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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket ID FCIC-20-0003]

RIN 0563-AC67

Common Crop Insurance Regulations; Forage Seeding 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, Forage Seeding Crop Insurance Provisions. The intended effect of this action is to clarify that producers are able to purchase or change insurance coverage on spring seeded forage until the spring sales closing date if they did not plant any *insurable* fall seeded forage in the same crop year. The changes are to be effective for the 2022 and succeeding crop years.

DATES: *Effective date*: This rule is effective April 29, 2021.

Comment date: We will consider comments that we receive on this rule until the close of business [**INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**]. FCIC will consider these comments and make changes to the rule if warranted in a subsequent rulemaking.

ADDRESSES: We invite you to submit comments on this rule. You may submit comments by either of the following methods, although FCIC prefers that you submit comments electronically through the Federal eRulemaking Portal:

- *Federal e*Rulemaking *Portal*: Go to http://www.regulations.gov and search for Docket ID FCIC-20-0003. 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-20-0003.

Comments will be available for viewing online at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926–7829, 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 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 Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.151 Forage Seeding Crop Insurance Provisions, to be effective for the 2022 and succeeding crop years. This change resulted from public comments

received on the final rule with request for comment, published in the Federal Register on April 30, 2020 at 83 FR 23893-23902.

Comments were received from 10 commenters. The commenters included persons or entities from the following categories: farmer, trade association, insurance companies, and others. The public comments received regarding the final rule with request for comment and FCIC's responses to the comments are as follows:

Comment: Commenter suggested increased coverage in Arizona, California, Nevada, and Utah. They also suggested creating an insurance product that would allow producers to insure against forage quality losses and an insurance product that would allow producers to insure forage revenue losses.

Response: These issues were considered and researched by an independent contractor prior to the 2020 Final Rule. FCIC followed the recommendations of the contracted research to not implement these changes. FCIC will continue to work with industry groups concerning these items and others that may arise. FCIC will continue to analyze and consider recommendations from expert reviewers and Regional Office Subject Matter Experts when considering future changes.

Comment: Commenter expressed a concern about the cancellation date for spring seeded forage being nearly nine months prior to the sales closing date.

Response: The 9-month gap between the cancellation and sales closing dates is due to offering both fall seeded, and spring seeded coverage in a single county. FCIC will continue to encourage AIPs and agents to educate insureds on the different deadlines for making changes versus cancelling a policy.

Comment: Commenter provided some suggestions on the wording of the spring planted definition. They also noted spring and fall planted forage types were listed in the Special Provisions with final planting dates. They asked if these override the Crop Provision definition.

Response: The definition in the Crop Provisions refers to the Special Provisions. Therefore, the final planting dates listed in the Special Provisions work in conjunction with the Crop Provisions. The wording suggestions will be considered with any future changes to the Special Provisions.

Comment: Commenter asked for the term "late harvest date" to be defined since it is used in section 9 of the Crop Provisions.

Response: The term "late harvest date" refers to a date shown in the Special Provisions. The term will be clarified in the Special Provisions for the 2022 crop year.

Comment: Commenter stated the definition of replanting is contradictory of the "good farming practices" definition. They note seeding at a reduced seeding rate into a partially damaged forage stand is considered prudent and a "good farming practice." The current definition negates that choice if a producer would like reimbursement for his cost of replanting the damaged acreage.

Response: The Final Rule changes did not impact how the policy treats planting into an existing stand at a reduced seeding rate. FCIC recognizes planting at a reduced seeding rate may be a good farming practice, but it is not eligible for a replanting payment.

Comment: Commenter notes the actuarial documents show basic and optional units are available in some counties. They note the qualification of optional units found in section 34(b)(3) says a producer must have acceptable records for at least the previous crop year for all optional units that are reported in the current year. They are questioning how a producer may become eligible for optional units since the Dollar Plan of insurance does not require acceptable records of production.

Response: The Final Rule did not change records requirements for electing optional units under the policy. The policy requires production records; however, the underwriting procedures in the Crop Insurance Handbook make it possible to have

Optional Units without the need to have production records. Insureds may need production records for loss purposes.

Comment: Commenter suggests removing the 'Insurance Availability' statement from the Special Provisions since the wording mimics the same terms and conditions of subsection 7(b) of the Crop Provisions.

Response: The Special Provisions language clarifies the acreage must be "intended for harvest". FCIC will consider incorporating this phrase in future edits of subsection 7(b) of the Crop Provisions.

Comment: Commenter provided a variety of comments about the Replanting Payment section 11 of the Crop Provisions, but the underlying issues or suggestions were not clear.

Response: FCIC will reach out to the commenter to better understand if any changes are recommended.

Comment: Commenter notes contradicting verbiage between the definition of sales closing date and section 3(b)(1). The definition indicates if a producer has any insurable fall planted acreage then coverage could not be purchased on spring planted acreage prior to the spring sales closing date or make changes to any coverage. The wording in section 3(b)(1) indicates if a producer has any fall planted acreage (whether insurable or not) a producer cannot purchase coverage or make changes to any spring planted acreage.

Response: FCIC agrees this needs to be clarified and is revising the language with this Final Rule.

The intended effect of this action is to eliminate contradicting language between the "Sales Closing Date" definition and the "Amounts of Insurance" section.

The changes are as follows:

1. Section 3 – FCIC is revising section 3, Amounts of Insurance, to clarify contradicting language between the "Sales Closing Date" definition and "Amounts of

Insurance" sections. The "Sales Closing Date" definition specifies the fall planted acreage must be insurable but corresponding language in the "Amounts of Insurance" section does not specify whether the fall planted acreage is insurable or not, resulting in confusion that the fall sales closing date could be binding regardless of whether their fall planted acreage was insurable or uninsurable. The change will provide consistent language to indicate if a producer does not plant any "insurable" fall planted acreage, then they may purchase or revise their coverage on spring planted forage until the spring sales closing date.

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 April 30, 2021. Although not required by APA or any other law, FCIC has chosen to request comments on this rule.

Executive Orders 12866 and 13563

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.

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.

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 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 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.

Final Rule

For the reasons discussed in the preamble, FCIC amends 7 CFR part 457 as follows:

PART 457 - COMMON CROP INSURANCE REGULATIONS

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

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

2. Amend § 457.151 by:

a. In the introductory text removing "2021" and adding "2022" in its place;

b. In section 3 revising paragraph (b)(1).

The revision reads as follows:

§ 457.151 Forage seeding crop insurance provisions.

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3. Amounts of Insurance.

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(b) ***

(1) If you do not have any insurable fall planted acreage, you may purchase or revise your coverage for your spring planted acreage until the spring sales closing date;

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Richard H. Flournoy,
Acting Manager,
Federal Crop Insurance Corporation.
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