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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR part 457

Docket No. FCIC- 18-0001

RIN 0563-AC55

Common Crop Insurance Regulations; Sugar Beet Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations, Sugar Beet Crop Insurance Provisions (Crop Provisions).

The intended effect of this action is to update existing policy provisions and definitions to better reflect current agricultural practices. The changes will be effective for the 2019 and succeeding crop years in states with a November 30 contract change date and for the 2020 and succeeding crop years in all other states.

DATES: This final rule is effective November 30, 2018. However, FCIC will accept written comments on this final rule until close of business **[insert date 30 days after publication in the FEDERAL REGISTER]**. FCIC will consider these comments and make changes to the rule if warranted.

ADDRESSES: FCIC prefers that interested persons submit comments electronically through the Federal eRulemaking Portal. Interested persons may submit comments, identified by Docket ID No. FCIC-18-0001, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205.

All comments received, including those received by mail, will be posted without change to <http://www.regulations.gov>, including any personal information provided. Once these comments are posted to this website, the public can access all comments at its convenience from this website. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>. If interested persons are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, FCIC requests use of a text-based format. If interested persons wish to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of the submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the Risk Management Agency (RMA) Web Content Team at (816) 823-4694 or by email at rmaweb.content@rma.usda.gov.

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the person submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Interested persons may review the complete User Notice and Privacy Notice for Regulations.gov at

<http://www.regulations.gov/#!privacyNotice>.

FOR FURTHER INFORMATION CONTACT: Chandra Mason, Chief, Policy Administration Branch, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141-6205, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Background:

FCIC amends the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.109 Sugar Beet Crop Insurance Provisions (Crop Provisions), to be effective for the 2019 and succeeding crop years in states with a November 30 contract change date and for the 2020 and succeeding crop years in all other states. The intended effect of this action is to update existing policy provisions and definitions to better reflect current agricultural practices.

The changes are as follows:

1. FCIC is removing the paragraph immediately preceding section 1, which refers to the order of priority if a conflict exists among the policy provisions. This same provision is contained in the Basic Provisions. Therefore, the appearance here is duplicative and should be removed from the Crop Provisions.

2. FCIC is removing parentheticals identifying the titles of sections of the Basic Provisions throughout the Crop Provisions as the parenthetical section name is unnecessary and removing these titles will prevent FCIC from having to revise the Crop

Provisions should these section titles change in the Basic Provisions.

3. Section 1–

FCIC is revising the definition of “Crop Year.” The previous definition required a reference to specific counties, as the crop year was defined differently for several California counties. In 2013, the actuarial information that made insurance available was removed from all California counties except Imperial County, which has the same definition of “crop year” as used in all remaining insurable states and counties. Consequently, the revised definition removes references to specific counties such that all insurable counties have the same definition of “crop year.”

FCIC is removing the definition of “Local Market Price” as this term is no longer used in the Crop Provisions.

FCIC is revising the definition of “Practical to Replant.” FCIC is removing those provisions that are duplicative of the definition in the Basic Provisions and leaves the requirement that it is practical to replant if the terms of the processor contract can be met.

FCIC is adding a definition of “Processor Contract” and removing the definition of “Sugar Beet Processor Contract.” FCIC has identified several different Crop Provisions contain a variation of a definition for a “processor contract,” which has created ambiguity across Crop Provisions, and poses challenges for insurance providers to administer the program consistently across different crops. The definition of “processor contract” matches the definition found in other Crop Provisions, in order to improve standardization of language regarding use of contracts across crop insurance programs. References throughout the Crop Provisions will be revised accordingly. The new

definition also requires that contracts be executed by the acreage reporting date, which is consistent with all other crop insurance policies that insure contract crops. Contracts must be executed by the acreage reporting date so that liabilities and prices can be established for the purpose of determining guarantees and premium.

FCIC is removing the definition of “Production Guarantee (per acre).” The definition is contained in the Basic Provisions. This definition was previously necessary due to inclusion of stage guarantees, which, as stated below, have been removed from the policy. Further, as stated below, section 3 specifies that the production guarantee is expressed in pounds of raw sugar.

FCIC is removing the definitions of “Standardized Ton” and “Ton.” The definitions are no longer necessary, since, as stated below, FCIC is changing the basis of insurance from “tons” to “pounds of raw sugar” in section 3(c).

FCIC is removing the definition of “Thinning” as this term is no longer used in the Crop Provisions.

4. Section 3–

FCIC is revising the basis of insurance from “standardized tons” to “pounds of raw sugar.” This change is made to align the policy with the current sugar beet industry standard for payment. All references to the basis of insurance throughout the Crop Provisions will consequently be revised.

FCIC is removing stage guarantees from the policy. FCIC had previously offered an option to obtain coverage without the stage guarantees for an additional premium. FCIC has observed an increasing number of sugar beet producers electing the stage removal

option, such that very few producers have coverage with stage guarantees. Removal of stage guarantees from the policy will better reflect the risk management needs of producers and simplify their existing coverage options. Premiums will be revised to reflect the removal of the stage guarantees from the policy.

5. Section 4– FCIC is removing references to a July 15 contract change date because, since 2013, this date was removed from the actuarial information for all counties. Additionally, FCIC proposes to edit the remaining date references to apply to states instead of counties. The edit does not change any county dates, merely provides consistency in reference to states or counties within the Crop Provisions and actuarial documents.

6. Section 5– FCIC is removing the table of county-specific cancellation and termination dates since many of the counties with differing cancellation and termination dates no longer have insurance for sugar beets. With the removal of insurance from these counties, there are only two remaining cancellation and termination dates, so the provisions have been revised to only refer to these dates. The revision will not result in any changed dates for counties where insurance for sugar beets is currently available.

7. Section 6– FCIC is removing and reserving this section. With the removal of stage guarantees, this section is no longer necessary. The premium computation method appears in the Basic Provisions and will reflect this removal.

8. Section 7– In section 7(b)(2), FCIC is replacing “duly promulgated” with “executed and adopted” and “sets forth” with “contains.” FCIC is also adding the modifier “corporate” to “resolution.” This revised terminology uses more common

language, makes clear the connection to later uses of the term “corporate resolution,” and provides consistency with other Crop Provisions.

9. Section 8– FCIC is removing the parenthetical in 8(b) referring to counties without a final planting date because all insurable counties now have a specified final planting date.

10. Section 9– FCIC is removing the list of end of insurance dates by geographic region and instead referring to the calendar date shown in the actuarial documents for the end of the insurance period. This change will simplify the provision and allow FCIC to timely provide area-specific dates, allow for future program expansion, and provide greater flexibility to adjust end of insurance period dates to new or evolving regional conditions as needed in the future.

11. Section 11– In section 11(b), FCIC is removing the formula for calculating a replanting payment and replacing it with the phrase “dollar amount of the replant payment is specified in the Special Provisions” because the costs for replanting the crop may vary by county or region and this change gives FCIC the flexibility to ensure that the costs of replanting are reflected in the actuarial documents and adjusted as needed.

12. Section 12– FCIC is decapitalizing the words “in the” in the section heading for consistency throughout these Crop Provisions. In section 12(b), FCIC is adding a comma after “processor contract” to separate the two requirements. This change provides clarity on the issue of provision of contracts or corporate resolutions for specific entity types: for non-processors, a processor contract is required. For insureds who are also processors, a corporate resolution is required.

13. Section 13– In section 13(c)(1)(iii) FCIC is removing the parenthetical following the term “unharvested production,” which is no longer necessary due to the use of pounds of raw sugar as the basis of insurance, removal of stage guarantees, and the inclusion of an early harvest factor.

FCIC is removing section 13(c)(1)(iv), which is unnecessary due to the removal of stage guarantees. This also results in the redesignation of section 13(c)(1)(v) as section 13(c)(1)(iv).

In section 13(d) and (e), FCIC is revising the language to clarify the determination of production to count by referring to pounds of raw sugar and including the use of the raw sugar percentage specified in the Special Provisions only if a sugar test is not performed or is not deemed acceptable.

FCIC is adding a new subsection (f) to allow for an “early harvest factor.” The addition of this factor comes in response to a lack of clarity in the event of the periodic decisions by sugar beet processors to request a portion of their contracted acres be harvested early. In these events, the actual harvested beets are often lower in weight and sugar content, resulting in what could appear to be a production loss. This provision provides more clear guidance for insurance providers in the event of early harvested acres and eliminates the unnecessary reduction in grower APH. The adjustment for early harvest will not be made if the sugar beets are damaged by an insurable cause of loss and leaving the crop in the field would reduce production, and cannot result in a production to count in excess of the insured’s actual production history. Further, the adjustment will only be made in the event that the portion of a unit harvested early exceeds a percentage

of acreage threshold specified in the actuarial documents.

14. Section 14– FCIC is removing and reserving this section. This section was necessary because of the distinction between certain counties in California. Now that insurance is no longer available in those counties, the provision is no longer necessary and the late planting provisions in the Basic Provisions will apply.

15. Section 15– FCIC is removing section 15(a), because insurance is no longer available for those counties that previously had a July 15 contract change date.

Effective Date

The FCIC is issuing this final rule without opportunity for prior notice and comment. The Administrative Procedure Act (APA) exempts rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” from the statutory requirement for prior notice and opportunity for public comment (5 U.S.C. 553(a)(2)). A Federal crop insurance policy is a contract and is thus exempt from APA notice-and-comment procedures. Previously, changes made to the Federal crop insurance policies codified in the Code of Federal Regulations were required to be implemented through the notice-and-comment rulemaking process. Such action was not required by the APA, which exempts contracts. Rather, the requirement originated with a notice USDA published in the Federal Register on July 24, 1971 (36 FR 13804), stating that the Department of Agriculture would, to the maximum extent practicable, use the notice-and-comment rulemaking process when making program changes, including those involving contracts. FCIC complied with this notice over the subsequent years. On October 28, 2013, USDA published a notice in the Federal Register (78 FR 64194) rescinding the

prior notice, thereby making contracts again exempt from the notice-and-comment rulemaking process. This exemption applies to the 30-day notice prior to implementation of a rule. Therefore, the policy changes made by this final rule are effective upon publication in the Federal Register.

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

The changes will be effective for the 2019 and succeeding crop years in states with a November 30 contract change date and for the 2020 and succeeding crop years in all other states.

Executive Orders 12866, 13563, 13771 and 13777

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

reviewed this rule. The rule is not subject to Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.”

Paperwork Reduction Act of 1995

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

E-Government Act Compliance

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

Unfunded Mandates Reform Act of 1995

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

Executive Order 13132

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

of power and responsibilities among the various levels of government.

Executive Order 13175

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

FCIC 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 EO 13175. If a Tribe requests consultation, FCIC will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine

the indemnity amount for an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act (FCIA) authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have a significant impact on a substantial number of small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605).

Federal Assistance Program

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the

crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

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

List of Subjects in 7 CFR Part 457

Crop insurance, Sugar Beet, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, FCIC amends 7 CFR part 457 effective for the 2019 and succeeding crop years in states with a November 30 contract change date and for the 2020 and succeeding crop years in all other states as follows:

PART 457 - COMMON CROP INSURANCE REGULATIONS

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

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

2. Amend § 457.109 as follows:

a. In the introductory text remove the phrase “for the 2017 and succeeding crop years in counties with a contract change date of November 30, and for the 2018 and succeeding crop years in counties with a contract change date of April 30” and add the phrase “for effective for the 2019 and succeeding crop years in states with a November 30 contract change date and for the 2020 and succeeding crop years in all other states.” in its place;

b. Remove the undesignated paragraph immediately following the heading “Sugar

Beet Crop Provisions”;

- c. In section 1:
 - i. Revise the definition of “crop year”;
 - ii. Remove the definition of “local market price”;
 - iii. Revise definition of “practical to replant”;
 - iv. Add a definition of “processor contract” in alphabetical order; and
 - v. Remove the definitions of “production guarantee (per acre)”, “standardized ton”, “sugar beet processor contract”, “thinning”, and “ton”;
- d. In section 2 remove the term “sugar beet” in all three instances;
- e. Revise sections 3 through 5;
- f. Remove and reserve section 6;
- g. In section 7:
 - i. In paragraph (a) introductory text, remove the parenthetical “(Insured Crop)”;and
 - ii. Revise paragraphs (a)(3) and (b)(2);
- h. In section 8:
 - i. In the introductory text, remove the parenthetical “(Insurable Acreage)”;
 - ii. In paragraph (b) remove the parenthetical “(or within 30 days of initial planting for those counties without a final planting date)”;
- i. Revise section 9;
- j. In section 10 introductory text, remove the parenthetical “(Causes of Loss)”;
- k. In section 11:

i. In paragraph (a), remove the parenthetical “(Replanting Payment)” and the term “final stage”; and

ii. Revise paragraph (b);

l. In section 12:

i. In the introductory text, remove parenthetical “(Duties in the Event of Damage or Loss)”; and

ii. Revise paragraph (b);

m. In section 13:

i. In paragraph (c) introductory text, remove the parenthetical “(in standardized tons)”; and

ii. In paragraph (c)(1)(iii), remove the parenthetical “(unharvested production that is appraised prior to the earliest delivery date that the processor accepts harvested production will not be eligible for a conversion to standardized tons in accordance with section 13 (d) and (e))”;

iii. Remove paragraph (c)(1)(iv);

iv. Redesignate paragraph (c)(1)(v) as (c)(1)(iv);

v. Revise paragraphs (d) and (e); and

vi. Add paragraph (f);

n. Remove and reserve section 14; and

o. Revise section 15.

The revisions and additions read as follows:

§ 457.109 Sugar Beet Crop Insurance Provisions.

* * * * *

1. Definitions

Crop year. The period within which the sugar beets are normally grown, which is designated by the calendar year in which the sugar beets are normally harvested.

* * * * *

Practical to replant. In addition to the definition in section 1 of the Basic Provisions, it will not be considered practical to replant if production from the replanted acreage cannot be delivered under the terms of the processor contract, or 30 days after the initial planting date for all counties where a late planting period is not applicable, unless replanting is generally occurring in the area.

* * * * *

Processor contract. A written agreement between you and the processor, executed on or before the acreage reporting date, which is in effect for the crop year, containing at a minimum:

- (1) Your commitment to plant, grow, and deliver the sugar beet production to the processor;
- (2) The processor's commitment to purchase the production stated in the contract; and
- (3) A price or formula for a price based on third party data that will be paid to you for the production stated in the contract.

* * * * *

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

- (a) In addition to the requirements of section 3 of the Basic Provisions, you may

select only one price election for all the sugar beets in the county insured under this policy.

(b) The production guarantee will be expressed in pounds of raw sugar.

4. Contract Changes

In accordance with the provisions of section 4 of the Basic Provisions, the contract change date is April 30 preceding the cancellation date for California and November 30 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are August 31 for California and March 15 for all other states.

* * * * *

7. Insured Crop

* * * * *

(a) * * *

(3) That are grown under a contract and are not excluded from the processor contract at any time during the crop year; and

* * * * *

(b) * * *

(2) The Board of Directors or officers of the processor must have adopted and executed a corporate resolution that contains essentially the same terms as a processor contract. Such corporate resolution will be considered a processor contract under the terms of the sugar beet crop insurance policy;

* * * * *

9. Insurance Period

In accordance with section 11 of the Basic Provisions, the dates for the end of insurance period are contained in the actuarial documents.

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11. Replanting Payments

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(b) The dollar amount of the replant payment is specified in the Special Provisions.

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12. Duties in the Event of Damage or Loss

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(b) You must provide a copy of your processor contract, or corporate resolution if you are the processor.

13. Settlement of Claim

* * * * *

(d) Harvested production or unharvested production that is appraised after the earliest delivery date that the processor accepts harvested production and that meets the minimum acceptable standards contained in the processor contract or corporate resolution will be converted to pounds of raw sugar by multiplying the tons of such production by 2,000 and by the average percentage of raw sugar to determine the production to count. The average percentage of raw sugar will be determined from tests performed by the processor at the time of delivery.

(1) If individual tests of raw sugar content are not made at the time of delivery, the average percent of raw sugar may be based on the results of previous tests performed by the processor during the crop year if it is determined that such results are representative of the total production.

(2) If not representative, the average percent of raw sugar will equal the raw sugar content percent shown in the Special Provisions.

(e) Harvested production or unharvested production that is appraised after the earliest delivery date that the processor accepts harvested production and that does not meet the minimum acceptable standards contained in the processor contract or corporate resolution due to an insured peril will be converted to pounds of raw sugar by multiplying the tons of such damaged production by 2,000 and by the average percent of raw sugar contained in such production.

(1) If individual tests of raw sugar content are not made at the time of delivery, the average percent of raw sugar may be based on the results of previous tests performed by the processor during the crop year if it is determined that such results are representative of the total production.

(2) If not representative, the average percent of raw sugar will equal the raw sugar content percent shown in the Special Provisions.

(f) Production lost due to harvest prior to full maturity. If the percentage of insured acreage in the unit harvested prior to full maturity exceeds the threshold specified in the actuarial documents, production to count from such acreage will be determined by increasing the amount of harvested production by 1 percent per day for each day the

sugar beets were harvested prior to the date the sugar beets would have reached full maturity.

(1) The date the sugar beets would have reached full maturity will be considered to be 45 days prior to the calendar date for the end of the insurance period, unless otherwise specified in the Special Provisions.

(2) This adjustment will not be made if the sugar beets are damaged by an insurable cause of loss and leaving the crop in the field would reduce production.

(3) The adjustment cannot result in production to count in excess of the insured's actual production history;

* * * * *

15. Prevented Planting

Your prevented planting coverage will be a percentage specified in the actuarial documents of your production guarantee for timely planted acreage. If you have additional levels of coverage and pay an additional premium, you may increase your prevented planting coverage if such additional coverage is specified in the actuarial documents.

Martin R. Barbre
Manager
Federal Crop Insurance Corporation
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