

### 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.

### Regulatory Flexibility Act

A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on 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 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. With respect to any direct action taken by FCIC or to require 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.

### Background

On May 22, 2008, the 2008 Farm Bill was enacted. Section 12010 of the 2008 Farm Bill amended section 508(e) of the Federal Crop Insurance Act (Act) by removing paragraph (3), which has authorized AIPs to provide a premium discount to their insureds if they were able to deliver the crop insurance program for less money than they were paid in an administrative and operating expense reimbursement under section 508(k) of the (Act) and the Standard Reinsurance Agreement. The provisions of the 2008 Farm Bill are very specific and do not allow FCIC any discretion regarding interpretation of the provisions or their implementation. Therefore, elimination of the provisions authorizing the payment of the premium discount necessitates the removal of the relevant provisions in 7 CFR part 400, subpart V related to the premium reduction plan.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. Good cause exists when notice and comment and the 30-day delay in the effective date is impracticable, unnecessary, or contrary to the public interest. FCIC is merely making ministerial changes to the regulation that are mandated by the 2008 Farm Bill. There is no discretion given to FCIC in the terms contained in this rule or their implementation. Therefore, good cause exists to make this change effective upon filing for public inspection at the Office of the Federal Register.

### List of Subjects in 7 CFR Part 400

Administrative practice and procedure, Crop insurance.

### Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR Part 400 as follows:

### PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 1. The authority citation for 7 CFR part 400 continues to read as follows:

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

### Subpart V—Submission of Policies, Provisions of Policies and Rates of Premium

■ 2. Revise the heading for subpart V to read as set forth above.

■ 3. Revise section § 400.700 to read as follows:

#### § 400.700 Basis, purpose, and applicability.

This subpart establishes guidelines for the submission of policies, plans of insurance, and rates of premium to the Board as authorized under section 508(h) of the Act and for nonreinsured supplemental policies in accordance with the SRA, and the roles and responsibilities of FCIC and the applicant. It also specifies the procedures for requesting reimbursement for research and development costs, and maintenance costs for products and the approval process.

#### § 400.701 [Amended]

■ 4. Revise section § 400.701 by removing the definitions for “Administrative and operating (A&O) costs,” “Agent,” “Approved procedures,” “Compensation,” “Efficiency,” “Eligible crop insurance contract,” “Eligible producer,” “Managing General Agent (MGA),” “Plan of Operations,” “Premium discount,” “Profit sharing arrangement,” “Reduction in service,” “Standard Reinsurance Agreement (SRA),” “Third Party Administrator (TPA),” “Underwriting gain,” and “Unfair discrimination”.

#### §§ 400.714–400.722 [Removed]

■ 5. Remove sections §§ 400.714 through 400.722.

Signed in Washington, DC, on February 19, 2009.

**William J. Murphy,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. E9–4116 Filed 2–25–09; 8:45 am]

BILLING CODE 3410–08–P

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563–AB99

### Common Crop Insurance Regulations; Cabbage Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations; Cabbage Crop Insurance Provisions to convert the cabbage pilot crop insurance program to a permanent insurance program for the 2010 and succeeding crop years.

**DATES:** *Effective Date:* March 30, 2009.

**FOR FURTHER INFORMATION CONTACT:** Erin Albright, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility—Mail Stop 0812, PO Box 419205, Kansas City, MO 64141-6205, telephone (816) 926-7730.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

**Paperwork Reduction Act of 1995**

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), 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.

**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 amount of an indemnity payment in the event of 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 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 an impact on 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 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 final 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 to require 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.

**Background**

On Thursday, November 16, 2006, FCIC published a notice of proposed rulemaking in the **Federal Register** at 71 FR 66694-66698 to add 7 CFR 457.171 Cabbage crop insurance provisions, effective for the 2009 and succeeding crop years. As a result of delays in the rulemaking process, the 2009 effective date became impossible and FCIC will have this rule effective for the 2010 crop year.

The public was afforded 60 days to submit written comments and opinions. A total of 30 comments were received from 3 commenters. The commenters were an insurance services organization, an insurance provider, and a grower association. The comments received and FCIC's responses are as follows:

*Comment:* One commenter suggested in the definition of "damaged cabbage production" to delete the word "For" at the beginning of the two phrases so it reads "Fresh market cabbage that fails to grade U.S. Commercial or better," and "or processing cabbage that fails to grade U.S. No. 2 or better."

*Response:* FCIC has revised the definition accordingly.

*Comment:* One commenter recommended rearranging the definition of "marketable cabbage" to avoid duplication of the phrase "Grades at least" at the beginning of subsections (a) and (b). The commenter recommended the definition read as, "Cabbage that is sold or grades at least: (a) U.S. Commercial for fresh market cabbage; or (b) U.S. No. 2 for processing cabbage."

*Response:* FCIC has revised the definition accordingly.

*Comment:* One commenter recommended adding the missing period at the end of the sentence in the definition of "planted acreage."

*Response:* FCIC has revised the definition accordingly.

*Comment:* One commenter recommended the definition of "price election" be moved to follow the definition of "planted acreage" to be in alphabetical order.

*Response:* FCIC has removed the definition of "price election" in response to other comments. Therefore, the requested change is no longer applicable.

*Comment:* One commenter questioned that if a processor contract specifies the number of acres rather than the amount of production contracted, how that contract would be affected by the requirement in the definition of "processor contract" that the processor must agree to " \* \* \* purchase all the production stated in the contract \* \* \* ". The commenter also questioned what the "specified conditions" under which delivery must be accepted.

*Response:* If the processor contract specifies the number of acres rather than the amount of production and the processor agrees to purchase all the production from the acreage stated in the contract, all such production would be considered to be under contract. Therefore, there is no difference if the processor contract refers to acreage or production. Both contracts are insurable under the terms of the policy as long as the processor agrees to accept all production from the acreage. The term "specified conditions" is vague so FCIC has removed the phrase "and to accept delivery subject only to specified conditions" from the definition of "processor contract."

*Comment:* One commenter stated the definition of "type" has changed from specifying "Green or red cabbage" to a more generic definition. The commenter questioned if there are other categories being considered, or is this just leaving the option of other categories available.

*Response:* A more generic definition will allow for changes or additional types in the future. For this reason, the definition refers to the categories of cabbage designated as a type in the Special Provisions.

*Comment:* One commenter supported basic units by planting period as proposed in section 2. In the past, growers in areas where the pilot has been operating have primarily bought CAT coverage because unit division has not been available. The commenter stated that without unit division the policy is of limited value, particularly because of the staggered planting dates for cabbage over a long period of time.

*Response:* FCIC has retained the proposed provisions in the final rule allowing basic units by planting period, if applicable, and optional units by type, if applicable.

*Comment:* One commenter stated since it might be possible to have both fresh and processing cabbage in the same unit, section 3 might need to be reviewed and possibly rearranged to

address that possibility. The procedure for determining the price, acres, premium, liability, and indemnity for cabbage could be extremely complicated with the potential for multiple price elections for fresh and processing in the same unit.

*Response:* Under the proposed rule it was possible to have processing cabbage under different processor contracts containing different prices in the same unit. Calculating the price, premium, liability and indemnity for the unit could be very complicated if there are multiple price elections for fresh and processing in the same unit. Therefore, the provisions in sections 3(c), 6 and 13(c)(1) regarding insuring processing cabbage under the price per hundredweight contained in a processor contract have not been retained in the final rule. FCIC will issue the price election for fresh and processing cabbage. As a result, the definition of "price election" has been removed because it is no longer needed because the definition in the Common Crop Insurance Policy Basic Provisions will be applicable.

*Comment:* Two commenters stated the proposed addition of section 3(c), addressing the possibility of different price elections for multiple processor contracts for processing cabbage, raises questions as to whether (a) and (b) apply only to fresh cabbage. The commenters recommended section 3(a) should be identified as "For fresh cabbage, \* \* \* " and section 3(c) be identified as "For processing cabbage, \* \* \* ". Clarification is also needed as to whether section 3(b), requiring the same price percentage relationship when there are separate price elections by type, applies only to fresh cabbage or also applies to the contract price elections for processing cabbage grown under contract.

*Response:* As stated above, FCIC has removed section 3(c), which would have insured processing cabbage using the contracted price in the processing contract. FCIC issues price elections for both fresh and processing cabbage. A cabbage producer must have a processor contract to obtain insurance on processing cabbage and must select one price election for each cabbage type designated in the Special Provisions. Therefore, sections 3(a) and (b) apply to both fresh and processing cabbage.

*Comment:* One commenter recommended changing the phrase "different price per hundredweights" in section 3(c) to the phrase "different prices per hundredweight." The commenter also recommended changing the word "stipulates" to "stipulate" in the parenthetical. If the parenthetical

phrase is not revised based on other comments, the first word should not be capitalized (or else, it needs to be treated as a separate sentence from the sentence that precedes it and each sentence needs its own period).

*Response:* As stated above, FCIC has removed section 3(c) in response to other comments.

*Comment:* One commenter stated the two different types of contracts (based on specific acreage or based on production to be delivered) in section 3(c) should be separated. The commenter recommended section 3(c) be revised and a new subsection (d) be added to read: "For processing cabbage: "(1) If there are multiple contracts stipulating specific acreage within the same unit with different price per hundredweights, each contract price will be considered a separate price election which will be multiplied by the number of acres specified under applicable processor contract. "(2) If there are multiple contracts stipulating production within the same unit with different price per hundredweights, each contract price will be considered a separate price election. "(3) Acres for contracts stipulating production will be determined by dividing the amount of production to the delivered by the approved yield. "(d) These *price* amounts will be totaled to determine the premium, liability and indemnity for the unit."

*Response:* As stated above, FCIC has removed the proposed provisions that would insure processing cabbage using the contracted prices.

*Comment:* Two commenters stated there are some concerns with the new language in section 3(c) with regard to determining the number of acres used when a production contract is in effect. The calculation may result in an artificial number of acres that do not match what can or will be planted to cabbage (and should not exceed the number of acres actually planted to cabbage). One commenter recommended adding a definition of insured acres since insured acres may not be planted acres and instead of determining the acres (when a contract stipulates the amount of production) by dividing, using a cup and cap on the result would be more accurate.

*Response:* FCIC has removed section 3(c), which would have insured processing cabbage using the contracted price. However, the commenter is correct that there must be a means to calculate insurable acreage. FCIC has revised section 8(c) to clarify how to determine insurable acreage. As revised in section 8(c), insurable acreage for acreage and production based processor

contracts is based on the lesser of the planted acres or the maximum acres stated in the processor contract. Insurable acreage for production based processor contracts will be based on the lesser of the planted acres or the number of acres determined by dividing the production stated in the processor contract by the approved yield. In addition, FCIC has changed the reference to "insurable acreage" in section 13(c)(1) to be consistent with section 8(c). These revisions will prevent over-insurance.

*Comment:* One commenter stated the price used to determine liability is the only aspect of determining liability covered in section 3 of the proposed rule. Additional information must be added in order for insurance providers to understand the necessary calculations. For example, the commenter asked how liability is determined for processing cabbage when the insured has one basic unit, two separate basic units or two optional units and: (1) A single contract stipulating total production to be delivered; (2) a single contract stipulating different prices for production to be delivered; or (3) multiple contracts stipulating total production to be delivered. The commenter stated the last sentence of section 3(c) in the proposed rule states "These amounts will be totaled to determine the premium, liability and indemnity for the unit." The use of the "These amounts" is vague. The placement of this sentence within section 3(c) is also questionable. The commenter questioned whether the intent of this sentence is to convey that though different prices may apply to different acres (based on different contract prices and/or prices from the actuarial documents), the liability for the unit is the total of the liabilities determined in accordance with section 3.

*Response:* As stated above, FCIC has removed section 3(c) in response to other comments.

*Comment:* One commenter questioned if the deletion of the July 31 date for California in section 5 means that California will have whatever date is "designated in the Special Provisions," or will cabbage no longer be insurable in this state.

*Response:* California is not participating in the cabbage program at this time; if they do participate at a later date they will be eligible under the category "All other states and counties" and the date will be designated in the Special Provisions.

*Comment:* One commenter recommended adding a comma in

section 6 following the phrase "in your processor contract" for clarity.

*Response:* FCIC has removed the phrase "under the price per hundredweight contained in your processor contract" in section 6 in response to other comments. FCIC has added a comma following the word "cabbage."

*Comment:* One commenter stated in section 7(a)(1) through (6) the change of "and" to "or" following section 7(a)(5) seems to indicate that not all six of these provisions will apply in all cases. However, the "or" could be understood to mean that as long as one of the other provisions applies, it is not necessary for the cabbage to be planted within the applicable plating periods. Therefore, the commenter recommended combining subsections (4) and (5) into one subsection for cabbage that is either fresh or processing cabbage, then the word "or" at the end of subsection (5) can be changed to the word "and".

*Response:* FCIC has revised the provision accordingly.

*Comment:* Two commenters stated the reference to "mustard" in section 7(b) needs to be corrected to "cabbage".

*Response:* FCIC has revised the provision accordingly.

*Comment:* One commenter stated since the proposed provisions in sections 7(b) and (c) address the insured share rather than the insured crop, the commenter recommended putting them under a separate "Share Insured" section corresponding to section 10 of the Basic Provisions.

*Response:* The provisions of sections 7(b) and (c) are consistent with other Crop Provisions. Therefore, no change has been made.

*Comment:* One commenter stated in section 9(b) it states, "In accordance with the provisions of section 11 of the Basic Provisions, the end of the insurance period will be the earlier of: "(1) The date the crop should have been harvested; "(2) For processing cabbage, the date you harvested sufficient production to fulfill your processor contract \* \* \*; or "(3) The following applicable calendar date after planting:\* \* \*" This seems to exclude any consideration of the other conditions of the Basic Provisions (i.e., abandonment, harvest, final adjustment of the loss, etc.). The commenter stated if section 9(b) were to be revised to read "In addition to the provisions of section 11(b) of the Basic Provisions \* \* \*" it would be clear that these other conditions still apply.

*Response:* FCIC has changed the phrase "In accordance with" to "In addition to".

*Comment:* One commenter recommended section 10(a)(2) be clarified to read "Fire, due to natural causes" or "Fire, if caused by lightning" as is in the proposed revision to the Tobacco Crop Provisions.

*Response:* Section 12 of the Basic Provisions states all specified causes of loss must be due to a naturally occurring event. Further, if the requirement for natural causes was only included with regard to fire, it may create the mistaken impression that fire is the only cause of action that must be from natural causes. Therefore, no change has been made.

*Comment:* One commenter stated the word "a" needs to be added before the phrase "cause of loss" in section 10(a)(7).

*Response:* FCIC has revised the provision accordingly.

*Comment:* One commenter stated in sections 11(c)(1) and (2) that, without some indication in the proposed rule as to what range of hundredweight might be given in the Special Provisions to replace the previous policy language or why the specified figures are being removed, it is difficult to comment since there is no way of knowing the significance of the proposed policy change. The commenter also recommended changing the semicolon to a comma preceding the phrase "multiplied by your insured share" at the end of the first sentence in section 11(c).

*Response:* FCIC revised sections 11(c)(1) and (2) to specify that the amount of replanting payment per acre will be contained in the Special Provisions because the replant costs vary considerably by region. The amount in hundredweight will be the amount to cover the cost of replanting the crop in that region. The semicolon in the first sentence of section 11(c) should be changed to a comma and the provision has been revised accordingly.

*Comment:* One commenter questioned if the phrase "In addition to section 14 of the Basic Provisions," in section 12(b)(1) means the allowance for notice of damage not later than 15 days after the end of the insurance period from the Basic Provisions is still afforded.

*Response:* FCIC did not intend for the 15 days after the end of insurance period notice of damage from section 14(a)(2)(Your Duties) of the Basic Provisions to be applicable to cabbage. FCIC has revised section 12(b) to clarify proposed section 12(b)(1) was in lieu of section 14(a)(2)(Your Duties) of the Basic Provisions. FCIC added a new section 12(c) and redesignated sections 12(b)(2), (3), and (4) as sections 12(c)(1), (2), and (3), respectively, to clarify these

provisions were intended to be in addition to section 14 of the Basic Provisions. The proposed sections 12(c) and (d) have been redesignated as sections 12(d) and (e), respectively, and the reference to section 12(b) in redesignated section 12(d) has been revised to reference the new sections 12(b) and (c).

*Comment:* One commenter recommended either adding a comma before the phrase “except for stored cabbage” or putting this phrase in parentheses in section 12(c).

*Response:* FCIC has added a comma before the phrase “except for stored cabbage” in redesignated section 12(d).

*Comment:* One commenter stated unless the provision in section 12(d) affects more than just what is in section 14(a)(3) of the Basic Provisions, the commenter recommended keeping the more specific reference to section 14(a)(3) in the first sentence so people do not have to read through all of section 14 of the Basic Provisions.

*Response:* FCIC has revised the provision accordingly.

*Comment:* Two commenters stated in section 13(a)(1) the sentence following section 13(a)(1)(ii) “For any processor contract that stipulates \* \* \*” should be identified as subsection (a)(2) otherwise, (a)(1) includes two sets of (i) and (ii), though perhaps it would be better if this subsection were moved to section 13(d) [production to count]. One commenter also stated the spelling of “notwithstanding” needs to be corrected to “notwithstanding”.

*Response:* FCIC has identified the paragraph following section 13(a)(1)(ii) as subsection (a)(2) and has corrected the spelling to “notwithstanding”. FCIC has also removed sections 13(a)(2)(ii) and (iii) and combined section 13(a)(2) with section 13(a)(2)(i) to be consistent with the changes in the Mustard Crop Insurance Provisions, which were recently converted to a permanent crop insurance program and contain provisions regarding a processing crop.

*Comment:* Two commenters stated section 13(a)(2)(ii) [if the subsection (a)(2) is added as recommended above] references section 13(b)(4), but there is no section 13(b)(4).

*Response:* As stated above, FCIC has removed section 13(a)(2)(ii) to be consistent with the changes in the Mustard Crop Insurance Provisions, which were recently converted to a permanent crop insurance program and contain provisions regarding a processing crop.

*Comment:* One commenter stated it is unclear whether the reference to section 13(b) in section 13(a)(2)(iii) [if the subsection (a)(2) is added as

recommended above] is correct. The commenter stated perhaps it should reference section 13(c).

*Response:* As stated above, FCIC has removed section 13(a)(2)(iii) to be consistent with the changes in the Mustard Crop Insurance Provisions, which were recently converted to a permanent crop insurance program and contain provisions regarding a processing crop.

*Comment:* One commenter stated section 13(c)(1) references the term “insured acreage”. The commenter recommended adding a definition of insured acreage.

*Response:* FCIC has added language in section 8(c) explaining how insurable acreage is determined for processing cabbage. In addition, FCIC has changed the reference from “insured acreage” to “insurable acreage” in section 13(c)(1) to be consistent with section 8(c).

*Comment:* Two commenters stated the background of this proposed rule states quality adjustments have been added. There is no specific reference to quality adjustments; however, section 13(e) notes an adjustment for damaged production that is sold. The commenters recommended that, in order to maintain consistency with other Crop Provisions and to provide clarity, section 13(e) should contain language regarding the conditions under which quality adjustments will be used.

*Response:* FCIC erroneously stated in the proposed rule that quality adjustments have been added to the provisions. Quality adjustment provisions were already contained in the Pilot Cabbage Crop Provisions. FCIC has revised the language in section 13(e)(1) to be more consistent with other Crop Provisions and to reference a quality adjustment. Further, the definition of “local market price” has been removed because it is no longer required. The provision now refers to the amount received. For cabbage to be adjusted for damage, the damage must have been caused by an insured cause of loss, but the damaged cabbage must be marketable. The definition of “marketable cabbage” in section 1 establishes that cabbage production that is sold or grades at least U.S. Commercial for fresh market cabbage or grades at least U.S. No. 2 for processing cabbage is marketable.

In addition to the changes described above, FCIC has made minor editorial changes and added a definition for “crop year.” FCIC has also removed any reference to South Carolina because they will no longer be participating in the program.

## List of Subjects in 7 CFR Part 457

Crop insurance, Cabbage, Reporting and recordkeeping requirements.

### Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 for the 2010 and succeeding crop years 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(l), 1506(p).

■ 2. Section 457.171 is added to read as follows:

#### § 457.171 Cabbage crop insurance provisions.

The Cabbage Crop Insurance Provisions for the 2010 and succeeding crop years are as follows:

FCIC policies: United States Department of Agriculture, Federal Crop Insurance Corporation.

Reinsured policies: (Appropriate title for insurance provider).

Both FCIC and reinsured policies: Cabbage Crop Insurance Provisions.

##### 1. Definitions

*Cabbage.* Plants of the family Brassicaceae and the genus Brassica, grown for their compact heads and used for human consumption.

*Crop Year.* In lieu of the definition contained in section 1 of the Basic Provisions, a period of time that begins on the first day of the earliest planting period and continues through the last day of the insurance period for the latest planting period. The crop year is designated by the calendar year in which the cabbage planted in the latest planting period is normally harvested.

*Damaged cabbage production.* Fresh market cabbage that fails to grade U.S. Commercial or better in accordance with the United States Standards for Grades of Cabbage, or processing cabbage that fails to grade U.S. No. 2 or better in accordance with the United States Standards for Grades of Cabbage for Processing due to an insurable cause of loss.

*Direct marketing.* Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper, or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

*Harvest.* Cutting of the cabbage plant to sever the head from the stalk.

*Hundredweight.* One hundred pounds avoirdupois.

*Inspected transplants.* Cabbage plants that have been found to meet the standards of the public agency responsible for the inspection process within the State in which they are grown.

*Marketable cabbage.* Cabbage that is sold or grades at least:

(a) U.S. Commercial for fresh market cabbage; or

(b) U.S. No. 2 for processing cabbage.

*Planted acreage.* In addition to the definition contained in section 1 of the Basic Provisions, cabbage plants and seeds must initially be planted in rows wide enough to permit mechanical cultivation. Cabbage planted or seeds planted in any other manner will not be insurable unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

*Processor.* Any business enterprise regularly engaged in processing cabbage for human consumption, that possesses all licenses and permits for processing cabbage required by the State in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process the contracted cabbage within a reasonable amount of time after harvest.

*Processor contract.* A written contract between the producer and the processor, containing at a minimum:

(a) The producer's commitment to plant and grow cabbage, and to sell and deliver the cabbage production to the processor;

(b) The processor's commitment to purchase all the production stated in the processor contract; and

(c) A price per hundredweight that will be paid for the production.

*Timely planted.* In lieu of the definition contained in section 1 of the Basic Provisions, cabbage planted during a planting period designated in the Special Provisions.

*Type.* A category of cabbage as designated in the Special Provisions.

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by planting period if separate planting periods are designated in the Special Provisions.

(b) In addition to the requirements of section 34 of the Basic Provisions, optional units may also be established by type if separate types are designated in the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for all the cabbage in the county insured under this policy unless the Special Provisions provide different

price elections by type, in which case you may select one price election for each cabbage type designated in the Special Provisions.

(b) The price elections you choose for each type must bear the same percentage relationship to the maximum price election offered by us for each type. For example, if you selected 100 percent of the maximum price election for one type, you must also select 100 percent of the maximum price election for all other types.

4. Contract Changes

In accordance with the provisions of section 4 of the Basic Provisions, the contract change dates are the following calendar dates preceding the cancellation dates:

(a) April 30 in Florida; Brooks, Colquitt, Tift, and Toombs Counties, Georgia; and Texas;

(b) November 30 in Alaska; Rabun County, Georgia; Illinois; Michigan; New York; North Carolina; Ohio; Oregon; Pennsylvania; Virginia; Washington; and Wisconsin; or

(c) As designated in the Special Provisions for all other states and counties.

5. Cancellation and Termination Dates

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

State and counties	Cancellation and termination dates
Brooks, Colquitt, Tift, and Toombs Counties, Georgia; Texas	July 1.
Florida	August 15.
Oregon, Washington	February 1.
Rabun County, Georgia; North Carolina	February 28.
Alaska, Illinois, Michigan, New York, Ohio, Pennsylvania, Virginia, and Wisconsin	March 15.
All other states and counties	As designated in the Special Provisions.

6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, to insure your processing cabbage, you must provide a copy of all your processor contracts to us on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with the provisions of section 8 of the Basic Provisions, the crop insured will be all the cabbage types in the county for which a premium rate is provided by the actuarial documents, in which you have a share, and that are:

(1) Planted with inspected transplants, if such transplants are required by the Special Provisions;

(2) If direct seeded, planted with hybrid seed unless otherwise permitted by the Special Provisions;

(3) Planted within the planting periods as designated in the Special Provisions;

(4) Planted to be:

(i) Harvested and sold as fresh cabbage; or

(ii) Grown and sold as processing cabbage in accordance with the requirements of a processor contract executed on or before the acreage reporting date and not excluded from the processor contract at any time during the crop year; and

(5) Unless allowed by the Special Provisions:

(i) Not interplanted with another crop; and

(ii) Not sold by direct marketing.

(b) Under the processor contract, you will be considered to have a share in the insured crop to the extent you retain control of the acreage on which the cabbage is grown, your income from the insured crop is dependent on the amount of production delivered, and the processor contract provides for delivery of the cabbage under specified conditions and at a stipulated price.

(c) A processing cabbage producer who is also a processor may establish an insurable interest if the following additional requirements are met:

(1) The producer must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the processor must execute and adopt a

resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a processor contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of "processor" contained in these Crop Provisions.

#### 8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(a) We will not insure any acreage that does not meet the rotation requirements contained in the Special Provisions.

(b) Any acreage of the insured crop damaged before the end of the planting period, to the extent that a majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant.

(c) For processing cabbage, insurable acreage will be:

(1) For acreage only based processor contracts, and acreage and production based processor contracts which specify a maximum number of acres, the lesser of:

(i) The planted acres; or  
(ii) The maximum number of acres specified in the contract;

(2) For production only based processor contracts, the lesser of:

(i) The number of acres determined by dividing the production stated in the processor contract by the approved yield; or

(ii) The planted acres.

#### 9. Insurance Period

(a) In lieu of the provisions of section 11 of the Basic Provisions, coverage begins on each unit or part of a unit the later of:

(1) The date we accept your application; or

(2) When the cabbage is planted in each planting period.

(b) In addition to the provisions of section 11 of the Basic Provisions, the end of the insurance period will be the earlier of:

(1) The date the crop should have been harvested; or

(2) The following applicable calendar date after planting:

(i) Alaska: October 1;

(ii) Florida:

(A) February 15 for the fall planting period;

(B) April 15 for the winter planting period; and

(C) May 31 for the spring planting period;

(iii) Brooks, Colquitt, Tift, and Toombs Counties, Georgia:

(A) January 15 for the fall planting period; and

(B) June 15 for the spring planting period;

(iv) Rabun County, Georgia:

(A) September 15 for the spring planting period; and

(B) October 31 for the summer planting period;

(v) Illinois, Michigan, New York, Ohio, and Pennsylvania:

(A) September 30 for the spring planting period; and

(B) November 25 for the summer planting period;

(vi) North Carolina:

(A) July 10 for the spring planting period; and

(B) December 31 for the fall planting period;

(vii) Oregon: December 31;

(viii) Texas:

(A) December 31 for the summer planting period;

(B) February 15 for the fall planting period; and

(C) April 30 for the winter planting period;

(ix) Virginia:

(A) July 31 for the early spring planting period;

(B) September 15 for the spring planting period; and

(C) November 15 for the summer planting period;

(x) Washington: December 31;

(xi) Wisconsin: November 5; and

(xii) All other states and counties as provided in the Special Provisions.

#### 10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Wildlife;

(4) Insects or plant disease, but not damage due to insufficient or improper application of control measures;

(5) Earthquake;

(6) Volcanic eruption; or

(7) Failure of the irrigation water supply, if caused by a cause of loss specified in sections 10(a)(1) through (6) that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) Failure to market the cabbage for any reason other than actual physical damage from an insured cause of loss that occurs during the insurance period (For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production, etc.); or

(2) Damage that occurs or becomes evident after the end of the insurance period, including, but not limited to,

damage that occurs or becomes evident after the cabbage has been placed in storage.

#### 11. Replanting Payments

(a) In accordance with the provisions of section 13 of the Basic Provisions, a replanting payment is allowed if the crop is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

(b) No replanting payment will be made on acreage planted prior to the initial planting date or after the end of the final planting period as designated by the Special Provisions.

(c) In accordance with the provisions of section 13(c) of the Basic Provisions, the maximum amount of the replanting payment per acre is the number of hundredweight specified in the Special Provisions multiplied by your price election, multiplied by your insured share. The fresh market cabbage price election will be used to determine processing cabbage replanting payments in counties where both fresh market and processing cabbage are insurable.

(d) When the insured crop is replanted using a practice that is uninsurable as an original planting, the liability for the unit will be reduced by the amount of the replanting payment attributable to your share. The premium will not be reduced.

(e) In lieu of the provisions contained in section 13 of the Basic Provisions that limit a replanting payment to one each crop year, only one replanting payment will be made for acreage replanted during each planting period within the crop year, if separate planting periods are allowed by the Special Provisions.

#### 12. Duties In The Event of Damage or Loss

(a) Failure to meet the requirements of this section will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(b) In lieu of the provisions of section 14(a)(2)(Your Duties) of the Basic Provisions, so that we may inspect the insured crop, you must give us notice within 72 hours of your initial discovery of damage if such discovery occurs more than 15 days prior to harvest of the acreage.

(c) In addition to the provisions of section 14(a)(3) (Your Duties) of the Basic Provisions, so that we may inspect the insured crop, you must give us notice:

(1) Immediately if damage is discovered 15 days or less prior to the beginning of harvest or during harvest.

(2) At least 15 days prior to the beginning of harvest, if direct marketing of the insured crop is allowed by the Special Provisions, and you intend to direct market any of the crop.

(3) At least 15 days before the earlier of:

(i) The date harvest would normally start if any acreage on the unit will not be harvested; or

(ii) The beginning of harvest, if any production will be harvested for a use other than as indicated on the acreage report.

(d) After you have provided the applicable notice required by sections 12(b) and (c), we will conduct an appraisal to determine your production to count for the purposes of section 13(d).

(1) Except as provided in section 12(e), you must not dispose of or sell the damaged crop, or store the insured crop, until after we have appraised it and given you written consent to do so.

(2) If additional damage occurs after this appraisal, except for stored cabbage, we will conduct another appraisal.

(3) These appraisals, and any acceptable records provided by you, will be used to determine your production to count in accordance with section 13(d).

(e) In accordance with the requirements of section 14 of the Basic Provisions, if you initially discover damage to any insured cabbage within 15 days of or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 3 rows wide and extend the entire length of each field in the unit and must not be harvested or destroyed until the earlier of our inspection or 15 days after completion of harvest on the unit.

### 13. Settlement of Claim

(a) We will determine your loss on a unit basis.

(1) In the event you are unable to provide separate acceptable production records:

(i) For any optional units, we will combine all optional units for which such production records were not provided; and

(ii) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(2) For any processor contract that stipulates only the amount of production to be delivered, and notwithstanding the provisions of this section or any unit division provisions contained in the Basic Provisions, no indemnity will be paid for any loss of production on any unit if you produced a crop sufficient to fulfill the processor

contract(s) forming the basis of the insurance guarantee;

(b) The extent of any damaged cabbage production must be determined not later than the date the cabbage is placed in storage if the production is stored prior to sale, or the date the cabbage is delivered to a buyer, wholesaler, packer, processor, or other handler if production is not stored.

(c) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insurable acreage by its respective production guarantee (per acre), by type if applicable;

(2) Multiplying each result in section 13(c)(1) by the respective price election, by type if applicable;

(3) Totaling the results in section 13(c)(2);

(4) Multiplying the total production to count of each type, if applicable (see section 13)(d)), by its respective price election;

(5) Totaling the results in section 13(c)(4);

(6) Subtracting the results in section 13(c)(5) from the results of section 13(c)(3); and

(7) Multiplying the result in section 13(c)(6) by your share.

For example:

For a basic unit you have 100 percent share in 100 acres of cabbage, 50 acres for fresh market and 50 acres for processing as sauerkraut, with a production guarantee (per acre) of 400 hundredweight per acre for fresh market and 400 hundredweight per acre for processing as sauerkraut and a price election of \$5.00 per hundredweight for fresh market and \$1.90 per hundredweight for processing as sauerkraut. You are only able to harvest 9,000 hundredweight of fresh market cabbage and 9,000 hundredweight of cabbage for sauerkraut because an insured cause of loss has reduced production. Your total indemnity would be calculated as follows:

(1) 50 acres  $\times$  400 hundredweight = 20,000 hundredweight guarantee for the fresh market acreage.

50 acres  $\times$  400 hundredweight = 20,000 hundredweight guarantee for the processing as sauerkraut acreage.

(2) 20,000 hundredweight guarantee  $\times$  \$5.00 price election = \$100,000 value of guarantee for the fresh market cabbage.

20,000 hundredweight guarantee  $\times$  \$1.90 price election = \$38,000 value of guarantee for processing as sauerkraut.

(3) \$100,000 + \$38,000 = \$138,000 total value of guarantee.

(4) 9,000 hundredweight  $\times$  \$5.00 price election = \$45,000 value of production to count for the fresh market acreage.

9,000 hundredweight  $\times$  \$1.90 price election = \$17,100 value of production

to count for the acreage for processing as sauerkraut.

(5) \$45,000 + \$17,100 = \$62,100 total value of production to count.

(6) \$138,000 - \$62,100 = \$75,900 loss.

(7) \$75,900  $\times$  100 percent share = \$75,900 indemnity payment.

(d) The total production to count (in hundredweight) of marketable cabbage from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee (per acre) for acreage:

(A) That is abandoned;

(B) For which you fail to meet the requirements contained in section 12;

(C) That is put to another use without our consent;

(D) That is damaged solely by uninsured causes; or

(E) For which you fail to provide production records that are acceptable to us;

(ii) All production lost due to uninsured causes;

(iii) All unharvested marketable production;

(iv) All potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us. (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(e) Mature production that is considered damaged cabbage production but is sold will be adjusted for quality as follows:

(1) Dividing the amount received per hundredweight of such damaged cabbage production by the applicable price election; and

(2) Multiplying the result by the number of hundredweight of damaged cabbage production.

14. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

Signed in Washington, DC, on February 19, 2009.

**William J. Murphy,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. E9-4118 Filed 2-25-09; 8:45 am]

BILLING CODE 3410-08-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-29255; Directorate Identifier 2007-NM-085-AD; Amendment 39-15821; AD 2009-04-15]

RIN 2120-AA64

#### **Airworthiness Directives; Boeing Model 737-100, -200, -200C, -300, -400, and -500 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 737-100, -200, -200C, -300, -400, and -500 series airplanes. This AD requires repetitive internal eddy current and detailed inspections to detect cracked stringer tie clips; measuring the fastener spacing and the edge margin if applicable, and doing applicable corrective and related investigative actions. As a temporary alternative to doing the actions described previously, this AD requires repetitive external general visual inspections of the skin and lap joints and repetitive external eddy current sliding probe inspections, as applicable, of the lap joints for cracks and evidence of overload resulting from cracked stringer tie clips, and applicable corrective actions if necessary. This AD results from a report of several cracked stringer tie clips. We are issuing this AD to detect and correct multiple adjacent cracked stringer tie clips and damaged skin and frames, which could lead to the skin and frame structure developing cracks and consequent decompression of the airplane.

**DATES:** This AD becomes effective April 2, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 2, 2009.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone 206-544-5000, extension 1, fax 206-766-5680; e-mail [me.boecom@boeing.com](mailto:me.boecom@boeing.com); Internet <https://www.myboeingfleet.com>.

#### **Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800-647-5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

#### **FOR FURTHER INFORMATION CONTACT:**

Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6447; fax (425) 917-6590.

#### **SUPPLEMENTARY INFORMATION:**

##### **Discussion**

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 737-100, -200, -200C, -300, -400, and -500 series airplanes. That supplemental NPRM was published in the **Federal Register** on August 29, 2008 (73 FR 50899). That supplemental NPRM proposed to require repetitive internal eddy current and detailed inspections to detect cracked stringer tie clips; measuring the fastener spacing and the edge margin if applicable, and doing applicable corrective and related investigative actions. That supplemental NPRM also proposed to require repetitive external eddy current sliding probe inspections of the lap joints for cracks and evidence of overload resulting from cracked stringer tie clips, and applicable corrective actions if necessary.

#### **Comments**

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

#### **Request To Clarify Effectivity**

Boeing asks that the affected airplanes specified in Note 3 of the supplemental NPRM be clarified. Boeing states that the original issue of Boeing Service Bulletin 737-53-1085, Revision 1, dated May 10, 1990 (referred to in Note 3), contains an error in the affected airplanes shown in the summary section. Boeing notes that the error shows line numbers 1 through 1000. Boeing also states that in the planning information section of that service bulletin, it shows line number 1000/part number 136 is not included in the Group 2 airplanes (all affected Model 737-200 airplanes). In addition, Boeing Service Bulletin 737-53-1085, Revision 1, dated May 10, 1990, includes a change to the production line for line numbers 1000 and on. Boeing asks that Note 3 of the supplemental NPRM be changed to replace line number 1000 with line number 999, and to replace line number 1001 with line number 1000. We agree for the reasons provided and have changed Note 3 for clarification.

#### **Request To Clarify Paragraph (g)**

Boeing asks that we clarify the first sentence in paragraph (g) of the supplemental NPRM (paragraph (f) of the final rule) by adding "as applicable" after the inspection method. We agree because the inspection method depends on the type of stringer clip. We have changed paragraph (f) of the AD accordingly.

#### **Request To Clarify Paragraph (h)**

Boeing asks that we clarify the first sentence in paragraph (h) of the supplemental NPRM (paragraph (g) of the final rule) by adding "as applicable" to that sentence. We agree because the inspection types are appropriate only for certain airplanes. We have changed paragraph (g) of the AD accordingly.

#### **Request To Move Note 2**

Boeing asks that we move Note 2 of the supplemental NPRM from its current position below paragraph (h) of the supplemental NPRM (paragraph (g) of the final rule) to the position below paragraph (g) (paragraph (f) of the final rule) and Note 1 of the supplemental NPRM. Boeing states that Note 2 pertains to the optional/economic inspections, which are relative to those inspections specified in paragraph (g), not paragraph (h). Boeing notes that