



**Billing Code 3410-08-P**

**DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

**7 CFR Part 457**

**[Docket No. FCIC-18-0002]**

**RIN 0563-AC57**

**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 (Crop Provisions). The intended effect of this action is to update existing policy provisions and definitions to better reflect current agricultural practices and allow for variations in insurance provisions based on regionally-specific agronomic conditions and potential future expansions. The changes are to be effective for the 2020 and succeeding crop years.

**DATES:** This final rule is effective April 30, 2019. However, FCIC will accept written comments on this final rule until close of business [insert date 30 days after publication in the Federal Register]. FCIC will consider these comments and make changes to the rule if warranted.

**ADDRESSES:** FCIC prefers that interested persons submit comments electronically through the Federal eRulemaking Portal. Interested persons may submit comments, identified by Docket ID No. FCIC-18-0002, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the 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 to <http://www.regulations.gov>, including any personal information provided. Once these comments are posted to this website, the public can access all comments at its convenience from this website. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>. If interested persons are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, FCIC requests use of a text-based format. If interested persons wish to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of the submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the Risk Management Agency (RMA) Web Content Team at (816) 823-4694 or by email at [rmaweb.content@rma.usda.gov](mailto:rmaweb.content@rma.usda.gov).

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the person submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Interested persons may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/#!privacyNotice>.

**FOR FURTHER INFORMATION CONTACT:** Francie Tolle, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

**Background:**

FCIC amends the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.151 Forage Seeding Crop Insurance Provisions (“Crop Provisions”), to be effective for the 2020 and succeeding crop years. The intended effect of this action is to update existing policy provisions and definitions to better reflect current agricultural practices and allow for variations in insurance provisions based on regional agronomic conditions and potential future expansions.

The changes are as follows:

1. FCIC is removing the paragraph immediately preceding section 1, which refers to the order of priority if a conflict exists among the policy provisions. This same provision is contained in the Common Crop Insurance Policy, Basic Provisions (“Basic Provisions”). Therefore, the appearance here is duplicative and should be removed from the Crop Provisions.

2. Section 1 – FCIC is adding the definition of “adequate stand.” The new definition will allow RMA to revise loss adjustment procedures to rely upon the number of live alfalfa stems rather than the number of live plants (normal stand) for making loss determinations for forage containing more than 60 percent alfalfa. Plants can have more than one stem. Extension research across major forage growing areas has demonstrated

that the number of live alfalfa stems is more closely correlated with future yield than the number of live plants when alfalfa is the dominant component of the forage mixture.

Loss determinations for forage types that contain less than 60 percent alfalfa or no alfalfa at all, such as red clover, will have no change to existing loss adjustment procedures and, as stated below, will be based upon the normal planting density because there is no demonstrable correlation between future yield and the number of live alfalfa stems when the forage type does not contain at least 60 percent alfalfa.

FCIC is adding the definition of “amount of insurance.” The term “amount of insurance” refers to the dollar amount of insurance per acre obtained by multiplying the reference maximum dollar amount shown in the actuarial documents by the coverage level percentage elected by the insured. FCIC adds this definition to provide clarity because the term is used multiple times in the Crop Provisions but is not defined.

FCIC is removing the definition of “nurse crop (companion crop)” and adding the definition of “companion crop”. FCIC also replaces the definition “nurse crop (companion crop)” with the term “companion crop” throughout the Crop Provisions. FCIC replaces this definition to reduce ambiguity and increase clarity by using one term instead of referring to “nurse crop” and “companion crop” interchangeably.

FCIC is revising the definition of “fall planted” by adding the phrase “except when specified in the Special Provisions,” following the phrase “A forage crop seeded after June 30” to allow FCIC to provide area-specific dates that have distinctions outside of this range. For example, Maine is currently recognized as having a single growing season with planting dates that begin before June 30 but extend beyond June 30, which is inconsistent with existing definitions for “spring planted” and “fall planted.” This change

also allows FCIC to be responsive to new or evolving regional conditions as needed in the future.

FCIC is revising the definition of “good farming practices.” The revised definition adds the phrase “in lieu of the definition in the Basic Provisions” to clarify that the “good farming practices” definition in the Crop Provisions will replace the definition contained in the Basic Provisions. The definition in the Basic Provisions is not appropriate for forage seeding because it includes references to the insured’s approved yield, but these Crop Provisions provide coverage for a failed forage seeding, not for yield losses below an insured’s approved yield. The revised definition also replaces the phrase “normal stand” with “adequate stand,” because the adequate stand will be used to determine if the forage seeding was successful. The revised definition also replaces the phrase “and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county” with “which are those generally recognized by agricultural experts or organic agricultural experts, as compatible with agronomic and weather conditions for the area” to be more consistent with the definition of “good farming practices” contained in the Basic Provisions because, even though the definition in the Basic Provisions is no longer applicable, some of the same principles apply. These changes are intended to ensure that the definition is consistent with the practices applicable to forage seeding crops.

FCIC is revising the definition of “harvest” to remove the word “only” before “grazed” to clarify that the acreage does not have to be exclusively grazed to not be considered harvested. If the acreage is grazed at any time regardless of whether the crop is removed from the field, it is not considered harvested.

FCIC is removing the definition of “normal stand” and replacing it with the definition of “normal planting density.” The new definition of “normal planting density” simplifies the previous definition of “normal stand” by replacing the phrase “a population of live plants per square foot that meets the minimum required number of plants” with the more concise phrase “the minimum number of live plants per square foot.” The normal planting density will be used to determine if the stand qualifies for replanting payments. The normal planting density will result in more accurate replanting payments than basing replant determinations on an adequate stand because not all stems may have emerged when replanting determinations are made.

FCIC is revising the definition of “planted acreage” by removing the reference to “provisions in section 1” and replacing it with the more specific phrase “definition in”. This is not a substantive change but it makes it consistent with other definitions that refer to the definitions in the Basic Provisions.

FCIC is revising the definition of “replanting” by removing the duplicative language that is already contained in the Basic Provisions. FCIC is revising the remaining sentence of the current definition by adding the phrase “in addition to the definition in the Basic Provisions” to clarify that the “replanting” definition in the Crop Provisions will add to the definition contained in the Basic Provisions, replacing the phrase “replacing” with the word “placing” as it is a more accurate term for seeding an existing stand, and replacing the phrase “which results in” with the word “using” to convey that using a reduced seeding rate to replace seed into an existing damaged stand will not be considered replanting.

FCIC is revising the definition of “sales closing date.” The revised definition replaces

the term “fall seeded” with “fall planted.” The terms “fall seeded” and “fall planted” had been used interchangeably. This change will add clarity and reduce confusion because “fall planted” is defined within the policy, but “fall seeded” is not.

FCIC proposes to revise the definition of “spring planted.” The revised definition adds the phrase “except when specified in the Special Provisions,” following the phrase “A forage crop seeded before July 1,” to allow FCIC to provide area specific dates that have distinctions outside of this range. For example, Maine is currently recognized as having a single growing season with planting dates that begin before June 30 but extend beyond June 30, which is inconsistent with existing definitions for “spring planted” and “fall planted”. This change also allows FCIC to be responsive to new or evolving regional conditions as needed in the future. FCIC proposes this change to reduce ambiguity and increase clarity because the definition of “crop year” references the calendar year of the planted acreage.

3. Section 5– FCIC is replacing the cancellation and termination date table with a new date table. The new dates allow for expansion of the fall-planted practice and align forage seeding cancellation and termination dates with the dates for other fall-planted crops in each state. Maine’s cancellation and termination dates will remain unchanged at March 15<sup>th</sup> to allow time after premium billing for a termination decision to be made. In all other states, the cancellation date will be July 31st and termination date will be September 30th to allow time after premium billing for a termination decision to be made.

4. Section 6– FCIC is replacing the term “acreage report date” with the term “acreage reporting date.” FCIC is making this change because the term “acreage reporting date” is

defined in the Basic Provisions and also appears in the Special Provisions.

5. Section 7– FCIC is replacing “a normal stand” with “an adequate stand” and “nurse crops” with “companion crops” to incorporate the references to the new terms stated above.

6. Section 8– FCIC is revising section 8(a) to simplify this section by removing references to states and counties and applying the same replanting requirements to all insurable areas. FCIC is removing section 8(b) which requires some California counties to replant if damage occurred anytime within the crop year, compared to all other areas, where replanting is only required for damage that occurred before the final planting date. This change was done concurrently with revisions to section 11, which outlines when replanting payments are allowed based on region and spring or fall planting. FCIC is also replacing the phrase “a normal stand” with “the normal planting density,” consistent with the changes above regarding the definition change.

7. Section 9 – FCIC is revising section 9(c) to make it be grammatically correct.

FCIC also is removing all state and county specific end of insurance dates and instead referring to the end of insurance period date shown in the actuarial documents. This change will simplify the provision and allow FCIC to provide area specific dates, allow for future program expansion, and allow FCIC to continue to be responsive to new or evolving regional conditions as needed in the future.

8. Section 10– FCIC is replacing the phrase “a stand of forage that occur” with the phrase “an adequate stand that occurs.” This change reduces ambiguity and clarifies the provisions because “adequate stand” is a defined term but “stand of forage” is not, which could lead to different results when determining losses.

9. Section 11– In section 11(a), FCIC is moving the phrase “unless specified otherwise in the Special Provisions,” from subparagraph (a)(1) (addressing California only) to the main paragraph (addressing all areas) to allow FCIC greater flexibility in determining regional specific distinctions for replanting payments and to protect program integrity and insured interests by allowing FCIC, with assistance from forage subject matter experts and regional offices, to address regional specific production practices.

FCIC is moving the phrase “It is practical to replant;” from subparagraph (a)(2)(iii) (addressing Lassen, Modoc, Mono, Shasta, Siskiyou Counties, California and all other states) to the subparagraph 11(a)(1) (addressing all areas). FCIC is moving this phrase to consistently apply the requirement that it be practical to replant in order to receive a replanting payment across all counties and states.

In section 11(a)(2), FCIC is moving the phrase “We give written consent to replant;” from subparagraph (a)(2)(iv) (addressing Lassen, Modoc, Mono, Shasta, Siskiyou Counties, California and all other states) to the subparagraph 11(a)(2) (addressing all areas). FCIC is moving this phrase to require written consent by approved insurance providers as a requirement of replanting payments across all counties and states. FCIC is renumbering subsequent paragraphs.

In the newly designated section 11(a)(3) FCIC is replacing the phrase “within the insurance period” with the phrase “before the spring final planting date in the actuarial documents.” FCIC is replacing this phrase so that allowable replanting payments correlate with replanting requirements. Specifically, this change corresponds with the removal of section 8(b), which removed the replanting requirement in California counties for damage occurring after the spring final planting date. Therefore, the spring final

planting date is a more appropriate timeframe for defining when replanting payments are available. FCIC is replacing “a normal stand” with “the normal planting density” consistent with the changes made above.

FCIC is revising the newly designated section 11(a)(4) to remove the list of specific California counties. This list is not needed because the Special Provisions will include any county differences in replanting payment provisions.

FCIC is removing section 11(a)(4)(i), renumbering subsequent paragraphs, and adding the phrase “spring or ” before “fall planted” in the newly designated section 11(a)(4)(i) to extend replanting payment eligibility to include both fall and spring planted practices, as opposed to the current provisions that allowed replanting only for a failed fall seeding in counties that designated both fall and spring final planting dates. FCIC is adding this language in order to allow replanting payments for producers engaged in the spring planted practice. A producer that plants a forage crop in the spring suffers the same financial consequences as a producer of a fall planted crop, if that crop fails to emerge or suffers damage and needs to be replanted. Therefore, FCIC is expanding coverage to allow replanting payments for spring planted forage as well as fall planted forage. Additionally, as the plan requires replanting to maintain the insurance, this will provide some compensation to cover replanting costs. Additionally, FCIC is replacing the phrase “a normal stand” with the phrase “the normal planting density,” consistent with definition change.

In the newly designated section 11(a)(2)(ii), FCIC is revising the paragraph to clarify the provision only pertains to the fall planted practice, because a separate provision is added below to address the spring planted practice. FCIC is also adding the word “final”

before “planting date” to eliminate ambiguity between spring planting dates. FCIC is also correcting the grammar.

FCIC is revising the newly designated section 11(a)(2)(iii) to state “If spring planted, the original planting took place after the earliest planting date shown in the Special Provisions, and the acreage is replanted by the spring final planting date shown in the Special Provisions.” FCIC is adding this language in order to allow replanting payments for producers engaged in the spring planted practice. A producer that plants a forage crop in the spring suffers the same financial consequences as a producer of a fall planted crop, if that crop fails to emerge or suffers damage and needs to be replanted. Therefore, FCIC is expanding coverage to allow replanting payments for spring planted forage as well as fall planted forage. Additionally, as the plan requires replanting to maintain the insurance, this will provide some compensation to cover replanting costs.

In section 11(b), FCIC is adding “(a)” directly after “section 13” to more specifically reference section 13(a). This addition clarifies which specific part of section 13 this provision is referencing.

10. Section 12—In section 12(b), FCIC removes the phrase, “(Duties in the Event of Damage or Loss)” as the parenthetical section name is unnecessary and removing these titles will prevent FCIC from having to revise the Crop Provisions should these section titles change in the Basic Provisions.

In section 12(b), FCIC is also adding the adjective “damaged” before “fall planted acreage” and removing the phrase “that is damaged” after the phrase “fall planted acreage” to simplify the language and clarify the provisions.

11. Section 13 – FCIC is removing the sub-section designation of “(a)” as it is not

needed in the introductory paragraph. FCIC is also adding paragraph designation “(a)” and the statement “Each type and practice:” directly following the introductory paragraph in order to clarify and simplify the section, because the steps for settling a claim should be followed first for each type and practice and then summed to any applicable unit.

FCIC is revising section 13(a)(1) to change the phrase “Multiplying the insured acreage of each type and practice by the amount of insurance for the applicable type and practice;” to “Determining the value of all insured acreage by multiplying the number of insured acres by the dollar amount of insurance;”. This change is intended to clarify that this is the outcome of the calculation in this step and to remove reference to type and practices because type and practice instructions are already stated in 13(a).

FCIC is removing 13(a)(2), because the step for totaling results by type and practice from 13(a) is moved to the newly designated 13(b).

FCIC is revising section 13(a)(3) to change the phrase “multiplying the total acres with an established stand for the insured acreage of each type and practice in the unit by the amount of insurance for the applicable type and practice;” to “determining the value of the acreage with no insurable losses, by multiplying the dollar amount of insurance by the insured acreage that: [.]” This change is intended to simplify the policy language by removing the term “established stand,” which was referenced within the settlement steps of section 13(b); clarifying the outcome of the calculation in this step by adding the phrase “value of the acreage with no insurable losses”; and removing the phrase “for each type and practice” because this instruction is already stated in 13(a). In addition, FCIC designates 13(a)(3) as 13(a)(2).

FCIC is moving the settlement steps in section 13(b), previously referred to as an

“established stand” to section 13(a)(2)(i)-(iv). In moving these settlement steps, FCIC is also revising the sub-sections 13(a)(2)(i)-(iv) to each start with a verb to provide more cohesive language and reduce redundancy between the leading text and sub-paragraphs.

FCIC is adding a new section 13(a)(3) to state, “Determining the value of the acreage with partial insurable losses, by multiplying the dollar amount of insurance by the number of insured acres that have a stand less than 75 percent but more than 55 percent of an adequate stand, by 50 percent (0.5);”. This step was previously captured in section 13(c), which stated, “The amount of indemnity on any spring planted acreage determined in accordance with section 13(a) will be reduced 50 percent if the stand is less than 75 percent but more than 55 percent of a normal stand.” FCIC is moving this step to section 13(a)(3) so that all steps for settling a claim throughout section 13 are presented in sequential order. FCIC is updating the language of this step to clarify that the outcome of the calculation in this step is determining the value of acreage with partial insurable losses by adding the phrase “determining the value of the acreage with partial insurable losses”. FCIC is also removing reference to spring planted acreage because the steps for settling a claim are first done by any applicable unit, which is already defined to allow basic units by spring planted and fall planted acreage. FCIC is replacing the term “a normal stand” with the term “an adequate stand,” consistent with the new definition. FCIC is removing section 13(c) because it is incorporated into section 13(a)(3), and it is no longer needed.

FCIC is revising section 13(a)(4), to state “Adding the results in section 13(a)(2) and section 13(a)(3);”. This revision calculates the total value of the acreage with no insurable loss by adding together the value of acreage with no insurable loss plus the

value of acreage with partial insurable loss. FCIC removes the previous language because the step for totaling results by type and practice from 13(a) is moved to the newly designated 13(b).

FCIC is updating section 13(a)(5) reference of section 13(a)(2) to section 13(a)(1) and change the words “result” to “results”. This step will function as subtracting the total value of the acreage with no insurable loss from the total value of all insured acreage to determine the total value of acreage with insurable losses. This calculation will be for each type and practice. FCIC is also removing the word “and” at the end of the section as it is not needed for this step.

FCIC is revising 13(a)(6) to update the section reference from section 13(a)(5) to 13(a)(3). FCIC is also adding the word “and” at the end of the section 13(a)(6) to provide a cohesive transition to the final step for settlement of a claim in 13(b).

FCIC is adding section 13(b) to state “totaling the results in section 13(a).” Totaling results for each type and practice to any applicable unit was previously included twice in the steps for settling a claim. With this revision, totaling results for each type and practice is only performed once.

FCIC is revising the indemnity calculation example to portray the revised steps for settlement of a claim in section 13. The revised example demonstrates the difference in calculations when a portion of the acreage has a stand between 55 and 75 percent of an adequate stand versus a stand with less than 55 percent of an adequate stand. Additional revisions to the indemnity calculation example include replacing each instance of “remaining stand of 75 percent or greater” with “remaining stand of 75 percent of an adequate stand or greater” and to replace “75% stand or greater” with “75% of an

adequate stand or greater” to reduce ambiguity and clarify that loss determinations are to be determined relative to adequate stand. In the indemnity calculation, FCIC also is replacing “\$100.00” with “\$100” and “\$90.00” with “90.” This change simplifies the example calculations.

### **Notice and Comment**

The FCIC is issuing this final rule without opportunity for prior notice and comment. The Administrative Procedure Act (APA) exempts rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” from the statutory requirement for prior notice and opportunity for public comment (5 U.S.C. 553(a)(2)). A Federal crop insurance policy is a contract and is thus exempt from APA notice-and-comment procedures. Previously, changes made to the Federal crop insurance policies codified in the Code of Federal Regulations were required to be implemented through the notice-and-comment rulemaking process. Such action was not required by the APA, which exempts contracts. Rather, the requirement originated with a notice USDA published in the Federal Register on July 24, 1971 (36 FR 13804), stating that the Department of Agriculture would, to the maximum extent practicable, use the notice-and-comment rulemaking process when making program changes, including those involving contracts. FCIC complied with this notice over the subsequent years. On October 28, 2013, USDA published a notice in the Federal Register (78 FR 64194) rescinding the prior notice, thereby making contracts again exempt from the notice-and-comment rulemaking process. This exemption applies to the 30-day notice prior to implementation of a rule. Therefore, the policy changes made by this final rule are effective April 30, 2019 in the Federal Register.

However, FCIC is providing a 30-day comment period and invites interested persons to participate in this rulemaking by submitting written comments. To assist in analyzing the comments, FCIC requests that commenters include the number and heading corresponding to their comment, along with any applicable supporting data or references. FCIC will consider the comments received and may conduct additional rulemaking based on the comments.

The changes will be effective for the 2020 and succeeding crop years.

### **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. The rule is not subject to Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.”

### **Paperwork Reduction Act of 1995**

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C.

chapter 35, subchapter I), the collections of information in this rule have been approved by OMB under control number 0563-0053.

### **E-Government Act Compliance**

FCIC is committed to complying with the E-Government Act of 2002, 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.

### **Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the 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.

### **Executive Order 13132**

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

### **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.

The Federal Crop Insurance Corporation 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. If a Tribe requests consultation, the Federal Crop Insurance Corporation will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

### **Regulatory Flexibility Act**

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the indemnity amount for an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act (FCIA) authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as

large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have a significant impact on a substantial number of small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605).

### **Federal Assistance Program**

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

### **Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See 2 CFR part 415, subpart C.

### **Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

### **Environmental Evaluation**

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

## **List of Subjects in 7 CFR Part 457**

Crop insurance, Forage seeding, Reporting and recordkeeping requirements.

### **Final Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2020 and succeeding crop years as follows:

### **PART 457 - COMMON CROP INSURANCE REGULATIONS**

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

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

2. Amend § 457.151 as follows:

a. Remove “2003” and add “2020” in its place in the introductory text;

b. Remove the undesignated paragraph immediately preceding section 1;

c. In section 1:

i. Add in alphabetical order the definitions of “adequate stand”, “amount of insurance”, and “companion crop”;

ii. Revise the definition of “good farming practices”;

iii. In the definition of “harvest” remove the word “only”;

iv. Add in alphabetical order the definition of “normal planting density”;

v. Remove the definitions of “normal stand” and “nurse crop (companion crop)”;

vi. Revise the definitions of “planted acreage”, “replanting”, and “sales closing date”;

d. Revise section 5;

e. In section 6 remove the phrase “acreage report date” and add the phrase “acreage reporting date” in its place;

f. In section 7:

i. In paragraph (b) remove the phrase “a normal” and add the phrase “an adequate” in its place;

ii. In paragraph (d) remove the word “nurse” and add the word “companion” in its place;

g. Revise section 8;

h. In Section 9;

i. Revise paragraph (c);

ii. Revise paragraph (g);

i. In section 10 in the introductory text remove the phrase “stand of forage that occur” and add the phrase “an adequate stand that occurs” in its place;

j. In section 11:

i. Revise paragraph (a);

ii. In paragraph (b) add the term “(a)” directly following the number “13”;

k. In paragraph 12(b) remove the phrase “(Duties in the Event of Damage or Loss)”, add the word “damaged” preceding the term “fall planted acreage”, and remove the phrase “that is damaged”; and

l. Revise section 13.

The revisions and additions read as follows:

**§ 457.151 Forage seeding crop insurance provisions.**

\* \* \* \* \*

1. Definitions.

*Adequate stand.* The number shown in the Special Provisions, representing:

(a) For forage containing 60 percent or more alfalfa, the minimum required number of live alfalfa stems per square foot that are two inches or greater in height; or

(b) For forage containing less than 60 percent alfalfa, the normal planting density.

*Amount of insurance.* The dollar amount of insurance per acre obtained by multiplying the reference maximum dollar amount shown in the actuarial documents by the coverage level percentage you elect.

*Companion crop.* A crop seeded into the same acreage as another crop, that is intended to be harvested separately, and that is planted to improve growing conditions for the crop with which it is grown.

\* \* \* \* \*

*Good farming practices.* In lieu of the definition in the Basic Provisions, the cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce an adequate stand and which are those generally recognized by agricultural experts or organic agricultural experts, as compatible with agronomic and weather conditions for the area.

\* \* \* \* \*

*Normal planting density.* The number of live plants per square foot as shown in the Special Provisions.

\* \* \* \* \*

*Planted acreage.* In addition to the definition in the Basic Provisions, land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will be considered planted, unless otherwise provided by the Special Provisions, actuarial

documents, or written agreement.

*Replanting.* In addition to the definition in the Basic Provisions, placing new seed into an existing damaged stand, using a reduced seeding rate from the original seeding rate, will not be considered replanting.

*Sales closing date.* In lieu of the definition contained in the Basic Provisions, a date contained in the Special Provisions by which an application must be filed and by which you may change your crop insurance coverage for a crop year. If the Special Provisions provide a sales closing date for both fall planted and spring planted practices for the insured crop and you plant any insurable fall planted acreage, you may not change your crop insurance coverage after the fall sales closing date for the fall planted practice.

\* \* \* \* \*

#### 5. Cancellation and Termination Dates.

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

State	Cancellation	Termination
Maine	March 15	March 15
All other states	July 31	September 30

\* \* \* \* \*

#### 8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that such acreage has less than 75 percent of a normal planting density, must be replanted unless we agree that it is not practical to replant.

9. Insurance Period.

\* \* \* \* \*

(c) The first harvest after the late harvest date, if a late harvest date is specified in the Special Provisions (You may harvest the crop as often as practical in accordance with good farming practices on or before the late harvest date);

\* \* \* \* \*

(g) The end of insurance period date shown in the actuarial documents.

\* \* \* \* \*

11. Replanting Payment

(a) Unless otherwise specified in the Special Provisions, a replanting payment is allowed if:

(1) It is practical to replant;

(2) We give written consent to replant;

(3) In California, acreage planted to the insured crop is damaged by an insurable cause of loss occurring before the spring final planting date in the actuarial documents to the extent that less than 75 percent of the normal planting density remains and the crop can reach maturity before the end of the insurance period;

(4) In all other states:

(i) The insured spring or fall planted acreage is damaged by an insurable cause of loss to the extent that less than 75 percent of the normal planting density remains;

(ii) If fall planted, the acreage is replanted the following spring by the spring final planting date; and

(iii) If spring planted, the original planting took place after the earliest planting date

shown in the Special Provisions; and the acreage is replanted by the spring final planting date shown in the Special Provisions.

\* \* \* \* \*

### 13. Settlement of Claim

In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(a) Each type and practice:

(1) Determining the value of all insured acreage by multiplying the number of insured acres by the dollar amount of insurance;

(2) Determining the value of the acreage with no insurable losses, by multiplying the dollar amount of insurance by the insured acreage that:

- (i) Has at least 75 percent of an adequate stand;
- (ii) Was abandoned or put to another use without our prior written consent;
- (iii) Was damaged solely by an uninsured cause; or
- (iv) Was harvested and not reseeded.

(3) Determining the value of the acreage with partial insurable losses, by multiplying the dollar amount of insurance by the number of insured acres that have a stand less than 75 percent but more than 55 percent of an adequate stand, by 50 percent (0.5);

(4) Adding the results in section 13(a)(2) and section 13(a)(3);

(5) Subtracting the results in section 13(a)(4) from the results in section 13(a)(1);

(6) Multiplying the result in section 13(a)(3) by your share; and

(b) Totaling the results in section 13(a).

Example:

Assume you have a 100 percent share in 30 acres of type A forage in the unit, with an amount of insurance of \$100 per acre. At the time of loss, the following findings are established: 10 acres had a remaining stand of 75 percent of an adequate stand or greater. 20 acres had a remaining stand less than 75 percent but more than 55 percent of an adequate stand.

You also have a 100 percent share in 20 acres of type B forage in the unit, with an amount of insurance of \$90 per acre. 10 acres had a remaining stand of 75 percent of an adequate stand or greater. 10 acres had a remaining stand less than 55 percent of an adequate stand.

Your indemnity would be calculated as follows:

1. 30 acres X \$100 = \$3,000 amount of insurance for type A;  
20 acres X \$90 = \$1,800 amount of insurance for type B;
2. 10 acres with 75% of an adequate stand or greater X \$100 = \$1,000 for type A;  
10 acres with 75% of an adequate stand or greater X \$900 = \$900 for type B;
3. 20 acres with less than 75% but greater than 55% of an adequate stand X \$100 X 50 percent = \$1,000 for type A;  
0 acres with less than 75% but greater than 55% of an adequate stand X \$90 X 50 percent = \$0 for type B;
4. \$1,000 + \$1,000 = \$2,000 reduction for type A;  
\$900 + \$0 = \$900 reduction for type B;

5.  $\$3,000 - \$2,000 = \$1,000$  for type A

$\$1,800 - \$900 = \$900$  for type B

6.  $\$1,000 \times 100$  percent share =  $\$1,000$  for type A;

$\$900 \times 100$  percent share =  $\$900$  for type B;

7.  $\$1,000 + \$900 = \$1,900$  total indemnity

\* \* \* \* \*

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Martin R. Barbre

Manager

Federal Crop Insurance Corporation

[FR Doc. 2018-26559 Filed: 12/7/2018 8:45 am; Publication Date: 12/10/2018]