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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

[Docket No. FCIC-10-0002]

RIN 0563-AC27

#### Common Crop Insurance Regulations; Extra Long Staple Cotton Crop Provisions

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes amendments made to the Common Crop Insurance Regulations, Extra Long Staple Cotton Crop Insurance Provisions to remove all references to the Daily Spot Cotton Quotation and replace the references with the National Average Loan Rate published by the Farm Service Agency (FSA), to incorporate a current Special Provisions statement into the Crop Provisions, and to make the Extra Long Staple Cotton Crop Insurance Provisions consistent with the Upland Cotton Crop Insurance Provisions. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of the producers, and to reduce vulnerability to program fraud, waste, and abuse. The changes will be effective for the 2012 and succeeding crop years.

**DATES:** *Effective Date:* This rule is effective July 5, 2011.

**FOR FURTHER INFORMATION CONTACT:** Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. 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 purpose 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 through March 31, 2012.

#### 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. The review reveals that this regulation will not have substantial

and direct effects on Tribal governments and will not have significant Tribal implications.

#### 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 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 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 November 19, 2010, FCIC published a notice of proposed rulemaking in the **Federal Register** at 75 FR 70850–70852 to revise 7 CFR part 457, Common Crop Insurance Regulations, by revising § 457.105 (Extra Long Staple Cotton Crop Insurance Provisions). Requests have been made for changes to improve the coverage offered, address program integrity issues, and simplify program administration. The provisions will be effective for the 2012 and succeeding crop years.

A total of six comments were received from one commenter. The commenter was an insurance service organization. The comments received and FCIC's responses are as follows:

#### General Comments

*Comment:* A commenter suggests FCIC remove the Basic Provisions section titles which are set off by parenthesis throughout the Crop Provisions, as has been done when other Crop Provisions that have been revised recently. For example, section 2 could read "In addition to the requirements of section 3 of the Basic Provisions \* \* \*" [deleting the parenthetical " \* \* \* (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) \* \* \*" following "section 3"]. Affected sections are 2, 3, 4, 5, 6, 7(b), 8, and 9(a).

*Response:* Although this section was not included in the proposed rule, FCIC agrees and has revised the provisions accordingly since it is a technical correction and does not change the meaning or intent of the provision.

*Comment:* A commenter recommends changing "The total production (pounds) to count \* \* \*" in section 10(c) to "The total production to count (in pounds) \* \* \*" so as to keep the phrase "production to count" intact.

*Response:* Although this section was not included in the proposed rule, FCIC agrees and has revised the provisions

accordingly since it is a technical correction and does not change the meaning or intent of the provision.

#### Section 10—Settlement of Claim

*Comment:* A commenter supports the proposed changes of the prices used in section 10(d) and (f) and the change of the Price B percentage used from 75 percent to 85 percent since equivalent changes have already been made in the 2011 Cotton Crop Provisions.

*Response:* FCIC thanks the commenter for their support regarding the changes of the prices used in section 10 and the change of the Price B percentage.

*Comment:* A commenter points out the Background section of the Proposed Rule states the following: "FCIC also proposes to change the percentage of Price B from 75 percent to 85 percent in sections 10(d) and 10(d)(3). This does not change the existing terms of the policy because the change was already implemented in the Special Provisions. FCIC is proposing to move the provision to the Crop Provisions because the change is being implemented in all areas where ELS cotton is available."

- If the summary of this Proposed Rule accurately describes the actions taken, and represents clarification or standardization to conform to the 2011 Basic Provisions, the only comment would concern whether FCIC has conducted whatever necessary rate impact evaluations and made any necessary adjustments. Whether or not the rate analysis has been done is a little unclear based on two phrases in the third paragraph of item 2 in the Background section of the Proposed Rule.

- The second sentence of the paragraph in the Background section suggests the change to 85 percent "was" already implemented (in the past), while the third sentence indicates the change "is being" implemented (currently) everywhere ELS Cotton is insurable. The difference between "was" and "is being" might be explained in the context that the change to 85 percent "was" already added in a previous year's Special Provisions, and now "is being" added in the Crop Provisions instead (with a Special Provisions statement no longer being necessary), but it could be clarified. Was the 85 percent change previously in the Special Provisions for ALL counties where ELS Cotton was insurable, or only in some?

*Response:* The change from 75 percent to 85 percent was put into place in crop year 2000 with a Special Provisions statement. At the time the change was implemented, a rate adjustment was made. There has been nothing in the performance of the policy

to suggest that this rate change was not appropriate or was inadequate. Therefore, no additional rate analysis is necessary.

The Special Provisions statement that says the production to count will be reduced if price quotation "A" is less than 85 percent of price quotation "B" will be removed from the Special Provisions and incorporated into the Crop Provisions. The change was made years ago and this Special Provisions statement existed in all counties where ELS Cotton is insurable. As incorporated into the Crop Provisions, no new Special Provisions statements will be required if ELS cotton is expanded to additional counties.

#### Section 12—Prevented Planting

*Comment:* A commenter recommends eliminating the option to increase prevented planting coverage levels.

*Response:* This section was not included in the proposed rule and would be considered a substantive change to the policy. Since the public was not provided an opportunity to comment, FCIC cannot consider the recommended change.

In addition to the changes described above, FCIC has revised section 10(f) by removing the phrase "Any AUP cotton" and replacing it with the phrase "Mature AUP cotton" to clarify the AUP cotton must be mature in order to calculate a conversion factor between AUP cotton and ELS cotton.

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

Crop insurance, Extra long staple cotton, 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 2012 and succeeding crop years for the Extra Long Staple Cotton Crop Insurance Provisions.

#### 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(o).

■ 2. Amend § 457.105 as follows:

■ a. Amend the introductory text by removing "1998" and adding "2012" in its place;

■ b. Remove the undesignated paragraph immediately preceding section 1.

■ c. Amend section 2 by removing the phrase "(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)";

- d. Amend section 3 by removing the phrase “(Contract Changes)”;
  - e. Amend section 4 by removing the phrase “(Life of Policy, Cancellation, and Termination)”;
  - f. Amend the introductory text of section 5 by removing the phrase “(Insured Crop)”;
  - g. Amend the introductory text of section 6 by removing the phrase “(Insurable Acreage)”;
  - h. Amend section 7(b) by removing the phrase “(Insurance Period)”;
  - i. Amend the introductory text of section 8 by removing the phrase “(Causes of Loss)”;
  - j. Amend section 9(a) by removing the phrase “(Duties in the Event of Damage or Loss)”;
  - k. Amend the introductory text of section 10(c) by removing the phrase “The total production (pounds) to count” and replacing it with the phrase “The total production to count (in pounds)”;
  - l. Revise section 10(d); and
  - m. Revise section 10(f).
- The revisions read as follows:

**§ 457.105 Extra long staple cotton crop insurance provisions.**

\* \* \* \* \*

10. Settlement of Claim.

\* \* \* \* \*

(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 Price A is less than 85 percent of Price B.

(1) Price B is defined as the Extra Long Staple Cotton National Average Loan Rate determined by FSA, or as specified in the Special Provisions.

(2) Price A is defined as the loan value per pound for the bale determined in accordance with the FSA Schedule of Premiums and Discounts for the applicable crop year, or as specified in the Special Provisions.

(3) 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 A by 85 percent of Price B.

\* \* \* \* \*

(f) Mature AUP cotton harvested or appraised from acreage originally planted to ELS cotton in the same growing season will be reduced by the factor obtained by dividing the price per pound for AUP cotton by the price per pound for ELS cotton. The prices used for AUP and ELS cotton will be calculated using the Upland Cotton National Average Loan Rate determined by FSA and the Extra Long Staple Cotton National Average Loan Rate

determined by FSA, or as specified in the Special Provisions.

\* \* \* \* \*

Signed in Washington, DC, on May 23, 2011.

**William J. Murphy**,  
Manager, Federal Crop Insurance  
Corporation.

[FR Doc. 2011-13354 Filed 6-2-11; 8:45 am]

**BILLING CODE 3410-08-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2011-0215]

RIN 1625-AA00

#### Safety Zone; Lorain Independence Day Fireworks, Black River, Lorain, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone at the mouth of the Black River, Lorain, OH for the Lorain Independence Day Fireworks. This zone is intended to restrict vessels from the Black River in Lorain, OH, during the Lorain Independence Day Fireworks on July 3, 2011. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a firework display.

**DATES:** This rule is effective from 9:30 p.m. until 11 p.m. on July 3, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket USCG-2011-2015 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-2015 in the “Keyword” box, and then clicking “Search.” This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail MST3 Rory Boyle, Marine Events Coordinator, U.S. Coast Guard Sector Buffalo; telephone 716-843-9343, e-mail [Rory.C.Boyle@uscg.mil](mailto:Rory.C.Boyle@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

## SUPPLEMENTARY INFORMATION:

### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because waiting for a notice and comment period to run would be impracticable and contrary to the public interest in that it would inhibit the Coast Guard’s ability to protect the public from the hazards associated with fireworks displays on navigable waters.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, a 30 day notice period would be impractical and contrary to the public interest.

### Background and Purpose

The Lorain Independence Day Fireworks is an event established to celebrate United States Independence. The fireworks display will occur on July 3, 2011 from 9:30 p.m. until 11 p.m. The Captain of the Port Buffalo has determined that fireworks launched proximate to watercraft pose a significant risk to public safety and property. Thus, this temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with the aforesaid fireworks display. Establishing a safety zone to control vessel movement around the location of the launch area will help ensure the safety of persons and property at these events and help minimize the associated risks.

### Discussion of Rule

This temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching the fireworks during the Lorain Independence Day Fireworks. It will encompass a 1,400 ft radius at the end of the break wall at the Spitzer Lakeside Marina in Lorain, OH. This temporary safety zone will be effective and enforced from 9:30 p.m. until 11 p.m. on July 3, 2011.