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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC23

Common Crop Insurance Regulations, Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Basic Provisions to revise enterprise unit provisions to protect the program from potential abuse as a result of the increased premium subsidies for enterprise and whole farm units provided by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill).

DATES: *Effective Date:* This rule is effective December 23, 2009.

Applicability Date: The changes to the Common Crop Insurance Regulations, Basic Provisions required by this rule will apply for the 2011 and succeeding crop years for all crops with a 2011 contract change date on or after March 31, 2010, and for the 2012 and succeeding crop years for all crops with a 2011 contract change date prior to March 31, 2010.

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

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through March 31, 2012.

E-Government Act Compliance

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

Unfunded Mandates Reform Act of 1995

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

Executive Order 13132

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

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the

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

Federal Assistance Program

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

Executive Order 12372

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

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

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

Background:

This rule finalizes changes to the Common Crop Insurance Regulations, Basic Provisions that were published by FCIC on June 15, 2009, as a notice of interim rulemaking in the **Federal Register** at 74 FR 28154–28156. The public was afforded 60 days to submit written comments and opinions.

A total of 14 comments were received from five commenters. The commenters were a reinsured company, an insurance service organization, and state departments of agriculture. The comments received and FCIC's responses are as follows:

Comment: A few commenters concurred with the intent to preserve program integrity and prevent abuse of the enterprise unit provisions. However, the commenters were concerned there may be unintended consequences from the added requirement that an enterprise unit have at least the lesser of 20 acres or 20 percent of the enterprise unit insured crop acreage in at least two sections, section equivalents, Farm Serial Numbers (FSNs), or units by written agreement, as allowed in the Common Crop Insurance Policy Basic Provisions. For example, a farmer with 10 acres planted in each of two sections would meet the 20 acre or 20 percent requirement for an enterprise unit, while another farmer with 10 acres planted in each of 10 sections would not. The added requirement might actually encourage farmers in the second situation to “* * * manipulate their unit structure by making slight changes in their farming operation to gain additional benefits from the increased premium subsidy,” shifting where they plant their acreage so as to have at least 20 acres or 20 percent of the insured crop acreage in at least two of the ten sections.

The commenters agreed some version of the 20 acre or 20 percent requirement is needed, though perhaps with some revision. One suggestion was for it to apply when the enterprise unit is comprised of only two separate sections (or other legal descriptions, as applicable) with planted acreage, but not when there are more (so it is unlikely the insured intentionally planted a few acres in a second section just to qualify). The commenters asked if RMA will review 2009 data to

determine how many producers were affected by the new 20 acre or 20 percent requirement, and how they were affected, before this rule is incorporated into the forthcoming “Combination” Crop Insurance Policy.

Response: The intent of this provision was to prevent producers who usually produce the crop in one section from planting on a small number of acres in another section for the sole purpose to qualify for the enterprise unit and the new subsidy. For example, without the proposed revisions, a producer with 40 acres in one section could qualify for an enterprise unit by planting one acre or less in another section. The additional subsidy is intended to encourage producers to consolidate their acreage into larger units, which reduces the risk. The planting of a small number of acres in a separate section simply to obtain the subsidy defeats this purpose. However, this provision was never intended to prevent the producer that usually produces the crop on small acreages in a number of sections from qualifying for the enterprise unit. Therefore, FCIC agrees the provisions should allow enterprise units for producers who plant acreage in more than two sections, section equivalents, etc. and have acreage dispersed similar to producers who only have planted acreage in two sections. FCIC has revised the provisions to allow producers who plant in more than two sections, section equivalents, etc. to qualify for an enterprise unit if aggregating acreage in the sections, section equivalents, etc. would meet the minimum acreage requirement. FCIC cannot simply make the 20 acre or 20 percent requirement applicable only when the unit only has two sections because there may be situations where even the aggregation of acreage would not meet this minimum standard.

Comment: A few commenters opposed the new 20 acre or 20 percent requirement. A commenter stated it is another obstacle that could adversely impact small producers. Another commenter stated the changes were not in the best interest of farmers in certain states which have a large number of small farms, and will discriminate against small farmers and farmers who farm multiple small tracts of land. Another commenter stated the restrictions are viewed as discriminatory and are counterproductive when trying to increase participation in the crop insurance program, especially in Targeted States. The commenters recommended eliminating the current requirement to have at least 50 acres in an enterprise unit.

Response: As stated in the Interim Rule, without a requirement that a minimum amount of acreage be planted in at least two sections, section equivalents, FSA farm serial numbers, or units established by written agreement, the program is vulnerable to program abuse by producers who will plant only a small amount of acreage in an additional section, FSA farm serial number, etc., solely for the purpose of qualifying for an enterprise unit and the increased premium subsidy. A minimum acreage requirement in at least two separate parcels of land protects program integrity and helps ensure a certain level of risk reduction.

FCIC does not believe the 20 acre or 20 percent requirement discriminates against producers who farm a very small number of acres. While drafting the Interim Rule, FCIC considered the impact on producers who farm a small number of acres. FCIC opted to use the requirement of “the lesser of 20 acres or 20 percent of the acreage” with those producers in mind. Under this rule, a producer who only farms 10 acres (for example, five acres in two separate sections) would only have to have planted two acres in two sections or two aggregated parcels, while a producer who farmed a large number of acres would have to have planted at least 20 acres in two sections or two aggregated parcels.

The Interim Rule amended the Common Crop Insurance Policy Basic Provisions, and does not contain a minimum 50 acre requirement. The Crop Revenue Coverage (CRC) policies are the only policies under the Federal crop insurance program that require a minimum 50 acres to qualify for an enterprise unit, and those policies are not included in this rule. Therefore, no change is made in this Final Rule in response to this comment. However, FCIC will review the minimum 50 acre requirement contained in the current CRC policies, giving consideration to the impact on producers of small acreage and Targeted States, and make any changes that are necessary.

Comment: A commenter did not take issue with FCIC using the policy definition(s) (*i.e.*, requiring consolidation that would otherwise be separate basic or optional units located in different sections and FSA farm serial numbers, *etc.*) and requiring greater than 50 acres for the actuarial discounts listed on the actuarial tables, in order for a producer to qualify for the acreage consolidation discounts listed on the actuarial table. However, in view of the emphasis, throughout the Farm Bill, to be more helpful to many non-traditional growers (*i.e.*, organic, direct marketing

etc.), the commenter urged FCIC to make it easier for them to qualify for the enterprise and whole farm unit premium subsidy.

Response: As stated above, FCIC has added the flexibility of being able to aggregate acreage when the unit contains acreage in more than two sections. This should assist producers who farm a small amount of acreage and non-traditional producers. Further, the 50 acre minimum is not applicable under this rule.

Comment: A few commenters stated the restrictions reach beyond the requirements of the authorizing legislative language.

Response: The 20 acre or 20 percent requirement does not go beyond the legislative authority. The Federal Crop Insurance Act (Act) allows the increased premium subsidies for enterprise units, but does not specify how enterprise units are to be established. As stated in the Interim Rule, FCIC became aware that a program vulnerability existed in cases where producers were planting a small amount of acreage in one additional parcel of land, solely to benefit from the higher enterprise unit premium subsidy. FCIC has an obligation under the Act to protect program integrity and maintain actuarial soundness. No change has been made.

Comment: A commenter recommended allowing the enhanced premium subsidy only on CRC and Revenue Assurance (RA) policies. Another commenter recommended allowing the enterprise unit premium subsidy for all insurance plans.

Response: FCIC does not agree the enhanced premium subsidy for enterprise units should be allowed only for CRC and RA policies. The 2008 Farm Bill did not limit the availability of the increased premium subsidy for enterprise units to any particular plan of insurance and FCIC is unaware of a rational basis to limit the benefit to only CRC and RA policies, especially as such policies are in the process of being combined with the production based plans of insurance. The increased premium subsidy is available for any plan of insurance that offers enterprise units. To the extent that a plan of insurance may not currently have enterprise units available, FCIC will review such plans the next time they are revised to determine the feasibility of adding such enterprise units. No change has been made.

Comment: A commenter stated at a time when we are mandated to establish programs for under-served producers, it makes good sense to extend the option of enterprise units (without acreage and other current limitations) and the

corresponding premium subsidy to these producers. Having crop insurance could guarantee some level of success for small and/or new producers and providing enterprise units with the increased federal premium subsidy could result in: (1) Insurance affordability for more producers; (2) more producers eligible for SURE; (3) higher levels of coverage which results in better crop insurance protection and higher SURE guarantees; and (4) producers considering crop insurance as more of an insurance plan instead of a Federal payout.

A commenter stated all producers believe they should be eligible for enterprise units by merely choosing to combine acreage of a crop that would otherwise qualify for two or more basic or optional units into one, regardless of the crop or insurance plan. The commenter added producers reason that they do not control which plans of insurance are available to them for the various crops and therefore should not miss out on the higher premium subsidy for enterprise units. The commenter stated if a decision is made to generally continue the additional restrictions to qualify for the additional premium subsidy on enterprise and whole farm insurance units, that a pilot program should be implemented in Targeted States that would remove the minimum 50 acre requirement and make it easier for producers to qualify for the enterprise and whole farm unit premium subsidy. The commenter believes doing so would greatly enhance the success of the educational mandate of the Farm Bill and as included in RMA, RME Crop Insurance Education Requirements Announcement for Targeted States.

Another commenter recommends Targeted States be subject to a pilot program that removes the minimum 50 acre and 20 acre or 20 percent requirement.

A commenter stated they seem to have hit a plateau in participation rates in their State. They feel this is not so much due to policy issues as it is in unaffordable premium cost. They believe enterprise units (with up to an 80 percent premium subsidy) is probably the single most important thing that could have broad sweeping results by making crop insurance more affordable for these targeted groups.

Response: FCIC is trying to reach under-served producers and Targeted States to meet their risk management needs. However, as stated above, the requirement that a minimum amount of acreage be planted in at least two sections, FSA farm serial numbers, *etc.* is necessary to protect program

integrity. Therefore, the limitations cannot be removed but as stated above, they have been revised to provide more flexibility to qualify for enterprise units. Further, since FCIC chose to use the "lesser of 20 acres or 20 percent" producers of small farms should not be impacted to any greater degree than producers of large farms. The 50 acre limitation does not apply to this rule. It only applies to the CRC policy, which is not affected by this rule. However, FCIC will consider the current 50 acre requirement contained in the CRC policies and the impact on producers of small acreage, and those in Targeted States, and will make necessary changes.

Comment: A commenter requested an exception for a Targeted State that would reduce the 50 acre minimum requirement to 20 acres. The commenter also requested the 20 acre or 20 percent requirement be reduced to 10 acres or 10 percent, which in Targeted States, will uphold the program intent sought by the FCIC and at the same time provide equality for beginning, socially disadvantaged and farmers in transition in converting production or marketing systems. The commenter stated the underlying factor in support of this request is the high percentage of farms under the 50 acre minimum and the number of limited resource farms in their State.

Response: As stated above, the 50 acre requirement is not contained in or part of this rule. However, FCIC will consider the impact of the 50 acre requirement that is currently contained in the CRC policies and make any necessary changes. Also, as stated above, FCIC does not believe the 20 acre or 20 percent requirement will adversely impact producers who farm small amounts of acreage, or beginning, socially disadvantaged, or limited resource farmers. The purpose of enterprise units is to reduce the risk through the consolidation of acreage into larger units. FCIC did not consider 10 acres or 10 percent of the acres in a unit to be sufficient to achieve the desired result. No change has been made.

Comment: A commenter stated although the 50 acre minimum requirement for an enterprise unit under the CRC plan of insurance is not a part of the enterprise unit changes in this Interim Rule (perhaps because it is not in the enterprise unit provisions of the Common Crop Insurance Policy Basic Provisions), the commenter suggested that consideration be given to including it in the "Combo" Policy, although some adjustments would be needed for small-acreage crops such as tobacco.

Response: The commenter is correct that the 50 acre minimum requirement is not a part of this rule. FCIC published a proposed rule with request for comments in the **Federal Register** on July 14, 2006, to combine various plans of insurance into one single policy commonly referred to as the “Combo” policy. Since FCIC has not yet published that Final Rule, FCIC cannot comment on that rule at this time.

Comment: A few commenters stated some clarification is needed regarding the statement “At least two of the sections, section equivalents, FSA farm serial numbers, or units established by written agreement making up the basic or optional units * * *”; The commenters noted that based on answers to questions regarding unit structure in an Arkansas county that has sections under the Rectangular Survey System but where a Special Provisions statement establishes optional units by FSN instead of by section, it was determined that insureds could qualify for an enterprise unit by having planted acreage (20 acres or 20 percent, as applicable) in at least two sections, even though the underlying optional units are by FSN rather than by section and that planted acreage in at least two FSNs also would qualify for the enterprise unit. The commenters stated they have also been advised that the reverse is also true. For example:

- In an Iowa county where optional units are established by section, insureds would be able to qualify for enterprise unit coverage if they have one basic unit with planted acreage all in one section but there are at least 20 acres or 20 percent of the insured crop acreage in two separate FSNs within that section.
- Insureds who previously established optional units by written unit agreement (or a Unit Division Option) would be able to qualify for enterprise unit with 20 acres or 20 percent of the insured crop acreage in at least two FSNs or regular sections, even though those are not the basis of the underlying optional units.

The commenters stated the rationale behind this answer was that paragraph (1)(i) of the definition of “enterprise unit” refers to “One or more basic units that are LOCATED IN two or more separate sections, section equivalents, FSA farm serial numbers, or units established by written agreement” [emphasis added], unlike (1)(ii), which requires “Two or more optional units ESTABLISHED BY * * * those legal descriptions [emphasis added]. Therefore, the subdivisions of the basic units do not have to be the same as

those on which the underlying optional units must be based.

The commenters believed this needs to be reconsidered and/or clarified, since it is likely that most people reading the enterprise unit provisions would have expected the 20 acre or 20 percent requirement to be based on the applicable legal description on which the underlying optional units would be based (in the Arkansas example, requiring 20 acres or 20 percent of the insured crop acreage in at least two FSNs, not two sections).

A commenter stated allowing use of other legal descriptions that are available in the county seems counterintuitive since it brings in something other than what is the basis of the underlying unit structures from optional to basic to enterprise. The commenter stated it also adds complexity to the process of determining whether a policy qualifies for an enterprise unit since the 20 acre or 20 percent requirement would have to be applied to all available legal descriptions for the crop/county, separate from (and possibly unrelated to) establishing and/or updating the APH databases for any underlying basic/optional units.

The commenter suggested that if all of these are allowed, it might help to revise paragraph (2) of the definition of “enterprise unit” [as in the Interim Rule] to clarify that “At least two of the available sections, section equivalents, FSA farm serial numbers, or units established by written agreement making up the basic or optional units in paragraph (1) of this definition must each have * * *” [or perhaps “At least two of the sections, * * * making up the basic or optional units in paragraph (1) of this definition (as available) must each have * * *”]. The commenter stated that if it is not intended to allow use of whatever legal descriptions are available in a county, then paragraph (2) might be clarified as “At least two of the applicable sections * * *,” etc. The commenter believes this would seem to be the more logical application of the underlying unit structures.

Response: FCIC agrees the provision should be reconsidered and clarified. After additional consideration, FCIC agrees the basis used to qualify for an enterprise unit should be the same as that used to establish optional units where the insured acreage is located. The provisions have been revised accordingly. For example, if sections are the basis for optional units where the insured acreage is located, a producer must have at least two sections with the required minimum number of planted acres in each section to qualify for an

enterprise unit. In addition, FCIC has revised the provisions to allow qualification for an enterprise unit when a producer has only one section, section equivalent, or FSA farm serial number provided there are at least 660 planted acres of the insured crop in such section, section equivalent, or FSA farm serial number. To ensure equitable treatment to all producers and in particular those that may have only one large section, section equivalent or FSA farm serial number, FCIC determined that by assuring there were at least 660 planted acres there would be more than a standard section which is generally 640 acres and it would be equivalent to assuring there are at least 20 planted acres in more than one parcel (*i.e.* equivalent to two sections).

Comment: A commenter stated regarding the enterprise unit requirement in the Common Crop Insurance Policy Basic Provisions and Revenue Assurance (RA) Basic Provisions of one or more basic units (as opposed to the Crop Revenue Coverage (CRC) Basic Provisions, which requires two or more basic units), it is unclear why an insured with one basic unit, who chooses NOT to subdivide that basic unit into two or more optional units by section or applicable legal description, should be allowed to call that single unit an enterprise unit rather than a basic unit, and get an additional enterprise unit discount when no additional risk has been given up in exchange. The commenter stated that the “Background” section of the Interim Rule states that, “The new premium subsidy amounts are intended only for producers who are willing to combine optional or basic units, not for those who manipulate unit structures solely to benefit from the higher premium subsidy. * * *” The additional 20 acre or 20 percent requirement was added “* * * to protect program integrity * * *” The commenter questioned if an insured who could qualify for optional units by section, and plants acres in two sections but chooses to insure all the acreage as one unit, shouldn’t have a basic unit, rather than skipping over the basic unit designation and calling it an enterprise unit. The commenter stated that if the “Combo” Policy adopts the CRC requirement of two or more basic units, this will no longer be an issue, but the 7/14/06 Proposed Rule still required only one or more basic units.)

The commenter stated perhaps the requirement of “one or more basic units” (with planted acreage in at least two sections, *etc.*) is intended to allow a farmer with 100% share in the entire farming operation to qualify for enterprise unit as long as he/she has

planted acres in at least two sections, instead of reserving enterprise unit coverage for farmers with different share arrangements who might have fewer acres overall but can meet the enterprise unit requirements. But if that is the case, it would appear the purpose of the enterprise unit is to encompass acreage in different sections, etc. rather than to combine units, especially if it is allowed to count any of the available legal descriptions and not just the one on which optional units are based for the crop/county.

The commenter stated if the enterprise unit is supposed to build on top of the same unit structure pyramid of the underlying basic units that in turn could be divided into optional units by the applicable legal description for the crop/county (which is the logical sequence), then an enterprise unit should be comprised of at least two basic units. An enterprise unit that contains only one basic unit, with planted acreage in at least two sections, is no different than the actual basic unit (with the insured choosing not to have optional units); however, the insured receives the additional enterprise unit discount without giving up any more separate units.

Response: The question of reduced risk for enterprise units involves dispersion of the risk over a wider area. This is embodied in the definition of an enterprise unit which requires acreage in separate sections or other legal descriptions. However, it is possible that producers may have basic units that qualify for enterprise units but for some reason the producer has not established the enterprise unit and taken advantage of the premium discount to which they could be entitled. For example, if a producer owns all the acreage farmed in the county, the acreage qualifies as a single basic unit. If the acreage is dispersed into qualifying legal descriptions that would qualify for an enterprise unit, the risk is still reduced. To penalize the producer because the producer failed to establish smaller units would be discriminatory. If the insured acreage qualifies as an enterprise unit, the producer should be able to establish the enterprise unit. In addition, and as stated above, producers who have only one large section, section equivalent or FSA farm serial number should also be able to qualify for an enterprise unit provided there are at least 660 planted acres in such parcel. Because 660 acres is more than a standard section which is generally 640 acres, it would be equivalent to assuring there are at least 20 planted acres in more than one parcel (i.e. equivalent to two sections) and would have adequate

dispersion. No change has been made in response to this comment.

Comment: A commenter stated a point that needs consideration and possible revision is when land is farmed across a section line. The current interpretation is that, although the acreage is farmed as one field, it is (according to a literal reading of the policy language) LOCATED in two separate sections and therefore would meet the requirement of having one basic unit with planted acreage in at least two separate sections to qualify for an enterprise unit. But since this field cannot qualify as two separate optional units (because it is farmed as one field), logic would dictate that it should not count as two sections for enterprise unit purposes.

Response: As stated above, a producer with one basic unit can qualify for an enterprise unit by having acreage located in two separate sections, FSA farm serial numbers, etc., provided such division is the basis for optional units where the insured acreage is located. However, when determining whether acreage qualifies for an enterprise unit, it is necessary to determine if at least two of the sections, FSA farm serial numbers, etc. contains at least 20 acres or 20 percent of the planted acreage in the unit. This means that the field that is located in two sections must have at least 20 acres or 20 percent of the acreage located in each of the sections. If it is unclear where the section line is in the field and this determination cannot be made, the acreage does not qualify for an enterprise unit. No change has been made in response to this comment.

Comment: A commenter stated the policy and procedure need to clarify when/if prevented planting acres count toward the enterprise unit requirements and the calculations for the enterprise unit discount and the 20 acre or 20 percent requirement.

The commenter stated some of the current language indicates the enterprise unit discount applies only to planted acreage, but this conflicts with section 17(c) of the Common Crop Insurance Policy Basic Provisions, which states "The premium amount for acreage that is prevented from being planted will be the same as that for timely planted acreage except as specified in section 15(f). * * *" and the conflict was resolved in favor of the insured. The commenter hoped the language in the "Combo" Policy is revised one way or the other to eliminate that conflict. The commenter noted that the proposed Combo Policy included some changes that might address this, including adding a

reference in section 17(c) to new section 34(f) as well, stating "Any unit discounts contained in the actuarial documents will only apply to planted acreage in the applicable unit. A unit discount will not apply to any prevented planting acreage." However, the commenter is concerned that a lot could have changed since then.

The commenter stated this also has led to questions as to whether the enterprise unit discount is determined based on prevented planting as well as planted acres. Based on the policy and procedure language, FCIC has confirmed that the answer is no. Any clarification of the policy and procedure language should be sure to keep this in line accordingly. This would apply as well to the question of whether or not prevented planting acreage should count toward the 20 acre or 20 percent requirement, and the language revised as needed.

The commenter stated some feel strongly that prevented planting acreage should never get the enterprise unit discount (and presumably the same would apply regarding the 20 acre or 20 percent requirement). Prevented planting acres always involve a loss so they do not lessen the risk for loss. In fact, in some respects they increase the chance of a payable loss because of the 20 acre or 20 percent requirement. Therefore, the enterprise unit discount should apply only to planted acres (which would require some revision to the existing prevented planting provision in section 17(c), as noted above).

Response: The interim rule is clear that at least the lesser of 20 acres or 20 percent of the insured crop acreage in the enterprise unit must be planted. Therefore, prevented planting acreage will not be considered when determining whether the 20 acre or 20 percent requirement has been met. Provisions currently contained in section 34(a)(2)(vii) of the Basic Provisions specify the enterprise unit discount will only apply to acreage in the enterprise unit that has been planted. However, FCIC determined the provision conflicts with other provisions currently contained in sections 16(c) and 17(c) of the Basic Provisions, which specify the premium for late planted and prevented planting acreage will be the same as that for timely planted acreage. Therefore, FCIC issued Informational Memorandum R&D-05-028 stating the enterprise unit discount will apply to both planted and prevented planting acres. Once the 20 acre or 20 percent requirement has been met, all acreage in the enterprise unit will receive the enterprise unit discount

and premium subsidy, including both the planted and prevented planting acreage. Currently, the discount for an enterprise unit is based on the total number of acres in the enterprise unit (both planted and prevented planting acres). FCIC has determined there is no clear rational basis there should be a difference in the unit discount provided for prevented planting acreage and planted acreage. Therefore, FCIC has removed section 34(a)(2)(vii) in this rule. When finalizing the proposed "combo" policy, FCIC will ensure that all provisions are consistent.

List of Subjects in 7 CFR Part 457

Crop insurance, Reporting and recordkeeping requirements.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation adopts as final the interim rule published at 74 FR 28154 on June 15, 2009, as final with the following changes:

PART 457—COMMON CROP INSURANCE REGULATIONS

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

Authority: 7 U.S.C. 1506(1), 1506(o).

■ 2. In § 457.8, paragraph (b) is amended as follows:

- a. By revising the definition of "Enterprise unit" in section 1;
- b. By removing "; and" and adding "." in its place in section 34(a)(2)(vi); and
- c. By removing section 34(a)(2)(vii).

The revised text reads as follows:

§ 457.8 The application and policy.

* * * * *

(b) * * *

1. Definitions.

* * * * *

Enterprise unit. All insurable acreage of the insured crop in the county in which you have a share on the date coverage begins for the crop year. To qualify:

(1) An enterprise unit must contain all of the insurable acreage of the same insured crop in:

(i) Two or more sections, if sections are the basis for optional units where the insured acreage is located;

(ii) Two or more section equivalents determined in accordance with FCIC issued procedures, if section equivalents are the basis for optional units where the insured acreage is located or are applicable to the insured acreage;

(iii) Two or more FSA farm serial numbers, if FSA farm serial numbers are the basis for optional units where the insured acreage is located;

(iv) Any combination of two or more sections, section equivalents, or FSA farm serial numbers, if more than one of these are the basis for optional units where the acreage is located or are applicable to the insured acreage (*e.g.*, if a portion of your acreage is located where sections are the basis for optional units and another portion of your acreage is located where FSA farm serial numbers are the basis for optional units, you may qualify for an enterprise unit based on a combination of these two parcels);

(v) One section, section equivalent, or FSA farm serial number that contains at least 660 planted acres of the insured crop. You may qualify under this paragraph based only on the type of parcel that is utilized to establish optional units where your insured acreage is located (*e.g.*, if having two or more sections is the basis for optional units where the insured acreage is located, you may qualify for an enterprise unit if you have at least 660 planted acres of the insured crop in one section); or

(vi) Two or more units established by written agreement; and

(2) At least two of the sections, section equivalents, FSA farm serial numbers, or units established by written agreement in paragraphs (1)(i), (ii), (iii), (iv), or (vi) of this definition must each have planted acreage that constitutes at least the lesser of 20 acres or 20 percent of the insured crop acreage in the enterprise unit. If there is planted acreage in more than two sections, section equivalents, FSA farm serial numbers or units established by written agreement in paragraphs (1)(i), (ii), (iii), (iv), or (vi), these can be aggregated to form at least two parcels to meet this requirement. For example, if sections are the basis for optional units where the insured acreage is located and you have 80 planted acres in section one, 10 planted acres in section two, and 10 planted acres in section three, you may aggregate sections two and three to meet this requirement.

* * * * *

Signed in Washington, DC, on November 16, 2009.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-1070; Directorate Identifier 2009-NM-180-AD; Amendment 39-16089; AD 2008-06-20 R1]

RIN 2120-AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above that would revise an existing AD. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, * * * Special Federal Aviation Regulation 88 (SFAR88) * * * required a safety review of the aircraft Fuel Tank System * * *.

* * * * *

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' * * *. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective December 8, 2009.

On April 23, 2008 (73 FR 14661, March 19, 2008), the Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD.

We must receive comments on this AD by January 7, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.