Signed in Washington, D.C., on November 30, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB62

Common Crop Insurance Regulations; Cotton and ELS Cotton Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Cotton Crop Insurance Provisions and the Extra Long Staple (ELS) Cotton Crop Insurance Provisions for the 1999 and succeeding crop years to provide a prevented planting coverage level of 50 percent of the insured's production guarantee for timely planted acreage. The intended effect of this action is to create a policy that better meets the needs of the insured.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Stephen Hoy, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, U.S. Department of Agriculture, 9435 Holmes Street, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this final rule to be significant and, therefore, it has been reviewed by OMB.

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons from the address listed above. In summary, for prevented planting coverage, Government outlays for producer premium subsidies are estimated at about $9.9 million; administrative subsidies are estimated at about $3.5 million; and underwriting costs are estimated at about $1.2 million. If only the portion of the prevented planting costs attributable to increasing the payment rate from 45 to 50 percent are included, the total increase in Government outlays is expected to be about $0.2 million. The analysis indicates that rate increases for prevented planting coverage vary from region to region, depending on locally expected indemnities, from 0.3 percent to 0.9 percent. On average, at the 50 percent payment rate, about 0.76 percentage point will be added to cotton and ELS cotton premium rates to account for the basic prevented planting coverage. Preliminary analysis suggests that the increase in the payment rate will add about 0.1 percent to total premiums to cover expected losses.

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by the Office of Management and Budget (OMB) under control number 0563–0053 through October 31, 2000. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms or information collections cleared under the above referenced docket.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform 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 the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions in this rule will not impact small entities to a greater extent than large entities. The amount of work required of the insurance companies will not increase because the information must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

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 require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

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. 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, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On Wednesday, September 30, 1998, FCIC published a proposed rule in the **Federal Register** at FR 52198–52200 to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.104 and 7 CFR 457.105 effective for the 1999 and succeeding crop years.

Following filing of the proposed rule at the **Federal Register**, the public was afforded 15 days to submit written comments, data, and opinions. A total of 10 written comments were received from an insurance service organization, two cotton producer associations, and three reinsured companies. The comments received and FCIC's responses are as follows:

Comment: Two producer associations concurred with the proposal to provide a replant payment for cotton and ELS cotton damaged by excess moisture, hail, or blowing sand or soil but only if no additional premium is added for the coverage. One producer association recommended that replanting coverage be provided as an option at the choice of the producer. Two reinsured companies stated that adding replant payments will substantially increase loss adjustment expenses, which was not contemplated in the 1999 Standard Reinsurance Agreement. One reinsured company recommended that data regarding premium rates and workload requirements be published before changes are made. Another reinsured company stated that support could not be provided without knowledge of rate increases. This commenter also indicated that multiple causes of loss often occur, and, therefore, it would be nearly impossible to identify damage by cause and limit replant payments to excess moisture, hail, or blowing sand or soil.

Response: Additional premium must be charged to provide replanting coverage because this increases the risk of loss and is not included in the premium rate. Loss adjustment workload for reinsured companies may increase due to this provision. However, costs would be recouped through the additional administrative subsidies as a result of higher premium. The proposed rule limited the causes of loss on which replanting payments would be provided in an effort to limit loss exposure and subsequent impact on premium rates. Based on the negative comments, FCIC has elected not adopt the proposal, and no replanting payment will be provided for the 1999 crop year.

Comment: A producer association stated that the 25 percent deductible in price that must be met before cotton is eligible for quality adjustment is too high to be useful. The commenter recommended that quality adjustment be based on physical standards, and FCIC establish a base quality as is done with grains with a trigger of not greater than 5 percent adopted. The commenter stated that the quality adjustment procedure should not be changed unless the proposal is modified substantially. The commenter also recommended that FCIC adopt a procedure that does not penalize a producer's APH yield as a result of quality adjustment. A reinsured company stated that without knowing specific plans for rate increases, the proposal could not be endorsed.

Response: FCIC must apply a premium rate increase if the quality adjustment deductible is lowered. Calculating the quality adjustment factor using any reduction in value due to damage will increase indemnities, and FCIC has determined that if it adopted the trigger suggested, a premium rate increase of approximately 5 percent would be required to compensate for the potential increase in losses. FCIC concurs with the recommendation that the quality adjustment for cotton and ELS cotton be based on physical standards; however, this requires a detailed study to evaluate the appropriate cotton classification factors for quality adjustment, the deductible to apply, and to measure the effect on premium rates. FCIC cannot adopt the recommendation that cotton producer's APH yields should not reflect production to count after quality adjustment. For all crops that permit a quality adjustment, a producer's yield is reduced due to quality adjustment for indemnity purposes, and the yield reduction is retained in the producer's production history. Cotton should not be an exception. If the crop insurance program is to be actuarially sound, the producer's production history must reflect all indemnities paid, including losses due to quality adjustments. Based on the negative comments, FCIC has elected not to adopt the proposed change to quality adjustment, and the quality adjustment determination will remain the same as that available for the 1998 crop year. However, FCIC will work with the industry to explore alternatives to the current quality adjustment determination.

Comment: A cotton producer association stated that an analysis comparing preplanting costs shows that cotton should have a prevented planting percentage comparable to corn. The commenter stated that deducting preplanting costs from the prevented planting payment for each commodity shows that cotton producers fare considerably worse than either corn or soybean growers, even if cotton producers receive the proposed 50 percent coverage level, and the inequity is believed greater when premiums are deducted. The commenter stated that this analysis indicates that the soybean prevented planting percentage should be less than cotton and corn and questioned why soybeans were not included in the Economic Research Service (ERS) study. The commenter also expressed opposition to the provision that prohibits planting a substitute crop on prevented planting acreage. The commenter stated that elimination of the substitute crop provision penalizes Southern producers who have more numerous cropping alternatives than producers in the Midwest. The commenter recommended that FCIC raise the cotton prevented planting coverage level to 60 percent and allow a non-insurable ghost crop to be planted on the prevented planting acreage. If these recommendations cannot be implemented with no additional cost to the producer, the commenter asked that prevented planting coverage become an option for cotton producers, and any premium reduction due to the reduced coverage be credited.

Response: FCIC has found that the evidence does not support an increase in the cotton prevented planting percentage to 60 percent. Prevented planting coverage levels should be based on estimated preplanting costs for a crop, and not on equivalency to the coverage level for other crops. An increase to the 50 percent rate of payment for prevented planting of cotton is consistent with the basis on which prevented planting payment rates have been established for other crops. An adjustment will be made in premium rates for cotton to reflect this higher value. However, this increase will be proportional to the increase in coverage, *i.e.*, the cost for the prevented planting component of the premium rates will increase by approximately 11 percent, or 0.1 percentage point. This higher rate of payment should not affect the frequency with which prevented planting would occur. The commenter raised an issue of including crop insurance premium costs in the preplanting expenses that are analyzed to determine the rates of payment for prevented planting. Premium is based on the risk associated with the crop, not the cost associated with planting the crop. Prevented planting is only intended to cover costs associated with planting. This issue is interrelated with the issue of the overall level of cotton premium costs relative to other crops, an issue that also was raised by commenters (see below). FCIC has committed to work with interested parties in a detailed review of premium rates for cotton. FCIC did not request ERS to ignore soybeans in the study of prevented planting payment rates. The reason soybeans were not included cannot be determined. History has shown that prevented planting cannot be provided as an option. This would be inconsistent with the prevented planting requirement mandated by the Federal Crop Insurance Act. FCIC removed the substitute crop provision because it discovered that producers could receive benefits for the crop year that exceeded their income received for the crop year if the crop produced the approved yield. This is not the intent of crop insurance. Therefore, for 1998 and subsequent crop years, the substitute crop provision was removed from all prevented planting provisions.

Comment: Two producer associations expressed concern that cotton premiums substantially exceed other major commodities relative to risk exposure and the level of coverage provided. One commenter stated that prior to the Federal Crop Insurance Reform Act of 1994, most cotton producers chose not to participate in the crop insurance program. Therefore, the actuarial tables prior to 1995 reflect a very unrepresentative pool of cotton insurance participants. The commenter stated that the rating models used by FCIC should reflect the much larger pool of cotton insurance participants since 1995, which would result in significantly lower premiums for cotton producers. One commenter opposed implementation of the proposed rule if the changes result in any increase in premium costs for cotton producers and suggested that each of the proposed changes be made optional coverage. A reinsured company expressed concern that the proposed changes are not beneficial enough to warrant any additional premium.

Response: FCIC recognizes that many cotton producers believe premium rates for cotton to be inequitably high for that crop. FCIC traditionally has based premium rates on its experience in each county. However, improvements to crop varieties, such as resistance to disease and insects, changes to cropping patterns due to ''freedom to farm,'' and other changes may be rendering some experience to be unreliable as a predictor of potential future losses. The Federal Crop Insurance Act directs FCIC to charge premiums that are adequate to pay expected losses and build a reasonable reserve. FCIC is reviewing its experience for cotton to determine if it does in fact provide a basis to meet the tests set forth in the law. If it does not, adjustments will be made as appropriate. As stated above, FCIC has eliminated many of the proposed provisions that would have raised premium rates. However, FCIC has retained the 50 percent coverage because it concluded the benefits outweigh the insignificant increase in premium.

In addition to the changes described above, FCIC has amended the following ELS Cotton Crop Provisions:

1. Sections 10 (d) and (f)—Changed the ELS cotton price quotations for prices ''A'' and ''B'' and the price used to adjust AUP cotton harvested or appraised from acreage originally planted to ELS cotton from the Weekly Cotton Market Review to the Daily Spot Cotton Quotation. This publication more accurately reflects the value of the ELS cotton.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. This rule must be effective prior to the November 30, 1998, contract change date to be effective for the 1999 crop year. Therefore, public interest requires that FCIC act immediately to make these provisions available.

List of Subjects in 7 CFR part 457

Crop insurance, Cotton.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

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

Authority: 7 U.S.C. 1506(1), 1506(p).

2. § 457.104, section 11 of the crop provisions is revised to read as follows:

§ 457.104 Cotton crop insurance provisions.

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11. Prevented Planting

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(b) Your prevented planting coverage will be 50 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

3. § 457.105, section 10 of the crop provisions is revised to read as follows:

§ 457.105 ELS Cotton Crop Insurance Provisions.

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10. Settlement of Claim

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(d) Mature ELS cotton production may be adjusted for quality when production has been damaged by insured causes. Such production to count will be reduced if the price quotation for ELS cotton of like quality (price quotation ''A'') for the applicable growth area is less than 75 percent of price quotation ''B.'' Price quotation ''B'' is defined as the price quotation for the applicable growth area for ELS cotton of the grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. Price quotations ''A'' and ''B'' will be the price quotations contained in the Daily Spot Cotton Quotations published by the USDA Agricultural Marketing Service on the date the last bale from the unit is classed. If the date the last bale is classed is not available, the price quotations will be determined when the last bale from the unit is delivered to the warehouse, as shown on the producers account summary obtained from the gin. If eligible for quality adjustment, the amount of production to be counted will be determined by multiplying the number of pounds of such production by the factor derived from dividing price quotation ''A'' by 75 percent of price quotation ''B.''

* * * * *

(f) Any AUP cotton harvested or appraised from the acreage originally planted to ELS cotton in the same growing season will be reduced by the factor obtained by dividing the price per pound of the AUP cotton by the price quotation for the ELS cotton of the grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. The prices used for the AUP and ELS cotton will be the price quotations contained in the Daily Spot Cotton Quotations published by the USDA Agricultural Marketing Service on the date the last bale from the unit is classed. If the date the last bale is classed is not available, the price quotations will be determined when the last bale from the unit is delivered to the warehouse, as shown on the producer's account summary obtained from the gin. If either price quotation is unavailable for the dates stated above, the price quotations for the nearest prior date for which price quotations for both the AUP and ELS cotton are available will be used. If prices are not yet available for the insured crop year, the previous season's average prices will be used.

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4. In § 457.105 section 12 is revised to read as follows:

12. Prevented Planting

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(b) Your prevented planting coverage will be 50 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Signed in Washington, DC, on November 30, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

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