

DEPARTMENT OF AGRICULTURE**Federal Crop Insurance Corporation****7 CFR Part 457**

[Docket No. FCIC-17-0003]

RIN 0563-AC59

**Common Crop Insurance Regulations;
Cultivated Clam Crop Insurance
Provisions****AGENCY:** Federal Crop Insurance Corporation, USDA.**ACTION:** Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations to provide Cultivated Clam insurance. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions (Basic Provisions), which contain standard terms and conditions common to most crop programs. The intended effect of this action is to convert the Cultivated Clam pilot crop insurance program to a regulatory insurance program for the 2019 and succeeding crop years.

DATES: *Effective date:* This final rule is effective December 27, 2017.

Applicability date: The changes are applicable for the 2019 and succeeding crop years.

Comment due date: FCIC will accept written comments on this final rule until close of business January 26, 2018. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC-17-0003, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Director, Actuarial and Product Design Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64141-6205.

FCIC will post all comments received, including those received by mail, without change to <http://www.regulations.gov>, including any personal information provided. Once these comments are posted to this website, the public can access all comments at its convenience from this website. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions

on submitting comments and additional information, see <http://www.regulations.gov>. If interested persons are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, FCIC requests that the document attachment be in a text-based format. If interested persons want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of the submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the Risk Management Agency (RMA) Web Content Team at (816) 823-4694 or by email at rmaweb.content@rma.usda.gov.

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

FOR FURTHER INFORMATION CONTACT: Ron Lundine, Director, Product Management, Actuarial and Product Design 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) 926-3854.

SUPPLEMENTARY INFORMATION:**Background**

FCIC offered a pilot crop insurance program for cultivated clams beginning with the 1999 crop year. The program is offered in nine counties in Massachusetts, South Carolina, and Virginia. After a program evaluation, in 2014 the FCIC's Board of Directors authorized the Cultivated Clam Pilot Crop Insurance Program to be converted from a pilot to a permanent program in Massachusetts, South Carolina, and Virginia. For the 2016 crop year, 42 policies were sold and 352,563,049 clams were insured in Massachusetts, South Carolina, and Virginia. This rule will add the Cultivated Clam Program to the Code of Federal Regulations.

The FCIC is issuing this final rule without opportunity for prior notice and comment. The Administrative Procedure Act (APA) exempts rules "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts" from the statutory requirement for prior notice and opportunity for public comment (5

U.S.C. 553(a)(2)). A Federal crop insurance policy is a contract and is thus exempt from APA notice-and-comment procedures. Previously, changes made to the Federal crop insurance policies codified in the Code of Federal Regulations were required to be implemented through the notice-and-comment rulemaking process. Such action was not required by the APA, which exempts contracts. Rather, the requirement originated with a notice USDA published in the **Federal Register** on July 24, 1971 (36 FR 13804), stating that the Department of Agriculture would, to the maximum extent practicable, use the notice-and-comment rulemaking process when making program changes, including those involving contracts. FCIC complied with this notice over the subsequent years. On October 28, 2013, USDA published a notice in the **Federal Register** (78 FR 64194) rescinding the prior notice, thereby making contracts again exempt from the notice-and-comment rulemaking process. This exemption applies to the 30-day notice prior to implementation of a rule. Therefore, the policy changes made by this final rule are effective upon publication in the **Federal Register**.

However, FCIC is providing a 30-day comment period and invites interested persons to participate in this rulemaking by submitting written comments. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

Executive Orders 12866, 13563, 13771 and 13777

Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review," direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, "Enforcing the Regulatory Reform Agenda," established a federal policy to alleviate unnecessary regulatory burdens on the American people. The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, "Regulatory Planning and Review," and therefore, OMB has not reviewed this rule. The rule is not subject to Executive Order 13771,

“Reducing Regulation and Controlling Regulatory Costs.”

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

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

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Federal Crop Insurance Corporation has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, the Federal Crop Insurance Corporation will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the indemnity amount for an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act (FCIA) authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have a significant impact on a substantial number of small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive

effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

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

List of Subjects in 7 CFR Part 457

Crop insurance, Cultivated clam, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457, applicable for the 2019 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(o).

■ 2. Section 457.176 is added to read as follows:

§ 457.176 Cultivated clam crop insurance provisions.

The cultivated clam crop provisions for the 2019 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Cultivated Clam Crop Provisions

1. Definitions.

Amount of insurance. For each basic unit, your inventory value multiplied by the coverage level percentage you elect, and multiplied by your share. However, for catastrophic risk protection policies, amount of insurance is your inventory value multiplied by the coverage level percentage you elect (for CAT coverage the level is limited to 50 percent), multiplied by your share, and multiplied by 55 percent. Your accumulated paid indemnities during the crop year for each basic or optional

unit may not exceed your amount of insurance.

Basic unit value before loss. The stage value of all undamaged insurable clams, in the basic unit or, if elected, all optional units combined, immediately prior to the occurrence of any loss as determined by our appraisal. This allows the amount of insurance under the policy to be prorated among the individual units based on the actual value of the clams in the unit at the time of loss. It is also the basis for determining whether or not an indemnity is due. This value is used to ensure that you have not under-reported your clam inventory value.

Clam. A cultivated *Mercenaria mercenaria* (quahog).

Crop year. The twelve-month period beginning December 1 and extending through November 30 of the next calendar year, designated by the calendar year in which insurance ends.

Crop year deductible. The deductible percentage multiplied by the sum of the inventory values within each basic unit. The crop year deductible will be increased for any increases in the inventory value on the inventory value report. The crop year deductible will be reduced by any previously incurred deductible if you timely report each loss to us.

Deductible percentage. An amount equal to 100 percent minus the percent of coverage you select. The percentage is 50 percent for catastrophic risk protection coverage.

Disease. Any pathogen or group of pathogens, parasitic infestation or plague verified by an aquaculture pathologist and shown to be a primary cause to the death of the insured clams.

Freeze. The formation of ice in the cells of the animal caused by low air temperatures.

Global Positioning System (GPS). A space based radio position, navigation, and time transfer system involving satellites and computers to determine the latitude and longitude of a receiver on Earth by computing the time difference for signals from different satellites to reach the receiver and referenced in the Special Provisions.

Growing location. A lease parcel, permit or licensed area, whose boundaries are readily discernable above the water, and identified on a map that shows enough detail to distinguish seeded areas within the site.

Growout bag. A mesh bag used throughout the growing season to contain clams when placed in the appropriate growing medium and as further defined by the Special Provisions.

Harvest. Removal of marketable clams from the unit. Clams that are removed from the growing location but not of sufficient size to be marketable are not considered harvested if returned to the growing location.

Ice floe. Floating ice formed in sheets on the sea surface.

Inventory value. The total of the stage values from the inventory value report.

Inventory value report. Your report that declares the stage values of insurable clams in accordance with section 6. See the Cultivated Clam Insurance Standards Handbook, Exhibit 5 for the inventory value report completion instructions and form.

Land. The land under a body of water suitable for planting clams and the column of water above the land if designated and controlled by state law.

Lease. A contract that grants use of land in or assigned to a county for a specified term and for a specified payment and provides the lessee with the exclusive use of the land to plant clams.

Lease parcel. A legally identifiable tract or plot of land covered by a lease, permit, or license.

License. Official or legal permission that grants use of land in or assigned to a county for a specified term and provides the licensee with the exclusive use of the land to plant clams.

Non-contiguous. In lieu of the definition in the Basic Provisions, separately-named, high-density aquaculture lease sites or shellfish sites are considered non-contiguous, unless limited by the Special Provisions. Individual land parcels within such sites are not considered non-contiguous.

Occurrence deductible.

(a) This deductible allows a smaller deductible than the crop year deductible to be used when:

(1) Inventory values are less than the reported basic unit value; or

(2) You have elected optional units, if applicable.

(b) The occurrence deductible is the lesser of:

(1) The deductible percentage multiplied by the unit value before loss multiplied by the under-report factor; or

(2) The crop year deductible.

Permit. A document giving official or legal permission to use land in or assigned to a county for a specified term and provides the permittee with the exclusive use of the land to plant clams.

Planting. The placing of seed clams into the appropriate growing medium for the practice specified.

Pollution. The presence in the water of a substance that directly causes death of the clams. The substance shall not be parasitical, bacterial, fungal or viral, or

any substance used by you for medicinal purposes. Pollution will also include any increase or decrease in the content of any normal soluble or insoluble constituent of water including mud and silt, feed residues, solid or liquid fish wastes, dissolved gases and any other substance normally present in the water of the lease parcel.

Practical to replant. In lieu of the definition of "Practical to replant" contained in section 1 of the Basic Provisions, unless limited by the Special Provisions, practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors including, but not limited to the causes of loss listed in section 10 of these provisions, that replanting the insured crop will allow the crop to develop normally during the remainder of the crop year. Unavailability of seed clams will not be considered a valid reason for failure to replant.

Practice. The cultural methods of producing clams such as trays, mesh bags, round pens, lantern nets or bottom planting.

Replant. Unless limited by the Special Provisions, performing the cultural practices necessary to prepare for replacement of insurable clams that were destroyed by an insurable cause of loss and then placing living insurable clams into mesh bags or pens, or seeding them into prepared growout beds, bottom culture, bottom trays, or floating trays on insurable acreage.

Salinity. The dissolved solids (typically salts such as chloride, sodium, and potassium) in ocean water expressed as parts per thousand.

Seed clam.

(a) For clams placed in a field nursery or a nursery bag—a clam that is a minimum of 5 millimeters, measured at the longest shell distance that is parallel to the hinge.

(b) For all others—a clam which is a minimum of 10 millimeters, measured at the longest shell distance that is parallel to the hinge.

Separately named high-density aquaculture lease site. The submerged subdivided land under a body of water suitable for the cultivation of clams and identified and named separately by the Division of Marine Resources or similar regulatory agency.

Shellfish harvest ban. A State or Federal order that prohibits harvesting clams for human food in areas where monitoring program data indicates that fecal material, pathogenic microorganisms, poisonous or deleterious substances, marine toxins, or radio nuclides have reached excessive concentrations.

Stage. Clams that have attained the size or age specified for stage 1, 2, 3, or 4 as defined in the Special Provisions.

Stage value. The dollar value of the inventory of all insurable clams at each stage based on the survival factors and the prices shown in the actuarial documents for such stages, in each unit on your inventory value report, including any revision that increases the value of your insurable inventory.

Storm surge. A significant increase or decrease in water depth relative to normal tides that is caused by a strong, continuous and prolonged strong flow of onshore or offshore winds.

Survival factor. A factor shown on the actuarial documents that represents the expected percentage of clams that will normally survive. If you provide production records for three consecutive years, your records will be used in lieu of the factor contained in the actuarial document to determine the survival factor. The survival factor is applied at the time of inventory and is not applied a second time to the same inventory when a loss occurs. Clams that are seeded subsequent to the annual inventory value report must be adjusted by the survival factor.

Tidal wave. A large water wave, wave train, or a series of waves, generated in a body of water by an impulsive disturbance that vertically displaces the water column or a destructive type of wave motion in seas and oceans, associated with either strong winds or underwater earthquakes.

Under-report factor. The factor that adjusts your indemnity for under-reporting of inventory values. The factor is always used in determining any indemnities. The under-report factor is the lesser of: (a) 1.000; or (b) the sum of all stage values reported on all the inventory value reports, minus the total of all previous losses, as adjusted by any previous under-reporting factors, divided by the basic unit value before loss.

Unit value after loss. The value of the remaining insurable clams in each basic or optional unit based on the percentage of the reference maximum dollar amount contained in the actuarial documents, immediately following the occurrence of a loss as determined by our appraisal, plus any reduction in value due to uninsured causes. This is used to determine the loss of value for each individual unit so that losses can be paid on an individual unit basis, optional or basic, as applicable.

Unit value before loss. The stage value of undamaged insurable clams in the basic or optional unit, as applicable, immediately prior to the loss occurrence. The determined value will

include the number of seeded and harvested clams and stages that existed on the date of the inventory value report, adjusted for changes in accordance with subparagraph 22A(2) of the Insurance Standards Handbook, including but not limited to; the reference maximum dollar amount contained in the actuarial documents; and the applicable survival factors. This allows the amount of insurance under the policy to be divided among the individual units in accordance with the value of the clams in the unit at the time of loss for determining whether you are entitled to an indemnity for insured losses in the unit, optional or basic, as applicable. Clams that are seeded subsequent to the annual inventory value report being submitted must be adjusted by the survival factor before they are added to the beginning inventory during the process of establishing the "Unit value before loss."

2. Unit Division

(a) In addition to the definition of basic unit contained in section 1 of the Basic

Provisions, a basic unit may be divided into optional units in accordance with section 2(b). Note that even if you elect optional unit coverage, amount of insurance, crop year deductible, under-report factor, premium, and the total amount of indemnity payable under this policy will be controlled by the basic unit value before loss.

(b) If you elect the additional level of coverage, for an additional premium, inventory that would otherwise be a basic unit may, unless limited by the Special Provisions, be divided into optional units by non-contiguous lease parcels. Additional optional units may also be authorized in the Special Provisions. If you elect optional units, you must provide separate inventory reports for each unit and keep all records of seeding, harvest, and uninsured losses separately by unit.

(c) Failure to keep or report separate records will result in all optional unit inventories under a basic unit being combined in a basic unit at loss time.

(d) If you elect optional units, your amount of insurance will be divided among optional units in relation to unit value before loss of clams in each optional unit. If, at the time of loss, the aggregate value of the clams in your optional units exceeds your basic unit inventory value, you will be subject to the under-report factor provisions.

3. Amount of Insurance

(a) In addition to the requirements of section 3 of the Basic Provisions, you may only select one coverage level percentage for all clams, regardless of their stage, insured under this policy.

(b) Your amount of insurance will be reduced by the amount of any indemnity paid under this policy.

(c) For an additional premium, you may increase your amount of insurance in accordance with section 6(d).

(d) The production reporting requirements contained in section 3 of the Basic Provisions are not applicable.

(e) For seeded clams, the amount of insurance is the product of the reference maximum dollar amount of insurance and the fraction of the maximum value associated with the applicable stage multiplied by the coverage level selected multiplied by your share.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is August 31 of each year, or as specified in the actuarial documents.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are November 30, or as specified in the actuarial documents.

6. Clam Inventory Value Report

In lieu of section 6 of the Basic Provisions:

(a) For insurance to attach for the crop year, you must submit an inventory value report to us with your application and for each subsequent crop year, not later than November 30 preceding the crop year, or by the date specified in the Special Provisions.

(b) The inventory value report must be submitted yearly and include, for each basic or optional unit all growing locations, the stages of the clams and the stage values, and your share by growing location.

(1) The inventory value must also reflect the stages as shown in the Special Provisions.

(2) At our option and at any time, you may be required to provide documentation in support of any of your reports, including, but not limited to, a detailed listing of growing locations, unit values, the numbers and the sizes of clams seeded or placed for grow-out; your share, sales of clams and purchases of seed clams for the 3 previous crop years, and of your ability to properly obtain and maintain clams.

(3) For catastrophic level policies only, you must report your clam sales for the previous crop year on the clam inventory value report. You may be

required to provide documentation to support such sales.

(c) Your inventory value report, including any revised report, will be used to determine your premium and amount of insurance.

(d) If allowed for in the Special Provisions you may revise your inventory value report to increase the reported inventory value. We may inspect the inventory. Your revised inventory value report, if allowed by the Special Provisions, will be considered accepted by us and coverage will begin on any proposed increase in inventory value at the later of December 1, the date shown in the Special Provisions, or 30 days after your written request is received by us, unless we reject the proposed increase in your inventory value in writing. We will reject any requested increase if a loss occurs before the later of December 1, the date shown in the Special Provisions, or within 30 days of the date the request is made.

(e) Failure to report the full value of your stage value will result in the reduction of any claim in accordance with section 14(d).

(f) For catastrophic insurance coverage only: Your inventory value report for all clams cannot exceed the lesser of the value from section 6(b) or the percent shown on the actuarial documents of your previous year's sales of clams unless you provide acceptable records to prove your actual inventory value.

(g) Your inventory value report must reflect your insurable clam inventory according to the prices contained in the actuarial documents. In no instance will we be liable for values greater than those contained in the actuarial documents.

(h) You must report all clams on the unit including any clams owned or subleased by other individuals or entities.

(i) No application or inventory value reports, except revisions, will be accepted after November 30, unless otherwise provided in the Special Provisions.

7. Premium

(a) In lieu of section 7(c) of the Basic Provisions, we will determine your premium by multiplying the amount of insurance by the appropriate premium rate and by the premium adjustment factors listed on the actuarial documents.

(b) Additional premium from an increase in the inventory value report is due and payable when we accept the revised inventory value report.

(c) In addition to the provisions in section 7 of the Basic Provisions, the

premium will be adjusted for partial crop years for the year of seeding and for clam leases you acquire. Premium will be charged for the entire month, as shown in the actuarial documents, for any month during which any amount of coverage is provided.

8. Insured Crop

In lieu of the provisions of section 8 and section 9 of the Basic Provisions, the insured crop is all the clams in the county that:

(a) Meet all the requirements for insurability and for which prices are provided in the actuarial documents;

(b) Are acceptable to us;

(c) Are grown by a person, who in at least three of the five previous crop years:

(1) Grew clams for commercial sale; and

(2) Participated in the management of a clam farming operation by at least exercising decision-making authority over all operational aspects of the farm.

(d) Are grown in a county for which a premium rate is provided in the actuarial documents;

(e) Are in a growing location acceptable to us and for which you provided GPS coordinates with your clam inventory value report in accordance with the Special Provisions; and

(f) Use a practice that fixes the insurable clams to the land within the growing location.

9. Insurance Period

(a) In accordance with section 11 of the Basic Provisions, coverage begins the later of:

(1) The date the pre-acceptance inspection, if applicable, is complete unless we notify you that your inventory is not insurable; or

(2) If your inventory is insurable:

(i) On December 1 for new applications, when the application and the inventory value report are submitted by October 30;

(ii) On the 31st day following the date of submission for new applications, when the application and the inventory value report are submitted between November 1 and 30;

(iii) On December 1 for policies continued from the prior year if the inventory value report is submitted by October 30;

(iv) On the 31st day following the date of submission of the inventory value report for policies continued from the prior year when the inventory value report is submitted between November 1 and 30; and

(v) However, you acquire a financial interest in any insurable clams after

coverage begins, but after December 1 of the crop year, and our inspection determines that the clams are acceptable, insurance will be considered to have attached to such clams 30 days after a revised inventory report is accepted by us indicating the stage value of the acquired clams; or

(vi) On the date contained in the Special Provisions.

(b) Insurance ends at the earliest of:

(1) The date of final adjustment of a loss when the total indemnities due equal the amount of insurance;

(2) November 30; or

(3) A date specified in the Special Provisions. (c) Insurance ceases immediately on any clams removed from the unit.

10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided for the death of clams caused only by the following causes of loss that occur within the insurance period unless otherwise limited by the Special Provisions:

(1) Oxygen depletion due to vegetation, microbial activity, harmful algae bloom, or high water temperature unless otherwise limited by the Special Provisions;

(2) Disease, if medication does not exist for control of the disease;

(3) Freeze;

(4) Hurricane;

(5) Decrease in salinity associated with a weather event verified by National Oceanic & Atmospheric Administration (NOAA) or United States Geologic Survey (USGS) or as otherwise defined in the Special Provisions;

(6) Tidal wave;

(7) Storm surge that is associated with a local weather event and verified by NOAA or USGS; or

(8) Ice floe.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we do not insure against any loss caused by:

(1) Your inability to market clams as a direct result of quarantine, shellfish harvest ban, boycott, or refusal of a buyer to accept production;

(2) Collapse or failure of buildings or structures;

(3) Loss of market value;

(4) Vandalism;

(5) Theft;

(6) Pollution;

(7) Predation (unless allowed by the Special Provisions);

(8) Dredging;

(9) Any cause of loss that occurred prior to or after the insurance period;

(10) Any unexplained shortages or disappearance of inventory; or

(11) Failure of the clam to grow to a marketable size.

11. Replanting Payments

Unless otherwise stated in the Special Provisions:

(a) In accordance with the provisions contained in section 13 of the Basic Provisions, a replanting payment is allowed for insurable clams if death of the clams was due to an insurable cause of loss.

(b) The maximum amount of the replanting payment will be the lesser of your actual cost of replanting or the result obtained by multiplying the replanting payment amount contained in the Special Provisions by your insured share.

(c) Notwithstanding the provisions of section 13 of the Basic Provisions, only one replanting payment will be made per lease parcel planted within the crop year.

(d) You may not collect a replant payment and an indemnity for the same loss.

12. Duties in the Event of Damage or Loss

In addition to your duties contained in section 14 of the Basic Provisions,

(a) You must obtain our written consent prior to changing or discontinuing your normal practices with respect to care and maintenance of the insured clams. Failure to obtain our written consent will result in the denial of your claim.

(b) If you are claiming disease as the cause of loss, you must prove at your own expense that the death of the clams was due to disease by isolating a sample of the clams and identifying the disease following histological or pathological examination conducted by a veterinarian who is a certified fish pathologist or a person approved by us.

13. Access to Insured Crop and Records, and Records Retention

In addition to the requirements of section 21 of the Basic Provisions, you must permit us to inspect the insurable clams at any time and take samples of damaged and undamaged clams for inspection, testing, and analysis, and examine and make copies of your records.

14. Settlement of Claim

We will determine indemnities for any unit as follows:

(a) Determine the under-report factor for the basic unit;

(b) Determine the occurrence deductible;

(c) Subtract unit value after loss from unit value before loss;

(d) Multiply the result of 14(c) by the under-report factor;

(e) Subtract the occurrence deductible from the result in section 14(d); and

(f) If the result of section 14(e) is greater than zero, and subject to the limit of section 14(g);

(1) For other than catastrophic risk protection coverage, your indemnity equals the result of section 14(e), multiplied by your share.

(2) For catastrophic risk protection coverage, your indemnity equals the result of section 14(e) multiplied by 55 percent, multiplied by your share.

(g) The total of all indemnities for the crop year will not exceed the amount of insurance.

15. Written Agreements

The written agreement provisions in the Basic Provisions do not apply.

16. Late Planting

Provisions of section 16 of the Basic Provisions do not apply.

17. Prevented Planting

Provisions of section 17 of the Basic Provisions do not apply.

18. Loss Examples

Single Unit Loss Example

Assume you have a 100 percent share, the inventory value reported by you is \$100,000, and your coverage level is 75 percent. Your amount of insurance is \$75,000 ($\$100,000 \times .75$). At the time of loss, unit value before loss is \$95,000, unit value after loss is \$30,000 and basic unit value before loss is \$100,000. The deductible percentage is 25 percent ($100 - 75$), the crop year deductible is \$25,000 ($.25 \times \$100,000$). Your indemnity would be calculated as follows:

Step (1) Determine the under-report factor; $\$100,000 \div \$95,000 = 1.000$;

Step (2) Determine the occurrence deductible; $.25 \times \$95,000 \times 1.000 = \$23,750$;

Step (3) Calculate the difference between unit value before loss and unit value after loss; $\$95,000 - \$30,000 = \$65,000$;

Step (4) Result of step 3 multiplied by the underreport factor (step 1); $\$65,000 \times 1.000 = \$65,000$;

Step (5) Result of step 4 minus the occurrence deductible;

$\$65,000 - \$23,750 = \$41,250$;

Step (6) Result of step 5 multiplied by your share; $\$41,250 \times 1.000 = \$41,250$ indemnity payment.

Multiple Unit Multiple Loss Example

Assume you have a 100 percent share, the inventory value reported by you is \$100,000, and your coverage level is 75

percent. You have two optional units, unit 1 and unit 2. Your amount of insurance is \$75,000 ($\$100,000 \times .75$). You have a loss on unit 1 and no loss on unit 2. At the time of loss, unit value before loss on unit 1 is \$60,000, unit value after loss on unit 1 is \$18,000 and basic unit value before loss is \$125,000. The deductible percentage is 25 percent ($100 - 75$), the crop year deductible is \$25,000 ($.25 \times \$100,000$). Your indemnity would be calculated as follows:

Step (1) Determine the under-report factor; $\$100,000 \div \$125,000 = .80$;

Step (2) Determine the occurrence deductible; $.25 \times \$60,000 \times .80 = \$12,000$;

Step (3) Calculate the difference between unit value before loss and unit value after loss; $\$60,000 - \$18,000 = \$42,000$;

Step (4) Result of step 3 multiplied by the underreport factor (step 1); $\$42,000 \times .80 = \$33,600$;

Step (5) Result of step 4 minus the occurrence deductible;

$\$33,600 - \$12,000 = \$21,600$;

Step (6) Result of step 5 multiplied by your share; $\$21,600 \times 1.000 = \$21,600$ indemnity payment.

Your crop year deductible is reduced to \$13,000 ($\$25,000 - \$12,000$). Your amount of insurance is reduced to \$53,400 ($\$75,000 - \$21,600$). You do not restock unit 1 after the first loss. Values on unit 2 do not change from those measured at the time of the loss on unit 1. Assume you have a loss later in the crop year on unit 2. Unit value before loss on unit 2 is \$65,000, unit value after loss on unit 2 is \$0.00 and basic unit value before loss on the basic unit is \$83,000. Your loss would be determined as follows:

Step (1) Determine the remaining amount of insurance;

$\$100,000 - \$33,600 = \$66,400$;

Step (2) Determine the under-report factor; $\$66,400 \div \$83,000 = .800$;

Step (3) Determine the occurrence deductible; $\$25,000 - \$12,000 = \$13,000$;

Step (4) Calculate the difference between unit value before loss and unit value after loss; $\$65,000 - \$0.00 = \$65,000$;

Step (5) Result of step 4 multiplied by the underreport factor (step 2); $\$65,000 \times .800 = \$52,000$;

Step (6) Result of step 5 minus the occurrence deductible;

$\$52,000 - \$13,000 = \$39,000$;

Step (7) Result of step 6 multiplied by your share; $\$39,000 \times 1.000 = \$39,000$ indemnity payment.

Signed in Washington, DC, on December 19, 2017.

Heather Manzano,

Acting Manager, Federal Crop Insurance Corporation.

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FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2017-18]

Civil Monetary Penalties Annual Inflation Adjustments

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: As required by the Federal Civil Penalties Inflation Adjustment Act of 1990, the Federal Election Commission is adjusting for inflation the civil monetary penalties established under the Federal Election Campaign Act, the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act. The civil monetary penalties being adjusted are those negotiated by the Commission or imposed by a court for certain statutory violations, and those imposed by the Commission for late filing of or failure to file certain reports required by the Federal Election Campaign Act. The adjusted civil monetary penalties are calculated according to a statutory formula and the adjusted amounts will apply to penalties assessed after the effective date of these rules.

DATES: This final rule is effective on December 27, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Neven F. Stipanovic, Acting Assistant General Counsel, or Mr. Eugene J. Lynch, Paralegal, Office of General Counsel, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (the “Inflation Adjustment Act”),¹ as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the “2015 Act”),² requires federal agencies, including the Commission, to adjust for inflation the civil monetary penalties within their jurisdiction according to prescribed formulas. A civil monetary penalty is “any penalty,

fine, or other sanction” that (1) “is for a specific monetary amount” or “has a maximum amount” under federal law; and (2) that a federal agency assesses or enforces “pursuant to an administrative proceeding or a civil action” in federal court.³ Under the Federal Election Campaign Act, 52 U.S.C. 30101-46 (“FECA”), the Commission may seek and assess civil monetary penalties for violations of FECA, the Presidential Election Campaign Fund Act, 26 U.S.C. 9001-13, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031-42.

The Inflation Adjustment Act requires federal agencies to adjust their civil penalties annually, and the adjustments must take effect no later than January 15 of every year.⁴ Pursuant to guidance issued by the Office of Management and Budget,⁵ the Commission is now adjusting its civil monetary penalties for 2018.⁶

The Commission must adjust for inflation its civil monetary penalties “notwithstanding Section 553” of the Administrative Procedures Act (“APA”).⁷ Thus, the APA’s notice-and-comment and delayed effective date requirements in 5 U.S.C. 553(b)-(d) do not apply because Congress has specifically exempted agencies from these requirements.⁸

Furthermore, because the inflation adjustments made through these final rules are required by Congress and involve no Commission discretion or policy judgments, these rules do not need to be submitted to the Speaker of the House of Representatives or the President of the Senate under the Congressional Review Act, 5 U.S.C. 801 *et seq.* Moreover, because the APA’s notice-and-comment procedures do not apply to these final rules, the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2), 604(a). Nor is the Commission required to submit these revisions for congressional review under FECA. *See* 5 U.S.C. 30111(d)(1), (4) (providing for

congressional review when Commission “prescribe[s] a ‘rule of law’”).

The new penalty amounts will apply to civil monetary penalties that are assessed after the date the increase takes effect, even if the associated violation predated the increase.⁹

Explanation and Justification

The Inflation Adjustment Act requires the Commission to annually adjust its civil monetary penalties for inflation by applying a cost-of-living-adjustment (“COLA”) ratio.¹⁰ The COLA ratio is the percentage that the Consumer Price Index (“CPI”) ¹¹ “for the month of October preceding the date of the adjustment” exceeds the CPI for October of the previous year.¹² To calculate the adjusted penalty, the Commission must increase the most recent civil monetary penalty amount by the COLA ratio.¹³ According to the Office of Management and Budget, the COLA ratio for 2018 is 0.02041, or 2.041%; thus, to calculate the new penalties, the Commission must multiply the most recent civil monetary penalties in force by 1.02041.¹⁴

The Commission assesses two types of civil monetary penalties that must be adjusted for inflation. First are penalties that are either negotiated by the Commission or imposed by a court for violations of FECA, the Presidential Election Campaign Fund Act, or the Presidential Primary Matching Payment Account Act. These civil monetary penalties are set forth at 11 CFR 111.24. Second are the civil monetary penalties assessed through the Commission’s Administrative Fines Program for late filing or non-filing of certain reports required by FECA. *See* 52 U.S.C. 30109(a)(4)(C) (authorizing Administrative Fines Program), 30104(a) (requiring political committee treasurers to report receipts and disbursements within certain time periods). The penalty schedules for these civil monetary penalties are set out at 11 CFR 111.43 and 111.44.

1. 11 CFR 111.24—Civil Penalties

FECA establishes the civil monetary penalties for violations of FECA and the other statutes within the Commission’s jurisdiction. *See* 52 U.S.C. 30109(a)(5), (6), (12). Commission regulations in 11

⁹ Inflation Adjustment Act § 6.

¹⁰ The COLA ratio must be applied to the most recent civil monetary penalties. Inflation Adjustment Act, § 4(a); *see also* OMB Memorandum at 2.

¹¹ The Inflation Adjustment Act, sec. 3, uses the CPI “for all-urban consumers published by the Department of Labor.”

¹² Inflation Adjustment Act, § 5(b)(1).

¹³ Inflation Adjustment Act, § 5(a), (b)(1).

¹⁴ OMB Memorandum at 1.

³ Inflation Adjustment Act § 3(2).

⁴ Inflation Adjustment Act § 4(a).

⁵ *See* Inflation Adjustment Act § 7(a) (requiring OMB to “issue guidance to agencies on implementing the inflation adjustments required under this Act”); *see also* Memorandum from Mick Mulvaney, Director, Office of Management and Budget, to Heads of Executive Departments and Agencies, M-18-03 (Dec. 15, 2017), <https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-03.pdf> (“OMB Memorandum”).

⁶ Inflation Adjustment Act § 5.

⁷ Inflation Adjustment Act § 4(b)(2).

⁸ *See, e.g., Asiana Airlines v. FAA*, 134 F.3d 393, 396-99 (D.C. Cir. 1998) (finding APA “notice and comment” requirement not applicable where Congress clearly expressed intent to depart from normal APA procedures).

¹ Public Law 101-410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note), amended by Debt Collection Improvement Act of 1996, Public Law 104-134, sec. 31001(s)(1), 110 Stat. 1321, 1321-373; Federal Reports Elimination Act of 1998, Public Law 105-362, sec. 1301, 112 Stat. 3280.

² Public Law 114-74, 701, 129 Stat. 584, 599.