise paragraph (c)(1) introductory text;
  - 7. Amend paragraph (c)(1)(i) by adding the word “contract” after the word “base”;
  - 8. Revise the introductory text in paragraph (c)(2);
  - 9. Amend the introductory text in paragraph (d) by adding the word “dry” after the word “total”;
  - 10. Amend paragraph (d)(1)(iii) by removing the phrase “, excluding Austrian Winter Peas.”;
  - 11. Revise paragraph (e) introductory text and (e)(1) introductory text.
  - M. Amend newly redesignated section 14 of § 457.140 by removing the phrase “limited or”; and
  - N. Add a new section 15.
- The additions and revisions read as follows:

**§ 457.140 Dry pea crop insurance provisions.**

- \* \* \* \* \*
- 1. Definitions.
- \* \* \* \* \*

*Base contract price.* The price per pound stipulated in the processor/seed company 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 processor/seed company.

\* \* \* \* \*

*Contract seed peas.* Peas (*Pisum sativum L.*) grown under the terms of a processor/seed company contract for the purpose of producing seed to be used in planting a future year’s crop.

*Dry peas.* Peas (*Pisum sativum L.*), Austrian Peas (*Pisum sativum spp arvense*), Lentils (*Lens culinaris Medik.*), Chickpeas (*Cicer arietinum L.*), and other types as listed on the Special Provisions.

\* \* \* \* \*

*Harvest.* \* \* \* Dry peas that are swathed prior to combining are not considered harvested.

\* \* \* \* \*

*Nurse crop (companion crop).* A crop planted into the same acreage as another crop to improve the growing conditions for the crop with which it is grown, and

that is intended to be harvested separately.

\* \* \* \* \*

*Practical to replant.* In addition to the definition contained in the Basic Provisions, it will not be considered practical to replant:

- (a) Contract seed peas unless the processor/seed company will accept the production under the terms of the processor/seed company contract.
- (b) Fall-planted dry peas more than 25 days after the final planting date for the corresponding spring-planted type of dry peas.
- (c) All other dry peas more than 25 days after the final planting date unless replanting is generally occurring in the area.

*Price election.* In addition to the provisions of the definition contained in the Basic Provisions, the price election for contract seed peas will be the percentage you elect (not to exceed 100 percent) of the base contract price and used for the purposes of determining premium and indemnity for contract seed peas under this policy.

*Processor/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.

*Processor/seed company contract.* A written agreement between the producer and the processor/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 processor/seed company;
- (b) The processor/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.

*Swathed.* Severance of the stem and pods from the ground without removal of the seeds from the pods and placing them into windrows.

*Type.* A category of dry peas identified as a type in the Special Provisions.

*Windrow.* Dry peas where the plants are cut and placed in a row.

## 2. Unit Division.

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, separate optional units may be established for each dry pea type as specified on the Special Provisions. Contract seed peas and dry pea types not grown under a processor/seed company contract may qualify for separate optional units even if they share a common variety provided each dry pea type is grown on separate acreage and the production is kept separate.

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

(a) In accordance with the requirements of section 3(b)(1) of the Basic Provisions, you may select only one coverage level for each type listed on the Special Provisions. However, if you elect the Catastrophic Risk Protection (CAT) level of insurance for any dry pea type, the CAT level of coverage will be applicable to all insured dry pea acreage in the county.

(b) In addition to the requirements of section 3 of the Basic Provisions:

(1) If the Special Provisions do not designate separate price elections by type, you may select only one price election for all dry peas in the county insured under this policy.

(2) If the Special Provisions designate separate price elections by type, you may select one price election for each dry pea type so designated in the Special Provisions even if the prices for each type are the same. 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 75 percent of the maximum price election for another type.

(c) In addition to the requirements of section 3 of the Basic Provisions, in counties with both a fall and spring sales closing date for the insured crop:

(1) If you do not have any insured fall-planted dry pea acreage covered under the Winter Coverage Option, you may change your coverage level or percentage of price election until the spring sales closing date; or

(2) If you have any insured fall-planted dry pea acreage covered under the Winter Coverage Option, you may not change your coverage level or percentage of price election after the fall sales closing date.

(d) If a dry pea type is added after the sales closing date, we will assign:

(1) A coverage level equal to the lowest coverage level you selected for any other dry pea types; and

(2) A price election percentage equal to:

(i) 100 percent of the price election if you elected additional coverage; and

(ii) 55 percent of the price election if you elected catastrophic level of coverage.

\* \* \* \* \*

## 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 for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are planted for harvesting once maturity is reached as:

(i) Dry peas; or

(ii) Contract seed peas, if the processor/seed company contract is executed on or before the acreage reporting; and

(3) 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;

(iii) Planted as a nurse crop; or

(iv) Planted to plow down, graze, harvest as hay, or otherwise not harvest as a mature dry pea crop.

(b) You will be considered to have a share in the insured crop if, under the processor/seed company contract, you retain control of the acreage on which the dry peas are grown, you are at risk of loss (i.e., if there is a reduction in quantity or quality of your dry pea production, you will receive less income under the contract), and the processor/seed company contract is in effect for the entire insurance period.

(c) In counties for which the actuarial documents provide premium rates for the Winter Coverage Option (see section 15), coverage is available for dry peas between the time coverage begins and the spring final planting date. Coverage under the option is effective only if you qualify under the terms of the option and you elect the option by the sales closing date.

## 8. Insurable Acreage.

\* \* \* \* \*

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that producers in the surrounding area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant.

(c) Whenever the Special Provisions designate both fall and spring final planting dates:

(1) Any fall-planted dry peas that is damaged before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a fall-planted type of dry peas to maintain insurance based on the fall-planted type unless we agree that replanting is not practical. If it is not practical to replant to a fall-planted type of dry peas but it is practical to replant to a spring-planted type, you must replant to a spring-planted type to keep your insurance coverage based on the fall-planted type in force.

(2) Any fall-planted dry pea acreage that is replanted to a spring-planted type when it was practical to replant the fall-planted type will be insured as the spring-planted type and the production guarantee, premium and price election applicable to the spring-planted type will be used. In this case, the acreage will be considered to be initially planted to the spring-planted type.

(3) Notwithstanding section 8(d)(1) and (2), if you have elected coverage under the Winter Coverage Option (if available in the county), insurance will be in accordance with the option.

(d) Whenever the Special Provisions designate only a spring final planting date, any acreage of a fall-planted dry pea crop is not insured unless you request such coverage on or before the spring sales closing date, and we agree in writing that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee.

(1) The fall-planted dry pea crop will be insured as a spring-planted type for the purpose of the production guarantee, premium and price election.

(2) Insurance will attach to such acreage on the date we determine an adequate stand exists or on the spring final planting date if we do not determine adequacy of the stand prior to the spring final planting date.

(3) Any acreage of such fall-planted dry peas that is damaged after it is accepted for insurance but before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring-planted type of dry pea unless we agree it is not practical to replant. No replanting payment will be made.

(4) If fall-planted acreage is not to be insured it must be recorded on the acreage report as uninsured fall-planted acreage.

## 9. Insurance Period.

In accordance with the provisions of section 11 of the Basic Provisions, and subject to the provisions provided by the Winter Coverage Option (see section 15) if you elect such option, the insurance period is as follows:

(a) Coverage for fall-planted dry peas not covered by the Winter Coverage Option will begin on the earlier of April 15 or the date we agree to accept the acreage for insurance, but not before March 1, unless otherwise specified on the Special Provisions.

\* \* \* \* \*

11. Replanting Payments.

(a) A replanting payment is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these Crop Provisions;

(2) You must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions (except as allowed in section 11(a)(1)) and in the Winter Coverage Option (see section 15), if applicable;

(3) The insured crop must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage;

(4) The acreage must have been initially planted to a spring type of the insured crop in those counties with only a spring final planting date;

(5) When the Winter Coverage Option is in effect for the acreage, damage must occur after the fall final planting date in those counties where both a fall and spring final planting date are designated;

(6) Replanting payments are not available for damaged fall planted dry pea acreage if you have not elected to cover such acreage under the Winter Coverage Option; and

(7) The replanted crop must be seeded at a rate sufficient to achieve a total (undamaged and new seeding) plant population that will produce at least the yield used to determine your production guarantee.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20.0 percent of the production guarantee or 200 pounds, multiplied by your price election, multiplied by your share, unless otherwise stated in the Special Provisions.

(c) When the crop is replanted using a practice that is uninsurable for an original planting, the liability on the unit will be reduced by the amount of

the replanting payment. The premium amount will not be reduced.

(d) Replanting payments will be calculated using the price election and production guarantee for the dry pea type that is replanted and insured. For example, if damaged smooth green and yellow pea acreage is replanted to lentils, the price election and production guarantee applicable to lentils will be used to calculate any replanting payment that may be due. A revised acreage report will be required to reflect the replanted type. Notwithstanding the previous two sentences, the following will have a replanting payment based on the guarantee and price election for the crop type initially planted:

(1) Any damaged fall-planted type of dry peas replanted to a spring-planted type that retains insurance based on the production guarantee and price election for the fall-planted type; and

(2) Any acreage replanted at a reduced seeding rate into a partially damaged stand of the insured crop.

12. Duties in the Event of Damage or Loss.

Representative samples are required in accordance with section 14 of the Basic Provisions.

13. Settlement of Claim.

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

(1) Optional units, we will combine all optional units for which acceptable records of production were not provided; or

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

(b) \* \* \*

\* \* \* \* \*

For example:

In this example, you have not elected optional units by type. You have a 100 percent share in 100 acres of spring-planted smooth green dry edible peas in the unit, with a 70 percent guarantee of 4,000 pounds per acre and a price election of \$0.09 per pound. Your selected price election percentage is 100 percent. You are only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

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

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

(9) 200,000-pound production to count × \$0.09 price election = \$18,000.00 value of production to count;

(12) \$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 share = \$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 65 percent guarantee of 5,000 pounds per acre and a base contract 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-pound guarantee for the spring-planted smooth green dry edible pea type;

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

(4) 100 acres × 5,000 pounds = 500,000-pound production to count for the contract seed pea type;

(5) 500,000-pound guarantee × \$0.40 base contract 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-pound production to count × \$0.09 price election = \$18,000.00 value of production to count for the spring-planted smooth green dry edible pea type;

(10) 450,000-pound production to count × \$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 share = \$33,000.00 indemnity payment.

(c) \* \* \*

(1) For mature production meeting the objective, measurable minimum quality requirements (e.g., size, germination percentage) contained in the processor/seed company contract, and for mature production that does not meet such requirements due to uninsured causes:

\* \* \* \* \*

(2) For mature production not meeting the objective, measurable minimum quality requirements (e.g., size, germination percentage) contained in the processor/seed company contract, due to insurable causes, and immature production that is appraised:

\* \* \* \* \*

(e) Mature dry pea production that does not qualify as contract seed peas under the policy terms or does not meet the objective, measurable minimum quality requirements (e.g., size, germination percentage) contained in the processor/seed company contract, may be adjusted for quality deficiencies.

(1) Production will be eligible for quality adjustment in accordance with the following, unless otherwise specified in the Special Provisions:

\* \* \* \* \*

#### 15. Winter Coverage Option.

(a) In the event of a conflict between this section and sections 1 through 14 of these Crop Provisions, this section will control.

(b) You must have purchased additional coverage under the Dry Pea Crop Provisions in order to select this option.

(c) In return for payment of the additional premium designated in the actuarial documents, this option is available in counties for which the actuarial documents provide premium rates for the Winter Coverage Option.

(d) This option is available only in counties for which the Special Provisions designate both a fall final planting date and a spring final planting date.

(e) You must select this option on your application for insurance, or on a form approved by us, on or before the sales closing date for the initial year in which you wish to insure dry peas under this option.

(1) Failure to do so means you have rejected this coverage for the dry pea crop planted in the fall and this option is void.

(2) This option will continue in effect until canceled or coverage under the Dry Pea Crop Provisions is canceled or terminated.

(3) This option may be canceled by you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date contained in section 15(g) preceding the crop year for which the cancellation of this option is to be effective.

(4) You may change your coverage level or percentage of price election for dry pea types until the spring sales closing date if you have selected this option, but do not have any insured fall planted acreage or your fall planted acreage is not eligible for this option.

(f) Coverage under this option begins on the later of the date we accept your application for coverage or on the fall final planting date designated in the Special Provisions. Coverage ends on the spring final planting date designated in the Special Provisions.

(g) If you elect this option for dry peas initially planted in the fall, the following dates will be applicable to all your fall-planted and spring-planted dry peas in the county:

(1) Contract change date is June 30 preceding the cancellation date;

(2) Cancellation date is September 30; and

(3) Termination date is November 30. For a policy with amounts due, when the sales closing date is prior to the previous crop year termination date, such policies will terminate for the current crop year even if insurance attached prior to the termination date. Such termination will be considered effective as of the sales closing date and no insurance will be considered to have attached for the crop year and no indemnity, prevented planting or replant payment will be owed.

(h) All notices of damage must be provided to us not later than 15 days after the spring final planting date designated in the Special Provisions.

(i) All insurable acreage of each fall planted dry pea type covered under this option must be insured.

(j) The amount of any indemnity paid under the terms of this option will be subject to any reduction specified in the Basic Provisions for multiple crop benefits in the same crop year.

(k) Whenever any acreage of dry peas planted in the fall is damaged during the insurance period and at least 20 acres or 20 percent of the insured planted acreage in the unit, whichever is less, does not have an adequate stand to produce at least 90 percent of the production guarantee for the acreage, you may, at your option, take one of the following actions:

(1) Continue to care for the damaged dry peas. By doing so, coverage will continue under the terms of the Basic Provisions, these Crop Provisions and this option;

(2) Replant the acreage to an appropriate type of insured dry peas, if it is practical, and receive a replanting payment in accordance with the terms of section 11. By doing so, coverage will continue under the terms of the Basic Provisions, these Crop Provisions and this option, and the production guarantee for the dry pea type planted in the fall will remain in effect; or

(3) Destroy the remaining crop on such acreage:

(i) By destroying the remaining crop, you agree to accept an appraised amount of production determined in accordance with section 13(d)(1) of these Crop Provisions to count against the unit production guarantee. This amount will be considered production to count in determining any final

indemnity on the unit and will be used to settle your claim as described in section 13.

(ii) You may use such acreage for any purpose, including planting and separately insuring any other crop if such insurance is available.

(iii) If you elect to plant and elect to insure spring-planted dry pea acreage of the same dry pea type (you must elect whether or not you want insurance on the spring-planted acreage of the same dry pea type at the time we release the fall-planted acreage), you must pay additional premium for insurance. Such acreage will be insured in accordance with the policy provisions that are applicable to acreage that is initially planted in the spring to the same dry pea type, and you must:

(A) Plant the spring-planted acreage in a manner which results in a clear and discernable break in the planting pattern at the boundary between it and any remaining acreage of the fall-planted dry pea acreage; and

(B) Store or market the production in a manner which permits us to verify the amount of spring-planted production separately from any fall-planted production. In the event you are unable to provide records of production that are acceptable to us, the spring-planted acreage will be considered to be a part of the original fall-planted unit.

Signed in Washington, DC, on August 26, 2008.

**Eldon Gould,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. E8-20128 Filed 9-3-08; 8:45 am]

**BILLING CODE 3410-08-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1291

[Docket No. AMS-FV-08-0057; FV-08-379 IFR]

RIN 0581-AC88

### Specialty Crop Block Grant Program—Farm Bill; Notice of Request for Approval of a New Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule provides regulations to administer the Specialty Crop Block Grant Program—Farm Bill (SCBGP—FB) to enhance the competitiveness of specialty crops. This rule is intended to