

# Proposed Rules

Federal Register

Vol. 72, No. 108

Wednesday, June 6, 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-AC00

#### Common Crop Insurance Regulations; Cultivated Wild Rice Crop Insurance Provisions

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to add to 7 CFR part 457 a new 457.170 that provides insurance for cultivated wild rice. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to convert the cultivated wild rice pilot crop insurance program to a permanent insurance program for the 2009 and succeeding crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business August 6, 2007, and will be considered when the rule is to be made final.

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

- By Mail to Director, Product Administration & 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 e-Rulemaking 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:

Linda Williams, Risk Management Specialist, Product Management, Product Administration & Standards Division, Risk Management Agency, at the Kansas City, MO, address listed above, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

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

##### Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this proposed 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) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

##### Executive Order 13132

It has been determined under section 1(a) of Executive Order No. 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 economical impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

##### Federal Assistance Program

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

##### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

##### Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order No. 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule 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 impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Background

FCIC offered a pilot crop insurance program for cultivated wild rice beginning with the 1999 crop year in the states of Minnesota and California. In the 2006 crop year, approximately 20,500 acres were insured under the pilot program. FCIC contracted with an independent firm to conduct an evaluation of the cultivated wild rice pilot program. The evaluation found the pilot crop insurance program to be a valuable tool for wild rice producers. The evaluation could not identify any instances where the pilot program adversely affected the wild rice market. The contractor's report did recommend updating the premium rates by utilizing the pilot program's experience, remove two definitions, and correct the termination date contained in the Crop Provisions. FCIC's Board of Directors concurred with the evaluation results and approved the conversion of the pilot status to that of a permanent crop insurance program.

FCIC intends to convert the cultivated wild rice pilot crop insurance program to a permanent crop insurance program beginning with the 2009 crop year. To effectuate this, FCIC proposes to amend the Common Crop Insurance regulations (7 CFR part 457) by adding a new section § 457.170, Cultivated Wild Rice Crop Insurance Provisions. These provisions will replace and supersede the current unpublished provisions that insure cultivated wild rice under pilot program status.

Cultivated wild rice crop insurance is an actual production history (APH) plan of insurance that protects against a loss in yield. If the number of pounds produced by the crop is less than the production guarantee, the producer will receive an indemnity if the producer is in compliance with all other policy provisions. The production guarantee is determined the same as other APH crops. The producer certifies the number of pounds of wild rice produced per acre for at least the previous four crop years building to a base period of

ten crop years and these amounts are averaged to determine the approved yield. The approved yield times the coverage level determines the production guarantee. The covered causes of loss are the same as for other APH crops and include such causes as adverse weather, fire, wildlife, plant disease, etc. The production to count is also determined the same as other crops with all appraised and harvested pounds counting against the guarantee when determining whether there was an indemnifiable loss.

In this proposed rule, FCIC has revised certain provisions of the pilot program to be consistent with other Crop Provisions and to improve the policy. In section 1, FCIC has removed the definitions of "latest final planting date" and "processing." A definition of "latest final planting date" is not needed because separate fall and spring final planting dates are not provided for wild rice. Since the term "processing" is not used in the Crop Provisions it has been removed and replaced with the definition of "processor," a term which is referenced in other definitions. FCIC also revised the definition of "finished weight" to add a provision that would provide the finish weight for appraised production. Currently, the policy only has provisions for delivered production and stored for seed, both which presume the crop has been harvested. However, the finish weight must also be determined in situations where the crop has not been harvested.

The termination date contained in section 5 has been revised to November 30th for Minnesota and some California counties. The current termination date does not allow producers sufficient time to pay their premiums. In addition, the cancellation and termination dates for some California counties have been revised to accommodate the different growing seasons and will allow expansion of the cultivated wild rice crop insurance program.

FCIC has revised section 10 to specify representative samples are required in accordance with section 14 of the Basic Provisions. This is consistent with other Crop Provisions and allows FCIC to only have to revise the Basic Provisions if changes are required, instead of many Crop Provisions.

Additionally, section 11(a) has been reformatted to be consistent with the changes made in other Crop Provisions and the Basic Provisions.

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

Crop insurance, Cultivated wild rice, 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, Common Crop Insurance Regulations, for the 2008 and succeeding crop years as follows:

#### PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

2. Section 457.170 is added to read as follows:

#### § 457.170 Cultivated Wild Rice crop insurance provisions.

The Cultivated Wild Rice Crop Insurance Provisions for the 2009 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:

Cultivated Wild Rice Crop Insurance Provisions

#### 1. Definitions

*Approved laboratory.* A testing facility approved by us to determine the recovery percentage from samples of cultivated wild rice.

*Cultivated wild rice.* A member of the grass family *Zizania Palustris* L., adapted for growing in man-made irrigated fields known as paddies.

*Determined recovery percentage.* The recovery percentage for a sample, as determined by an approved laboratory.

*Finished weight.*

(a) The green weight delivered to a processor multiplied by the determined recovery percentage;

(b) The green weight stored for seed multiplied by either the determined recovery percentage or the standard recovery percentage in accordance with section 11(d); and

(c) Appraised green weight multiplied by either the determined recovery percentage or the standard recovery percentage in accordance with section 11(d).

*Flood irrigation.* Intentionally covering the planted acreage with water and maintaining it at a proper depth throughout the growing season.

*Green weight.* The total weight in pounds of the green cultivated wild rice production that was appraised, delivered to a processor, or stored for seed.



*Harvest.* Combining or threshing the cultivated wild rice for grain or seed.

*Initially planted.* The first occurrence of planting the insured crop on insurable acreage for the crop year.

*Planted acreage.* In addition to the definition contained in the Basic Provisions, land on which an adequate amount of seed is initially spread onto the soil surface by any appropriate method, including shattering for the second and succeeding years, and subsequently is mechanically incorporated into the soil at the proper depth, will be considered planted, unless otherwise provided by the Special Provisions or actuarial documents.

*Processor.* A business that converts green weight to finished weight using appropriate equipment and methods such as separating immature kernels,

fermenting or curing, parching, dehulling, and scarifying.

*Recovery percentage.* The ratio of finished weight to green weight of the cultivated wild rice. This is also known as percent recovery.

*Shatter.* Mature seeds that naturally fall to the ground from a cultivated wild rice plant.

*Standard recovery percentage.* The recovery percentage contained in the Special Provisions.

## 2. Unit Division

Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

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

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

(a) You may select only one percentage of the maximum price election for all the cultivated wild rice insured under this policy in the county.

(b) The insurance guarantee per acre is expressed as pounds of finished weight.

## 4. Contract Changes

In accordance with section 4 of the Basic Provisions the contract change date is November 30 preceding the cancellation date for counties with a February 28 cancellation date and June 30 preceding the cancellation date for counties with a September 30 cancellation date.

## 5. Cancellation and Termination Dates

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

State	Cancellation date	Termination date
Mendocino, Glenn, Butte, and Sierra Counties, California; and all California Counties south thereof .....	February 28 .....	February 28.
Minnesota, All Other California Counties, and All Other States .....	September 30 ...	November 30.

## 6. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the cultivated wild rice in the county grown on insurable acreage for which premium rates are provided by the actuarial documents:

- (1) In which you have a share;
- (2) That is planted for harvest as grain; and
- (3) That is grown in man-made flood irrigated fields.

(b) Section 8(b)(3) of the Basic Provisions is not applicable to the cultivated wild rice seed that naturally shatters and is subsequently mechanically incorporated into the soil.

## 7. Insurance Period

In accordance with section 11 of the Basic Provisions, the calendar date for the end of the insurance period is September 30 of the calendar year the crop is normally harvested for Minnesota, October 15 of the calendar year the crop is normally harvested for California, and for all other states, the date as provided in the Special Provisions.

## 8. Causes of Loss

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

- (1) Adverse weather conditions;
- (2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

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

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if caused by a cause of loss specified in sections 8(a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes not insured against in section 12 of the Basic Provisions, we will not insure against any loss of production due to the crop not being timely harvested unless such delay in harvesting is solely and directly due to adverse weather conditions which preclude harvesting equipment from entering and moving about the field.

## 9. Replanting Payments

The provisions of section 13 of the Basic Provisions are not applicable.

## 10. Duties in the Event of Damage or Loss

Representative samples are required in accordance with section 14 of the Basic Provisions.

## 11. 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:

(1) Optional unit, we will combine all optional units for which such production records were not provided; or

(2) 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 insured acreage by its respective production guarantee;

(2) Multiplying the result in 11(b)(1) by the respective price election;

(3) Totaling the results of section 11(b)(2);

(4) Multiplying the total production to be counted, (see section 11(c) through (d)) by the respective price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting the result of section 11(b)(5) from the result of section 11(b)(3); and

(7) Multiplying the result of section 11(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of cultivated wild rice in the unit, with a guarantee of 400 pounds per acre and a price election of \$1.00 per pound. You are only able to harvest 20,000 pounds. Your indemnity would be calculated as follows:



(1) 100 acres  $\times$  400 pounds = 40,000 pound guarantee;

(2) 40,000 pounds  $\times$  \$1.00/pound price election = \$40,000 value of guarantee;

(3) 20,000 pounds  $\times$  \$1.00/pound price election = \$20,000 value of production to count;

(4) \$40,000 – \$20,000 = \$20,000 loss; and

(5) \$20,000  $\times$  100 percent share = \$20,000 indemnity payment.

(c) The total production (finished weight) 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) Damaged solely by uninsured causes; or

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

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested green weight production must be adjusted in accordance with section 11(d)); and

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

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

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

(2) All harvested production from the insurable acreage.

(d) Mature green weight for appraised or harvested production will be multiplied by the recovery percentage subject to the following:

(1) We may obtain samples of the production to determine the recovery percentage.

(2) The determined recovery percentage will be used to calculate your loss only if:

(i) All determined recovery percentages are established using samples of green weight production obtained by us or by the processor for sold or processed production; and

(ii) The samples are analyzed by an approved laboratory.

(3) If the conditions of section 11(d)(2) are not met, the standard recovery percentage will be used.

## 12. Late Planting

The provisions of section 16 of the Basic Provisions are not applicable.

## 13. Prevented Planting

The provisions of section 17 of the Basic Provisions are not applicable.

Signed in Washington, DC, on May 30, 2007.

**Eldon Gould,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. E7–10824 Filed 6–5–07; 8:45 am]

**BILLING CODE 3410–08–P**

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

**RIN 0563–AC01**

#### Common Crop Insurance Regulations; Coverage Enhancement Option

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to add to 7 CFR part 457 a new § 457.172 Coverage Enhancement Option (CEO) that provides additional coverage to applicable crop provisions. The CEO will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops and with the crop provisions for which it is approved. At this time, RMA has no plans to expand CEO to crops other than Texas Citrus Trees. The intended effect of this action is to convert the pilot CEO to a permanent

option for the 2008 and subsequent crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business August 6, 2007 and will be considered when the rule is to be made final.

**ADDRESSES:** Interested persons are invited to submit comments, titled “Coverage Enhancement Option 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 from 7 a.m. to 4:30 p.m., CDT, Monday through Friday except holidays at the above address.

#### FOR FURTHER INFORMATION CONTACT:

William Klein, 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

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

##### Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been previously 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

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