

# Proposed Rules

Federal Register

Vol. 72, No. 99

Wednesday, May 23, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563-AB98

### Common Crop Insurance Regulations, Tobacco Crop Insurance Provisions

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

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations by removing the Quota Tobacco Crop Insurance Provisions, revising the Guaranteed Tobacco Crop Insurance Provisions, and changing the title of the Guaranteed Tobacco Crop Insurance Provisions to Contracted Tobacco Crop Insurance Provisions. The intended effect of this action is to provide policy changes and clarify existing policy provisions to better meet the needs of insured producers. The changes will apply for the 2008 and succeeding crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business July 23, 2007, and will be considered when the rule is to be made final.

**ADDRESSES:** Interested persons are invited to submit comments, titled "Tobacco Crop Insurance Provisions", by any of the following methods:

- *By Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133-4676.

- *E-mail:* [DirectorPDD@rma.usda.gov](mailto:DirectorPDD@rma.usda.gov).
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CDT, Monday through Friday, except holidays, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Gary Johnson, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, at the Kansas City, Mo, address listed above, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be nonsignificant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget (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 November 30, 2007.

##### E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, 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), Public Law 104-4, 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 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 proposed 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

FCIC proposes to amend the Common Crop Insurance Regulations by removing the Quota Tobacco Crop Insurance Provisions and reserving § 457.156. The American Jobs Creation Act of 2004 eliminated the tobacco quota support program and quota support price as administered by the Farm Service Agency (FSA). FCIC also proposes to revise the Guaranteed Tobacco Crop Insurance Provisions and change the title to Contracted Tobacco Crop Insurance Provisions. Under the new provisions, insurance will only be available for tobacco grown under a contract with a tobacco company. The entity named on the tobacco contract must be the same as the entity named on the application to indicate an insurable share.

Prior to the American Jobs Creation Act of 2004, tobacco was sold in United States Department of Agriculture (USDA) auction warehouses. The prices paid to the auction warehouses by tobacco companies were based upon the quality and grade of the tobacco. Today the majority of tobacco is grown under contract with a tobacco company. Therefore, a new environment exists for tobacco production and marketing and FCIC is proposing to revise the tobacco policy to reflect this new environment.

The proposed changes are as follows:

1. FCIC proposes to remove the paragraph immediately preceding section 1 which refers to the order of priority of provisions in the event of conflict. This same information is contained in the Basic Provisions; therefore, it is duplicative and should be removed in the Crop Provisions.

2. Section 1—Definitions—Add definitions of “average price received,” “commercial tobacco producer,” “contract price,” “minimum acreage,” “price election,” “tobacco company or commercial marketing association (CMA),” “tobacco contract,” “tobacco handler,” and “tobacco types” since these terms are required to provide insurance under a tobacco company contract.

FCIC proposes to revise the definition of “basic unit” so that a basic unit will be all insurable acreage of each tobacco type grown in the county for the crop year. Previously, basic units were available by farm serial number (FSN). However, due to the elimination of the tobacco quota and support program and the tobacco quota support price, the majority of tobacco is now sold under a contract with a tobacco company. The tobacco company contract indicates only the total quantity of tobacco production by tobacco type the producer agrees to deliver regardless of who shares in the production or from what FSN the tobacco production was produced. Basic units by tobacco types are more appropriate because tobacco types are planted, harvested and cured separately by growers. The types are graded, and purchased separately by tobacco companies. Therefore, verifiable production records will most likely be kept by type. Under the APH plan of insurance the producer is responsible for supplying verifiable production records for APH purposes.

FCIC is proposing to revise the definition of “priming” to clarify that priming applies to one or more leaf, not just each leaf.

FCIC proposes to remove the definitions of “average value,” “carryover tobacco,” “discount variety,” “fair market value,” “market price,” “season average market price,” and “support price.” These definitions are no longer necessary since the price support program has been eliminated.

FCIC proposes to remove the definition of “adequate stand” because even though the definition was added in 1999, the term was never used in the Crop Provisions.

FCIC proposes to remove the definition of “approved yield,” and “replanting.” These terms are defined in the Common Crop Insurance Policy Basic Provisions and do not require modification for the purpose of these Crop Provisions. FCIC also proposes to remove the definition of “production guarantee (per acre)” because the elimination of the quota tobacco program means that production will now be based on the actual production history of the producer, not the pounds on the actuarial documents or approved yield in the Special Provisions. Therefore, the definition in the Basic Provisions is appropriate.

3. Section 2—FCIC is proposing to revise section 2 by removing the sentence that states, “The provisions in the Basic Provisions regarding optional units are not applicable, unless specified by the Special Provisions.” FCIC is proposing only basic units by

type be available to producers. Previously, optional units were available by farm serial number (FSN) for certain types of tobacco in certain areas as specified by the Special Provisions. Also, enterprise units were available by certain types of tobacco in certain areas as specified by the Special Provisions. However, due to the elimination of the tobacco quota and support program and the tobacco quota support price, the majority of tobacco is now sold under a contract with a tobacco company. The tobacco company contract indicates only the total quantity of tobacco production by tobacco type the producer agrees to deliver regardless of who shares in the production or from what FSN the tobacco production was produced. Optional and enterprise units will not be available to any producer. Basic units by tobacco types are more appropriate because tobacco types are planted, harvested and cured separately by growers. The types are graded, and purchased separately by tobacco companies. Therefore, verifiable production records will most likely be kept by type. Under the APH plan of insurance the producer is responsible for supplying verifiable production records for APH purposes.

4. Section 3—FCIC is proposing to revise section 3(a) by removing the word “guaranteed” because the tobacco quota support program through the FSA has been abolished so there is no longer guaranteed tobacco. FCIC is also proposing to add the word “percentage” after the phrase “price election” to clarify that producers actually select the percentage of the price election that is announced by FCIC.

FCIC proposes to remove section 3(b). Once the American Jobs Creation Act of 2004 eliminated the tobacco quota support program and quota support price, the guarantee became based on the actual production history of the producer. Therefore, the production report must be filed annually.

FCIC proposes to add a new section 3(b) to specify the producer’s production guarantee will be adjusted if the producer has not planted a sufficient number of acres to produce the amount of tobacco necessary to fulfill the contracts. Whether sufficient acres have been planted is determined by dividing the pounds specified in the producer’s tobacco contracts in the county by the applicable approved yield. If the producer does not plant the minimum acreage, the production guarantee will be reduced proportionately. These provisions are necessary to prevent the producer from over-insuring the tobacco.

5. Section 6—FCIC proposes to remove the provision requiring the producer to report any carryover tobacco from previous years because carryover production no longer needs to be reported since the tobacco quota support program has been eliminated. FCIC proposes the new paragraph (a) specify that a copy of all tobacco contracts must be provided to the approved insurance provider on or before the acreage reporting date and the entity named on the tobacco contract must be the same as the entity named on the application. This is consistent with other Crop Provisions that cover crops under contract. However, FCIC added the requirement that the name on the tobacco contract must be the same name on the application in order to be able to verify that the producer has an insurable interest in the crop.

FCIC proposes to add a new section 6(b) to specify that a copy of any written lease agreement, if applicable, between the insured and any landlord or tenant must identify all other persons sharing in the crop and be provided to the approved insurance provider on or before the acreage reporting date. This provision would permit the approved insurance provider to properly determine the appropriate share in the crop.

6. Section 7—FCIC is proposing to restructure section 7 and add new paragraphs (a) and (b). FCIC is proposing a new paragraph (a) that specifies that the insured tobacco crop must meet all rotation requirements on the Special Provisions, be grown in accordance with the requirements of the tobacco contract executed on or before the acreage reporting date, and not be excluded from the tobacco contract at any time during the insurance period. These requirements are consistent with the requirements of other Crop Provisions covering crops under contract and ensure that the coverage is only provided if the crop remains contracted throughout the insurance period. This will prevent a shifting of costs to the government if there has been an over-contracting of production.

FCIC is proposing to add a new section 7(b) to specify a tobacco company or commercial marketing association that produces its own tobacco may establish an insurable share if they comply with the Crop Provisions; the Board of Directors or officers of the tobacco company or commercial marketing association, or tobacco handler executes and adopts a resolution prior to the sales closing date that contains the same terms as an acceptable tobacco contract; and the approved insurance provider's

inspection determines the processing facilities comply with the definition of a tobacco company or commercial marketing association. These requirements are consistent with the requirements of other Crop Provisions covering crops under contract and protect program integrity by ensuring that the persons responsible for decisions of the business determine the terms and conditions of the contract.

7. Section 8—FCIC is proposing to revise section 8 by removing paragraphs (a) and (b). Paragraph (a) is not necessary because the quota price support program has been eliminated. Paragraph (b) is not necessary because it was redundant with section 7, which specifies the premium rate for the tobacco type must be provided by the actuarial documents. Paragraph (c) and (d) have been redesignated as paragraphs (a) and (b) respectively. FCIC proposes to revise redesignated paragraph (b) to specify that acreage is not insured if it is damaged before the final planting date to the extent that a majority of the producers in the area would normally not care for the crop. Previously, the provision referred to "most" producers but FCIC has since been using the term "majority" in its other Crop Provisions because it provides a more determinable standard.

8. Section 9—FCIC proposes to revise the introductory paragraph to specify that section 9 is in lieu of the provisions in section 11 of the Basic Provisions. FCIC proposes to remove section 9(b) because tobacco under contract may no longer be weighed at a tobacco warehouse like it was under the previous tobacco quota program. FCIC proposes to redesignate sections 9(c) and (d) as sections 9(b) and (f), respectively and revise redesignated section 9(b) to remove the reference to delivery to the warehouse for the same reason as stated above. FCIC proposes to add new sections 9(c), (d), and (e) to incorporate the events that trigger the end of the insurance period from section 11 of the Basic Provisions that are still applicable and add a new event, which is the date the producer delivers sufficient production to fulfill all tobacco contracts in the county. This is consistent with other Crop Provisions covering crops under contract.

FCIC is proposing to revise redesignated section 9(f) to clarify that the end of insurance period is the date immediately following planting and it is designated by specific tobacco types and states, unless otherwise provided on the Special Provisions. This proposed revision changes the tobacco type from an assigned number to a specific name.

9. Section 10—FCIC is proposing to revise section 10(b) to clarify fire is a cause of loss if it is caused by lightning. Currently, the provisions provide for tobacco to be insured in the tobacco barn and fire is listed as a cause of loss. FCIC has received many inquiries asking if fire is an insurable cause of loss when the barn burns and there is no proof the fire was caused by a naturally occurring event. Since coverage can only be provided for naturally occurring events, FCIC is removing all ambiguity regarding what causes of the fire are covered.

FCIC is proposing to revise section 10(h) for clarity and to be consistent with other Crop Provisions. No substantive change has been made.

10. Section 11—FCIC proposes to revise section 11(a) to be consistent with the format of other similar Crop Provisions. No substantive change has been made.

FCIC proposes to revise section 11(b) to require producers who have filed a notice of damage to leave all tobacco stalks and stubble on the unit intact for the approved insurance provider's inspection. Previously this requirement only applied to specific tobacco types but FCIC has determined that inspection of the stalks and stubble can be useful in the adjustment of all types of tobacco.

11. Section 12—FCIC proposes to revise section 12(a) to remove the consequences for failure to provide acceptable records for optional units since such units are no longer available under the policy. As stated above, only basic units are available because the tobacco company contract indicates the total quantity of tobacco production the producer will deliver regardless of who shares in the production or from what FSN the tobacco production was grown. The consequences for failure to provide acceptable records by basic unit remains the same.

FCIC proposes to revise section 12(b) to remove the references to different types because now separate basic units are available by type. The loss calculation example has also been revised to remove the references to the type by number of guaranteed tobacco since types are proposed to be designated by name, not number, and the tobacco is not longer guaranteed because of the elimination of the quotas.

FCIC proposes to revise section 12(c) to be consistent with other Crop Provisions. FCIC also proposes to remove language in section 12(c)(1)(D) referring to specific tobacco types because FCIC is proposing that the requirement to leave all stubble and stalks intact be applicable to all tobacco. FCIC is proposing to remove the

references to the value of the production to count in section 12(c)(1)(E)(A) because there is no support price. The provision will now refer to the amount of production to count instead of the value of such production.

FCIC proposes to remove sections 12(e) through (g) since the tobacco quota support program has been eliminated.

FCIC proposes to redesignate section 12(d) as section 12(e) and add a new section 12(d) to specify the producer must destroy the production in those situations where an agreement is reached between the approved insurance provider and the insured that the current year's tobacco has no market value due to an insured cause of loss. FCIC is also proposing that failure to destroy such tobacco will result in the production considered as production to count valued at the price election.

FCIC proposes to revise redesignated section 12(e). Previously, quality deficiencies for tobacco were determined by using USDA Official Grade Standards at the tobacco warehouses. This allowed an objective third party to inspect the tobacco. However, most of the tobacco is now sold under contract and the elimination of the quota tobacco program has eliminated the need for tobacco warehouses. Therefore, there is no longer this disinterested third party available to grade and value the tobacco. Further, FCIC has not discovered any party other than the tobacco company, commercial marketing association, or tobacco handler who grades or values tobacco. This creates a serious program vulnerability because the person who would be grading and valuing the tobacco will be the same person who is purchasing it. This means there exists an incentive to undervalue the production, reduce the price the tobacco company, commercial marketing association, or tobacco handler has to pay the producer, and shift the costs to FCIC to pay the difference. There have been similar situations in other crop policies and there has been significant fraud and abuse.

One solution is the removal of the quality adjustment provisions but producers claim that the value of the insurance is seriously diminished without this coverage. FCIC recognizes its value and is not ready to remove the coverage in this rule. However, FCIC is proposing that insured producers, with damaged tobacco, will be required to notify approved insurance providers before any tobacco is delivered to the tobacco company, commercial marketing association, or tobacco handler so that at the approved insurance providers option they may

inspect the tobacco to determine and document the extent of the damage. Without the opportunity to inspect the damaged tobacco, such tobacco is not eligible for quality adjustment. Such inspection will assist the approved insurance provider in determining the extent of damage and if the price for the damaged tobacco received by the producer is reasonable based on the quality of the tobacco observed by the approved insurance provider. If the price is not reasonable, the approved insurance provider will have the authority to adjust the price. FCIC is also proposing quality adjustment will apply only when the average price per pound received for the damaged tobacco is less than 75 percent of the producer's contract price. This will reduce the administrative burdens associated with minor quality adjustments. FCIC realizes that this is not a perfect solution and is seeking comments on alternative methods to ensure the integrity of the program. If the proposed solution is not workable or effective, and there are no viable alternatives, FCIC may be required to remove the quality adjustment provisions from the policy.

12. Section 13—FCIC is proposing to revise section 13 to remove the numeric figures and parenthesis surrounding such figures to be consistent with the other Crop Provisions. No substantive change has been made.

13. Section 14—FCIC is proposing to revise section 14 to add prevented planting coverage. Previously, prevented planting coverage was not available at all for tobacco. FCIC is proposing the producer's prevented planting coverage be 35 percent of the producer's production guarantee for timely planted acreage. However, no additional prevented planting coverage will be available.

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

Crop insurance, Tobacco, Reporting and recordkeeping requirements.

#### Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 to read 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).

#### PART 457—[AMENDED]

#### § 457.156 [Removed and Reserved]

- Remove and reserve § 457.156.
- Revise § 457.136 to read as follows:

#### § 457.136 Contracted tobacco crop insurance provisions.

The contracted tobacco crop insurance provisions for the 2008 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:

Contracted Tobacco Crop Insurance Provisions

##### 1. Definitions.

*Average price received.* The price per pound for tobacco sold under contract by type, and is determined by dividing total receipts for the tobacco type sold by the number of pounds of the tobacco type sold, without regard to discounts or incentives. Failure to provide acceptable receipts will result in the average price received being the same as the price election.

*Basic unit.* In lieu of the definition in the Basic Provisions, a basic unit is all insurable acreage of each tobacco type grown in the county for the crop year.

*Commercial tobacco producer.* A producer who grows tobacco under a contract with tobacco company, commercial marketing association, or tobacco handler.

*Contract price.* The price for each type of tobacco specified in the tobacco contract without regard to discounts or incentives.

*Harvest.* Cutting or priming and removing all insured tobacco from the unit.

*Hydroponic plants.* Seedlings grown in liquid nutrient solutions.

*Late planting period.* In lieu of the definition in section 1 of the Basic Provisions, the period that begins the day after the final planting date for the insured crop and ends 15 days after the final planting date, unless otherwise specified in the Special Provisions.

*Minimum acreage.* The minimum number of acres required to be planted to produce the number of pounds of tobacco under contract, determined by dividing the pounds specified in your tobacco contract by the applicable approved yield.

*Planted acreage.* In addition to the definition contained in the Basic provisions, land in which tobacco seedlings, including hydroponic plants, have been transplanted by hand or machine from the tobacco bed to the field.

*Pound.* Sixteen ounces avoirdupois.

*Price election.* In lieu of the definition in the Basic Provisions, the price election will be the contract price multiplied by the percentage you elect.

*Priming.* A method of harvesting tobacco by which one or more leaves are removed from the stalk as they mature.

*Tobacco bed.* An area protected from adverse weather in which tobacco seeds are sown and seedlings are grown until transplanted into the tobacco field by hand or machine.

*Tobacco company or commercial marketing association (CMA).* Any business enterprise regularly engaged in buying and processing tobacco for human use, that possesses all licenses and permits for processing tobacco required by the state in which it operates, possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted tobacco within a reasonable amount of time after harvest.

*Tobacco contract.* A written agreement between the producer or entity and a tobacco company or commercial marketing association, or between the producer and a tobacco handler, containing at a minimum:

(a) The producer or entity's commitment to plant and grow tobacco of an insurable type and practice, and to deliver the amount of production stated in the contract to the tobacco company, commercial marketing association, or tobacco handler;

(b) The tobacco company's, commercial marketing association's, or tobacco handler's commitment to purchase the specified number of pounds of tobacco stated in the contract (an option to purchase is not a commitment); and

(c) A contract price.

*Tobacco handler.* A business enterprise that has all the licenses and permits required by the state in which it operates, and has an agreement in writing with a tobacco company or commercial marketing association to purchase and deliver tobacco.

*Tobacco types.* Insurable types as shown on the Special Provisions.

## 2. Unit Division.

A unit will be determined in accordance with the definition of basic unit contained in section 1 of these Crop Provisions. Enterprise and optional units are not available.

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

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

(a) You must select only one price election percentage and coverage level for each tobacco type designated in the Special Provisions that you elect to insure.

(b) Your total production guarantee will be the number of pounds in your tobacco contract multiplied by your

selected coverage level, provided you have planted sufficient acreage of tobacco to fulfill all of your tobacco contracts in the county.

(1) Sufficient acreage is determined by dividing the pounds specified in your tobacco contracts in the county by the applicable approved yields. For example, you have three contracts for tobacco, each to deliver 2,000 pounds, and your approved yield is 1,700 pounds. You must plant at least 3.5 acres ( $6,000 \div 1,700$ ).

(2) If you do not plant sufficient acreage, your production guarantee (per acre) will be reduced proportionately. For example, using the example in paragraph (2), you only plant 2.5 acres. This means you could only produce 4,250 pounds ( $1,700 \times 2.5$ ), which is 71 percent of the pounds specified in your tobacco contracts. Therefore, your production guarantee (per acre) will be reduced to 1207 pounds ( $.71 \times 1,700$ ).

### 4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

### 5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

### 6. Report of Acreage.

In addition to the requirements of section 6 of the Basic Provisions, you must:

(a) Provide a copy of all tobacco contracts to us on or before the acreage reporting date. The entity named on the tobacco contract must be the same as the entity named on your application for you to have an insurable interest; and

(b) Provide a copy of any written lease agreement, if applicable, between you and any landlord or tenant. The written lease agreement must:

(1) Identify all other persons sharing in the crop; and

(2) Be submitted to us on or before the acreage reporting date.

### 7. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the insured crop will be each tobacco type you elect to insure and for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That meets all rotation requirements on the Special Provisions; and

(3) That is grown and insured in accordance with the requirements of your tobacco contract executed on or before the acreage reporting date and the tobacco is not excluded from the tobacco contract at any time during the insurance period.

(b) You will be considered to have a share in the insured crop if you retain control of the acreage on which the tobacco is grown and you are at risk of loss.

(c) A commercial tobacco producer who is also a tobacco company, commercial marketing association, or tobacco handler may establish an insurable interest if the following requirements are met:

(1) You must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the tobacco company, commercial marketing association, or tobacco handler must execute and adopt a resolution that contains the same terms as an acceptable tobacco contract. Such resolution will be considered a tobacco contract under this policy; and

(3) Our inspection determines the processing facilities comply with the definition of a tobacco company or commercial marketing association contained in these Crop Provisions.

### 8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage that is:

(a) Planted in any manner other than as provided in the definition of "planted acreage" in section 1 of these Crop Provisions, unless otherwise provided by the Special Provisions or by written agreement; or

(b) Damaged before the final planting date to the extent that the majority of producers in the area would normally not further care for the tobacco crop, unless such crop is replanted or we agree that replanting is not practical.

### 9. Insurance Period.

In lieu of the provisions of section 11 of the Basic Provisions, coverage ends at the earlier of:

(a) Total destruction of the tobacco on the unit;

(b) Removal of the tobacco from the unit where grown, except for curing, grading, and packing;

(c) Abandonment of the crop on the unit;

(d) The date you deliver sufficient production to fulfill your tobacco contract with the tobacco company, commercial marketing association, or tobacco handler;

(e) Final adjustment of the loss on the unit; or

(f) The calendar date for the end of the insurance period, which is the date immediately following planting and designated by tobacco types and states (or as otherwise stated on the Special Provisions) as follows:

(i) Flue cured—November 30 in North Carolina and Virginia;

- (ii) Flue cured—October 31 in Alabama, Florida, Georgia, and South Carolina;
- (iii) Burley—February 28 in all states;
- (iv) Dark air cured—March 15 in Kentucky, Tennessee, and Virginia;
- (v) Fire cured—April 15 in Kentucky, Tennessee, and Virginia;
- (vi) Cigar Binder, Cigar Filler, and Cigar Wrapper—April 30 in Connecticut, Massachusetts, Pennsylvania, and Wisconsin;
- (vii) Maryland type—May 15 in Maryland and Pennsylvania.

#### 10. Causes of Loss.

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:

- (a) Adverse weather conditions;
- (b) Fire, if caused by lightning;
- (c) Insects, but not damage due to insufficient or improper application of pest control measures;
- (d) Plant disease, but not damage due to insufficient or improper application of disease control measures;
- (e) Wildlife;
- (f) Earthquake;
- (g) Volcanic eruption; or
- (h) Failure of the irrigation water supply due to a cause of loss specified in sections 10(a) through (g) that also occurs during the insurance period.

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

(a) In accordance with section 14 of the Basic Provisions, any representative sample we require of each unharvested tobacco type must be at least 5 feet wide (at least two rows), and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until after our inspection.

(b) If you have filed a notice of damage, you must leave all tobacco stalks and stubble in the unit intact for our inspection. The stalks and stubble must not be destroyed until we give you written consent to do so or until 30 days after the end of the insurance period, whichever is earlier.

#### 12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

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

(1) Multiplying the number of insured acres by your applicable production guarantee (per acre), as adjusted in accordance with section 3(b), if applicable;

(2) Multiplying the result of section 12(b)(1) by your price election;

(3) Multiplying the total production to count determined in section 12(c) by your price election;

(4) Subtracting the result of section 12(b)(3) from the result of section 12(b)(2); and

(5) Multiplying the result of section 12(b)(4) by your share.

For example:

You have 100 percent share in a tobacco contract to produce 3,000 pounds of Burley tobacco, a production guarantee of 1,950 pounds (APH yield of 3,000 pounds  $\times$  .65 coverage level), you will plant 1.0 acre (which is the minimum acreage requirement in this situation), your price election is \$1.50 per pound, and your production to count is 500 pounds. Your indemnity would be calculated as follows:

(1) 1.0 acre  $\times$  1,950 pound production guarantee = 1,950 pounds;

(2) 1,950 pounds  $\times$  \$1.50 price election = \$2,925.00 value of the production guarantee;

(3) 500 pound production to count  $\times$  \$1.50 price election = \$750.00 value of the production to count;

(4) \$2,925.00 value of the production guarantee—\$750.00 value of the production to count = \$2,175.00; and

(5) \$2,175.00  $\times$  1.000 share = \$2,175.00 indemnity.

(c) The total production (pounds) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

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

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes;

(D) For which you fail to provide records of production, that are acceptable to us; or

(E) Of any type of tobacco when the stalks and stubble have been destroyed without our consent;

(ii) Production lost due to uninsured causes.

(iii) Potential production on insured acreage 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 insurable acreage.

(d) Once we agree the current year's tobacco has no market value due to an insured cause of loss, you must destroy it, and it will not be considered production to count. If you refuse to destroy such tobacco, we will include it as production to count and value it at your applicable price election.

(e) Mature tobacco may be adjusted for quality deficiencies when production has been damaged by insurable causes.

(1) You must contact us before any tobacco is delivered to the tobacco company, commercial marketing association, or tobacco handler so that at our option we may inspect the tobacco to determine and document the extent of the damage.

(2) Our inspection will be used to assist in determining whether the price paid for the quality deficient tobacco by the tobacco company, commercial marketing association, or tobacco handler is reasonable. Based on the degree of damage documented by the tobacco company compared to our inspection, if the price adjusted for quality is:

(i) Reasonable, such price will be used to determine the quality adjustment in section 12(e)(5);

(ii) Unreasonable, we may adjust the price used to calculate the quality adjustment in section 12(e)(5).

(3) If you deliver any production to the tobacco company, commercial marketing association, or tobacco handler without giving us the opportunity to inspect the tobacco you will not receive a quality adjustment for such tobacco, regardless of the price received by the tobacco company, commercial marketing association, or tobacco handler.

(4) Production to count will only be reduced if the average price received for damaged tobacco is less than 75 percent

of your tobacco contract price. You must provide us with a marketing record acceptable to us which clearly shows the number of pounds, price per pound, and the quality of such tobacco.

(5) Any reduction in the production to count will be determined by:

(i) Dividing the price per pound as determined by us in accordance with section 12(e)(2) of these Crop Provisions by your applicable tobacco contract price; and

(ii) Multiplying this result by the number of pounds of damaged production.

#### 13. Late Planting.

In lieu of late planting provisions in the Basic Provisions regarding acreage initially planted after the final planting date, insurance will be provided for acreage planted to the insured crop after the final planting date as follows:

(a) The production guarantee (per acre) for acreage planted during the late planting period will be reduced by:

(1) One percent per day for the 1st through the 10th day; and

(2) Two percent per day for the 11th through the 15th day;

(b) The premium amount for insurable acreage planted to the insured crop after the final planting date will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for acreage planted after the final planting date exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage).

#### 14. Prevented Planting.

Your prevented planting coverage will be 35 percent of your production guarantee for timely planted acreage. Additional prevented planting coverage levels are not available for tobacco.

Signed in Washington, DC, on May 15, 2007.

**Eldon Gould,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. E7-9775 Filed 5-22-07; 8:45 am]

**BILLING CODE 3410-08-P**

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1485

**RIN Number: 0051-AA69**

#### Market Access Program

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Advance notice of proposed rulemaking and public hearing.

**SUMMARY:** The Commodity Credit Corporation (CCC) is soliciting comments on whether to amend and revise the regulation at 7 CFR part 1485 for the purpose of improving the effectiveness of the program. This action announces the comment period and the date, time, and location for a public hearing on the proposed rulemaking. The Market Access Program (MAP) is administered by personnel of the Foreign Agricultural Service (FAS).

**DATES:** Written comments on the proposed rulemaking must be received on or before Monday, August 13, 2007, to be assured of consideration. FAS will conduct a public hearing in order to receive oral and written comments. The hearing is scheduled for Wednesday, July 25, 2007, from 9 a.m. to 2:30 p.m.

**ADDRESSES:** The hearing scheduled for July 25, 2007, will be held in the Jefferson Auditorium at the U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250.

Comments may be hand delivered (including FedEx, DHL, UPS, etc.) to: Program Policy Staff, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, 1250 Maryland Avenue, SW., Suite 400, Washington, DC 20024-2162. Comments may also be delivered through the U.S. mail to: Program Policy Staff, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1042, Washington, DC 20250-1042. All written comments received will be available for public inspection at the above address during business hours from 8 a.m. to 4 p.m., Monday through Friday. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720-2600 (voice and TDD).

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

Mark Slupek, Director, Program Policy Staff, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, (202) 720-4327; fax (202) 720-9361.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The current regulation was last amended on June 2, 1998. FAS now has sufficient experience to propose further changes to improve the program's effectiveness. MAP funding helps to create, expand, and maintain commercial export markets for U.S. agricultural products. The program forms partnerships between non-profit

U.S. agricultural trade associations, U.S. agricultural cooperatives, non-profit state-regional trade groups, small U.S. businesses, and the CCC to share the costs of international marketing and promotional activities. Any future amendment of the regulation could be expected to include revision of outdated language. For example, the current regulation does not reflect the organizational changes resulting from the recent reorganization of FAS.

#### **Issues for Public Comment**

I. With respect to proposed administrative changes, comments on these specific issues are being requested:

(a) Application process and activity plan. FAS is seeking comments on updating and merging the list of application requirements under § 1485.13(a) and the activity plan requirements under § 1485.15 to reflect the Unified Export Strategy system that is currently in place.

(b) Approval Criteria. FAS is seeking comments on the application approval criteria and allocation factors identified under § 1485.14(b) and (c).

II. With respect to amending and revising the scope and coverage of the regulation, FAS is soliciting comments regarding the feasibility of the changes proposed below and views regarding how they might be implemented.

(a) Expanding the scope of the program to include activities designed to address international market access issues. FAS is aware of the increasing numbers of trade barriers that disrupt the export of U.S. agricultural products in mature markets and is considering modifying the program to ensure that appropriate activities of this type would be reimbursable.

(b) Modifying the lists of eligible and ineligible contributions [currently found at § 1485.13(c)] to better identify in-kind and third party contributions.

(c) Modifying the lists of reimbursable and non-reimbursable activities [currently found at § 1485.16(b), (c), and (d)] to clarify existing activities and to include the use of electronic technologies not considered in the current regulation.

(d) Revising the portions of the regulation regarding contracting procedures [currently found at § 1485.23(c)]. The current regulation may not address the full range of contracting situations faced by participants. It may be necessary to identify the differences between employees, consultants, and contractors.

(e) Revising the portions of the regulation regarding the compliance review and appeals processes. The