

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563-AC82

[Docket ID FCIC-22-0008]

#### Small Grains and Processing Sweet Corn Crop Insurance Improvements

**AGENCY:** Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

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

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations, Small Grains Crop Insurance Provisions, Processing Sweet Corn Crop Insurance Provisions, Cabbage Crop Insurance Provisions, and the Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions. The changes will allow revenue coverage for oats and rye under the Small Grains Crop Insurance Provisions and extend the end of the insurance period date for processing sweet corn from September 20 to September 30 in Illinois, Minnesota, and Wisconsin. This will benefit the producers in those states by providing them with an additional 10 days of coverage, consistent with the existing coverage for producers in Iowa. In addition, this final rule will make corrections to the Cabbage Crop Insurance Provisions and the Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions. The changes will be effective for the 2023 and succeeding crop years for crops with a contract change date on or after November 30, 2022, and for the 2024 and succeeding crop years with a contract change date on or after June 30, 2023.

**DATES:**

*Effective date:* November 25, 2022.

*Comment date:* We will consider comments that we receive by the close

of business January 24, 2023. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

**ADDRESSES:** We invite you to submit comments on this rule. You may submit comments by going through the Federal eRulemaking Portal as follows:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and search for Docket ID FCIC-22-0008. Follow the instructions for submitting comments.

All comments will be posted without change and will be publicly available on [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:**

Francie Tolle; telephone (816) 926-7829; or email [francie.tolle@usda.gov](mailto:francie.tolle@usda.gov).

Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 or (844) 433-2774 (toll-free nationwide).

**SUPPLEMENTARY INFORMATION:**

**Background**

FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIPs) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

Federal crop insurance policies typically consist of the Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Throughout this rule, the terms "Crop Provisions," "Special Provisions," and "policy" are used as defined in the Common Crop Insurance Policy (CCIP) Basic Provisions in 7 CFR 457.8. Additional information and

definitions related to Federal crop insurance policies are in 7 CFR 457.8.

FCIC amends the Common Crop Insurance Regulations by revising 7 CFR 457.101 Small Grains Crop Insurance Provisions, 7 CFR 457.139 Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions, 7 CFR 457.154 Processing Sweet Corn Crop Insurance Provisions, and 7 CFR 457.171 Cabbage Crop Insurance Provisions. In addition, this final rule will make corrections to references, missing words, grammatical and spelling errors, repetitive parenthetical titles, and inadvertently missing text that was identified in the Cabbage Crop Insurance Provisions and the Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions. The changes will be effective for the 2023 and succeeding crop years for crops with a contract change date on or after November 30, 2022, and for the 2024 and succeeding crop years with a contract change date on or after June 30, 2023.

The changes to 7 CFR 457.101 Small Grains Crop Insurance Provisions are:

The Small Grains Crop Insurance currently offers actual production history (APH) coverage for buckwheat, flax, oats, and rye; and offers yield protection (YP), revenue protection (RP), and revenue protection with harvest price exclusion (RP-HPE) for barley and wheat. In this final rule, FCIC is expanding RP and RP-HPE for oats and rye, matching available coverage for barley and wheat.

The current APH coverage will be converted to YP. For producers who wish to maintain yield coverage, the only difference in coverage will be the price guarantee will match the projected price offered for revenue protection (established approximately 2 weeks prior to the sales closing date), instead of a price election established by the Risk Management Agency (RMA) (established prior to the contract change date).

With the availability of revenue protection for oats and rye, the terms "price election" and "production guarantee" are no longer applicable. Instead, the terms "projected price," "yield protection guarantee," and "revenue protection guarantee" are applicable. These changes appear in the following sections of the Small Grains Crop Insurance Provisions to expand revenue coverage to oats and rye:

paragraph 3 (a) and (b), paragraph 9 (c), and paragraphs 11 (b) and (c).

In Section 3, FCIC is revising paragraph (a) to remove the references to oats and rye. Prior to this rule, the provision stated that revenue protection is not available for oats, rye, flax, or buckwheat. FCIC is removing oats and rye from the list of crops because revenue coverage will now be available for oats and rye. FCIC is also revising paragraph (b) to add references to oats and rye. Prior to this rule, the provisions stated that revenue protection is available for barley and wheat. FCIC is adding oats and rye to the list of crops in the two places where the list occurs.

In Section 9, FCIC is revising paragraph (c)(2)(i) to remove the reference to oats and revise paragraph (c)(2)(ii) to add a reference to oats. When a crop does not have yield or revenue protection available, the price used for determining coverage and any indemnity payments, including replanting payments, is called the price election. For crops for which yield and revenue protection are available, this price is called the projected price. In paragraph (c)(2)(i), prior to this rule, the provision stated that the replanting payment for oats will be determined by using the price election. This rule changes the regulation to make revenue and yield protection plans of insurance available for oats; therefore, the price used will be the projected price. Paragraph (c)(2)(ii) contains provisions applicable to the projected price. FCIC is revising paragraph (c)(2)(ii) to include oats, as the projected price will now be used. There are no changes in this section regarding rye because replanting payments are not available for rye.

In Section 11, FCIC is revising paragraphs (b)(1)(i), (ii) and (iii). Paragraphs (b)(1)(i), (ii), and (iii) refer to “yield protection guarantee,” “production guarantee,” and “revenue protection guarantee,” respectively. For crops for which yield and revenue protection are available, the applicable terms are yield protection guarantee and revenue protection guarantee. For crops for which yield and revenue protection are not available, the applicable term is production guarantee. Therefore, this rule is removing the references to oats and rye in paragraph (b)(1)(ii), which address production guarantee, and adds them to paragraphs (b)(1)(i) and (iii), which address yield protection guarantee and revenue protection guarantee.

FCIC is also revising paragraph (b)(3)(i) to add references to oats and rye and revising paragraph (b)(3)(ii) to remove the references to oats and rye. This change is consistent with the

change discussed above for section 9 paragraph (c)(2). Paragraph (b)(3)(i) refers to computations using the projected price; paragraph (b)(3)(ii) refers to computations using the price election. Oats and rye are being removed from paragraph (b)(3)(ii) and added to paragraph (b)(3)(i) to align with the proper terms for crops for which revenue protection is available.

FCIC is also revising paragraph (c)(1)(i) to remove the reference to oats and rye in one place and add the reference in two places. Paragraph (c)(1)(i) contains provisions that explain what appraised production includes. Prior to this rule, oats and rye were included in a list of crops with buckwheat and flax. Those four crops have similar coverage and use the same crop insurance terminology under the Small Grains Crop Provisions. This rule removes oats and rye from the list of crops containing buckwheat and flax and adds them to the list of crops containing barley and wheat in two places because allowing revenue coverage for oats and rye make coverage and crop insurance terminology for those two crops consistent with coverage and terminology for barley and wheat.

FCIC is adding the word “an” to make the sentence in section 2 paragraph (a)(3) grammatically correct.

FCIC is revising the sub-heading for section 3 to “Insurance Guarantees, Coverage Levels, and Prices” by removing the phrase “for Determining Indemnities” at the end. Removing this phrase will align the sub-heading to match the corresponding section in the CCIP Basic Provisions. It also helps clarify that price is not exclusively used to determine indemnities; it is also used to establish the guarantee and determine the premium due for the producer.

FCIC is correcting the location of premium rates from “actuarial table” to “actuarial documents” in section 6 paragraph (d). The practical meaning is the same. However, the CCIP Basic Provisions defines “actuarial documents” so that is the correct term to refer to the location of the premium rates information.

FCIC is updating prices in the settlement of claim example, so the prices are more reflective of current values and potential indemnities. FCIC is also adding “not applicable” next to any steps that do not apply to the example. Specifically, steps 2 and 4 in the example are to sum the results of the prior step for each type. The example is for a single type and summing the results is not an applicable step in the calculation.

The changes to 7 CFR 457.154 Processing Sweet Corn Crop Insurance Provisions are:

In response to feedback from producers and processors, FCIC is revising the end of insurance date for Illinois, Minnesota, and Wisconsin from September 20 to September 30. The end of insurance date is already September 30 in Iowa where the producers use the same processors for their crop. The processors coordinate the timing of harvest in advance to maximize operational and storage capabilities at the processing plant. The typical harvest period ends around September 30 and producers are currently left without insurance coverage after September 20. Claims for losses are not expected to increase significantly because the main cause of loss leading up to harvest is freeze or frost and the average first hard freeze dates for these states are between October 3 to October 12, after the revised end of insurance date. This rule will also move the end of insurance period date to the Special Provisions, ensuring RMA can timely adjust the end of insurance period date if another change is needed in the future.

Other minor changes to 7 CFR 457.154 Processing Sweet Corn Crop Insurance Provisions include:

FCIC is removing the introductory sentence explaining the order of priority of policy provisions because it is duplicative of the same order of priority included in the CCIP Basic Provisions.

FCIC is revising the definition of “good farming practice” to clarify the definition for “good farming practice” is in addition to the definition in the CCIP Basic Provisions, because cultural practices required by the sweet corn processor contract are also considered good farming practices for the crop.

FCIC is revising the definition of “practical to replant” to clarify that the definition is in addition to the definition in the CCIP Basic Provisions, because the processor must also agree to accept the production in order for the crop to be considered practical to replant.

FCIC is revising the definition of “processor contract” to replace the term “written agreement” with “written contract.” The term “written agreement” has a specific defined meaning in the CCIP Basic Provisions that does not apply to a processor contract. This change should help avoid confusion with the definition of a “written agreement.”

FCIC is revising the sub-heading for section 3 to “Insurance Guarantees, Coverage Levels, and Prices” by removing the phrase “for Determining Indemnities” at the end. Removing this

phrase will align the sub-heading to match the corresponding section in the CCIP Basic Provisions. It also helps clarify that price is not exclusively used to determine indemnities; it is also used to establish the guarantee and determine the premium due for the producer.

FCIC is updating prices and yields in settlement of claim examples, so they are more reflective of current values and potential indemnities. FCIC is also adding “not applicable” next to any steps that do not apply to the example. Specifically, steps 3 and 5 in the first example are to sum the results of the prior step for each type. The example is for a single type and summing the results is not an applicable step in the calculation.

FCIC is removing the phrase “the provisions of” or the “provisions contained in” each time they occur to be consistent when referring to the CCIP Basic Provisions.

FCIC is removing the phrase “the requirements of” in section 3 to be consistent when referring to the CCIP Basic Provisions.

FCIC is replacing “FSA farm serial number” with “FSA farm number,” because “FSA farm serial number” is no longer used. A similar change was already implemented in the CCIP Basic Provisions in 2017 when the definition was changed to remove the word “serial.”

The technical edits and corrections to 7 CFR 457.139 Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions are:

FCIC is revising section 11 paragraph (b) to clarify that FCIC will not insure the crop due to an excluded cause of loss for any damage, not just production losses. Production loss is not defined in the CCIP Basic Provisions and could be interpreted as having losses associated with a producer’s actual production history only. Damage is defined in the CCIP Basic Provisions as injury, deterioration, or loss of production of the insured crop due to insured or uninsured causes.

FCIC is removing the phrase “the provisions of” each time they occur to be consistent when referring to the CCIP Basic Provisions.

The technical edits and corrections to 7 CFR 457.171 Cabbage Crop Insurance Provisions are:

FCIC is revising the definition of “crop year” to remove the capitalization of “year” so that it matches the definition in CCIP Basic Provisions.

#### **Effective Date, Notice and Comment, and Exemptions**

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the

notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to contracts. This rule governs contracts for crop insurance policies and therefore falls within that exemption. Although not required by APA or any other law, FCIC has chosen to request comments on this rule.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

For major rules, the Congressional Review Act requires a delay the effective date of 60 days after publication to allow for Congressional review. This rule is not a major rule under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, this final rule is effective on the date of publication in the **Federal Register**.

#### **Executive Orders 12866 and 13563**

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866. Therefore, OMB has not reviewed this rule and analysis of the costs and benefits is not required under either Executive Order 12866 or Executive Order 13563.

#### **Clarity of the Regulation**

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?

- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

#### **Environmental Review**

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347) and the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508). FCIC conducts programs and activities that have been determined to have no individual or cumulative effect on the human environment. As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

#### **Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that

have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

RMA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under E.O. 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, RMA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified in this rule are not expressly mandated by Congress.

#### The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of 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.

#### Federal Assistance Program

The title and number of the Federal Domestic Assistance Program listed in the Assistance Listing to which this rule applies is No. 10.450—Crop Insurance.

#### Paperwork Reduction Act of 1995

The purpose of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), among other things, are to minimize the paperwork burden on individuals, and to require Federal agencies to request and receive approval from the Office of Management and Budget (OMB) prior to collecting information from ten or more persons. This rule does not change the information collection approved by

OMB under control numbers 0563–0053.

#### USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 or (844) 433–2774 (toll-free nationwide).

Additionally, program information may be made available in languages other than English. To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: [OAC@usda.gov](mailto:OAC@usda.gov).

USDA is an equal opportunity provider, employer, and lender.

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

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

For the reasons discussed above, FCIC amends 7 CFR part 457 as follows:

#### PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

■ 2. Amend § 457.101 by:

■ a. Revise the introductory text;

■ b. In section 1, in the definition of “latest final planting date”, redesignate paragraphs (a), (b), and (c) as paragraphs (1), (2), and “(3), respectively;

■ c. In section 2:

■ i. In the section heading, remove the period; and

■ ii. In paragraph (a)(3) introductory text, remove the words “you elected enterprise unit” and add “you elected an enterprise unit” in their place;

■ d. In section 3:

■ i. Revise the section heading;

■ ii. In paragraph (a), remove the words “your oats, rye, flax,” and add “flax” in their place; and

■ iii. Revise paragraphs (b) introductory text and (b)(1);

■ e. In section 6, in paragraph (d), remove the words “actuarial table provides” and add “actuarial documents provide” in their place;

■ f. In section 9:

■ i. In paragraph (c)(2)(i), remove the words “oats, flax,” and add “flax” in their place; and

■ ii. In paragraph (c)(2)(ii), remove the words “wheat or barley” and add “barley, oats, or wheat” in their place;

■ g. In section 11:

■ i. In paragraph (b)(1)(i), remove the word “barley” and add the words “barley, oats, rye,” in its place;

■ ii. In paragraph (b)(1)(ii), remove the words “oats, rye, flax,” and add “flax” in their place;

■ iii. In paragraph (b)(1)(iii), remove the word “barley” and add “barley, oats, rye,” in its place;

■ iv. In paragraph (b)(3)(i), remove the words “wheat or barley” and add “barley, oats, rye, or wheat” in their place;

■ v. In paragraph (b)(3)(ii), remove the words “oats, rye, flax,” and add the word “flax” in their place;

■ vi. Revise paragraph (b)(6);

■ vii. Revise paragraph (c)(1)(i) introductory text; and

■ viii. In paragraph (c)(1)(iii), remove the cross reference “in accordance with subsection 11.(d)” and add “in accordance with paragraph (d) of this section” in its place;

■ ix. In paragraph (d)(2)(i)(A), remove the words “smutty or ergoty” and add “smutty, and ergoty” in their place;

■ x. In paragraphs (d)(2)(i)(B) and (C), remove the words “garlicky or ergoty” and add “garlicky, or ergoty” in their place; and

■ xi. In paragraph (d)(2)(ii), remove the words “smutty or ergoty” and add “smutty, and ergoty” in their place; and

■ h. In section 13, in the section heading, remove the period.

The revisions and additions read as follows:

**§ 457.101 Small grains crop insurance provisions.**

The Small Grains Crop Insurance Provisions for the 2023 and succeeding crop years for crops with a contract change date on or after November 30, 2022, and for the 2024 and succeeding crop years with a contract change date prior to November 30, 2022, are as follows:

\* \* \* \* \*

**3. Insurance Guarantees, Coverage Levels, and Prices**

\* \* \* \* \*

(b) Revenue protection is available for barley, oats, rye, and wheat. Therefore, if you elect to insure your barley, oats, rye, or wheat:

(1) You must elect to insure your barley, oats, rye, or wheat with either revenue protection or yield protection by the sales closing date; and

\* \* \* \* \*

**11. Settlement of Claim**

\* \* \* \* \*

(b) \* \* \*

(6) Multiplying the result of section 11(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of wheat in the unit with a production guarantee (per acre) of 45 bushels, your projected price is \$7.10, your harvest price is \$10.90, and your production to count is 2,000 bushels.

If you elected yield protection:

(1)  $50 \text{ acres} \times (45\text{-bushel production guarantee} \times \$7.10 \text{ projected price}) = \$15,975.00$  value of the production guarantee;

(2) Not applicable;

(3)  $2,000\text{-bushel production to count} \times \$7.10 \text{ projected price} = \$14,200.00$  value of the production to count;

(4) Not applicable;

(5)  $\$15,975.00 - \$14,200.00 = \$1,775.00$ ; and

(6)  $\$1,775.00 \times 1.000 \text{ share} = \$1,775.00$  indemnity; or

If you elected revenue protection:

(1)  $50 \text{ acres} \times (45\text{-bushel production guarantee} \times \$10.90 \text{ harvest price}) = \$24,525.00$  revenue protection guarantee;

(2) Not applicable;

(3)  $2,000\text{-bushel production to count} \times \$10.90 \text{ harvest price} = \$21,800.00$  value of the production to count;

(4) Not applicable;

(5)  $\$24,525.00 - \$21,800.00 = \$2,725.00$ ; and

(6)  $\$2,725.00 \times 1.000 \text{ share} = \$2,725.00$  indemnity.

(c) \* \* \*

(1) \* \* \*

(i) For flax or buckwheat, and barley, oats, rye, or wheat under yield

protection, not less than the production guarantee (per acre), and for barley, oats, rye, or wheat under revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (per acre) for acreage:

\* \* \* \* \*

■ 3. Amend § 457.139 by:

■ a. In section 9, in paragraph (a) and paragraph (b) introductory text, remove the words “the provisions of”;

■ b. In section 11:

■ i. Remove the words “the provisions of” in paragraph (a) introductory text; and

■ ii. Revise paragraph (b) introductory text.

The revisions read as follows:

**§ 457.139 Fresh Market Tomato (Dollar Plan) crop insurance provisions.**

\* \* \* \* \*

**11. Causes of Loss**

\* \* \* \* \*

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against any damage or loss of production due to:

\* \* \* \* \*

■ 4. Amend § 457.154 by:

■ a. Revise the introductory text;

■ b. Remove the undesignated introductory paragraph between “Processing Sweet Corn Crop Provisions” and Section 1;

■ c. In section 1:

■ i. Revise the definition of “Good farming practices”;

■ ii. Revise the definition of “Practical to replant”; and

■ iii. Revise the definition of “Processor contract”;

■ d. In section 2, in paragraph (a)(2), remove the word “serial”;

■ e. In section 3:

■ i. Revise the section heading; and

■ ii. In the introductory text, remove the words “the requirements of”;

■ f. In section 6, remove the words “the provisions of”;

■ g. In section 8, introductory text, remove the words “the provisions of”;

■ h. In section 9:

■ i. In the introductory text, remove the words “the provisions contained in”; and

■ ii. Revise paragraph (d).

■ i. In section 10, introductory text, remove the words “the provisions of”;

■ j. In section 11, introductory text, remove the words “the requirements of”; and

■ k. In section 12, revise paragraph

(b)(7).

The revisions read as follows:

**§ 457.154 Processing Sweet Corn crop insurance provisions.**

The Processing Sweet Corn Crop Insurance Provisions for the 2023 and succeeding crop years are as follows:

\* \* \* \* \*

**1. Definitions**

\* \* \* \* \*

*Good farming practices.* In addition to the definition contained in the Basic Provisions, cultural practices required by the processor contract.

\* \* \* \* \*

*Practical to replant.* In addition to the definition in the Basic Provisions, it will not be considered practical to replant unless the replanted acreage can produce at least 75 percent of the approved yield, and the processor agrees in writing that it will accept the production from the replanted acreage.

\* \* \* \* \*

*Processor contract.* (1) A written contract between the producer and a processor, containing at a minimum:

(i) The producer’s commitment to plant and grow sweet corn, and to deliver the sweet corn production to the processor;

(ii) The processor’s commitment to purchase all the production stated in the processor contract; and

(iii) A base contract price.

(2) Multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract, unless the contracts are for different types. Your base contract price will be the weighted average of all applicable base contract prices.

\* \* \* \* \*

**3. Insurance Guarantees, Coverage Levels, and Prices**

\* \* \* \* \*

**9. Insurance Period**

\* \* \* \* \*

(d) The end of insurance date specified in the Special Provisions or otherwise allowed by written agreement.

\* \* \* \* \*

**12. Settlement of Claim**

\* \* \* \* \*

(b) \* \* \*

(7) Multiplying the result of section 12(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of type A processing sweet corn in the unit, with a guarantee of 6.0 tons per acre and a price election of \$100.00 per ton. You are only able to harvest 200 tons. Your indemnity would be calculated as follows:

- (1) 100 acres × 6.0 tons = 600 tons guarantee;
- (2) 600 tons × \$100.00 price election = \$60,000.00 value of guarantee;
- (3) Not applicable;
- (4) 200 tons × \$100.00 price election = \$20,000.00 value of production to count;
- (5) Not applicable;
- (6) \$60,000.00 – \$20,000.00 = \$40,000.00 loss; and
- (7) \$40,000.00 × 100 percent = \$40,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of type B processing sweet corn in the same unit, with a guarantee of 60 tons per acre and a price election of \$90.00 per ton. You are only able to harvest 350 tons. Your total indemnity for both types A and B would be calculated as follows:

- (1) 100 acres × 6.0 tons = 600 tons guarantee for type A, and 100 acres × 6.0 tons = 600 tons guarantee for type B;
- (2) 600 tons × \$100.00 price election = \$60,000.00 value of guarantee for type A, and 600 tons × \$90.00 price election = \$54,000.00 value of guarantee for type B;
- (3) \$60,000.00 + \$54,000.00 = \$114,000.00 total value of guarantee;
- (4) 200 tons × \$100.00 price election = \$20,000.00 value of production to count for type A, and 350 tons × \$90.00 price election = \$31,500.00 value of production to count for type B;
- (5) \$20,000.00 + \$31,500.00 = \$51,500.00 total value of production to count;
- (6) \$114,000.00 – \$51,500.00 = \$62,500.00 loss; and
- (7) \$62,500.00 loss × 100 percent = \$62,500.00 indemnity payment.

■ 5. Amend § 457.171, in section 1, by removing the definition of “Crop Year” and adding a definition for “Crop year” in its place to read as follows:

**§ 457.171 Cabbage crop insurance provisions.**

\* \* \* \* \*

1. Definitions

\* \* \* \* \*

*Crop year.* In lieu of the definition contained in section 1 of the Basic Provisions, a period of time that begins on the first day of the earliest planting period and continues through the last day of the insurance period for the latest planting period. The crop year is designated by the calendar year in

which the cabbage planted in the latest planting period is normally harvested.

\* \* \* \* \*

**Marcia Bunger,**  
*Manager, Federal Crop Insurance Corporation.*

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**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1022**

**Fair Credit Reporting Act Disclosures**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule; official interpretation.

**SUMMARY:** The Consumer Financial Protection Bureau (Bureau) is issuing this final rule amending an appendix for Regulation V, which implements the Fair Credit Reporting Act (FCRA). The Bureau is required to calculate annually the dollar amount of the maximum allowable charge for disclosures by a consumer reporting agency to a consumer pursuant to FCRA section 609; this final rule establishes the maximum allowable charge for the 2023 calendar year.

**DATES:** This final rule is effective January 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Adrien Fernandez, Counsel, Thomas Dowell, Senior Counsel; Office of Regulations, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB\_Accessibility@cfpb.gov*.

**SUPPLEMENTARY INFORMATION:** The Bureau is amending Appendix O to Regulation V, which implements the FCRA, to establish the maximum allowable charge for disclosures by a consumer reporting agency to a consumer for 2023. The maximum allowable charge will be \$14.50 for 2023.

**I. Background**

Under section 609 of the FCRA, a consumer reporting agency must, upon a consumer’s request, disclose to the consumer information in the consumer’s file.<sup>1</sup> Section 612(a) of the FCRA gives consumers the right to a free file disclosure upon request once every 12 months from the nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies.<sup>2</sup>

<sup>1</sup> 15 U.S.C. 1681g.  
<sup>2</sup> 15 U.S.C. 1681j(a).

Section 612 of the FCRA also gives consumers the right to a free file disclosure under certain other, specified circumstances.<sup>3</sup> Where the consumer is not entitled to a free file disclosure, section 612(f)(1)(A) of the FCRA provides that a consumer reporting agency may impose a reasonable charge on a consumer for making a file disclosure. Section 612(f)(1)(A) of the FCRA provides that the charge for such a disclosure shall not exceed \$8.00 and shall be indicated to the consumer before making the file disclosure.<sup>4</sup>

Section 612(f)(2) of the FCRA also states that the \$8.00 maximum amount shall increase on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.<sup>5</sup> Such increases are based on the Consumer Price Index for All Urban Consumers (CPI–U), which is the most general Consumer Price Index and covers all urban consumers and all items.

**II. Adjustment**

For 2023, the ceiling on allowable charges under section 612(f) of the FCRA will be \$14.50, an increase of one dollar from 2022. The Bureau is using the \$8.00 amount set forth in section 612(f)(1)(A)(i) of the FCRA as the baseline for its calculation of the increase in the ceiling on reasonable charges for certain disclosures made under section 609 of the FCRA. Since the effective date of section 612(a) was September 30, 1997, the Bureau calculated the proportional increase in the CPI–U from September 1997 to September 2022. The Bureau then determined what modification, if any, from the original base of \$8.00 should be made effective for 2023, given the requirement that fractional changes be rounded to the nearest fifty cents.

Between September 1997 and September 2022, the CPI–U increased by 84.124 percent from an index value of 161.2 in September 1997 to a value of 296.808 in September 2022. An increase of 84.124 percent in the \$8.00 base figure would lead to a figure of \$14.73. However, because the statute directs that the resulting figure be rounded to the nearest \$0.50, the maximum allowable charge is \$14.50. The Bureau therefore determines that the maximum

<sup>3</sup> 15 U.S.C. 1681j(b)–(d). The maximum allowable charge announced by the Bureau does not apply to requests made under section 612(a)–(d) of the FCRA. The charge does apply when a consumer who orders a file disclosure has already received a free annual file disclosure and does not otherwise qualify for an additional free file disclosure.

<sup>4</sup> 15 U.S.C. 1681j(f)(1)(A).

<sup>5</sup> 15 U.S.C. 1681j(f)(2).