



Billing Code 3410-08-P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 402, 407, and 457

[Docket No. FCIC-17-0004]

RIN 0563-AC56

Catastrophic Risk Protection Endorsement; Area Risk Protection Insurance Regulations; and the Common Crop Insurance Regulations, Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Catastrophic Risk Protection Endorsement, the Area Risk Protection Insurance Basic Provisions, and the Common Crop Insurance Policy Basic Provisions to revise and clarify policy provisions and reduce burden on producers choosing to insure their crops. The changes to the policy made in this rule are applicable for the 2018 and succeeding crop years for all crops with a 2018 contract change date on or after the effective date of the rule, and for the 2019 and succeeding crop years for all crops with a 2018 contract change date prior to the effective date of the rule.

DATES: This final rule is effective [insert date of publication in the Federal Register].

However, FCIC will accept written comments on this final rule until close of business [insert date 60 days after publication in the Federal Register]. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: FCIC prefers interested persons submit their comments electronically

through the Federal eRulemaking Portal. Interested persons may submit comments, identified by Docket ID No. FCIC-17-0004, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205.

FCIC will post all comments received, including those received by mail, without change to <http://www.regulations.gov>, including any personal information provided. Once these comments are posted to this website, the public can access all comments at its convenience from this website. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>. If interested persons are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, FCIC requests that the document attachment be in a text-based format. If interested persons want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of the submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the Risk Management Agency (RMA) Web Content Team at (816) 823-4694 or by email at rmaweb.content@rma.usda.gov.

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the person submitting the comment (or signing the comment,

if submitted on behalf of an entity, such as an association, business, labor union, etc.).

Interested persons may review the complete User Notice and Privacy Notice for

Regulations.gov at <http://www.regulations.gov/#!privacyNotice>.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, 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:

Background

1. FCIC is revising section 6(f) to the CAT Endorsement (7 CFR part 402) to remove the date of June 1 from the conservation compliance provisions and instead refer to the premium billing date. This will provide more flexibility to policyholders and allow the conservation compliance certification process for crop insurance to be administered more consistently with the way it is administered for other USDA programs. Under the new provisions, policyholders must still have a valid AD-1026 on file with the Farm Service Agency (FSA) for the reinsurance year to be eligible for premium subsidy; however, the AD-1026 does not have to be completed by June 1 of the preceding reinsurance year.

While June 1 was believed to be an appropriate timeframe in which the AD-1026 needed to be signed, after two years since initial implementation a more streamlined approach is warranted to provide administrative efficiencies for both producers and FCIC/FSA without impacting the appropriate determinations of compliance. Insurance providers can confirm whether a policyholder has a valid AD-1026 on file, via data received from FCIC, as of the premium billing date, and any policyholder without an AD-1026 on file

will be billed the full unsubsidized premium. To effectuate these changes, FCIC has revised section 6(f)(2) to clarify the date by which producers must be determined to be eligible for premium subsidy. FCIC has also added section 6(f)(2)(i)(A) to remove the June 1 deadline from the FCIC language providing exceptions from the requirement to file an AD-1026 for producers who are new to farming, new to crop insurance, a new entity, or have not previously been required to file form AD-1026 and to specify that policyholders must certify to the exception by the premium billing date. The FCIC exceptions allow new producers certifying they meet the exception criteria by the premium billing date to receive premium subsidy for the initial reinsurance year while providing the flexibility to file form AD-1026 with FSA by the premium billing date of the subsequent reinsurance year to maintain premium subsidy eligibility. Subparagraph (B) was added to section 6(f)(2)(i) to reference FSA relief provisions contained in 7 CFR part 12 that provide additional time to file an AD-1026 if producers are unable to file due to circumstances beyond their control and provides additional time to provide required information if the AD-1026 is timely filed but the producer is unable to timely provide the information due to circumstances beyond their control. FCIC has determined these changes will have no impact on the proper determinations of conservation compliance regarding Highly Erodible Land/Wetland Compliance violations under 7 CFR part 12. These changes are intended to increase the opportunity for producers to comply with the form AD-1026 conservation compliance certification requirement and decrease the likelihood of producers who have not committed a violation from becoming ineligible for premium subsidy.

2. The specific changes to the Area Risk Protection Insurance Basic Provisions (7

CFR part 407) are as follows:

(a) Section 1 - FCIC is revising the definition of “good farming practices” for clarification by removing the reference to an organic plan, because an organic plan and good farming practice determinations serve two different purposes. An organic plan is a written plan that describes organic farming practices, but does not necessarily provide a comprehensive list of good farming practices. FCIC is also reorganizing the definition to improve readability.

FCIC is revising the definition of “limited resource farmer” by updating the website for the USDA definition because the website address had become out of date.

FCIC is revising the name of the definition of “RMA’s Web site” to “RMA’s website” because the uncapitalized, one-word term is more commonly used. FCIC is also correcting references to this term throughout the policy.

(b) Section 2 - FCIC is revising section 2(j) to add a new paragraph (2) that clarifies that with the policyholder’s consent the premium and administrative fees can be offset from any indemnity due the policyholder even if the offset occurs before the fees are billed. This change clarifies the issues raised in Final Agency Determination-147 and allows insurance providers the latitude to contact the policyholder and inquire as to whether the policyholder would agree to have the “unbilled” administrative fees and premium offset from the remaining amount of the loss. FCIC is redesignating paragraph 2(j)(2) as 2(j)(3).

FCIC is revising section 2(k)(2)(i)(D) to update the years used in the example so that it reflects more recent crop years.

FCIC is revising section 2(k)(3)(ii) to reference subpart U regarding written payment

agreements and deleting the parenthetical from this provision. FCIC is removing the prohibition on a policyholder entering into a written payment agreement if they previously failed to make a scheduled payment under any payment agreement to give insurance providers the flexibility to enter into these agreements. Subpart U provides information regarding written payment agreements. Subpart U provides that only one written payment agreement is permitted per termination date. Subpart U also provides other requirements for written payment agreements such as a written payment agreement cannot exceed two years in duration and a written payment agreement cannot be modified after it has been executed. Subpart U does not restrict a policyholder from entering into a written payment agreement if they previously failed to make a payment under an agreement. By referring to subpart U, FCIC will not need to make updates to the Basic Provisions when changes are made to subpart U.

FCIC is revising section 2(p)(2) to update the years used in the example so that it reflects more recent crop years.

(c) Section 7 - FCIC is revising section 7(i) to remove the date of June 1 from the conservation compliance provisions and instead refer to the premium billing date. This will provide more flexibility to policyholders and allow the conservation compliance certification process for crop insurance to be administered more consistently with the way it is administered for other USDA programs. Under the new provisions, policyholders must still have a valid AD-1026 on file with FSA for the reinsurance year to be eligible for premium subsidy; however, the AD-1026 does not have to be completed by June 1 of the preceding reinsurance year. While June 1 was believed to be an appropriate timeframe in which the AD-1026 needed to be signed, after two years since initial

implementation a more streamlined approach is warranted to provide administrative efficiencies for both producers and FCIC/FSA without impacting the appropriate determinations of compliance. Insurance providers can confirm whether a policyholder has a valid AD-1026 on file, via data received from FCIC, as of the premium billing date, and a policyholder without an AD-1026 on file will be billed the full unsubsidized premium. To effectuate these changes FCIC has revised section 7(i)(2) to clarify the date by which producers must be determined to be eligible for premium subsidy. FCIC has also added section 7(i)(2)(i)(A) to remove the June 1 deadline from the FCIC language providing exceptions from the requirement to file an AD-1026 for producers who are new to farming, new to crop insurance, a new entity, or have not previously been required to file form AD-1026 and to specify that policyholders must certify to the exception by the premium billing date. The FCIC exceptions allow new producers certifying they meet the exception criteria by the premium billing date to receive premium subsidy for the initial reinsurance year while providing the flexibility to file form AD-1026 with FSA by the premium billing date of the subsequent reinsurance year to maintain premium subsidy eligibility. Subparagraph (B) was added to section 7(i)(2)(i) to reference FSA relief provisions contained in 7 CFR part 12 that provide additional time to file an AD-1026 if producers are unable to file due to circumstances beyond their control and provides additional time to provide required information if the AD-1026 is timely filed but the producer is unable to timely provide the information due to circumstances beyond their control. FCIC has determined these changes will have no impact on the proper determinations of conservation compliance regarding Highly Erodible Land/Wetland Compliance violations. These changes are intended to increase the opportunity for

producers to comply with the form AD-1026 conservation compliance certification requirement and decrease the likelihood of producers who have not committed a violation from becoming ineligible for premium subsidy.

3. The changes to the Common Crop Insurance Regulations, Basic Provisions (7 CFR part 457) are as follows:

(a) Preamble – FCIC is revising the order of priority in the preamble to include the actuarial documents. By definition, the actuarial documents are a part of the policy and should be included in the order of priority. The actuarial documents will follow the Special Provisions in the order of priority.

(b) Section 1 – FCIC is revising the definition of “Cooperative Extension System” by replacing the reference to the “Cooperative State Research, Education, and Extension Service” to the “National Institute of Food and Agriculture.” This change is being made to reference the correct entity.

FCIC is revising the name of the definition of “FSA farm serial number” to “FSA farm number” because the term “FSA farm serial number” is no longer used. FCIC is also correcting references to this term throughout the policy.

FCIC is revising the definition of “good farming practices” for clarification by removing the reference to an organic plan, because an organic plan and good farming practice determinations serve two different purposes. An organic plan is a written plan that describes organic farming practices, but does not necessarily provide a comprehensive list of good farming practices. FCIC is also reorganizing the definition to improve readability.

FCIC is revising the definition of “price election” by replacing the phrase “Special

Provisions, or in an addendum thereto” with the phrase “actuarial documents” because price elections are contained in the actuarial documents.

FCIC is revising the definition of “replanted crop” to address how to calculate production to count in the event of a claim if the insurance provider determines it is not practical to replant and the policyholder plants the acreage to the same insured crop.

The rules surrounding “practical to replant” are designed for a failed crop to be replanted with the replant expenses covered by the insurance policy. In most cases, if there is a reasonable chance harvesting some production from the replanted crop and thereby provides assistance for impacted policyholders to grow the crop they intended. This assists policyholders while potentially reducing costs for the taxpayer, potentially lowers premium rates, and provides the potential for growers to have higher insurance guarantees in subsequent years than would otherwise be the case. If there is not a reasonable chance of at least some production, then the policyholder should not replant the crop.

If, later, the policyholder decides to replant the crop for the same intended use, then the policyholder is indicating that there is a reasonable chance of some production. Any production from the replanted crop is applied against the losses from the initial crop.

In relation to “replanted crops,” concerns have been raised that if an insurance provider determines that it is not practical to replant a crop and the policyholder plants the acreage to the same insured crop, it is possible the replanted crop could have less production to count than the appraised production on the initially planted crop. Allowing the policyholder to receive the larger claim, creates a moral hazard situation, where the policyholders could receive a larger indemnity from replanting a crop when it may not be

practical to do so. It is not the intent of FCIC to pay producers a full indemnity for a crop and then they successfully plant and harvest the same crop for the same intended use after the late planting period. Therefore, FCIC has determined the indemnity should be based on the greater of: 1) the appraised production on the initially planted crop; 2) the subsequent appraisal of the replanted crop if the replanted crop is not harvested; or 3) the harvested production from the replanted crop.

FCIC is also revising the definition of “replanted crop” to accommodate growing practices of producers. The rationale behind “replanted crop” rules is to ensure that producers are not paid a full indemnity and subsequently plant the same crop for the same purpose to harvest. If a producer plants the same crop, then a full indemnity should not be paid on the initially planted crop and FCIC should ensure that taxpayer losses are lessened if the second attempt to plant the crop results in a better yield than the initially planted crop.

Specifically, FCIC is revising the definition of “replanted crop” to state unless otherwise specified in the Special Provisions, the crop will be considered an insured replanted crop and no replanting payment will be paid if the insurance provider has determined: (1) it is not practical to replant the insured crop, and (2) the policyholder chooses to plant the acreage to the same insured crop within or prior to the late planting period, or after the final planting date if no late planting period is applicable.

FCIC is making this change to clarify that anytime the acreage is replanted to the same crop within or prior to the late planting period, it will be considered a replanted crop. However, FCIC also recognizes that in some situations a producer replants the same crop much later and for a different purpose. For example, a crop is damaged and it

is determined not practical to replant. However, after the late planting period, conditions allow a policyholder to plant a crop with no intention of harvesting for grain but rather the chance of harvesting for livestock feed. This revision will allow a claim to be paid for the initially seeded crop and not be impacted by the late planted crop which was never intended to be harvested as grain.

Additionally, the revisions provides FCIC flexibility to clarify by Special Provisions certain situations where a crop is replanted to the same crop and when it will or will not be considered a replanted crop. This flexibility addressed those crops that have no late planting period or late planting periods that are a few days.

FCIC is revising the name of the definition of “RMA’s Web site” to “RMA’s website” because the uncapitalized, one-word term is more commonly used. FCIC is also correcting references to this term throughout the policy.

(c) Section 2 - FCIC is revising section 2(e) to add a new paragraph (2) that clarifies that with the policyholder’s consent the premium and administrative fees can be offset from any prevented planting or indemnity due the policyholder even if the offset occurs before the fees are billed. This change clarifies the issues raised in Final Agency Determination-147 and allows insurance providers the latitude to contact the policyholder and inquire as to whether the policyholder would agree to have the “unbilled” administrative fees and premium offset from the remaining amount of the loss.

FCIC is revising section 2(f)(2)(i)(D) to update the years used in the example to reflect more recent crop years.

FCIC is revising section 2(f)(3)(ii) to reference subpart U regarding written payment agreements and deleting the parenthetical from this provision. FCIC is removing the

prohibition that does not allow a policyholder to enter into a written payment agreement if they previously failed to make a payment under an agreement to give insurance providers the flexibility to enter into these agreements. Subpart U provides information regarding written payment agreements. Subpart U provides that only one written payment agreement is permitted per termination date. It also provides other requirements for written payment agreements such as a written payment agreement cannot exceed two years in duration and a written payment agreement cannot be modified after it has been executed. Subpart U does not restrict a policyholder from entering into a written payment agreement if they previously failed to make a payment under an agreement. By referring to subpart U, FCIC will not need to make updates to the Basic Provisions when changes are made to subpart U.

FCIC is revising section 2(f)(5) to update the years used in the example to reflect more recent crop years.

FCIC is removing section 2(j) because this provision is unnecessary since there are no longer maximum allowable amounts of administrative fees. Previously, when there were caps, there needed to be a way to inform insurance providers when the cap had been met in those situations where the policyholder insured with more than one insurance provider. FCIC is redesignating paragraph 2(k) as 2(j).

(d) Section 3 - FCIC is revising section 3(f)(3) to allow these provisions to be changed in the Special Provisions. This change provides flexibility to amend the production reporting dates and the manner in which production reports are submitted if it is determined appropriate to better meet the needs of the program and policyholders.

FCIC is revising section 3(h)(1) by changing the reference of “valid basis” to “valid

agronomic basis” to be consistent with section 3(h)(2). This will allow FCIC to require the same basis for supporting both the excessive yields and inconsistent yields and will clarify that factors related to the soil and crop productivity will be considered when determining whether yields should be considered acceptable.

(e) Section 6 – FCIC is revising section 6(a)(3) to add a new paragraph (iii) that provides if the policyholder planted the insured crop on or within five days prior to the final planting date and the final planting date is five or fewer days prior to the acreage reporting date, the policyholder must submit an acreage report no later than five days after the acreage reporting date. This allows policyholders adequate time to submit their acreage reports if the insured crop’s acreage reporting date is the same as or closely follows the final planting date.

(f) Section 7 - FCIC is revising section 7(h) to remove the date of June 1 from the conservation compliance provisions and instead refer to the premium billing date. This will provide more flexibility to policyholders and allows the conservation compliance certification process for crop insurance to be administered more consistently with the way it is administered for other USDA programs. Under the new provisions, policyholders must still have a valid AD-1026 on file with FSA for the reinsurance year to be eligible for premium subsidy; however, the AD-1026 does not have to be completed by June 1 of the preceding reinsurance year. While June 1 was believed to be an appropriate timeframe in which the AD-1026 needed to be signed, after two years since initial implementation a more streamlined approach is warranted to provide administrative efficiencies for both producers and FCIC/FSA without impacting the appropriate determinations of compliance. Insurance providers can confirm whether a policyholder

has a valid AD-1026 on file, via data received from FCIC, as of the premium billing date, and any policyholder without an AD-1026 on file will be billed the full unsubsidized premium. To effectuate these changes, FCIC has revised section 7(h)(2) to clarify the date by which producers must be determined to be eligible for premium subsidy. FCIC has also added section 7(h)(2)(i)(A) to remove the June 1 deadline from the FCIC language providing exceptions from the requirement to file an AD-1026 for producers who are new to farming, new to crop insurance, a new entity, or have not previously been required to file form AD-1026 and to specify that policyholders must certify to the exception by the premium billing date. The FCIC exceptions allow new producers certifying they meet the exception criteria by the premium billing date to receive premium subsidy for the initial reinsurance year while providing the flexibility to file form AD-1026 with FSA by the premium billing date of the subsequent reinsurance year to maintain premium subsidy eligibility. Subparagraph (B) was added to section 7(h)(2)(i) to reference FSA relief provisions contained in 7 CFR part 12 that provide additional time to file an AD-1026 if producers are unable to file due to circumstances beyond their control and provides additional time to provide required information if the AD-1026 is timely filed but the producer is unable to timely provide the information due to circumstances beyond their control. FCIC has determined these changes will have no impact on the proper determinations of conservation compliance regarding Highly Erodible Land/Wetland Compliance violations. These changes are intended to increase the opportunity for producers to comply with the form AD-1026 conservation compliance certification requirement and decrease the likelihood of producers who have not committed a violation from becoming ineligible for premium subsidy.

(g) Section 9 – FCIC is revising section 9(a)(2)(viii)(A) by changing the reference to the “Group Risk Protection Plan of Insurance” to “Area Risk Protection Insurance” because the Group Risk Protection Plan of Insurance was replaced with Area Risk Protection Insurance for the 2014 and succeeding crop years.

(h) Section 17 – FCIC is revising section 17(f)(9) by changing the reference to “manpower” to “labor” to update the term to be gender neutral.

(i) Section 18 – FCIC is revising sections 18(c)(1) and (2) by replacing the phrase “Special Provisions, or in an addendum thereto” with the phrase “actuarial documents” as price elections are contained in the actuarial documents.

FCIC is revising section 18(e)(2)(i)(B) to remove the requirement that a written agreement to insure acreage that is greater than five percent of the planted acreage in the unit where the acreage has not been planted and harvested or insured in any of the three previous crop years (commonly referred to as new breaking acreage) must be requested by the acreage reporting date. The Special Provisions have previously been utilized to require a written agreement on such acreage be requested by the sales closing date. By removing this language from this section, the deadline to request this type of written agreement will revert to section 18(a), making the deadline the sales closing date and allowing the Special Provisions statement to be removed.

FCIC is removing section 18(e)(3) because any additional land or additional crop must meet the request deadlines of section 18(a) or 18(e) regardless of whether the additional land or additional crop will be added to an existing written agreement or a request for a written agreement. Therefore, this language is not needed.

FCIC is revising section 18(f)(1)(ii) to remove language regarding the information

needed to determine the approved yield. By specifying that the completed actual production history (APH) must be based on verifiable records of actual yields for the crop and county, the APH already contains the information needed to determine the approved yield. The revision is made because the language is redundant.

FCIC is also revising section 18(f)(1)(ii) to remove the requirement of the policyholder's signature on the completed APH submitted with the written agreement request. The policyholder certifies to the insurance provider each year the yields on the APH for the year the crop is produced and any required signatures are obtained by the insurance provider from the policyholder at that time. Requiring a policyholder's signature on the APH for a written agreement request is redundant.

FCIC is revising section 18(f)(1)(iii) to add "the crop" as an option for evidence of adaptability. Making this change clarifies that for situations when the crop is not insurable, evidence of adaptability can only be required for the crop itself, and is not required to be broken down by practice, type, or variety. The current practice, type, or variety language is intended for when the crop may be insurable, but the requested practice, type, or variety is not.

FCIC is removing section 18(f)(1)(vi) to clarify that "all other information" is not a requirement to obtain a written agreement. The policyholder may still provide any other information they wish to support their request for written agreement, but the policyholder is only required to submit the information identified in sections 18(f).

FCIC is revising section 18(f)(2)(i) to clarify this section is not only applicable to crops previously planted, it is also applicable to perennial crops that have previously produced a crop. Due to the nature of how long some perennial crops take to produce

after planting the crop, specifying “perennial crops that have previously produced a crop” instead of “planted” clarifies the language for how perennial crops are affected.

FCIC is also revising section 18(f)(2)(i) to allow an entity to use the production history from a substantial beneficial interest in the entity that has a history of growing the crop to qualify for a written agreement. This revision will allow a newly formed entity a pathway to qualify for a written agreement, whereas previously the newly formed entity was required to grow the crop, or a similar crop, for a minimum of three years before the new entity could qualify, even if substantial beneficial interests of the entity had previously grown the crop.

FCIC is revising section 18(f)(2)(i)(A) to remove the requirement of the policyholder’s signature on the completed APH submitted with the written agreement request. If the policyholder has insured the crop in the county or area, then the yields used on the APH have already been certified by the policyholder each year the production report was provided, and any required signatures are obtained by the insurance provider from the policyholder at that time. If the crop was not insured, then verifiable records must be submitted with the written agreement request. In both cases, requiring a policyholder’s signature on the APH for a written agreement request is redundant. Therefore, removing the APH signature requirement increases efficiency for written agreement requests and is less burdensome to the policyholder.

FCIC is also revising section 18(f)(2)(i)(A) of the Basic Provisions to state the completed APH is based on verifiable production records of actual yields for the crop to be consistent with the APH requirement for other written agreement request types.

FCIC is revising section 18(f)(2)(i)(B) to clarify this section is also applicable to

perennial crops that have previously produced a crop. As stated above, due to the nature of how long some perennial crops take to produce after planting the crop, specifying “perennial crops that have previously produced a crop” instead of “planted” clarifies the language for how perennial crops are affected.

FCIC is revising section 18(f)(2)(i)(B)(2) to remove the requirement that the policyholder must insure the crop for the three previous crop years before they can substitute a year of insurance experience for a year of verifiable records. This change will allow the policyholder to use their insured crop’s information for any year that the policyholder has insured the crop instead of providing verifiable records. For example, if the policyholder has produced the requested crop for three years and insured the requested crop for one year, verifiable records only have to be submitted for the two years the requested crop was not insured. For the year that the crop was insured the policyholder does not have to provide verifiable records.

FCIC is also revising section 18(f)(2)(i)(B)(2) to allow an entity to use the production history from a substantial beneficial interest in the entity that has a history of growing the crop to qualify for a written agreement. As stated above, this revision will allow a newly formed entity a pathway to qualify for a written agreement, whereas previously the newly formed entity was required to grow the crop, or a similar crop, for a minimum of three years before the new entity could qualify, even if substantial beneficial interests of the entity had previously grown the crop.

FCIC is adding a new section 18(f)(2)(i)(B)(3) to state that FCIC will not consider any crop year in which the crop was planted outside of the most recent ten crop years as a year of previously planting the crop, or produced a crop if the crop is a perennial crop,

unless verifiable production records are provided, or the crop was insured for that crop year. This change reduces the burden on policyholders by not requiring them to bring in the requested crop verifiable records from over ten years ago, which would allow the use of similar crop provisions in section 18(f)(2)(ii) to fulfill the requirement if the policyholder has not grown the requested crop for three crop years in the last ten years, even if the policyholder produced the requested crop more than ten years ago.

FCIC is revising section 18(f)(2)(ii) to clarify this section is not only applicable to crops previously planted, it is also applicable to perennial crops that have previously produced a crop. As stated above, due to the nature of how long some perennial crops take to produce after the crop is planted, specifying “perennial crops that have previously produced a crop” instead of “planted” clarifies the language for how perennial crops are affected.

FCIC is also revising section 18(f)(2)(ii) to allow an entity to use the production history from a substantial beneficial interest in the entity that has a history of growing the crop to qualify for a written agreement. As stated above, this revision will allow a newly formed entity a pathway to qualify for a written agreement, whereas previously the newly formed entity was required to grow the crop, or a similar crop, for a minimum of three years before the new entity could qualify, even if substantial beneficial interests of the entity had previously grown the crop.

FCIC is revising section 18(f)(2)(ii)(A) to remove the requirement of the policyholder’s signature on the completed APH submitted with the written agreement request. As stated above, if the policyholder has insured the crop in the county or area, then the yields used on the APH have already been certified to the insurance provider

each year the production report was provided, and any required signatures are obtained by the insurance provider from the policyholder at that time. If the crop was not insured, then verifiable records must be submitted with the written agreement request. In both cases, requiring a policyholder's signature on the APH for a written agreement request is redundant.

FCIC is removing sections 18(f)(2)(ii)(A)(1) and (2) from section 18(f)(2)(ii)(A). This change makes the similar crop language consistent with the requested crop language in section 18(f)(2)(i). A policyholder will now be able to provide a completed APH for a similar crop that was grown in the area even if the similar crop was also grown in the county, the same as is allowed for the requested crop.

FCIC is revising section 18(f)(2)(ii)(B) to clarify this section is not only applicable to crops previously planted, it is also applicable to perennial crops that have previously produced a crop. As stated above, due to the nature of how long some perennial crops take to produce after planting the crop, specifying "produced for perennial crops" instead of "planted" clarifies the language for how perennial crops are affected.

FCIC is revising section 18(f)(2)(ii)(B)(2) to be consistent with the changes made in section 18(f)(2)(i)(B)(2) above, which is removing the requirement that the policyholder must insure the crop for the three previous crop years before they can substitute a year of insurance experience for a year of verifiable records. Revising this section to be consistent with section 18(f)(2)(i)(B)(2) makes this change apply to the similar crop language the same as the requested crop language. This change will allow the policyholder to use their insured similar crop's information for any year that the policyholder has insured the similar crop instead of providing verifiable records.

FCIC is also revising section 18(f)(2)(ii)(B)(2) to allow an entity to use the production history from a substantial beneficial interest in the entity that has a history of growing the similar crop to qualify for a written agreement. As stated above, this revision will allow a newly formed entity a pathway to qualify for a written agreement, whereas previously the newly formed entity was required to grow the crop, or a similar crop, for a minimum of three years before the new entity could qualify, even if substantial beneficial interests of the entity had previously grown the crop.

FCIC is adding a new section 18(f)(2)(ii)(B)(3) to be consistent with the changes made in section 18(f)(2)(i)(B)(3), which is to state that FCIC will not consider any crop year in which the crop was planted outside of the most recent ten crop years as a year of previously planting the crop, or having produced a crop if the crop is a perennial crop, unless verifiable production records are provided, or the crop was insured for that crop year. Revising this section to be consistent with section 18(f)(2)(i)(B)(3) makes this change apply to the similar crop language the same as the requested crop language.

FCIC is revising section 18(f)(2)(ii)(C) to allow an entity to use the production history from a substantial beneficial interest in the entity that has a history of growing the crop to qualify for a written agreement. As stated above, this revision will allow a newly formed entity a pathway to qualify for a written agreement, whereas previously the newly formed entity was required to grow the crop, or a similar crop, for a minimum of three years before the new entity could qualify, even if substantial beneficial interests of the entity had previously grown the crop.

FCIC is also revising section 18(f)(2)(ii)(C) to clarify this section is not only applicable to crops previously planted, it is also applicable to perennial crops that have

previously produced a crop. As stated above, due to the nature of how long some perennial crops take to produce after planting the crop, specifying “perennial crops that have previously produced a crop” instead of “planted” clarifies the language for how perennial crops are affected.

FCIC is removing section 18(f)(2)(vi) to be consistent with the changes made in section 18(f)(1)(vi) above. This will clarify that “all other information” is not a requirement to obtain a written agreement. The policyholder may still provide any other information they wish to support their request for written agreement but the policyholder is only required to submit the information identified in sections 18(f).

FCIC is removing section 18(g)(3) because any additional land or additional crop must meet the request deadlines of section 18(a) or 18(e) whether or not the additional land or additional crop will be added to an existing written agreement or a request for a written agreement. Therefore, this language is not needed.

FCIC is revising section 18(h)(2) to clarify the APH history used to determine 50 percent of the transitional yield for the crop, type, and practice can be from either the county or a similar county. Currently this provision only looks at similar counties. This will allow a broader review of the policyholder’s APH history to determine whether at least 50 percent of the transitional yield for the crop, type, and practice has been produced.

FCIC is also revising section 18(h)(2) to clarify that this provision only applies when the crop has been previously grown. The provision appeared to deny a written agreement if the policyholder had not previously grown the requested crop, type or practice, because if the requested crop, type or practice had not previously been grown it could not have

made 50 percent of the transitional yield. These changes now clearly state that a policyholder will not be denied a written agreement under this provision if they have not grown the crop, type, and practice.

FCIC is revising section 18(h)(4) to clarify this provision is also applicable if a similar crop was not previously grown in the area. As previously written, it appeared like a written agreement would automatically be denied when the actual crop was not grown. This conflicted with the similar crop provisions in section 18(f)(2)(ii) where a similar crop can be used to qualify a written agreement request for counties without actuarial documents for the crop when the requested crop had not been grown, or had not been grown long enough to complete the required three years of records. This change now clarifies that a denial will take place when the crop, or a similar crop, has not been grown, which removes any conflict with the similar crop provisions.

FCIC is also revising section 18(h)(4) to allow the crop or similar crop to be grown in the area, as growing the crop or similar crop in the area can qualify a policyholder in the county even if they have not grown the crop in the requested county.

FCIC is removing from section 18(h)(4) the phrase “based on sales receipts, contemporaneous feeding records or a contract for the crop.” By listing these options out it limits what can be shown as evidence of a market. If the policyholder is new to the area or is growing a new crop and qualifying based on a similar crop, they would not have sales receipts, contemporaneous feeding records, and unlikely to have a contract for the requested crop as most crops do not require a contract. Section 18(f)(2)(iv) already requires the name, location of, and approximate distance to the place the crop will be sold, which identifies the market for the crop.

FCIC is revising section 18(h)(5) to allow a written agreement request to be denied for a particular practice or type if that practice or type is not adapted to the county. The current language only specified crop, thus if the crop was adapted to the county it could be assumed that all practices or types are automatically considered adapted. This change allows the ability to deny a written agreement request if a particular practice or type of a crop is not adapted to the county, even if other practices or types of the crop are adapted to the county.

(j) Section 21 - FCIC is revising section 21(b)(2) to update the years used in the example to reflect more recent crop years.

(k) Section 34 – FCIC is revising sections 34(a)(4)(viii), (viii)(A), and (viii)(B) to allow a policyholder to select an enterprise unit for either irrigated or non-irrigated practice and choose the most appropriate unit structure on the other practice, be it a separate enterprise unit or optional or basic units. Previously, FCIC only allowed an enterprise unit for all acreage of the crop in the county. In the Agricultural Act of 2014, Congress mandated that FCIC allow separate enterprise units by irrigated and non-irrigated practices. Currently, FCIC requires that all acreage of the crop in the county be insured as an enterprise unit, one for all the irrigated acreage in the county and one for all the non-irrigated acreage in the county. Policyholders have made it clear to FCIC that, requiring all irrigated and non-irrigated acreage to separately qualify as enterprise units and to be eligible for separate enterprise units by practice both must be insured as enterprise units is not affording policyholders the flexibility to tailor their insurance coverage to meet their risk management needs. Policyholders have identified situations where both the irrigated and non-irrigated acreage do not qualify as enterprise units and

they are left with a single enterprise unit for all the acreage and situations where having separate enterprise units for irrigated and non-irrigated acreage simply does not meet their risk management needs. Policyholders argue that to meet their risk management needs they need to be allowed to qualify for an enterprise unit for the practice that they determine best meets their risk management needs and another type unit for the other practice. FCIC agrees that irrigated and non-irrigated practices have inherently different risks, and some perils such as drought that can impact a non-irrigated crop may be distinctly different from those that may impact an irrigated crop such that an enterprise unit structure may only be an appropriate risk management alternative for one of the practices, but not both. In the best interest of policyholders and to allow the flexibility to match as closely as possible the inherently different risks for irrigated and non-irrigated practices, FCIC is revising the provisions to allow a policyholder to elect the most appropriate unit structure for each practice.

FCIC is revising section 34(a)(4)(viii)(C) to make this section applicable only if the policyholder elected separate enterprise units for irrigated and non-irrigated practices and it is discovered the policyholder does not qualify for an enterprise unit for the irrigated or non-irrigated practices.

FCIC is adding a new section 34(a)(4)(viii)(D) to state what happens when a policyholder elected an enterprise unit on one practice (irrigated or non-irrigated) and a different unit structure on the other practice and it is discovered the policyholder does not qualify for an enterprise unit for the irrigated or non-irrigated practice. If it is discovered the policyholder does not qualify for an enterprise unit on or before the acreage reporting date, the policyholder's unit division will be based on basic or optional units, whichever

they report on their acreage report and qualify for. If it is discovered the policyholder does not qualify for an enterprise unit at any time after the acreage reporting date, the insurance provider will assign the basic unit structure.

Effective Date

The FCIC is issuing this final rule without opportunity for prior notice and comment. The Administrative Procedure Act (APA) exempts rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” from the statutory requirement for prior notice and opportunity for public comment (5 U.S.C. 553(a)(2)). A Federal crop insurance policy is a contract and is thus exempt from APA notice-and-comment procedures. Previously, changes made to the Federal crop insurance policies codified in the Code of Federal Regulations were required to be implemented through the notice-and-comment rulemaking process. Such action was not required by the APA, which exempts contracts. Rather, the requirement originated with a notice USDA published in the Federal Register on July 24, 1971 (36 FR 13804), stating that the Department of Agriculture would, to the maximum extent practicable, use the notice-and-comment rulemaking process when making program changes, including those involving contracts. FCIC complied with this notice over the subsequent years. On October 28, 2013, USDA published a notice in the Federal Register (78 FR 64194) rescinding the prior notice, thereby making contracts again exempt from the notice-and-comment rulemaking process. This exemption applies to the 30-day notice prior to implementation of a rule. Therefore, the policy changes made by this final rule are effective upon publication in the Federal Register.

However, FCIC is providing a 30-day comment period and invites interested persons

to participate in this rulemaking by submitting written comments. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

Executive Orders 12866, 13563, and 13771

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has not reviewed this rule. The rule is not subject to Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.”

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), 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.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Federal Crop Insurance Corporation has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal

implications that require tribal consultation under EO 13175. If a Tribe requests consultation, the Federal Crop Insurance Corporation will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

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 indemnity amount for 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 (FCIA) 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 a significant impact on a substantial number of 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 2 CFR part 415, subpart C.

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 action by FCIC directing 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.

List of Subjects in 7 CFR Parts 402, 407, and 457

Crop insurance, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR parts 402, 407, and 457 as follows:

PART 402 - CATASTROPHIC RISK PROTECTION ENDORSEMENT

1. The authority citation for 7 CFR part 402 continues to read as follows:

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

2. Amend § 402.4 by revising section 6(f) to read as follows:

§ 402.4 Catastrophic Risk Protection Endorsement Provisions.

* * * * *

6. Annual Premium and Administrative Fees

* * * * *

(f) You will be responsible for payment of the premium established for the coverage provided under this endorsement if:

(1) USDA determines you have committed a violation of the highly erodible land conservation or wetland conservation provisions of 7 CFR part 12 as amended by the Agricultural Act of 2014; or

(2) You have not filed form AD-1026 with FSA for the reinsurance year by the premium billing date.

(i) Notwithstanding section 6(f)(2), you may be eligible for premium subsidy without having a timely filed form AD-1026:

(A) For the initial reinsurance year if you certify by the premium billing date for your policy that you meet the qualifications as outlined in FCIC approved procedures for producers who are new to farming, new to crop insurance, a new entity, or have not previously been required to file form AD-1026; or

(B) If FSA approves relief for failure to timely file due to circumstances beyond your control or failure to timely provide adequate information to complete form AD-1026 in accordance with the provisions contained in 7 CFR part 12.

(ii) To be eligible for premium subsidy paid on your behalf by FCIC, it is your

responsibility to assure you meet all the requirements for:

(A) Compliance with the conservation provisions specified in section 6(f)(1) of this section; and

(B) Filing form AD-1026 to be properly identified as in compliance with the conservation provisions specified in section 6(f)(1) of this section.

* * * * *

PART 407 – AREA RISK PROTECTION INSURANCE REGULATIONS

3. The authority citation for 7 CFR part 407 continues to read as follows:

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

4. Amend § 407.9 as follows:

a. Remove the phrase “Web site” wherever it appears and add the word “website” in its place;

b. In section 1:

i. Revise the definition of “Good farming practices”; and

ii. In the definition of “Limited resource farmer”, remove “<http://www.lrftool.sc.egov.usda.gov> or a successor website” and add “http://lrftool.sc.egov.usda.gov/LRP_Definition.aspx” in its place;

c. In section 2:

i. Redesignate paragraph (j)(2) as paragraph (j)(3);

ii. Add a new paragraph (j)(2);

iii. In paragraph (k)(2)(i)(D), remove the date of “2011” and add the date “2019” in its place and remove the date of “2010” and add the date of “2018” in its place in each instance these dates appear in the paragraph;

iv. Revise paragraph (k)(3)(ii); and

v. In paragraph (p)(2), remove the date of “2012” and add the date “2018” in its place and remove the date of “2013” and add the date of “2019” in its place in each instance these dates appear in the paragraph;

d. Revise section 7(i).

The revisions and additions reads as follows:

§ 407.9 Area risk protection insurance policy.

* * * * *

1. Definitions

* * * * *

Good farming practices. The production methods utilized to produce the insured crop, type, and practice and allow it to make normal progress toward maturity, which are those generally recognized by agricultural experts or organic agricultural experts, depending on the practice, for the area. We may, or you may request us to, contact FCIC to determine if production methods will be considered “good farming practices.”

* * * * *

2. Life of Policy, Cancellation, and Termination

* * * * *

(j) * * *

(2) If you and we agree, your premium and administrative fees can be offset from any indemnity due you even if it is prior to the billing date of the premium and administrative fees.

* * * * *

(k) * * *

(3) * * *

(ii) Execute a written payment agreement in accordance with 7 CFR part 400, subpart U, and make payments in accordance with the agreement; or

* * * * *

7. Annual Premium and Administrative Fees

* * * * *

(i) You will be ineligible for any premium subsidy paid on your behalf by FCIC for any policy issued by us if:

(1) USDA determines you have committed a violation of the highly erodible land conservation or wetland conservation provisions of 7 CFR part 12 as amended by the Agricultural Act of 2014; or

(2) You have not filed form AD-1026 with FSA for the reinsurance year by the premium billing date.

(i) Notwithstanding section 7(i)(2), you may be eligible for premium subsidy without having a timely filed form AD-1026:

(A) For the initial reinsurance year if you certify by the premium billing date for your policy that you meet the qualifications as outlined in FCIC approved procedures for producers who are new to farming, new to crop insurance, a new entity, or have not previously been required to file form AD-1026; or

(B) If FSA approves relief for failure to timely file due to circumstances beyond your control or failure to timely provide adequate information to complete form AD-1026 in accordance with the provisions contained in 7 CFR part 12.

(ii) To be eligible for premium subsidy paid on your behalf by FCIC, it is your responsibility to assure you meet all the requirements for:

(A) Compliance with the conservation provisions specified in section 7(i)(1) of this section; and

(B) Filing form AD-1026 to be properly identified as in compliance with the conservation provisions specified in section 7(i)(1) of this section.

* * * * *

PART 457 - COMMON CROP INSURANCE REGULATIONS

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

Authority: 7 U.S.C. 1506(l) and 1506(o).

6. Amend §457.8, in the Common Crop Insurance Policy, as follows:

a. Remove the phrase “Web site” wherever it appears and add the word “website” in its place;

b. Remove the phrase “replant payment” wherever it appears and add the phrase “replanting payment” in its place;

c. Under the heading “Reinsured Policies,” revise the third paragraph;

d. In section 1:

i. In the definition of “Actual Production History (APH),” remove “(G)” and add “G” in its place;

ii. In the definition of “Cooperative Extension System,” remove the phrase “Cooperative State Research, Education and Extension Service” and add the phrase

“National Institute of Food and Agriculture” in its place;

iii. Remove the definition for “FSA farm serial number”;

- iv. Add the definition for “FSA farm number”; and
- v. Revise the definitions of “Good farming practices,” “Price election,” and “Replanted crop”;
- e. In section 2:
 - i. Redesignate paragraph (e)(2) as paragraph (e)(3);
 - ii. Add a new paragraph (e)(2);
 - iii. In paragraph (f)(2)(i)(D), remove the date of “2011” and add the date “2019” in its place in both places and remove the date of “2010” and add the date “2018” in its place;
 - iv. Revise paragraph (f)(3)(ii);
 - v. In paragraph (f)(5), remove the date of “2010” and add the date “2018” in its place, remove the date of “2011” and add the date of “2019” in its place, and remove the date of “2012” and add the date of “2020” in its place, in each instance these dates appear in the paragraph;
 - vii. Remove paragraph (j); and
 - viii. Redesignate paragraph (k) as paragraph (j);
- f. In section 3:
 - i. In paragraph (f)(3), add the phrase “, unless otherwise specified in the Special Provisions” following the phrase “by the production reporting date”; and
 - ii. In paragraph (h)(1), add the term “agronomic” following the phrase “you cannot prove there is a valid”;
- g. In section 6:
 - i. In paragraph (a)(3)(i), remove the term “and” following the semicolon at the end of the paragraph;

- ii. In paragraph (a)(3)(ii)(C), remove “(5)” and remove the period at the end of the paragraph and add “; and” in its place;
- iii. Add paragraph (a)(3)(iii); and
- iv. In paragraph (c)(5), remove the term “serial” following the phrase “FSA farm”;
- h. Revise section 7(h);
- i. In section 9(a)(2)(viii)(A), remove the phrase “the Group Risk Protection Plan of Insurance or successor provisions” and add the phrase “Area Risk Protection Insurance” in its place;
- j. In section 17(f)(9) introductory text, remove the term “manpower” and add the term “labor” in its place;
- k. In section 18:
 - i. In paragraphs (c)(1) and (2), remove the phrase “Special Provisions, or an addendum thereto,” and add the phrase “actuarial documents” in its place wherever it appears;
 - ii. In paragraph (e)(1), add the term “or” to the end of the paragraph following the semicolon;
 - iii. Revise paragraph (e)(2)(i)(B);
 - iv. In paragraph (e)(2)(iii), remove the term “or” following the semicolon;
 - v. Remove paragraph (e)(3);
 - vi. Revise paragraph (f)(1)(ii);
 - vii. In paragraph (f)(1)(iii), add the phrase “the crop,” following the phrase “to provide insurance for”;
 - viii. In paragraph (f)(1)(iv), remove the term “serial” following the phrase “FSA

farm” and add the term “and” at the end of the paragraph following the semicolon;

ix. In paragraph (f)(1)(v), remove the term “and” following the semicolon at the end of the paragraph;

x. Remove paragraph (f)(1)(vi);

xi. Revise paragraphs (f)(2)(i), (f)(2)(ii) introductory text, and (f)(2)(ii)(A) through (C);

xii. In paragraph (f)(1)(iv), add the term “and” at the end of the paragraph following the semicolon;

xiii. Remove paragraph (f)(2)(vi);

xiv. In paragraph (g)(2), add the term “or” at the end of the paragraph following the semicolon;

xv. Remove paragraph (g)(3);

xvi. Redesignate paragraph (g)(4) as (g)(3);

xvii. Revise paragraphs (h)(2) and (4); and

xviii. In paragraph (h)(5), add the phrase “, practice, or type” following the phrase “experts determine the crop”;

l. Revise section 21(b)(2); and

m. In section 34:

i. In paragraphs (a)(4)(i)(C), (D), and (E) and (a)(4)(ii), remove the term “serial” following the phrase “FSA farm” wherever it appears;

ii. Revise paragraph (a)(4)(viii); and

iii. In paragraphs (c)(1)(ii) and (c)(2) and (3), remove the term “serial” following the phrase “FSA farm” wherever it appears.

The revisions and additions reads as follows:

§ 457.8 The application and policy.

* * * * *

Common Crop Insurance Policy

* * * * *

Reinsured Policies

* * * * *

AGREEMENT TO INSURE: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures as issued by FCIC, the order of priority is: (1) the Act; (2) the regulations; and (3) the procedures as issued by FCIC, with (1) controlling (2), etc. If there is a conflict between the policy provisions published at 7 CFR part 457 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 457 control. If a conflict exists among the policy, the order of priority is: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the actuarial documents; (4) the Commodity Exchange Price Provisions, as applicable; (5) the Crop Provisions; and (6) these Basic Provisions, with (1) controlling (2), etc.

* * * * *

1. Definitions

* * * * *

FSA farm number. The number assigned to the farm by the local FSA office.

* * * * *

Good farming practices. The production methods utilized to produce the insured crop and allow it to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance, including any adjustments for late planted acreage, which are those generally recognized by agricultural experts or organic agricultural experts, depending on the practice, for the area. We may, or you may request us to, contact FCIC to determine if production methods will be considered “good farming practices.”

* * * * *

Price election. The amount contained in the actuarial documents that is the value per pound, bushel, ton, carton, or other applicable unit of measure for the purposes of determining premium and indemnity under the policy. A price election is not applicable for crops for which revenue protection is available.

* * * * *

Replanted crop. (1) The same agricultural commodity replanted on the same acreage as the insured crop for harvest in the same crop year if:

- (i) The replanting is specifically made optional by the policy and you elect to replant the crop and insure it under the policy covering the first insured crop; or
- (ii) Replanting is required by the policy.

(2) Unless otherwise specified in the Special Provisions, the crop will be considered an insured replanted crop and no replanting payment will be paid if we have determined it is not practical to replant the insured crop and you choose to plant the acreage to the same insured crop within or prior to the late planting period or after the final planting

date if no late planting period is applicable. If we determine it is not practical to replant and you plant the acreage to the same insured crop, any indemnity will be based on the greater of:

(i) Our appraised production on the initially planted crop;

(ii) Our subsequent appraisal of the replanted crop if the replanted crop is not harvested; or

(iii) The harvested production from the replanted crop.

* * * * *

2. Life of Policy, Cancellation, and Termination

* * * * *

(e) * * *

(2) If you and we agree, your premium and administrative fees can be offset from any indemnity or prevented planting payment due you even if it is prior to the billing date of the premium and administrative fees.

* * * * *

(f) * * *

(3) * * *

(ii) Execute a written payment agreement, in accordance with 7 CFR part 400, subpart U, and make payments in accordance with the agreement; or

* * * * *

6. Report of Acreage

(a) * * *

(3) * * *

(iii) If you plant the insured crop on or within five days prior to the final planting date and the final planting date is five or fewer days prior to the acreage reporting date, you must submit an acreage report no later than five days after the acreage reporting date (for example, if the final planting date contained in the Special Provisions is July 10, the acreage reporting date contained in the Special Provisions is July 15 and you plant the insured crop on July 9, you have until July 20 to submit an acreage report for the insured crop).

* * * * *

7. Annual Premium and Administrative Fees

* * * * *

(h) You will be ineligible for any premium subsidy paid on your behalf by FCIC for any policy issued by us if:

(1) USDA determines you have committed a violation of the highly erodible land conservation or wetland conservation provisions of 7 CFR part 12 as amended by the Agricultural Act of 2014; or

(2) You have not filed form AD-1026 with FSA for the reinsurance year by the premium billing date.

(i) Notwithstanding section 7(h)(2), you may be eligible for premium subsidy without having a timely filed form AD-1026:

(A) For the initial reinsurance year if you certify by the premium billing date for your policy that you meet the qualifications as outlined in FCIC approved procedures for producers who are new to farming, new to crop insurance, a new entity, or have not previously been required to file form AD-1026; or

(B) If FSA approves relief for failure to timely file due to circumstances beyond your control or failure to timely provide adequate information to complete form AD-1026 in accordance with the provisions contained in 7 CFR part 12.

(ii) To be eligible for premium subsidy paid on your behalf by FCIC, it is your responsibility to assure you meet all the requirements for:

(A) Compliance with the conservation provisions specified in section 7(h)(1) of this section; and

(B) Filing form AD-1026 to be properly identified as in compliance with the conservation provisions specified in section 7(h)(1) of this section.

* * * * *

18. Written Agreements

* * * * *

(e) * * *

(2) * * *

(i) * * *

(B) Establish optional units in accordance with FCIC procedures that otherwise would not be allowed or change the premium rate or transitional yield for designated high-risk land;

* * * * *

(f) * * *

(1) * * *

(ii) A completed APH (only for crop policies that require APH) based on verifiable records of actual yields for the crop and county for which the written agreement is being

requested (the actual yields do not necessarily have to be from the same physical acreage for which you are requesting a written agreement), and verifiable records of actual yields if required by FCIC;

* * * * *

(2) * * *

(i) For a crop you (or anyone with a substantial beneficial interest in you) have previously planted (or produced a crop if the crop is a perennial crop) in the county or area for at least three years:

(A) A completed APH (only for crop policies that require APH) based on verifiable production records of actual yields for the crop; and

(B) Verifiable production records for at least the three most recent crop years in which the crop was planted (or produced a crop if the crop is a perennial crop):

(1) The verifiable production records do not necessarily have to be from the same physical acreage for which you are requesting a written agreement;

(2) Verifiable production records do not have to be submitted for any year you (or anyone with a substantial beneficial interest in you) have insured the crop in the county or area and have certified the yields on the applicable production reports or the yields are based on your insurance claim (although you are not required to submit production records, you still must maintain production records in accordance with section 21); and

(3) FCIC will not consider any crop year in which the crop was planted (or produced a crop if the crop is a perennial crop) outside of the most recent ten crop years as a year of previously planting the crop (or having produced a crop if the crop is a perennial crop), unless verifiable production records are provided, or the crop was insured for that crop

year;

(ii) For a crop you (or anyone with a substantial beneficial interest in you) have not previously planted (or produced a crop if the crop is a perennial crop) in the county or area for at least three years:

(A) A completed APH (only for crop policies that require APH) based on verifiable production records of actual yields for the similar crop;

(B) Verifiable production records for at least the three most recent crop years in which the similar crop was planted (or produced a crop if the crop is a perennial crop) in the county or area:

(1) The verifiable production records for the similar crop do not necessarily have to be from the same physical acreage for which you are requesting a written agreement;

(2) Verifiable production records do not have to be submitted for any crop year you (or anyone with a substantial beneficial interest in you) have insured the similar crop in the county or area and have certified the yields on the applicable production reports or the yields are based on your insurance claim (although you are not required to submit production records, you still must maintain production records in accordance with section 21); and

(3) FCIC will not consider any crop year in which the similar crop was planted (or produced a crop if the crop is a perennial crop) outside of the most recent ten crop years as a year of previously planting the similar crop (or having produced a crop if the crop is a perennial crop), unless verifiable production records are provided, or the similar crop was insured, for that crop year;

(C) If you (or anyone with a substantial beneficial interest in you) have at least one

year of production records, but less than three years of production records, for the crop in the county or area but have production records for a similar crop in the county or area such that the combination of both sets of records results in at least three years of production records, you must provide the information required in sections 18(f)(2)(i)(A) and (B) for the years you (or anyone with a substantial beneficial interest in you) planted the crop (or produced a crop if the crop is a perennial crop) in the county or area and the information required in sections 18(f)(2)(ii)(A) and (B) regarding the similar crop for the remaining years; and

* * * * *

(h) * * *

(2) Your APH history demonstrates you have not produced at least 50 percent of the transitional yield for the crop, type, and practice obtained from the county, or a county with similar agronomic conditions and risk exposure, when previously grown;

* * * * *

(4) The crop, or a similar crop, was not previously grown in the county or area, or there is no evidence of a market for the crop (applicable only for counties without actuarial documents); or

* * * * *

21. Access to Insured Crop and Records, and Record Retention

* * * * *

(b) * * *

(2) All records used to establish the amount of production you certified on your production reports used to compute your approved yield for three years after the calendar

date for the end of the insurance period for the crop year for which you initially certified such records, unless such records have already been provided to us (*e.g.*, if you are a new insured and you certify 2015 through 2018 crop year production records in 2019 to determine your approved yield for the 2019 crop year, you must retain all records from the 2015 through 2018 crop years through the 2022 crop year. If you subsequently certify records of the 2019 crop year in 2020 to determine your approved yield for the 2020 crop year, you must retain the 2019 crop year records through the 2023 crop year and so forth for each subsequent year of production records certified); and

* * * * *

34. Units.

(a) * * *

(4) * * *

(viii) If allowed by the actuarial documents, you may elect separate enterprise units for irrigated or non-irrigated practices.

(A) You may elect one enterprise unit for all irrigated practices or one enterprise unit for all non-irrigated practices or enterprise units for both.

(B) You must separately meet the requirements in section 34(a)(4) for each enterprise unit.

(C) If you elected separate enterprise units for both irrigated and non-irrigated practices and we discover you do not qualify for an enterprise unit for the irrigated or non-irrigated practice and such discovery is made:

(1) On or before the acreage reporting date, you may elect to insure all acreage of the crop in the county in one enterprise unit provided you meet the requirements in section

34(a)(4), or your unit division will be based on basic or optional units, whichever you report on your acreage report and qualify for; or

(2) At any time after the acreage reporting date, your unit structure will be one enterprise unit provided you meet the requirements in section 34(a)(4). Otherwise, we will assign the basic unit structure.

(D) If you elected an enterprise unit on one practice (irrigated or non-irrigated) and a different unit structure on the other practice and we discover you do not qualify for an enterprise unit for the irrigated or non-irrigated practice and such discovery is made:

(1) On or before the acreage reporting date, your unit division will be based on basic or optional units, whichever you report on your acreage report and qualify for; or

(2) At any time after the acreage reporting date, we will assign the basic unit structure.

* * * * *

Signed in Washington, D.C., on November 16, 2017

Heather Manzano,
Acting Manager,
Federal Crop Insurance Corporation.

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