



Billing Code 3410-08-P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563-AC65

[Docket ID FCIC-19-0008]

Common Crop Insurance Regulations; Coarse Grains Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations, Coarse Grains Crop Insurance Provisions (Crop Provisions). The intended effect of this action is to allow separate enterprise and optional units by the cropping practices Following Another Crop (FAC) and Not Following Another Crop (NFAC). The changes will be effective for the 2020 and succeeding crop years.

DATES: *Effective date:* This final rule is effective November 30, 2019.

Comment date: We will consider comments that we receive on this rule by the close of business **[insert date 60 days after publication in the FEDERAL REGISTER]**. FCIC will consider these comments and make changes to the rule if warranted in a subsequent rulemaking.

ADDRESSES: We invite you to submit comments on this rule. In your comments, include the date, volume, and page number of this issue of the *Federal Register*, and the title of rule. You may submit comments by any of the following methods, although FCIC prefers that you submit comments electronically through the Federal eRulemaking Portal:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and search for Docket ID FCIC-19-0008. Follow the online 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.

All comments received, including those received by mail, will be posted without change and publicly available on <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926-7829; email francie.tolle@usda.gov. Persons with disabilities who require alternative means of communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIP) sell and service Federal crop insurance policies in every state and in Puerto Rico through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

Federal crop insurance policies typically consist of the Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV.

FCIC amends the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.113 Coarse Grains Crop Insurance Provisions to be effective for the 2020 and succeeding crop years.

The changes to 7 CFR 457.113 Coarse Grains Crop Insurance Provisions are as follows:

1. Section 1 – FCIC is adding the terms “Following another crop (FAC)” and “Not following another crop (NFAC)” to accommodate the changes in section 2. These terms are currently defined in the Special Provisions and vary depending on the county. FCIC is adding these terms to the Crop Provisions because the terms are now referenced in a newly-added section 2.
2. Section 2 – FCIC is redesignating sections 2 through 12 as section 3 through 13, respectively, and adding a new section 2. FCIC is adding a section 2 to allow enterprise units and optional units by the cropping practices Following Another Crop (FAC) and Not Following Another Crop (NFAC). The new language allows separate enterprise units and optional units for FAC acreage of the crop or NFAC acreage of the crop.

The cropping practices FAC and NFAC have different risks of loss. For example, soil conditions for crops following another crop on the same acreage in the same crop year are likely to have different moisture and nutrient availability than crops not following another crop which could impact crop yields and losses. Producers have raised concerns that when the two cropping practices are combined in a single unit, the losses from one of these cropping practices may be offset by gains on the other. By contrast, this offset would likely not occur if all insurable acreage was insured as a single practice, or if the acreage is insurable by separate practice at the enterprise or optional unit level, which is the change this rule seeks to make effective. This change allows producers to better manage the unique risks of each practice by separating FAC and NFAC units.

If the insured elects enterprise or optional units for these cropping practices, additional enterprise or optional units by irrigation practices are not allowed. The insured may elect one enterprise unit for all FAC cropping practices, all NFAC cropping practices, or separate enterprise units for both. Additionally, both the FAC and NFAC acreage must each separately qualify for enterprise units and will be subject to the current requirements in the Basic Provisions. The insured is only eligible if both FAC and NFAC cropping practices are allowed by the actuarial documents for each irrigation practice the insured uses. For example, if the non-irrigated practice for the insured's county allows both FAC and NFAC cropping practices in the actuarial documents, but the irrigated practice does not specify either FAC or NFAC, enterprise units are available as follows:

- If the insured uses the irrigated practice, separate enterprise units for FAC and NFAC cropping practices are not available because they are not

specified as separate cropping practices in the actuarial documents for the irrigated practice;

- If the insured uses only the non-irrigated practice, with FAC and NFAC cropping practices, separate enterprise units for non-irrigated FAC and NFAC cropping practices are available, because they are specified as separate cropping practices in the actuarial documents for the non-irrigated practice.

If an insured does not qualify for separate FAC and NFAC enterprise units, there are two options based on the timing of the discovery: 1) if the AIP discovers the insured does not qualify on or before the acreage reporting date, the insured may have one enterprise unit comprised of all FAC and NFAC acreage in the county of the crop, or basic or optional units depending on which unit structure the insured reported on the acreage report; or 2) if the AIP discovers the insured does not qualify after acreage reporting date, the insured may have one enterprise unit comprised of all FAC and NFAC acreage combined in the county of the crop, or the AIP will assign a basic unit structure.

If an insured does not qualify for a separate enterprise unit on one cropping practice when a different unit structure is on the other cropping practice, there are two options based on the timing of the discovery:

- 1) If the AIP discovers the insured does not qualify on or before the acreage reporting date, the insured may have basic or optional units depending on which unit structure the insured reported on the acreage report; or
- 2) If the AIP discovers the insured does not qualify after the acreage reporting date, the AIP will assign a basic unit structure.

Effective Date and Notice and Comment

In general, the Administrative Procedure Act (APA, 5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the *Federal Register* for interested persons to be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation and requires a 30-day delay in the effective date of rules, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. This rule involves matters relating to contracts and therefore the requirements in section 553 do not apply.

Although not required by APA, FCIC has chosen to request comments on this rule.

The Office of Management and Budget (OMB) designated this rule as not major under the Congressional Review Act, as defined by 5 U.S.C. 804(2). This rule is not major under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, FCIC is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review.

This final rule is effective November 30, 2019.

Executive Orders 12866, 13563, 13771 and 13777

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. Executive

Order 13777, “Enforcing the Regulatory Reform Agenda,” established a federal policy to alleviate unnecessary regulatory burdens on the American people.

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.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” requires that in order to manage the private costs required to comply with Federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. As this rule is designated as not significant, it is not subject to Executive Order 13771.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections

that are too long or confusing?

- What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by SBREFA, generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because as noted above, this rule is exempt from APA and no other law requires that a proposed rule be published for this rulemaking initiative.

Environmental Review

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347) and the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508). FCIC conducts programs and activities that have been determined to have no individual or cumulative effect on the human environment. As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

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.

FCIC 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. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, FCIC will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified in this rule are not expressly mandated by Congress.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State,

local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of 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.

Federal Assistance Program

The title and number of the Federal Domestic Assistance Program listed in the Catalog of Federal Domestic Assistance to which this rule applies is No. 10.450 – Crop Insurance.

Paperwork Reduction Act of 1995

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the rule does not change the information collection approved by OMB under control numbers 0563-0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, 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.

List of Subjects in 7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

For the reasons discussed above, FCIC amends 7 CFR part 457, effective for the 2020 and succeeding crop years, as follows:

PART 457 - COMMON CROP INSURANCE REGULATIONS

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

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

2. Amend § 457.113 as follows:

a. Revise the first sentence of the introductory text;

b. In section 1, add in alphabetical order definitions for “Following another crop (FAC)” and “Not following another crop (NFAC)”;

c. Redesignate sections 2 through 12 as sections 3 through 13, respectively;

d. Add a new section 2;

e. Amend newly redesignated section 6 as follows:

i. In paragraph (a)(3)(i), remove the phrase “5(b)(1)” and add “6(b)(1)” in its place;

ii. In paragraph (b) introductory text, remove the phrase “5(a),” and add “6(a),” in its place;

iii. In paragraph (b)(1), remove the phrase “5(c)” and add “6(c)” in its place;

iv. In paragraph (b)(2)(i), remove the phrase “5(b)(2)” and add “6(b)(2)” in its place;

v. In paragraph (d) introductory text, remove the phrase “5(a)” and add “6(a)” in its place;

vi. In paragraph (e), remove the phrase “5(a)” and add “6(a)” in its place;

f. In newly redesignated section 9(h), remove the phrase “sections 8(a) through (g)” and add “sections 9(a) through (g)” in its place;

g. In newly redesignated section 10(a)(2), remove the phrase “9(a)(1)” and add

“10(a)(1)” in its place;

h. In newly redesignated section 11(c), remove the phrase “11(c)(1)(i)(E)” and add “12(c)(1)(i)(E)” in its place;

i. Amend newly redesignated section 12 as follows:

i. In paragraph (b)(2), remove the phrase “section 11(b)(1)(i) or 11(b)(1)(ii)” and add “section 12(b)(1)(i) or 12(b)(1)(ii)” in its place;

ii. In paragraph (b)(4), remove the phrase “section 11(b)(3)(i) or 11(b)(3)(ii)” and add “section 12(b)(3)(i) or 12(b)(3)(ii)” in its place;

iii. In paragraph (b)(5), remove the phrase “section 11(b)(4) from the result of section 11(b)(2)” and add “section 12(b)(4) from the result of section 12(b)(2)” in its place;

iv. In paragraph (b)(6) introductory text, remove the phrase “11(b)(5)” and add “12(b)(5)” in its place;

v. In paragraph (c)(1)(iii), remove the phrase “section 11(d)” and add “section 12(d)” in its place;

vi. In paragraph (d) introductory text, remove the phrase “11(e).” and add “12(e).” in its place;

vii. In paragraph (d)(4), remove the phrase “sections 11(d)(2) and (3)” and add “sections 12(d)(2) and (3)” in its place;

viii. In paragraph (e)(2), remove the phrase “7(b)” and add “8(b)” in its place.

The revision and additions read as follows:

§ 457.113 Coarse grains crop insurance provisions.

The Coarse Grains Crop Insurance Provisions for the 2020 and succeeding crop years are as follows:

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1. Definitions.

* * * * *

Following another crop (FAC). A cropping practice, as defined in the Special Provisions, in which a crop is planted following another crop.

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Not following another crop (NFAC). A cropping practice, as defined in the Special Provisions, in which a crop is planted not following a crop.

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2. Unit Division.

(a) In addition to the requirements of section 34(a) of the Basic Provisions, you may elect separate enterprise units for FAC or NFAC cropping practices if these cropping practices are allowed by the actuarial documents. If you elect enterprise units for these cropping practices, you may not elect enterprise or optional units by irrigation practices.

(1) You may elect one enterprise unit for all FAC cropping practices, all NFAC cropping practices, or separate enterprise units for both, unless otherwise specified in the Special Provisions. For example: you may choose an enterprise unit for all FAC acreage (soybeans irrigated practice and non-irrigated practice) and an enterprise unit for all NFAC acreage (soybeans irrigated practice and non-irrigated practice).

(2) You are only eligible if both FAC and NFAC cropping practices are allowed by the actuarial documents for each irrigation practice you use. If FAC and NFAC

cropping practices are only allowed for the non-irrigated practice, separate enterprise units for FAC and NFAC cropping practices are not available if you use the irrigated practice; but if you use only non-irrigated FAC and NFAC cropping practices, separate enterprise units for non-irrigated FAC and NFAC cropping practices are available.

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

(4) If you elected separate enterprise units for both cropping practices and we discover you do not qualify for an enterprise unit for one or the other cropping practice and such discovery is made:

(i) 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

(ii) 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.

(5) If you elected an enterprise unit on one cropping practice for FAC or NFAC and a different unit structure on the other cropping practice and we discover you do not qualify for an enterprise unit for the FAC or NFAC cropping practice and such discovery is made:

(i) 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

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

structure.

(b) Instead of establishing optional units as provided in section 34(c) of the Basic Provisions, if allowed by the actuarial documents, you may have separate optional units for the FAC cropping practice and the NFAC cropping practice. These optional units will be by section, section equivalent, or FSA FN and by the FAC cropping practice and the NFAC cropping practice. These optional units cannot be further divided by irrigated and non-irrigated acreage or by acreage insured under an organic farming practice.

(c) If FAC or NFAC cropping practices are only available by written agreement, separate enterprise units or optional units for FAC or NFAC cropping practices are not available.

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[FR Doc. 2019-25862 Filed: 11/26/2019 8:45 am; Publication Date: 11/27/2019]