

**CALIFORNIA**

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**SAN JOAQUIN***Survey area*

## California:

San Joaquin

Area of Application. Survey area.

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[FR Doc. 02-1605 Filed 1-22-02; 8:45 am]

BILLING CODE 6325-39-U

**DEPARTMENT OF AGRICULTURE****Federal Crop Insurance Corporation****7 CFR Part 457**

RIN 0563-AB79

**Common Crop Insurance Regulations;  
Millet Crop Insurance Provisions****AGENCY:** Federal Crop Insurance Corporation, USDA.**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) is adding crop provisions for the insurance of millet. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to convert the millet pilot crop insurance program to a permanent insurance program administered by FCIC for the 2003 and succeeding crop years.

**EFFECTIVE DATE:** February 22, 2002.

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

**SUPPLEMENTARY INFORMATION:****Executive Order 12866**

This rule has been determined to be not-significant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

**Paperwork Reduction Act of 1995**

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563-0053 through January 31, 2002.

**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 the UMRA.

**Executive Order 13132**

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

**Regulatory Flexibility Act**

This regulation will not have a significant economic impact on a substantial number of small entities. Additionally, the regulation does not require any greater action on the part of small entities than is required on the part of large entities. The amount of work required of the insurance companies will not increase because the information used to determine eligibility must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

**Federal Assistance Program**

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

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372 which requires 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. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

**Environmental Evaluation**

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

**Background**

On Monday, June 19, 2000, FCIC published a notice of proposed rulemaking in the **Federal Register** at 65 FR 37919-37922 to add 7 CFR 457.165 Millet crop insurance provisions effective for the 2002 and succeeding crop years.

Following publication of the proposed rule on June 19, 2000, the public was afforded 30 days to submit written comments and opinions. A total of 21 comments were received from two reinsured companies and a trade association. The comments received and FCIC's responses are as follows:

*Comment.* Two reinsured companies and a trade association questioned why the contract change date contained in section 3 of these provisions was changed from December 31 to November 30.

*Response.* The contract change date was changed from December 31 to November 30 in section 3 to maintain the same time period between the contract change date and the cancellation date to be consistent with other annual crop insurance policies.

*Comment.* Two reinsured companies and a trade association questioned why section 11 (Written Agreement) of the previous pilot provisions was removed from the proposed rule.

*Response.* Section 11 was removed from the millet crop provisions because it is contained in the Basic Provisions and, therefore, is already part of the policy.

*Comment.* Two reinsured companies and a trade association questioned why the unit of measure, "hundredweight" was replaced by the unit of measure, "bushel" as defined in section 1 of these provisions.

*Response.* The appropriate unit of measure was changed from "hundredweight" to "bushel" for the following reasons: (1) There is no single

standard of measure for millet; it is not contained in the United States Grain Standards or any other standards; (2) FCIC has determined that for quality purposes on a bushels basis, the test weight for millet is 50 lbs. per bushel and a test weight under 50 lbs. per bushel is eligible for quality adjustment; and (3) A bushel unit of measurement is consistent with other crops, *i.e.*, grain sorghum.

*Comment.* Two reinsured companies and a trade association recommend the word "limited" be removed from section 12 (Prevented Planting) of the Millet crop provisions.

*Response.* FCIC agrees with commenters. The proposed rule stated that if the producer had limited or additional levels of coverage and paid additional premium, the producer could increase prevented planting coverage pursuant to the actuarial documents. FCIC has removed the incorrect reference to the word "limited" from section 12 of these provisions.

*Comment.* Two reinsured companies and a trade association questioned whether millet planted as a nurse crop is insurable.

*Response.* The proposed rule allowed millet grown as a nurse crop unless harvested as grain to be insured by written agreement or pursuant to Special Provisions. However, FCIC has revised section 5(c) to state that millet planted as a nurse crop is not insurable. This change was made because millet must be swathed and windrowed prior to combining or threshing and practice cannot be done when millet is planted as a nurse crop.

*Comment.* Two reinsured companies and a trade association questioned the end insurance period provisions in proposed section 7. The proposal allowed 25 days after swathing millet until the end of insurance period calendar date in North Dakota and South Dakota and only 15 days after swathing millet until the end of the insurance period calendar date in all other states.

*Response.* The variance of days provides adequate time for swathed millet to dry prior to completing harvest. The time variances are based on geographical locations, therefore, no changes have been made in response to this comment.

*Comment.* Two reinsured companies and a trade association recommend adding language to the peril of fire provision contained in section 8 of these provisions to read, "Fire, but only of natural origin and not artificial or man-made".

*Response.* FCIC agrees with commenters but will not incorporate the

suggested language in these crop provisions. FCIC is revising the Common Crop Insurance Policy Basic Provisions due to changes required by the Agricultural Protection Act of 2000. Language indicating that all causes of loss must be due to an act of natural origin will be included in this revision instead.

In addition to the changes described above, FCIC has revised section 7(b) to add language, "unless otherwise specified in the Special Provisions." This change allows for the flexibility for different ending dates of the insurance period when millet is expanded into other states as a result of changes in agronomic and geographic growing conditions.

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

Crop insurance, Millet, Reporting and recordkeeping requirements.

#### Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends the Common Crop Insurance Regulations (7 CFR part 457) 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 457.165 is added to read as follows:

#### § 457.165 Millet crop insurance provisions.

The Millet Crop Insurance Provisions for the 2002 and succeeding crop years are as follows:

FCIC policies:

#### United States Department of Agriculture

##### Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

##### Millet Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows:

(1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

##### 1. Definitions.

**Bushel.** Fifty pounds of millet, or any other quantity which is designated in the Special Provisions for that purpose.

**Harvest.** Combining or threshing the millet for grain. A crop that is swathed prior to combining is not considered harvested.

**Late planting period.** In lieu of the definition of "Late planting period" contained in section 1 of the Basic

Provisions, late planting period is defined as the period that begins the day after the final planting date for the insured crop and ends 20 days after the final planting date.

**Local market price.** The cash price for millet with a 50-pound test weight adjusted to zero percent foreign material content basis offered by buyers in the area in which you normally market the millet. Factors not associated with grading, including, but not limited to moisture content, will not be considered.

**Millet.** Proso millet produced for grain to be used primarily as bird and livestock feed.

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

**Planted acreage.** In addition to the definition of "Planted acreage" contained in section 1 of the Basic Provisions, planted acreage is also defined as land on which seed is initially spread onto the soil surface by any method and is subsequently mechanically incorporated into the soil in a timely manner and at the proper depth. Acreage planted in any manner not contained in the definition of "planted acreage" will not be insurable unless otherwise provided by the Special Provisions.

**Swathed.** Severance of the stem and grain head from the ground without removal of the seed from the head and placing into a windrow.

**Windrow.** Millet that is cut and placed in a row.

2. **Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.**

In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the millet in the county insured under this policy.

##### 3. Contract Changes.

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

##### 4. Cancellation and Termination Dates.

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

##### 5. Insured Crop.

In accordance with section 8 of the Basic Provisions, the crop insured will be all the millet in the county for which a premium rate is provided by the actuarial documents:

- (a) In which you have a share;
- (b) That is planted for harvest as grain;
- (c) That is not planted as a nurse crop; and
- (d) That is not (unless allowed by Special Provisions or written agreement):
  - (1) Interplanted with another crop; or
  - (2) Planted into an established grass or legume.

##### 6. Insurable Acreage.

In addition to section 9 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

##### 7. Insurance Period.

In accordance with section 11 of the Basic Provisions, the calendar date for the end of

the insurance period is the date immediately following planting as follows:

(a) North Dakota and South Dakota:

(1) September 15 for acreage not swathed and windrowed; or

(2) October 10 for acreage swathed and windrowed by September 15;

(b) All other states, unless otherwise specified in the Special Provisions:

(1) September 30 for acreage not swathed and windrowed by September 30; or

(2) October 15 for acreage swathed and windrowed by September 30.

#### 8. Causes of Loss.

In accordance with section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if caused by a cause of loss that occurs during the insurance period.

#### 9. Duties In the Event of Damage or Loss.

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

#### 10. Settlement of Claim.

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

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

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

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

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting the total production to count (See section 10(c)) from the result of section 10(b)(1);

(3) Multiplying the result of section 10(b)(2) by your price election; and

(4) Multiplying the result of section 10(b)(3) by your share and any adjustment from section 10(f).

For example:

You have a 100 percent share in 100 acres of millet in the unit, with a guarantee of 15 bushels per acre and a price election of \$4.00 per bushel. You are only able to harvest 800 bushels. Your indemnity would be calculated as follows:

(1) 100 acres  $\times$  15 bushel = 1,500 bushel guarantee;

(2) 1,500 bushels guarantee — 800 bushel production to count = 700 bushel loss;

(3) 700 bushel  $\times$  \$4.00 price election = \$2,800 loss; and

(4) \$2,800  $\times$  100 percent share = \$2,800 indemnity payment.

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

(1) All appraised production as follows:

(i) Your appraised production will not be less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide records

of production that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with subsection 10(d));

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

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

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

(2) All harvested production from the insurable acreage.

(d) Mature millet may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by .12 percent for each 0.1 percent point of moisture in excess of 12 percent. We may obtain samples of the production to determine the moisture content.

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

(i) Deficiencies in quality, result in the millet weighing less than 50 pounds per bushel; or

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

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

(i) The deficiencies, substances, or conditions resulted from a cause of loss

against which insurance is provided under these crop provisions and within the insurance period;

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

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

(iv) The samples are analyzed by a grader or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health (test weight for quality adjustment purposes may be determined by our loss adjuster).

(4) Millet production that is eligible for quality adjustment, as specified in sections 10(d)(2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions if quality adjustment factors are not available in the county, the eligible millet production will be reduced as follows:

(i) The market price of the qualifying damaged production and the local market price will be determined on the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit.

(ii) The price for the qualifying damaged production will be the market price for the local area to the extent feasible. Discounts used to establish the net price of the damaged production will be limited to those that are usual, customary, and reasonable. The price will not be reduced for:

(A) Moisture content;

(B) Damage due to uninsured causes; or

(C) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the millet; except, if the value of the damaged production can be increased by conditioning, we may reduce the value of the production after it has been conditioned by the cost of conditioning but not lower than the value of the production before conditioning. We may obtain prices from any buyer of our choice. If we obtain prices from one or more buyers located outside your local market area, we will reduce such prices by the additional costs required to deliver the millet to those buyers.

(iii) The value of the damaged or conditioned production determined in section 10(d)(4)(ii) will be divided by the local market price to determine the quality adjustment factor;

(iv) The number of bushels remaining after any reduction due to excessive moisture (the moisture-adjusted gross bushel, if appropriate) of the damaged or conditioned production under section 10(d)(1) will then be multiplied by the quality adjustment factor from section 10(d)(4)(iii) to determine the production to count.

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

(f) If the insured crop is not swathed and not harvested, the amount of indemnity payable under section 10(b)(4) will be reduced by 30 percent to reflect those costs

not incurred by you. If the insured crop is swathed but not harvested, the amount of indemnity payable under section 10(b)(4) will be reduced by 15 percent to reflect those costs not incurred by you.

**11. Late Planting.**

In lieu of the provisions contained in section 16(a) of the Basic Provisions, the production guarantee for each acre planted to the insured crop during the late planting period, unless otherwise specified in the Special Provisions, will be reduced by:

(a) One percent for the first through the tenth day; and

(b) Three percent for the eleventh through the twentieth day.

**12. Prevented Planting.**

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

Signed in Washington, DC, on January 16, 2002.

**Phyllis W. Honor,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 02-1619 Filed 1-22-02; 8:45 am]

**BILLING CODE 3410-08-P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1703

#### RIN 0572-AB70

### Distance Learning and Telemedicine Loan and Grant Program

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Rural Utilities Service (RUS) is amending its regulations for the Distance Learning and Telemedicine (DLT) Loan and Grant Program. This direct final rule addresses the amendments affecting the grant program. These amendments will clarify eligibility; change the grant minimum matching contribution; clarify that only loan funds will be used to finance transmission facilities; modify financial information requirements; adjust the leveraging of resources scoring criterion; revise financial information to be submitted; and make other minor changes and corrections.

**DATES:** This rule will become effective March 11, 2002, unless we receive written adverse comments or a written notice of intent to submit adverse comments on or before February 22, 2002. If we receive such comments or notice, we will publish a timely document in the **Federal Register**

withdrawing the rule. Comments received will be considered under the proposed rule published in this edition of the **Federal Register** in the proposed rule section. A second public comment period will not be held.

Written comments must be received by RUS via facsimile transmission or carry a postmark or equivalent no later than February 22, 2002.

**ADDRESSES:** Submit adverse comments or notice of intent to submit adverse comments to Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1590, Room 4056, South Building, Washington, DC 20250-1590 or via facsimile transmission to (202) 720-0810. RUS requests a signed original and three copies of all comments (7 CFR 1700.4). All comments received will be made available for public inspection at room 4056, South Building, Washington, DC, between 8 a.m. and 4 p.m. (7 CFR part 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:**

Marilyn J. Morgan, Chief, DLT Branch, Advanced Services Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1550, Washington, DC 20250-1550. Telephone: 202-720-0413; e-mail at [mmorgan@rus.usda.gov](mailto:mmorgan@rus.usda.gov); or, Fax: 202-720-1051.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

#### Executive Order 12372

This program is subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, which requires intergovernmental consultation with State and local officials.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeal

procedures, if any are required, must be exhausted before an action against the Department or its agencies may be initiated.

### Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this rule will not have a significant economic adverse impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601). The RUS DLT loan and grant program provides recipients with grants and loans at interest rates and on terms that are more favorable than those generally available from the private sector. Recipients, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with complying with the RUS regulations and requirements.

### National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

### Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.855 Distance Learning and Telemedicine Loans and Grants. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325, telephone number (202) 512-1800.

### Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0572-0096, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C chapter 35).

### Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.