



DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 407 and 457

RIN 0563-AC70

[Docket ID FCIC-20-0008]

Area Risk Protection Insurance Regulations; Common Crop Insurance Policy Basic Provisions; Common Crop Insurance Regulations, Sunflower Seed Crop Insurance Provisions; and Common Crop Insurance Regulations, Dry Pea 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 Area Risk Protection Insurance (ARPI) Regulations; Common Crop Insurance Policy (CCIP), Basic Provisions; Common Crop Insurance Regulations, Sunflower Seed Crop Insurance Provisions (Sunflower Seed Crop Provisions); and Common Crop Insurance Regulations, Dry Pea Crop Insurance Provisions (Dry Pea Crop Provisions). The intended effect of this action is to improve prevented planting provisions, revise beginning farmer or rancher and veteran farmer or rancher provisions and clarify arbitration provisions. In addition to these changes, FCIC is making clarifications to the Dry Pea Crop Provisions and revising the cancellation and termination dates in the Sunflower Seed Crop Provisions. The changes to the policy made in this rule are applicable for the 2021 and succeeding crop years for crops with a contract change date on or after November 30, 2020. For all other crops, the changes to the policy made in this rule are applicable for the 2022 and succeeding crop years.

DATES: *Effective Date:* This final rule is effective November 30, 2020.

Comment Date: We will consider comments that we receive by the 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. You may submit comments by either of the following methods, although FCIC prefers that you submit comments electronically through the Federal eRulemaking Portal:

- Federal eRulemaking Portal: Go to <https://www.regulations.gov/docket?D=FCIC-20-0008> and follow the instructions for submitting comments.
- Mail: Director, Product Administration and Standards Division, Risk Management Agency, US Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205. In your comment, specify docket ID FCIC-20-0008.

Comments will be available for viewing online at www.regulations.gov. Comments received will be posted without change, including any personal information provided. In addition, comments will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926-7829; or email francie.tolle@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. The Risk Management Agency (RMA) administers the FCIC regulations. FCIC is committed to increasing the availability and effectiveness of Federal

crop insurance as a risk management tool. Approved Insurance Providers (AIPs) 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 risk 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 ARPI Basic Provisions, the CCIP Basic Provisions, the Sunflower Seed Crop Provisions, and the Dry Pea Crop Provisions. The changes to the policy made in this rule are applicable for the 2021 and succeeding crop years for crops with a contract change date on or after November 30, 2020. For all other crops the changes to the policy made in this rule are applicable for the 2022 and succeeding crop years.

ARPI Basic Provisions

The changes to the ARPI Basic Provisions (7 CFR part 407) are:

FCIC is revising sections 23(d)(1), (2), and (5)(i) of the ARPI Basic Provisions to clarify the responsibility is on the producer to start dispute resolution through arbitration when the producer disagrees with an AIP determination. There has been confusion that this provision could require both the producer and the AIP to start arbitration prior to litigation.

FCIC is also making non-substantive changes to the regulation. Examples include making references consistent, making grammatical corrections, and clarifying word

changes. These revisions are editorial in nature and are intended to provide clarity to the regulation.

CCIP Basic Provisions

The changes to the CCIP Basic Provisions (7 CFR part 457.8) are:

FCIC is revising section 3(l) to allow a producer that qualifies as a beginning farmer or rancher (BFR), or veteran farmer or rancher (VFR), to receive a yield based on the actual production history (APH) of the previous producer of the crop or livestock on the acreage, if the BFR or VFR was previously involved in the decision-making or physical activities of the crop or livestock on any farm. Previously, the provisions specified that the APH history of the acreage could only be used if the BFR or VFR was previously involved on the specific acreage acquired.

Prevented planting is a feature of many crop insurance plans that provides a partial payment to cover certain pre-plant costs for a crop that was prevented from being planted due to an insurable cause of loss. After unprecedented prevented planting in 2019, FCIC examined how to improve the prevented planting coverage within a policy. FCIC held discussions with stakeholders via a Prevented Planting Taskforce that included FCIC and industry representatives. The taskforce reviewed the previous policy, discussed impacts, and explored policy improvements. The goal of the taskforce was to improve coverage for producers when needed most, but not replace market incentives with government incentives, while maintaining program integrity. The taskforce identified several issues that are extremely uncommon but could occur in years when prevented planting is catastrophic and widespread. The following lists the changes in section 17 of the CCIP Basic Provisions:

FCIC is revising section 17(e)(1)(i) to add a reference to the new provisions in section 17(e)(1)(ii)(E).

FCIC is revising section 17(e)(1)(ii) to allow the use of an intended acreage report

for the first 2 consecutive crop years the producer farms in a new county, instead of only the first year.

The CCIP Basic Provisions define “intended acreage report” as a report of the acreage a producer intends to plant, by crop, for the current crop year and used solely for the purpose of establishing eligible prevented planting acreage, as required in section 17. Further, section 17 states that if the insured did not plant any crop in the county for which prevented planting coverage was available in the 4 most recent crop years, the producer must complete and submit an intended acreage report to the AIP by the sales closing date, or within 10 days of land acquisition after the sales closing date, to establish the potential maximum number of eligible prevented planting acres.

Based on the previous provision, when a producer adds new land in a new county, the producer could only indicate intended acres for the first year. An issue arises in the second year if the producer, following good farming practices for crop rotation, intends to plant a different crop. Because the producer only has 1 year of history in the county, the producer is limited in the amount of acreage (and type of crop) that can be claimed for prevented planting purposes.

For example, a producer adds land in a new county. The first year, the producer files an intended acreage report for wheat and plants the entire acreage to wheat. The second year, the producer intends to plant corn, but is prevented from planting due to an insurable cause of loss. Under the previous regulations, the producer would not have any eligible prevented planting acreage for corn because they only have eligible wheat acres based on their first year’s history in their APH database. The producer would receive a prevented planting payment based on the eligible wheat acres. This would result in a different prevented planting payment than the intended corn crop, which may not be reflective of their pre-plant costs.

As specified above, FCIC will revise section 17(e)(1)(ii) to allow the producer to

submit an intended acreage report for the first 2 consecutive crop years the producer farms in a new county. In the above scenario, this will allow the producer to receive a prevented planting payment based on the acres contained on the intended acreage report for the second year and the payment will be based on corn. This change acknowledges rotational practices are a good farming practice. It will also result in more accurate prevented planting payments because they will be based on the producer's actual intended plantings for that year.

FCIC is revising section 17(e)(2) to provide that if following a failed first insured crop, an uninsured second crop is planted on the same acres within the same crop year, the planted acres of the uninsured crop will not be subtracted from the eligible prevented planting acreage.

Section 17(e)(2) of the CCIP Basic Provisions previously stated, "Any eligible acreage determined in accordance with section 17(e)(1) will be reduced by subtracting the number of acres of the crop (insured and uninsured) that are timely and late planted, including acreage specified in section 16(b)." If following a failed first insured crop, the producer plants an uninsured second crop on the same acres within the same crop year; acres from both plantings (first insured crop and second uninsured crop) are subtracted from the eligible prevented planting acreage, even though it is the same physical land subtracted twice. On occasion, this can lead to the producer having acres that do not receive a prevented planting payment due to inadequate eligible prevented planting acres. This occurrence is extremely rare, but it affected a small number of producers in the 2019 crop year. To illustrate the rarity of these circumstances, for the reduction to apply under the previous regulation, all of the following must have been true for the producer:

- 1) Planted a first crop that fails,
- 2) Planted a second crop on the same acreage following the failed crop, and
- 3) Exhausted eligible prevented planting acres available to pay a claim.

The underlying concern is that the same physical acres are subtracted twice from overall prevented planting eligible acres. To illustrate the inequity of the double subtraction, the following is a simple example of the previous provisions. A producer has 100 total acres of cropland (fields A & B) and intends to plant all 100 acres to corn. Based on production history, the producer also has 100 prevented planting eligible acres (50 for corn and 50 for soybeans). The producer plants 50 acres of corn in field A, resulting in 50 corn acres subtracted from eligible prevented planting acres. At this point, there are 50 soybean eligible prevented planting acres and zero corn eligible prevented planting acres. A flood destroys the 50 acres of corn in field A, the AIP determines it is not practical to replant, and the producer does not have to replant to retain insurance. The producer files a claim for indemnity for the crop loss and receives an indemnity for the field A 50 destroyed corn acres. Later, the producer plants the 50 acres in field A to soybeans that are not insured. The second planting of field A (uninsured soybeans) would result in the subtraction of 50 acres of eligible prevented planting acres of soybeans. This equates to 100 eligible prevented planting acres being subtracted from the same 50 physical acres (field A); leaving 0 eligible prevented planting acres remaining for the 50 physical acres prevented from planting in field B that remains unplanted.

FCIC is removing the double subtraction on field A by no longer subtracting the uninsured second planting from eligible prevented planting acres. This would allow a prevented planting payment on field B, if those acres were unable to be planted, and if other policy provisions for prevented planting claims are met.

To illustrate the inequity of the previous provisions in a different way, see the following scenarios below. These scenarios show the disparate treatment of two producers in the same situation, except that their 100 prevented planting eligible acres are for different crops. Scenario 1: Producer has 100 acres of corn prevented planting eligible acres and 0 acres of soybean prevented planting eligibility. There is no impact on

prevented planting eligibility for field B. Since there are 0 acres of soybean eligible prevented planting acres, the 50 planted acres of uninsured soybeans (field A) would not be subtracted from prevented planting eligibility. In this case, the producer would remain eligible for a prevented planting payment on the 50 acres of corn (field B) that were prevented from being planted.

Crop	Eligible Acres	Planted (insured & uninsured)	Prevented from Planting	Available for Payment
Corn	100	50	50	50
Soybeans	0	50	0	0

Scenario 2: A producer has 50 acres of prevented planting corn eligibility and 50 acres of prevented planting soybean eligibility; prevented planting eligibility is eliminated on field B. Previously, prevented planting eligible acres are reduced by planted acres of insured and uninsured crops, and the 50 acres of planted and then failed corn in field A would exhaust corn prevented planting eligibility. The planting of 50 acres of uninsured soybeans in field A would exhaust the soybean prevented planting eligibility as well. There would be no remaining eligible prevented planting acres for the 50 acres of corn prevented from being planted in field B.

Crop	Eligible Acres	Planted (insured & uninsured)	Prevented from Planting	Available for Payment
Corn	50	50	50	0
Soybeans	50	50	0	0

Regulation change: For this example, the change to the regulation results in Scenario 2 having the same result as Scenario 1 with 50 eligible acres of prevented planting soybeans which can be used to make the corn payment claimed. Changing this to not subtract the uninsured acres of soybeans planted on field A will be a more

equitable treatment of producers under catastrophic loss conditions.

Crop	Eligible Acres	Planted (insured)	Planted (uninsured)	Prevented from Planting	Available for Payment
Corn	50	50	0	50	0
Soybeans	50	0	50	0	50

FCIC is revising section 17(f)(1) to provide an exception if the producer can prove intent to plant based on inputs applied or available to apply, rotation, etc., the producer could then be paid a prevented planting payment based on their intended crop, even if it's different than the crop that was planted in the field.

Previously, section 17(f)(1) of the CCIP Basic Provisions stated, "Any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop, type, and practice that is planted in the field."

For example, a producer intends to plant a 100-acre field to corn, but it is too wet prior to the final plant date. Prior to the end of the late planting period for corn, she begins planting the field to soybeans. She planted 20 acres of soybeans before getting rained out. The producer submits a claim for the remaining 80 acres as prevented planting corn. The producer does not have history of producing both corn and soybeans in the same field in the same crop year. Prevented planting is common to the area and the producer has adequate corn prevented planting eligible acres to cover the 80 acres prevented from planting.

As a result, the producer has receipts for seed and other inputs to prove intent to plant corn. She expects to be paid prevented planting for corn at a higher per acre amount on 80 acres. However, because she planted 20 acres of soybeans in the same field as her prevented planting claim, section 17(f)(1) requires the 80 acres to be considered soybeans and be paid at a lower per acre amount. The previous provision may

have incentivized the producer to not plant soybeans in order to maintain the higher prevented planting payment on corn. Revising the provision could reduce prevented planting payments when this situation arises in the future.

With the revisions to section 17(f)(1) to provide an exception if the producer can prove intent to plant by inputs applied or available to apply, rotation, etc., in the example, the producer could provide documentation that fertilizer application, seed purchases, historical crop rotation patterns, etc. were consistent with intentions to plant corn. The producer could then be paid using available corn prevented planting acres, rather than having to consider the prevented planting acres soybeans.

FCIC is adding a new section 17(f)(5)(iii) to clarify prevented planting coverage will not be provided if the act of haying or grazing a cover crop contributed to the acreage being prevented from planting or the cover crop was otherwise harvested prior to the end of the late planting period. In a previous final rule, section 17(f)(5)(ii) was revised to remove the words “or cover” following the word “volunteer,”. In addition, FCIC removed a Special Provisions statement that read: “In lieu of Section 17(f)(5)(ii) of the Common Crop Insurance Basic Provisions, haying or grazing a cover crop will not impact eligibility for a prevented planting payment provided such action did not contribute to the acreage being prevented from planting.” FCIC received comments regarding concerns this change could lead to misunderstanding and unforeseen consequences. Some may interpret this to mean that a cover crop could be hayed or grazed even if the act contributed to the acreage being prevented from planting or that a cover crop could be otherwise harvested prior to the end of the late planting period. Therefore, the additional language incorporates the previous Special Provisions statements.

FCIC is revising section 17(f)(8) to implement the “1 in 4” requirement nationwide (beyond just the Prairie Pothole National Priority Area discussed below).

Acreage must be physically available for planting to be eligible for a prevented planting payment. The “1 in 4” requirement is contained in a Special Provisions statement and is an extension of the CCIP Basic Provisions that the acreage must be physically available for planting. The “1 in 4” requirement states that the acreage must have been planted to a crop, insured, and harvested (or if not harvested, adjusted for claim purposes due to an insurable cause of loss) in at least 1 out of the previous 4 crop years.

The “1 in 4” requirement has been in place since the 2012 crop year in the Prairie Pothole National Priority Area, which encompasses the states of Iowa, Minnesota, Montana, North Dakota, and South Dakota. The requirement in that area addressed prevented planting payments that were repeatedly made on acreage not physically available for planting (that is, acreage that is perpetually wet, such as potholes). Adding the language to the CCIP Basic Provisions for national applicability will allow for equal treatment for all areas of the United States and further mitigate waste, fraud and abuse for all acreage that is not physically available for planting to a crop to be insured. The Special Provisions statement had a requirement that the acreage must have been harvested, or if not harvested, was adjusted for claim purposes under the authority of the Act due to an insured cause of loss (other than a cause of loss related to flood or excess moisture). FCIC identified perpetual drought conditions as a vulnerability and received requests to expand the “1 in 4” requirement in previous years. Therefore, FCIC added that in order to meet the “1 in 4” requirement, claim purposes could not be “due to drought” to address prevented planting payments that were repeatedly made on acreage not physically available for planting on perpetually dry acreage when a crop was not harvested. This incorporates provisions from a Special Provisions statement and as a result, the Special Provisions statement is removed.

FCIC is revising section 20(a) and 20(b)(1) to clarify the responsibility is on the producer to start dispute resolution through arbitration when the producer disagrees with

an AIP determination. The AIP is the only party that makes a determination so the producer is the only party to the contract that could disagree with the determination the AIP made. There has been confusion that this provision could require both the producer and the AIP to start arbitration prior to litigation.

FCIC is also making non-substantive changes to the regulation. Examples include making references consistent, making grammatical corrections, and clarifying word changes. These revisions are editorial in nature and are intended to provide clarity to the regulation.

Sunflower Seed Crop Insurance Provisions

FCIC is revising section 4 of the Sunflower Seed Crop Insurance Provisions (7 CFR part 457.108) to change the cancellation and termination dates in 4 Texas counties from March 15 to January 31 to align with the January 31 sales closing date in these counties. This change is being made after a data mining exercise where FCIC identified that the sales closing date and cancellation/termination date did not match in these 4 counties.

FCIC is also making non-substantive changes to the regulation, including removing commas and correcting a spelling error.

Dry Pea Crop Insurance Provisions

FCIC is making non-substantive changes in the Dry Pea Crop Insurance Provisions (7 CFR part 457.140). Examples include making technical corrections and clarifying language changes. Changes were made to the Dry Pea Crop Insurance Provisions in a Final rule with request for comments, published in the Federal Register on June 26, 2020 (85 FR 38276). In reviewing the changes made, FCIC found some of the changes described in that rule were not made in the Code of Federal Regulations. Additionally, FCIC received comments to that final rule and is making revisions that are editorial in nature are intended to provide clarity to the regulation. There are other

comments that FCIC received in response to the final rule published June 26, 2020, that FCIC is continuing to review.

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

For major rules, the Congressional Review Act requires a delay to 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 November 30, 2020.

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 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 savings from deregulatory actions. 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.

RMA 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 to have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, RMA 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 on 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

7 CFR Part 407

Acreage allotments, Administrative practice and procedure, Barley, Corn, Cotton, Crop insurance, Peanuts, Reporting and recordkeeping requirements, Sorghum, Soybeans, Wheat.

7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

Final Rule

For the reasons discussed above, FCIC amends 7 CFR parts 407 and 457, effective for the 2021 and succeeding crop years for crops with a contract change date on or after November 30, 2020, and for the 2022 and succeeding crop years for all other crops, as follows:

PART 407— AREA RISK PROTECTION INSURANCE REGULATIONS

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

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

2. Amend § 407.9 as follows:

a. In section 1:

i. In the definition of “Code of Federal Regulations (CFR)”, remove the phrase

“<http://ecfr.gpoaccess.gov/>” and add “<https://www.ecfr.gov/>” in its place;

ii. In the definition of “total premium”, remove the phrase “section 7(e)(1)” and add “section 7(d)(1)” in its place;

b. In section 2:

i. In paragraph (k)(1)(ii), remove the phrase “sections (k)(2)(i)(A), (B) or (D)” and add “sections 2(k)(2)(i)(A), (B), or (D)” in its place; and

ii. In paragraph (k)(2)(ii), add a comma following the phrase “2(k)(2)(i)(A), (B)”;
and

c. In section 13, revise paragraph (d)(1);

d. In section 23 [Reinsured policies], revise paragraph (d)(1) introductory text, (d)(2), and (d)(5)(i).

The revisions read as follows:

§ 407.9 Area risk protection insurance policy.

* * * * *

13. Indemnity and Premium Limitations.

* * * * *

(d) * * *

(1) If the records you provided are from acreage you double cropped in at least two of the last four crop years, you may apply your history of double cropping to any acreage of the insured crop in the county (for example you have 100 cropland acres in the county and have double cropped wheat and soybeans on all 100 acres in the county and you acquire an additional 100 acres in the county, you can apply your history of 100 double cropped acres to any of the 200 acres in the county); or

* * * * *

[Reinsured policies]

23. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and

Judicial Review.

* * * * *

(d) * * *

(1) If you do not agree with any determination not covered by sections 23(a) and (c), the disagreement may be resolved through mediation. To resolve any dispute through mediation, you and we must both:

* * * * *

(2) If the disagreement cannot be resolved through mediation, or you and we do not agree to mediation, you must timely seek resolution through arbitration in accordance with the rules of the American Arbitration Association (AAA), unless otherwise stated in this subsection or rules are established by FCIC for this purpose. Any mediator or arbitrator with a familial, financial or other business relationship to you or us, or our agent or loss adjuster, is disqualified from hearing the dispute.

* * * * *

(5) * * *

(i) You must initiate arbitration proceedings within 1 year of the date we denied your claim or rendered the determination with which you disagree, whichever is later;

* * * * *

PART 457 - COMMON CROP INSURANCE REGULATIONS

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

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

4. Amend § 457.8 as follows:

a. Under the heading “FCIC Policies”, in the first paragraph, remove the phrase “on the RMA's website” and add “on RMA’s website” in its place;

b. Under the heading “Reinsured Policies”, in the first paragraph, remove the phrase “bulletins) published on the RMA's website” and add “bulletins), published on

RMA's website” in its place;

c. In section 1:

i. Revise the definition of “approved yield”;

ii. In the definition of “Code of Federal Regulations (CFR)”, remove the website address of “<http://www.access.gpo.gov/>” and add “<https://www.ecfr.gov/>” in its place;

iii. In the definition of “RMA’s website”, add the word “or” following the website address of “www.rma.usda.gov”;

iv. Revise the definition of “second crop”;

d. In section 3, in paragraph (l)(1), remove the phrase “acreage you were previously involved with” and add “new acreage” in its place;

e. Revise section 15(i)(1);

f. In section 17:

i. In section 17(e)(1)(i), add the phrase “, unless you qualify for the exception in section 17(e)(1)(ii)(E)” at the end of the paragraph before the colon;

ii. In section 17(e)(1)(i)(B)(3), remove the phrase “you lease the previous year and continue to leased” and add “you leased the previous year and continue to lease” in its place;

iii. Add paragraphs (e)(1)(ii)(E) and (F);

iv. Revise paragraph (e)(2);

v. In paragraph (f)(1) introductory text, remove the phrase “to be”;

vi. In paragraph (f)(1)(ii), remove the word “or” at the end of the paragraph;

vii. Revise paragraph (f)(1)(iii);

viii. Add paragraph (f)(1)(iv);

ix. Revise paragraph (f)(4)(ii) introductory text and (f)(4)(ii)(A);

x. Add paragraph (f)(5)(iii);

xi. Add paragraphs (f)(8)(i) and (ii);

g. In section 18, in paragraph (f)(1)(iii), add a comma following the phrase “for the crop”; and

h. In section 20 [For reinsured policies]:

i. Revise paragraph (a) introductory text;

ii. Revise paragraph (b)(1);

The revisions and additions read in part as follows:

§ 457.8 The application and policy.

* * * * *

Common Crop Insurance Policy

* * * * *

1. Definitions.

* * * * *

Approved yield. The actual production history (APH) yield, calculated and approved by the verifier, used to determine the production guarantee by summing the yearly actual, assigned, adjusted or unadjusted transitional yields and dividing the sum by the number of yields contained in the database, which will always contain at least four yields. The database may contain up to 10 consecutive crop years of actual or assigned yields. The approved yield may have yield options elected under section 36, revisions according to section 3, or other limitations according to FCIC procedures applied when calculating the approved yield.

* * * * *

Second crop. With respect to a single crop year, the next occurrence of planting any agricultural commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first insured crop, except the term does not include a replanted crop. If following a first insured crop, a cover crop that is planted on the same acreage and harvested for grain or

seed is considered a second crop. A cover crop that is covered by FSA's noninsured crop disaster assistance program (NAP) or receives other USDA benefits associated with forage crops will be considered a second crop. A crop meeting the conditions stated in this definition is considered to be a second crop regardless of whether or not it is insured.

* * * * *

15. Production Included in Determining an Indemnity and Payment Reductions.

* * * * *

(i) * * *

(1) If the records you provided are from acreage you double cropped in at least two of the last four crop years, you may apply your history of double cropping to any acreage of the insured crop in the county (for example, you have 100 cropland acres in the county and have double cropped wheat and soybeans on all 100 acres in the county and you acquire an additional 100 acres in the county, you can apply your history of 100 double cropped acres to any of the 200 acres in the county); or

* * * * *

17. Prevented Planting.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(E) If you were eligible to file an intended acreage report the first crop year, you may file an intended acreage report for the second crop year. If you choose to file an intended acreage report for the second crop year, the number of eligible acres will be the number of acres specified on your intended acreage report and not the number of eligible acres determined in accordance with section 17(e)(1)(i).

(F) You cannot file an intended acreage report more than 2 consecutive crop

years.

* * * * *

(2) Any eligible acreage determined in accordance with section 17(e)(1) will be reduced by subtracting the number of acres of the crop (insured and uninsured) that are timely and late planted, including acreage specified in section 16(b), unless your first insured crop failed and you plant an uninsured second crop on the same acres within the same crop year, the acres for the uninsured second crop will not be subtracted from the eligible prevented planting acreage.

* * * * *

(f) * * *

(1) * * *

(iii) The insured crop planted in the field would not have been planted on the remaining prevented planting acreage (*e.g.*, where due to Crop Provisions, Special Provisions, or processor contract specifications rotation requirements would not be met, or you already planted the total number of acres specified in the processor contract); or

(iv) The acreage that was prevented from being planted constitutes at least 20 acres or 20 percent of the total insurable acreage in the field and you provide proof that you intended to plant another crop or crop type on the acreage (including, but not limited to inputs purchased, applied or available to apply, or that acreage was part of a crop rotation).

* * * * *

(4) * * *

(ii) For the insured crop that is prevented from being planted, you provide records acceptable to us of acreage and production that show (your double cropping history is limited to the highest number of acres double cropped within the applicable four-year period unless your double cropping history is determined in accordance with section

15(i)(3)):

(A) You have double cropped acreage in at least 2 of the last 4 crop years in which the insured crop that is prevented from being planted in the current crop year was grown (you may apply your history of double cropping to any acreage of the insured crop in the county (for example, you have 100 cropland acres in the county and have double cropped wheat and soybeans on all 100 acres and you acquire an additional 100 acres in the county, you can apply your history of 100 double cropped acres to any of the 200 acres in the county)); or

* * * * *

(5) * * *

(iii) The act of haying or grazing a cover crop contributed to the acreage being prevented from being planted or the cover crop was otherwise harvested prior to the end of the late planting period.

* * * * *

(8) * * *

(i) In order for acreage to be considered physically available for planting, the acreage must:

(A) Be free of trees, rocky outcroppings, or other factors that prevent proper and timely preparation of the seedbed for planting and harvest of the crop in the crop year;

(B) Not be enrolled in a USDA program that removes the acreage from crop production;

(C) Not be planted to a perennial crop (i.e., trees or vines either planted on the acreage, or not removed from the acreage in a proper or timely manner, thus preventing the timely planting of a crop for the crop year);

(D) Not have pasture, rangeland or forage in place (see section 17(f)(6));

(E) In at least 1 of the 4 most recent crop years immediately preceding the current

crop year, have been planted to a crop:

(1) Using recognized good farming practices;

(2) Insured under the authority of the Act; and

(3) That was harvested, or if not harvested, was adjusted for claim purposes under the authority of the Act due to an insured cause of loss (other than a cause of loss related to flood, excess moisture, drought, or other cause of loss specified in the Special Provisions).

(ii) Once any acreage does not satisfy the criteria set-forth in section 17(f)(8)(i)(E)(1), (2), and (3) in 1 of the 4 most recent crop years immediately preceding the current crop year, such acreage will be considered physically unavailable for planting until the acreage has been planted to a crop in accordance with 17(f)(8)(i)(E)(1), (2), and (3) for 2 consecutive crop years.

* * * * *

[For Reinsured Policies]

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review.

(a) If you do not agree with any determination made by us except those specified in section 20(d) or (e), the disagreement may be resolved through mediation in accordance with section 20(g). If the disagreement cannot be resolved through mediation, or you and we do not agree to mediation, you must timely seek resolution through arbitration in accordance with the rules of the American Arbitration Association (AAA), except as provided in sections 20(c) and (f), and unless rules are established by FCIC for this purpose. Any mediator or arbitrator with a familial, financial or other business relationship to you or us, or our agent or loss adjuster, is disqualified from hearing the dispute.

* * * * *

(b) * * *

(1) You must initiate arbitration proceedings within 1 year of the date we denied your claim or rendered the determination with which you disagree, whichever is later;

* * * * *

5. Amend § 457.108 as follows:

a. In the introductory text, remove the year “2017” and add “2021” in its place;

b. In section 1, in the definition of “planted acreage”, remove the word “ini” and add “in” in its place;

c. Revise section 4;

d. In section 11:

i. In paragraph (c)(iv)(A), remove the comma following the phrase “in locations acceptable to us”;

ii. In paragraph (d)(3)(i), remove the comma following the phrase “or conditions”.

The revision reads as follows:

§ 457.108 Sunflower seed crop insurance provisions.

* * * * *

4. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation and termination dates
Hidalgo, Jim Wells, Nueces, and Starr Counties, Texas	January 31.
All other Texas counties and all other States	March 15.

* * * * *

6. Amend § 457.140 as follows

a. In section 1, in the definition of “price election”, remove the phrase “the

provisions of”;

b. In section 2, remove the phrase “FSA farm serial number” and add the phrase “FSA farm number” in its place;

c. In section 3, in paragraph (b)(1), remove the word “documentsdo” and add “documents do” in its place;

d. In section 7:

i. In paragraph (a)(2)(ii), remove the word “and” at the end of the paragraph;

ii. Revise paragraphs (a)(3) and (a)(4);

iii. In paragraph (c), remove the phrase “the sales closing date” and add the phrase “its sales closing date” in its place;

e. In section 8:

i. In paragraph (c) introductory text, remove the “al” at the end of the paragraph;

ii. In paragraph (c)(2), remove the phrase “to be”;

iii. In paragraph (d), remove the word “fall” and add “fall-planted” in its place;

f. In section 9:

i. Remove one of the duplicate section 9 headings “Insurance Period”;

ii. In paragraph (a), remove the phrase “fall and spring-planted types” and add “fall-planted and spring-planted types” in its place;

e. In section 11, in paragraph (a)(6), remove the phrase “fall-planted dry pea acreage” and add “fall-planted types” in its place;

h. In section 13:

i. In Example 2, paragraph (3), remove the comma and add a semi-colon in its place and add a semi-colon at the end of the paragraph;

ii. In Example 2, paragraph (6), remove the number “1.0” and add “1.00” in its place;

iii. In Example 2, paragraph (7), remove the comma and add a semi-colon in its

place;

iv. In paragraph (e) introductory text, remove the phrase “If applying a moisture adjustment, it” and add “Any adjustment for moisture” in its place;

i. In section 14, in paragraph (a), remove the word “fall” and add “fall-planted” in its place;

j. In section 15:

i. In paragraph (d), remove the phrase “both a both fall and spring-planted types” and add “both fall-planted and spring-planted types” in its place; and

ii. In paragraph (e)(4), remove the phrase “insured fall-planted acreage” and add “insured fall-planted acreage” in its place.

The revision read as follows:

§ 457.108 Dry pea crop insurance provisions.

* * * * *

7. Insured Crop.

(a) * * *

(3) That are not planted to plow down, graze, harvest as hay, or otherwise not planted for harvest as a mature dry pea crop; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop;

(ii) Planted into an established grass or legume; or

(iii) Planted as a nurse crop.

* * * * *

Martin Barbre,
Manager,
Federal Crop Insurance Corporation.