



Billing Code 3410-08-P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563-AC66

[Docket ID FCIC-19-0007]

Common Crop Insurance Regulations; Canola and Rapeseed 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, Canola and Rapeseed Crop Insurance Provisions. The intended effect of this action is to clarify policy provisions and for consistency with other crop provisions that offer coverage on both fall and spring-planted acreage of the crop. The changes will be effective for the 2021 and succeeding crop years.

DATES: *Effective:* **[Insert date of publication in the *FEDERAL REGISTER*].**

Comments date: 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: 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-19-0007. 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) 926-7730, email Francie.Tolle@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

FCIC amends the Common Crop Insurance Regulations by revising 7 CFR 457.161 Canola and Rapeseed Crop Insurance Provisions to be effective for the 2021 and succeeding crop years.

The changes to 7 CFR 457.161 Canola and Rapeseed Crop Insurance Provisions are as follows:

1. Section 1 – FCIC is revising the definition of “harvest” to incorporate a new term, “pushed”, that is being added to section 1. The definition specifies that canola that is swathed prior to combining is not considered harvested. The revised definition says that canola that is swathed or pushed prior to combining is not considered harvested.

FCIC is adding the definition of “latest final planting date” to specify the final planting date for those counties that have only spring-planted acreage, only fall-planted acreage, or both spring-planted and fall-planted acreage.

FCIC is adding a definition of “prevented planting” to specify it is the same definition found in the Basic Provisions except that the references to “final planting date” contained in the definition in the Basic Provisions are replaced with the “latest final planting date.” This is consistent with other crop provisions that have both fall and spring planted acreage.

FCIC is adding a definition of “pushed.” Pushed is a method by which the stems of the canola are mechanically bent prior to maturity. When the stems are pushed, the stems and pods remain intact to ripen naturally while being protected from weather events. This process is not harmful to the canola and is completed prior to harvest.

2. Section 3 - FCIC is revising paragraphs (b)(1) and (b)(2) to replace the phrase “insured fall planted acreage” with the phrase “insurable fall planted acreage.” This subsection provides guidance regarding the date by which producers can make changes to their insurance coverage depending on whether they have insured fall planted acreage. The previous provisions stated that if producers have insured fall planted acreage, no changes can be made after the fall sales closing date. If producers do not have insured fall planted acreage, then they can make changes up until the spring sales closing. According to section 6 of the Crop Provisions, all the producer’s acreage of the crop in the county must be insured. Therefore, if the producer plants fall planted acreage and it is insurable, then it must be insured. FCIC received input from insurance companies that the phrase “insured fall planted acreage” indicates that if producers

planted fall planted acreage but did not insure it, then they have until the spring sales closing date to make changes to the insurance coverage on the spring-planted acreage. That is not the intent of the provisions. Therefore, FCIC is revising the language to indicate that if there is insurable fall planted acreage, then no changes may be made after the fall sales closing date.

3. Section 5 – FCIC is revising the table to make two changes: 1) to specify what the cancellation and termination dates are for each state and county where canola insurance is available; and 2) to specify the cancellation and termination dates in two separate columns.

The wording does not list specific states, but rather identifies the cancellation and termination dates based on whether a county has or does not have fall planted types listed in the actuarial documents (or all counties for Alabama and Georgia):

- a. Counties without fall-planted types on the actuarial documents have a cancellation and termination date of March 15; and
- b. Counties with fall-planted types on the actuarial documents have a cancellation and termination date of August 31.

The wording of this table caused confusion when insured producers and their insurance providers were seeking written agreements in counties where canola and rapeseed crop insurance is not available (because the county does not appear in the actuarial documents). A written agreement provides insurance for insurable crops when coverage or rates are currently unavailable in the county, or is used to modify existing terms and conditions in the crop insurance policy when specifically permitted by the policy. Section 18(e)(2)(ii) of the Common Crop Insurance Policy, Basic Provisions

(Basic Provisions) had specified that written agreements must be provided on or before the cancellation date to insure a crop in a county that does not have actuarial documents for the crop (If the Crop Provisions do not provide a cancellation date for the county, the cancellation date for other insurable crops in the same State that have similar final planting and harvesting dates will be applicable). According to the Canola and Rapeseed Crop Provisions and section 18 of the Basic Provisions, the written agreement must be submitted by March 15 for counties without fall-planted types on the actuarial documents and August 31 for counties with fall-planted types on the actuarial documents.

In an example that was brought to our attention, an insured producer planted fall canola in a county for which there is no canola and rapeseed crop insurance coverage. This county falls within the category of not having fall-planted types listed on the actuarial documents; therefore, the deadline to submit the written agreement would be the March 15th cancellation date. However, the insured producer planted the crop months prior to the deadline and may be able to adversely select against insurance due to information the insured has about their crop prior to the attachment of insurance. With the revised changes to the table, the deadline for the written agreement in this county would default to the provisions in section 18(e)(2)(ii) of the Basic Provisions: (If the Crop Provisions do not provide a cancellation date for the county, the cancellation date for other insurable crops in the same State that have similar final planting and harvesting dates will be applicable). In this example, according to section 18 of the Basic Provisions, the cancellation date would have been more-appropriately aligned with the counties in the states with an August 31st cancellation date.

In Idaho, there are six counties that have only spring-planted types of canola. In the remaining counties in Idaho, and in all counties in Oregon and Washington, there are fall and spring-planted types. The six counties in Idaho are now specifically named in the table and fall within the cancellation and termination dates of March 15th. The remaining counties in Idaho and all counties in Oregon and Washington have a Special Provisions statement that changes the termination date from August 31 to October 31. By adding a separate column for the termination dates in the table, FCIC can incorporate the termination date addressed in the Special Provisions statement. The Special Provisions statement will no longer be needed.

4. Section 10 – FCIC is revising paragraph (d) for consistency with other crops that have both fall and spring planted acreage. The provisions state that the production guarantee, premium, projected and harvest prices and replant payments will be based on the crop type that is replanted and insured. The provisions do not address situations when a damaged winter crop type is replanted to a spring crop type, but retains insurance based on the winter crop type; and when the replanted acreage is planted at a reduced seeding rate into a partially-damaged stand of the insured crop. These situations are addressed in other crop provisions that have both fall and spring planted acreage; therefore, these situations are added to these crop provisions for consistency.

5. Section 14 - FCIC is adding a sentence at the beginning to clarify in counties for which the Special Provisions designate a spring final planting date, the prevented planting production guarantee will be based on the approved yield for spring-planted acreage of the insured crop. This change is consistent with other crop provisions that have both fall and spring planted acreage.

Effective Date and Notice and Comment

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to contracts. This rule governs contracts for crop insurance policies and therefore falls within that exemption.

For major rules, the Congressional Review Act requires a delay the effective date of 60 days after publication to allow for Congressional review. This rule is not a major rule under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, this final rule is effective **[Insert date of publication in the *FEDERAL REGISTER*]**. Although not required by APA or any other law, FCIC has chosen to request comments on this rule.

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. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant. 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 and analysis of the costs and benefits is not required under either Executive Order 12866 or 13563.

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. In a general response to the requirements of Executive Order 13777, USDA created a Regulatory Reform Task Force, and USDA agencies were directed to remove barriers, reduce burdens, and provide better customer service both as part of the regulatory reform of existing regulations and as an ongoing approach. FCIC reviewed this regulation and made changes to improve any provision that was determined to be outdated, unnecessary, or ineffective.

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 as follows:

PART 457 - COMMON CROP INSURANCE REGULATIONS

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

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

2. In §457.161:

a. Revise the introductory text;

b. Amend section 1 by:

i. Revising the definition of “Harvest”; and

ii. Adding in alphabetical order the definitions of “Latest final planting date”,

“Prevented planting”, and “Pushed”;

c. Revise section 3(b);

d. Revise section 5;

e. Revise section 10(d); and

f. Revise section 14.

The revisions and additions read as follows:

§ 457.161 Canola and Rapeseed crop insurance provisions.

The Canola and Rapeseed Crop Insurance Provisions for the 2021 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Harvest. Combining or threshing for seed. A crop that is swathed or pushed prior to combining is not considered harvested.

Latest final planting date. (a) The final planting date for spring-planted acreage in all counties for which the Special Provisions designate a final planting date for spring-planted acreage only;

(b) The final planting date for fall-planted acreage in all counties for which the Special Provisions designate a final planting date for fall-planted acreage only; or

(c) The final planting date for spring-planted acreage in all counties for which the Special Provisions designate final planting dates for both spring-planted and fall-planted acreage.

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Prevented planting. As defined in the Basic Provisions, except that the references to “final planting date” contained in the definition in the Basic Provisions are replaced with the “latest final planting date.”

* * * * *

Pushed. Mechanical bending of the stem prior to maturity that leaves the stems and pods intact to ripen naturally while being protected from weather events.

* * * * *

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

* * * * *

(b) * * *

(1) If you do not have any insurable fall planted acreage of the insured crop, you may change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, until the spring sales closing date; or

(2) If you have any insurable fall planted acreage of the insured crop, you may not change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, after the fall sales closing date.

* * * * *

5. Cancellation and Termination Dates.

The cancellation and termination dates are as follows, unless otherwise specified in the actuarial documents:

State and County	Cancellation Date	Termination Date
All counties in Alabama and Georgia	September 30	September 30
Blaine, Bonneville, Fremont, Jefferson, Madison, and Teton counties Idaho; and all counties in Minnesota, Montana, and North Dakota	March 15	March 15
All counties in Illinois, Indiana, Kansas, Kentucky, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia	August 31	August 31
All other Idaho counties, Oregon, and Washington	August 31	October 31

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10. Replanting Payment.

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(d) Replanting payments will be calculated using your projected price and your production guarantee for the crop type that is replanted and insured.

(1) For example, if damaged Spring Oleic Canola is replanted to Spring High Erucic Rapeseed, your projected price applicable to Spring High Erucic Rapeseed will be used to calculate any replanting payment that may be due. A revised acreage report will be required to reflect the replanted type.

(2) Notwithstanding section 10(d)(1), the following will have a replanting payment based on your production guarantee and your projected price for the crop type initially planted:

(i) Any damaged winter crop type that is replanted to a spring crop type, but that retains insurance based on the winter crop type; and

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

* * * * *

14. Prevented Planting.

In counties for which the Special Provisions designate a spring final planting date, your prevented planting production guarantee will be based on your approved yield for spring-planted acreage of the insured crop. Your prevented planting coverage will be a percentage specified in the actuarial documents of your production guarantee for timely planted acreage. If you have additional coverage and pay an additional premium, you

may increase your prevented planting coverage if such additional coverage is specified in the actuarial documents.

Martin Barbre,
Manager,
Federal Crop Insurance Corporation.

[FR Doc. 2020-10240 Filed: 5/27/2020 8:45 am; Publication Date: 5/28/2020]