[Bil]le 3410-08-P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Risk Management Agency

[Docket ID FCIC-23-0001]

Request for Information and Stakeholder Listening Sessions on Prevented Planting

AGENCY: Federal Crop Insurance Corporation and Risk Management Agency, U.S. Department of Agriculture (USDA).

ACTION: Notice of request for information.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is hosting listening sessions and requesting public input about the prevented planting provisions of the Common Crop Insurance Policy (CCIP), Basic Provisions. Prevented planting is a feature of many crop insurance plans that provides a payment to cover certain pre-plant costs for a crop that was prevented from being planted due to an insurable cause of loss. FCIC is interested in public input on the following: additional prevented planting coverage based on harvest prices in situations when harvest prices are higher than established prices initially set by FCIC prior to planting; the requirement that acreage must have been planted to a crop, insured, and harvested, in at least 1 of the 4 most recent crop years; additional levels of prevented planting coverage; prevented planting coverage on contracted crops; and other general prevented planting questions. We invite stakeholders to respond to this request for information or to participate in the listening session(s). All listening sessions will be posted publicly and open to the public for registration.

DATES: *Comments*: We will consider comments that we receive by September 1, 2023.

ADDRESSES: *Listening sessions*: To attend any of the listening sessions, go to www.rma.usda.gov for dates, times, and locations. No RSVP or reservation is required.

Comments: We invite you to send comments in response to this notice. In addition, if you plan to provide oral comments at a listening session, please see the information in the Listening Sessions section below. Send your comments through the method below:

- Federal eRulemaking Portal: Go to https://www.regulations.gov and search for Docket ID FCIC-23-0001. Follow the instructions for submitting comments.

All comments will be posted without change and will be publicly available on www.regulations.gov.

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

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. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. The Risk Management Agency (RMA) administers the FCIC regulations. The Approved Insurance Providers (AIP) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risk associated with losses due to natural causes. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

Prevented planting coverage pays when a producer is unable to plant an insured crop due to an insured cause of loss. The payment is intended to assist in covering the normal costs associated with preparing the land up to the point of the seed going in the ground (pre-plant costs). These pre-plant costs can include seed, purchase of machinery, land rent, fertilizer, actions taken to ready the field, pesticide, labor, and repairs. Coverage is calculated as a percent of the producer's insurance guarantee (for example, 60 percent for soybeans).

FCIC is hosting listening sessions to provide an opportunity for stakeholders and interested members of the public to share input about ways to improve prevented planting coverage for producers while maintaining program integrity. FCIC is interested in all general prevented planting comments but requests public input from stakeholders on the following specific topics:

Prevented Planting Coverage Based on Harvest Prices for Revenue Protection Insurance

Revenue protection is a plan of insurance that provides protection against loss of revenue due to a production loss, price decline or increase, or a combination of both. Under the revenue protection plan of insurance, yield losses are compensated using the harvest-time price if it is higher than the price FCIC projected prior to planting. This compensates producers for the replacement value of lost bushels. This type of coverage was intended to help producers mitigate the risk of having to buy out of delivery contracts they are unable to fulfill due to production losses. Currently, the prevented planting calculation for revenue protection is based on the projected price and does not increase with the harvest price.

Revenue protection is the most popular insurance coverage in the crop insurance program. Under revenue protection, producers may elect a harvest price exclusion option which removes the protection against loss of revenue due to harvest price increase. Over 99 percent of revenue protection policies maintain harvest price coverage.

Following the volume of prevented planting payments for 2019 and 2020, a consistent suggestion emerged to allow prevented planting payments to increase with the harvest price, as is currently done for lost production. Allowing the harvest price for prevented planting payments would not impact most years as there needs to be both an increase in the harvest price and a prevented planting claim. Historical data suggests the additional coverage would increase prevented planting payments by approximately 6 percent on average for those policies with harvest price revenue coverage. Consequently, there would need to be a corresponding increase in premium for these policies.

The following are questions for input regarding prevented planting coverage based on the harvest price:

1. Should prevented planting payments be based on the harvest price or the price used to establish the insurance guarantee (projected price)?
2. What specific advantages or disadvantages do you see for allowing prevented planting coverage to be based on the harvest price?
3. When a producer is prevented from planting, what additional loss does a producer suffer when the harvest price increases and what should be considered to estimate the value of the loss?
4. Do you have any concerns about allowing prevented planting coverage to be based on the harvest price?

Prevented Planting “1 in 4” Requirement

Beginning with the 2021 crop year, FCIC revised the prevented planting provisions to implement the “1 in 4” requirement nationwide. The “1 in 4” requirement states that 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. This was meant to reduce prevented planting payments on land that is not generally available to plant, thus lowering insurance costs for all producers. Prior to the 2021 crop year, the "1 in 4" requirement was only applicable to the Prairie Pothole National Priority Area and required that the acreage must be physically available for planting.

In late 2022, FCIC announced the "1 in 4" requirement would be removed from western states that have experienced significant ongoing drought in recent years. The purpose of removing the requirement in these states was to give FCIC more time to better understand the unique needs of western producers and to also ensure all parties can provide input on the change.

The following are questions regarding the prevented planting "1 in 4" requirement:

1. Since the nationwide implementation of the "1 in 4" requirement, what situations have created challenges due to this requirement for producers that have been prevented from planting?
2. Do you have recommendations that would make the requirement more flexible for producers while protecting the integrity of the Federal Crop Insurance Program?
3. Are there specific situations that should exempt land from the "1 in 4" requirement and why?
4. Should the requirement be removed from specific areas and why?
5. A portion of the "1 in 4" requirement allows crops that have been adjusted for claims purposes due to an insured cause of loss to be considered harvested. However, this allowance excludes claims adjusted due to the following causes of loss: flood, excess moisture, and drought. Should the requirement exclude specific causes of loss adjusted for claims purposes and why?
6. Are you aware of additional program integrity measures or safeguards that should be considered beyond what is in place today?

7. Do you believe there should be a limit on the number of consecutive years that a producer is eligible to receive a prevented planting payment on the same acreage? If so, what do you believe the limit should be?

Prevented Planting 10 Percent Additional Coverage

Insureds with additional coverage, a coverage level greater than catastrophic risk protection, may elect an additional level of prevented planting coverage, commonly referred to as buy-up coverage, on or before the sales closing date. The additional coverage level allows producers to better tailor their coverage to match their actual prevented planting costs. The additional level of prevented planting coverage also requires the producer pay additional premium. Prior to the 2018 crop year, two additional prevented planting coverage levels were available, 5 percent (+5) and 10 percent (+10). FCIC removed the +10 additional coverage option beginning in the 2018 crop year. Removing the +10 additional coverage option maintained the balance between providing coverage to producers and the cost to taxpayers. While FCIC has removed the +10 additional coverage option, the +5 additional coverage option is still available.

RMA is considering reinstating the +10 additional coverage option. The following are questions regarding the +10 additional coverage option:

1. What specific advantages or disadvantages do you see regarding reinstating the +10 additional coverage option?
2. If you believe reinstating the +10 additional coverage option will provide needed protection for producers, why is it needed in addition to the current +5 additional coverage option?
3. Do you have any concerns about reinstating the +10 additional coverage option?

Prevented Planting Coverage on Contracted Crops

For several crops, crop types, or specific practices grown under a contract with a processor, a contract price option allows a producer to use their contract price to determine the insurance guarantee. For example, the Contract Price Addendum allows organic certified and transitional producers of many crops to use the price contained in their organic contract for insurance. Currently, when the contract price option is elected, the prevented planting coverage is based on the contract price. However, it has been suggested that prevented planting costs may be the same regardless of whether the producer had a contract. FCIC is requesting input on whether the prevented planting guarantee should use the RMA established price (price election or projected price), regardless of if the contract price option has been elected.

The price election is the amount contained in the actuarial documents that is the value per pound, bushel, ton, carton, or other applicable unit of measure for the purposes of determining premium and indemnity under the policy. The projected price is the price for each crop determined in accordance with the[1] Commodity Exchange Price Provisions. The applicable projected price is used for each crop for which revenue protection is available, regardless of whether you elect to obtain revenue protection or yield protection for the crop.

The following are questions regarding prevented planting coverage on contracted crops that can elect the contract price option:

1. Are pre-planting costs higher for contracted crops? If so, explain.
2. Should prevented planting payments be based on the contract price or RMA's established price (price election or projected price)? Please explain why.

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[1] The Commodity Exchange Price Provisions (CEPP) are used in conjunction with either the Common Crop Insurance Policy Basic Provisions or the Area Risk Protection Insurance Basic Provisions, along with Crop Provisions for the following crops: barley, canola/rapeseed, corn, cotton, grain sorghum, rice, soybeans, sunflowers, and wheat. The CEPP specifies how and when the projected and harvest price components will be determined. Updated CEPP documents are on the RMA Website at www.rma.usda.gov/Policy-and-Procedure/Insurance-Plans/Commodity-Exchange-Price-Provisions-CEPP.

3. If a contract price is used for prevented planting guarantee purposes, should there be any limitations as to when the contract is secured, specifically when a cause of loss is present that may prevent planting?

Other General Prevented Planting Questions

1. Do you believe all producers will support paying higher premiums to cover the costs of expanded prevented planting benefits?
2. Are pre-planting costs the same for all causes of loss? For example: Does a multi-year drought leading to failure of irrigation supply have the same pre-planting costs as unexpected flooding prior to planting?

Listening Sessions

FCIC will host listening sessions for public input to examine the current policy and explore policy improvements regarding prevented planting coverage. The listening sessions will provide an opportunity for stakeholders and interested members of the public to share their thoughts about ways to improve prevented planting coverage for producers while maintaining program integrity. Each listening session will begin with brief opening remarks from USDA officials. All stakeholders and interested members of the public are welcome to provide oral and written comments; however, based on the listening session time or topic area constraints, FCIC may not be able to allocate time for all attendees to provide oral comments during the listening sessions. In your comments, provide your input about the prevented planting coverage, changes, and anything else that may be helpful for FCIC to be aware of or consider. We welcome public input that we can factor into decisions that need to be made to implement any changes to prevented planting coverage. We request that speakers planning to provide oral comments also provide a written copy of their comments at the listening session. All written comments received at the listening sessions will be posted without change and will be publicly available on www.regulations.gov.

Instructions for Attending the Meeting

All persons wishing to attend the listening session can view dates, times, and locations at www.rma.usda.gov. No RSVP is required. For those unable to attend an in-person listening session, some virtual sessions will be available. The virtual session may be attended online or by telephone.

Meeting Accommodation Request

If you are a person requiring reasonable accommodation to attend a listening session, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodations, including language translation, to Francie Tolle as identified in the contact information section above. Determinations for reasonable accommodation will be made on a case-by-case basis. The listening session locations are accessible to persons with disabilities.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone).

Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-–9410 or email: OAC@ usda.gov.

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Marcia Bunger,
Manager,
Federal Crop Insurance Corporation; and
Administrator,
Risk Management Agency.

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