



**Billing Code 3410-08-P**

**DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

**7 CFR Part 457**

**[Docket ID FCIC-19-0005]**

**RIN 0563-AC63**

**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) finalizes the Common Crop Insurance Regulations, Sugar Beet Crop Insurance Provisions (Crop Provisions) and makes amendments to the final rule, with request for comment, published in the Federal Register on September 10, 2018, that updated existing policy provisions and definitions to better reflect current agricultural practices. This final rule is amended based on comments received and other issues identified since implementation of the previous final rule. The changes will be effective for the 2020 and succeeding crop years in states with a November 30 contract change date and for the 2021 and succeeding crop years in all other states.

**DATES:** This final rule is effective November 30, 2019. However, FCIC will accept written comments on this final rule until close of business **insert date 60 days after publication in the FEDERAL REGISTER**. FCIC will consider these comments and make changes to the rule if warranted.

**ADDRESSES:** We invite you to submit comments on this rule. In your comments, include the date, volume, and page number of this issue of the *Federal Register*, and the title of rule. You

may submit comments by any of the following methods, although FCIC prefers that you submit comments electronically through the Federal eRulemaking Portal:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and search for Docket ID FCIC-19-0005. Follow the online 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 and publicly available on <http://www.regulations.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:** Francie Tolle; Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 7829, PO Box 419205, Kansas City, MO 64141-6205, telephone (816) 926-7730; email [francie.tolle@usda.gov](mailto:francie.tolle@usda.gov)

**SUPPLEMENTARY INFORMATION:**

**Background:**

This rule amends changes to the Common Crop Insurance Regulations, Sugar Beet Crop Insurance Provisions that were published by FCIC on September 10, 2018, as a notice of final

rule with request for comment rulemaking in the Federal Register at 83 FR 45535-45539. The public was afforded 30 days to submit written comments and opinions.

Comments were received from 15 commenters. The commenters included persons or entities from the following categories: insurance company, insurance agent, farmer, financial, producer group, academic, trade association, and other. The public comments received regarding the final rule with request for comment and FCIC's responses to the comments are as follows:

Comment: Commenter suggested revising the definition of "Raw sugar" to "Percentage of raw sugar" since that term is frequently used.

"Percentage of raw sugar – Quantity of sugar that has not been extracted from the sugar beet crop and is determined from analytical tests of samples performed by the processor or other accredited laboratories."

This revised definition clarifies how the percentage is determined and by whom, and includes the ability for alternative testing of samples by qualified facilities, which might be necessary in cases of unharvested appraisals where sampling and testing might not be readily performed by the processor.

Response: FCIC is adding the following definition for percentage of raw sugar, "quantity of sugar determined from analytical tests of samples performed by the processor or other laboratories approved by us."

Comment: A commenter stated that Section 1 is revising the definition of Practical to Replant and seems to strengthen the idea of only replanting when practical to replant and will be good for the growers.

Another commenter stated that revising the definition of practical to replant to align with the practicality to replant and should be an improvement.

Response: FCIC thanks the commenter and appreciates their input.

Comment: Commenter stated that the definition of “Initially planted” can be deleted since the term is no longer used in the Sugar Beet CP (part of the “Insurance Period” details that have been removed in section 9).

Response: FCIC is deleting the definition of initially planted.

Comment: Commenter stated that definitions for “Pound” and “Ton” should be added to align with other crop provisions that use pounds as the unit of measure, and tons. This also will function in conjunction with the proposed definition of “Percentage of raw sugar” (see under “raw sugar” below) and the production’s unit of measure, as indicated in other suggestions/recommendations provided in this document.

- “Pound – Sixteen ounces avoirdupois.”
- “Ton – 2,000 pounds.”

Response: FCIC is adding the definition of pound and ton.

Comment: Commenter stated the definition of “Processor contract” replacing the definition of “sugar beet processor contract” in the current Sugar Beet CP, now begins: “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: ...” [highlighting indicates the changes from the “sugar beet processor contract” definition].

- As written, this could be misunderstood as having the phrase “...which is in effect for the crop year...” apply to the acreage reporting date rather than to the “written agreement” (processor contract). One way to make this clearer would be something like: “...executed on or before the acreage reporting date and in effect for the crop year...”

- Also consider if this should use a term other than “written agreement”, which generally has a different meaning for crop insurance purposes, as in section 7(a)(4) and elsewhere. [One possibility: “An agreement, in writing, between...”]

Response: FCIC is replacing the definition and references to the term “processor contract” with the definition/term “production agreement” which removes the requirement for the contract to include a price or formula for a price based on third party data. This better reflects sugar beet contracts because there is no third party data source for prices and not all production agreements include a price.

Comment: Commenter suggested revising the definition of “Raw sugar” to “Percentage of raw sugar” since that term is frequently used.

- “Percentage of raw sugar – Quantity of sugar that has not been extracted from the sugar beet crop and is determined from analytical tests of samples performed by the processor or other accredited laboratories.”
- This revised definition clarifies how the percentage is determined and by whom, and includes the ability for alternative testing of samples by qualified facilities, which might be necessary in cases of unharvested appraisals where sampling and testing might not be readily performed by the processor.

Response: FCIC is adding the definition for average percentage of raw sugar based on this comment to be the quantity of sugar determined from analytical tests of samples performed by the processor or other laboratories approved by the Approved Insurance Provider (AIP). FCIC is also revising section 13(d), to allow the average percentage of raw sugar to be determined by laboratories approved by the AIP, in addition to tests performed by the processor. Sections

13(d)(1) and 13(e)(1) will also clarify that raw sugar content tests may be based on the insured's previous tests performed by the processor or other laboratories approved by the AIP.

Comment: A commenter stated that a change that is not in here, but should be, is an optional unit provision based on each individual processor contract per field. With each field being separately contracted, this is an easy change to make. Units based on section lines may make sense for dryland bulk commodity crops with a low per acre value but are not appropriate for a specialty crop like sugar beets which often have many smaller fields in the same section with each exposed to different risks due to their location in that unit.

Another commenter stated that one change that the commenter has repeatedly requested but is not in here is an optional unit provision based on each individual processor contract per field. With each field being individually identified by its own contract number this should be easily implemented and should increase participation.

Response: This issue has been reviewed extensively by FCIC. In the situation the commenter outlined, their processor contracts are by field, and they want insurance by field. This would allow a producer to separate their Actual Production History (APH) by field instead of having an average production for the unit. This could add complexity to the program and significantly increase the frequency of losses, which could require significant premium rate increases to maintain actuarial soundness. Further, processors, contractors, and grower groups have been asked to supply the data to show revenue increases and benefits to the program supporting this proposed unit structure. To date, nothing has been provided.

Comment: Commenter stated that Insurance Providers have some concerns on how this change from "standardized tons" to "pounds of raw sugar" will affect the insureds' APH. The conversion from standardized tons to pounds of raw sugar is not clear at this time. Insureds will

need to recertify their production history to align with the conversion from standardized tons to pounds of raw sugar.

The commenter assumes calculations are as follows:

Current procedure:

Assume that 150 tons of beets harvested on 20 acres with a 14.5% sugar content.

Sugar percentage is 17.2% in the special provisions.

$14.5\% / 17.2\% = .843$  factor

$150 \text{ tons} * .843 \text{ factor} = 126.4 \text{ tons}$

$126.4 \text{ tons} / 20 \text{ acres} = 6.3 \text{ standardized tons/acre}$  that gets reported for APH.

Actual sugar content of beets would be:

$150 \text{ tons} * 2,000 \text{ lbs.} = 300,000 \text{ lbs.}$  of beets

$300,000 \text{ lbs.} * 14.5\% \text{ sugar} = 43,500 \text{ lbs.}$  of actual raw sugar in the beets.

$43,500 \text{ lbs.} / 20 \text{ acres} = 2,175 \text{ lbs. / acre}$  actual raw sugar per acre.

Please clarify which of the following methods will be utilized for converting existing APH databases to pounds of raw sugar and note the difference in the APH conversion and the actual sugar content calculations in this example.

1.  $(6.3 \text{ tons/acre APH} * 2,000 \text{ lbs.}) * 17.2\% = 2,167.2 \text{ lbs.}$  raw sugar/acre APH

Or convert total production for the 20 acres:

2.  $126.4 \text{ standardized tons} * 2,000 \text{ lbs.} = 252,800 \text{ lbs.}$  of beets

$252,800 \text{ lbs.} * 17.2\% \text{ sugar from the SP} = 43,481.6 \text{ lbs.}$  of raw sugar.

$43,481.6 \text{ lbs. of raw sugar} / 20 \text{ acres} = 2,174 \text{ lbs.}$  APH

The example above is based on information included in the Evaluations and Recommended Improvements for the Sugar Beets Crop Insurance Program which was submitted by Watts and

Associates, Inc.

Plant Count Method Appraisals (Weight Method not applicable until the factory accepts sugar beets) completed prior to the processor accepting beets at the factory are not based on the percent of raw sugar present in the sugar beets at the time of the appraisal. Guidance is needed in the policy to convert appraised production based on the plant count method to “pounds of raw sugar.”

Response: The conversion is based on total production, thus example number 2 is the correct calculation. Additionally, FCIC has developed and released procedures and training materials for insurance companies detailing how to apply this conversion for insured producers including the Frequently Asked Questions at <https://www.rma.usda.gov/News-Room/Frequently-Asked-Questions/Sugar-Beet>.

Comment: A commenter stated that section 3 is changing standardized tons to pounds of raw sugar. It is unclear to the commenter how this calculation of pounds of raw sugar is made or how well it correlates to standardized tons.

Another commenter stated the commenter broadly supports FCIC’s proposal to change the basis of insurance from "standardized tons" to pounds of raw sugar, simplifying the program and better aligning it with commercial practice. The commenter did raise a concern, however, regarding the implementation of this important change. The shift from standardized tons to pounds of raw sugar will be very visible to farmer-producers and could cause considerable confusion, particularly in its first year. Insurance coverage will look different. The mathematical relationship between a producer's "old" coverage and "new" coverage may be far from obvious at first. Even traditional price elections may be confusing when now stated in the terms of pounds versus tons, as growers, agents, and other stakeholders try to make comparisons with prior-year

levels.

To avoid this problem, the commenter believes a well-planned, well-coordinated public outreach and education process will be essential, including outreach to farmers so they will understand the new system, training for agents so they can effectively explain it, training for AIP loss adjustors and underwriters to minimize mistakes, and the development of simple-to-use tools or applications allowing producers quickly and easily to compare prior coverage in "standardized tons" to their new coverage in raw sugar pounds.

The commenter would be pleased to assist RMA in this process, be it in arranging outreach to the commenter's farmer members, getting producer feedback on training materials, developing Question-and-Answer sheets, providing farmer-level input for web-based applications, or in any other manner that might be helpful to the agency and the commenter's members.

Response: FCIC has developed and released procedures and training materials for insurance companies detailing how to apply this conversion for insured producers including the Frequently Asked Questions at <https://www.rma.usda.gov/News-Room/Frequently-Asked-Questions/Sugar-Beet> and the Sugar Beet Loss Adjustment Standards Handbook at <https://www.rma.usda.gov/-/media/RMAweb/Handbooks/Loss-Adjustment-Standards---25000/Sugar-Beet/2019-25450-1H-Sugar-Beet-Loss-Adjustment-Standards.ashx>. The change in unit of measure from standardized tons to pounds of raw sugar was made to better align with the sugar industry in how producers are paid and for program consistency with sugarcane. Below is a comparison example of the new unit of measure (pounds of raw sugar), followed by previous unit of measure (standardized tons), and final example is converting standardized tons to pounds of raw sugar. The examples show the conversions and how the end guarantee should be the same or within a few pounds of their previous APH guarantee. The new APH calculation of taking net tons to pounds of raw

sugar:  $(20 \text{ net paid tons} * 2,000 \text{ lbs.}) * 0.180 \text{ insured's average percent of raw sugar} = 7,200$  pounds of raw sugar. The previous APH calculation of taking net tons to standardized tons:  $[20 \text{ net tons} * (0.180 / 0.170)] = 21.2$  standardized tons. The conversions from standardized tons to pounds of raw sugar is calculated:  $(21.2 \text{ standardized tons} * 2,000 \text{ pounds}) * 0.170 = 7,208$  pounds of raw sugar.

Comment: Commenter stated in regard to Section 3; changing standardized tons to pounds of raw sugar. Commenter would like clarification of how this calculation will be made, and how well it will correlate to standardized tons. Also concerned as to how an unharvested portion of a field would be appraised for APH on a raw sugar basis.

Another commenter is concerned as to how an unharvested portion of a field would be appraised for APH purposes on a raw sugar basis.

Response: FCIC has developed and released procedures and training materials for insurance companies detailing how to apply this conversion for insured producers as well as how to appraise unharvested acreage.

The change in unit of measure from standardized tons to pounds of raw sugar was made to better align with the sugar industry in how producers are paid and for program consistency with sugarcane. Below is a comparison example of the new unit of measure (pounds of raw sugar), followed by previous unit of measure (standardized tons), and final example is converting standardized tons to pounds of raw sugar. The examples show the conversions and how the end guarantee should be the same or within a few pounds of their previous APH guarantee. The new APH calculation of taking net tons to pounds of raw sugar:  $(20 \text{ net paid tons} * 2,000 \text{ lbs.}) * 0.180 \text{ insured's average percent of raw sugar} = 7,200$  pounds of raw sugar. The previous APH calculation of taking net tons to standardized tons:  $[20 \text{ net tons} * (0.180 / 0.170)] = 21.2$

standardized tons. The conversions from standardized tons to pounds of raw sugar is calculated:  $(21.2 \text{ standardized tons} * 2,000 \text{ pounds}) * 0.170 = 7,208 \text{ pounds of raw sugar}$ . Additional examples of the conversion can be found in the Frequently Asked Questions at <https://www.rma.usda.gov/News-Room/Frequently-Asked-Questions/Sugar-Beet>.

Appraising unharvested production is located in the Sugar Beet Loss Adjustment Standards Handbook in PART 4 Appraisals. The appraisal worksheet instructions are located in Exhibit 3. This information can be found at <https://www.rma.usda.gov/-/media/RMAweb/Handbooks/Loss-Adjustment-Standards---25000/Sugar-Beet/2019-25450-1H-Sugar-Beet-Loss-Adjustment-Standards.ashx>.

Comment: A commenter requested to recognize that the loads from each day of early harvest must be calculated separately.

As of now, RMA says it is going to convert databases using the sugar factor from the 2018 Special Provisions. This may be to the producer's benefit. The agent should have already adjusted the tons for percent sugar when they completed the production report. When you run the numbers, we have identified cases where the pounds of sugar production will be spot-on and other times when the pounds of sugar will increase for the producer from what would be if you multiplied tons by actual sugar.

RMA has indicated that they will distribute a draft of the Special Provisions for 2019 for industry review.

Response: FCIC is aware that each day of early harvest will have to be calculated separately. Whenever the conversion is done there are some instances where the production goes up slightly, some that stay the same, and some that go down slightly. The difference occurs because of rounding. The insured has the option to do the conversion of standardized tons to pounds of raw

sugar, or they can recertify their previous years' production in pounds of raw sugar.

Comment: The commenter stated that section 3 is also removing the stage guarantees. The commenter thinks this is a good thing for their growers.

Another commenter is pleased to see the removal of stage guarantees in the new Sugar Beet Crop Insurance Provisions. Having played a lead role in urging RMA originally to institute a Sugar Beet Stage Guarantee Removal Pilot Program over a decade ago, the commenter believes the consistent high levels of participation in the program underscore the general acceptance of the concept by sugar beet producers. Sugar beets are one of the last major crops to see stage guarantees eliminated from their coverage, reflecting an updated underwriting approach, and the commenter views this as an important step forward for the program.

Response: FCIC thanks the commenters and appreciates their input.

Comment: Commenters stated in regard to 3(a): Consider deleting this subsection, which appears to be unnecessary.

- CCIP Basic Provisions section 3(b)(1)(iii) already states that the insured must select the same “Percentage of the available price election...” and “...If different prices are provided by type or variety, ...the same price percentage will apply to all types and varieties.”
- Also, should a separate and unique price election be offered for the certified organic practice, then defaulting to the Basic Provisions will ensure that there is no conflict with the crop provisions whereby more than one price election may be applicable, albeit each at the same percentage to the maximum price offered.

Response: FCIC thanks the commenter and is deleting section 3(a).

Comment: Commenter stated in regard to 3(b) [which would be re-designated as section 3 if 3(a) is deleted]: Consider revising this to: “The unit of measure for production is pounds of raw

sugar, determined by multiplying the quantity of sugar beets by the percentage of raw sugar.”

This clarifies the determination of “pounds of raw sugar,” regardless of whether the production amount pertains to the guarantee or appraisal/indemnity calculations.

Response: FCIC is re-designating section 3(a) as section 3. Percentage of raw sugar is already defined and there is procedure in place referring to the calculations.

Comment: Instead of “reserving” this section, commenter suggests using it to add the following language that is similar to other crop policies that require the insured crop to be grown under a processor contract, and will facilitate the insurance provider’s timely determination of proper acreage and liability/coverage:

“Report of Acreage. In addition to the requirements of section 6 of the Basic Provisions, you must provide a copy of all sugar beet processor contracts to us on or before the acreage reporting date.”

For example: If a sugar beet contract pertains to 40 acres of sugar beets and the acreage report shows 41.2 acres planted, then the insurance provider has the proactive opportunity to verify with the sugar beet processor whether or not all production from the 41.2 acres of planted sugar beets will be accepted by the processor and if an amended contract is needed.

Another commenter stated that the deleted phrase that is being moved to the “processor contract” definition states that the processor contract must be executed on or before the acreage reporting date. Please consider adding language requiring that the insured “...must provide a copy of all processor contracts to us [the AIP] on or before the acreage reporting date...” as in section 6 [Report of Acreage] in the Processing Tomato Crop Provisions [the rest of that reads: “...in all counties, unless otherwise specified in the Special Provisions.”].

Section 12(b) of the Sugar Beet CP requires the insured to “...provide a copy of your processor contract, or corporate resolution if you are the processor” as part of the insured’s “Duties In The Event of Damage or Loss”, but the Sugar Beet policy does not have such a requirement when there is not a claim.

The requirement to provide a copy of the processor contract(s) whether or not there is a claim could be set up as in the Processing Tomato CP (and others), with the addition of section 6, Report of Acreage, since the current Sugar Beet section 6 is being removed.

Response: FCIC has replaced the reserved section 6 with report of acreage detailing the requirement that the insured provide a copy of all production agreements.

Comment: Commenter stated in regard to 7(a)(3): [Revised to replace “...a sugar beet processor contract executed before the acreage reporting date...” with “...a contract...”, with the deadline now included in the new definition of “processor contract”.] Commenter Suggests “...a processor contract...” to match the definition and avoid any confusion with a crop insurance “contract” as defined in the Basic Provisions.

Response: FCIC agrees and has replaced contract with production agreement in section 7(a)(3).

Comment: Commenter stated in reference to 7(b)(4): [ed.] Consider adding quotation marks around the word “processor”, as done in 7(b)(1).

Response: FCIC revised by adding quotation marks around the word processor.

Comment: A commenter requested that sugar beets that are planted in back to back years be insurable. The commenter stated that this would be most helpful for the commenter’s farm in Imperial Valley, CA where the commenter’s alternate crops to plant are limited.

Another commenter is requesting sugar beets to be insurable back to back.

Another commenter stated that they are writing to request the FCIC/RMA consider allowing Sugar Beet fields to be insurable if grown on acreage that was planted in the most recent previous crop year. Currently in Imperial County, CA it is a common practice to grow Sugar Beets on the same field twice in consecutive years.

The commenter stated that this is an industry standard, and the Sugar Processor allows this, and considers this a standard farming practice. All acreage farmed on a field in the first year, and on the following crop year are of the same quality and tonnage. Therefore, any acreage farmed on back to back fields should not be excluded from the Insurance policy.

Another commenter stated to please allow for Sugar Beets to be insurable back to back years. The beet companies allow us to grow back to back because it is within proper plant health standards, and therefore we'd like to be able to be insured for each and every crop that is within reasonable health standards. If the beet company itself believes it's healthy and safe to grow back to back, the commenter is not sure why the insurance standards would be different.

Another commenter stated that the commenter has been growing sugar beets in California for the last 40 years. In all of those years, it has been an accepted cultural practice to grow them in back to back years. The sugar companies that the commenter contracts with do not prohibit the commenter from that practice. The commenter sees no reason why the FCIC should deny the commenter's ability to obtain crop insurance on those fields that are planted back to back.

Another commenter stated that they are requesting Sugar Beets to be insurable in back to back years. This is very important to the commenter's farming operations and planning. The commenter believes the request speaks for itself on why it is so important.

Two commenters stated that they would like to see the option for Sugar Beets to be insurable for back to back years.

Response: The Crop Provisions as written in sections 8(a)(1) and 8(a)(3) do allow for back to back planting if it is specified in the Special Provisions for the county and if it is an allowable rotation outlined in the Special Provisions. These requests have been forwarded to the regional offices for review and further consideration. Other local or county-based concerns can be addressed to the RMA regional office. Any interested person may find contact information for the applicable regional office on RMA’s website at <https://www.rma.usda.gov/RMALocal/Field-Offices/Regional-Offices>.

Comment: The commenter stated that in regard to section 9(b) that they approve of the deletion of this language in 9(b) that dealt with the end of insurance period for all units being when production delivered equals the amount of production stated in the contract. This language was unclear, difficult to administer and the commenter was unsure what exactly it accomplished.

Another commenter stated that the commenter agrees with deleting the language currently in 9(b) stating that “...the insurance period ends for all units when the production delivered to the processor equals the amount of production stated in the sugar beet processor contract.” This language was difficult to administer and unclear as to what exactly it accomplished.

Response: FCIC thanks the commenter and appreciates their input.

Comment: The commenter is pleased to see the inclusion of provisions providing RMA with greater flexibility to update insurance dates and other factors. In particular, the commenter appreciates RMA's responsiveness in recent years to shifting the basis for calculating replant payments from a formula tied to annual price elections to a dollar amount based on actual costs — a process now formalized in the new policy. Such steps toward greater flexibility and responsiveness are always important and appreciated.

Response: FCIC thanks the commenter and appreciates their input.

Comment: The term “final stage” remains in the language. It should be removed. It should state “at least 90 percent (90%) of the production guarantee ...”

Response: FCIC has removed the language “final stage”.

Comment: Commenter stated clarification is needed on how the appraisal would be calculated when being completed for a replant determination to know if the appraised production would exceed 90% of the insureds guarantee. Currently the calculation is based on tons with no conversion for pounds of raw sugar.

Response: FCIC has updated the plant count appraisal method in the procedures to be calculated in pounds of raw sugar per acre.

Comment: Commenter recommends the following edits be made to 13(d), to clarify and reference defined terms.

“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 at the time of crop delivery or sample acquisition (appraisal).

(1) If individual tests of raw sugar content are not made at the time of delivery, the average percentage 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 percentage of raw sugar will equal the raw sugar content percent shown in the actuarial documents.”

Following the recommendation to recognize other institutions that may determine the

‘percentage of raw sugar’, stating who performs the analytic tests is not necessary within this section since they are identified within the revised/recommended definition. ‘Unharvested’ production as determined by an appraisal would not constitute crop delivery; thus clarification is added to specify the time frame associated with percentage of raw sugar determinations for samples obtained from field appraisals. This also keeps consistent usage of the term ‘percentage of raw sugar’. Recommend referring to the ‘actuarial documents’ rather than the ‘Special Provisions’ for where the county average percentage of raw sugar can be found.

Response: FCIC revised to further clarify that the average percentage of raw sugar will be determined from tests performed by the processor or other laboratories approved by us (the AIP) at the time of crop delivery or sample acquisition (appraisal).

FCIC further clarified that 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 your (the insured’s) previous tests.

Comment: The provision notes that the raw sugar percentage will be included to the extent that a raw sugar test may not be performed or deemed unacceptable. Commenter would like to have the latter scenario more clearly clarified under the rules as well. It's not readily apparent to the commenter under what circumstances it would be "deemed unacceptable" nor is it clear the extent to which such a distinction could harm the commenter’s production calculations in a given year. Please clarify what you mean.

Response: FCIC thanks the commenter and appreciates their input. FCIC will not further define “deemed unacceptable” as this is not currently in the crop provisions.

Comment: Commenter stated regarding section 13(d)(2), and in particular the phrase “...the raw sugar content percent shown in the Special Provisions”, it will be imperative for RMA to

review and update this parameter (as currently contained within the actuarial documents) for each and all sugar beet county programs. For some states, e.g., Idaho, Oregon, Washington (Pacific Northwest), Montana, North Dakota and Wyoming, their 2018 percent sugar values are established on a regional basis. A region-wide percent sugar better aligns each policyholder's determined standard tons with a single nation-wide price election. In contrast, other states, e.g., Minnesota, have variable county percent sugar values, which appear out of sync with their recent base period average. As the primary function of the 'county average percent sugar' has changed from being a key component in adjusting to standard tons, to instead as a default value of 'last resort', it is important for each county's percentage of raw sugar value to be current and reflective of the actual county instead of the region or district.

Response: FCIC reviews the county average percentage sugar at regional level with data based on RMA history, sugar percentage data from the sugar beet processor, and NASS data. Regional Offices also consider APH and loss implications in order to ensure this percentage is actuarially sound. Additionally, FCIC only will use this percentage in total loss determinations.

Comment: A commenter stated that in regard to section 13(d)(1) and 13(e)(1): Both state based on previous tests performed by the processor during the crop year. The commenter questions if that is based on all beets delivered to processor from all producers (in the county or otherwise) or just from the producer in question. Although this language was in the previous provisions it still seems unclear what basis is to be used to ascertain the percent of raw sugar that should be used in these situations.

Another commenter stated in regard to 13(d)(1) & (e)(1): These both include the statement "...based on the results of previous tests performed by the processor during the crop year..." It is unclear if that is based on all beets delivered to processor from all producers (in the county or

otherwise) or just from the producer in question. Although this language was in the previous crop provisions, it still seems unclear what basis is to be used to ascertain the percent of raw sugar that should be used in these situations.

Response: FCIC is revising the Crop Provisions to specify that the previous tests are based on the previous tests from the insured producer.

Comment: Commenter stated in regard to section 13, adding an early harvest adjustment, it appears to apply a penalty to the farmer when they are required by the processor to harvest a portion of a crop early, especially when damage has occurred from an insurable event. There is not clear enough guidance to insurance providers to have even application of these provisions, too much left to the discretion of the insurers could weaken coverage and participation.

Another commenter stated that section 13 is adding an early harvest adjustment. This change seems to apply a penalty to the commenters' growers when the growers are required by the processor to harvest some beets early, especially when there is damage from an insurable loss. An argument can easily be made that this provision will provide less clear guidance to insurance providers rather than clearer guidance resulting in uneven application of the provisions. It seems this is a blatant attempt to limit the loss payments to growers.

Another commenter stated in reference to 13(f)(3): It is unclear if the early harvest adjusted production should be limited to APH. If the producer is having a good year, he/she will not be happy with that. If part of the unit is early harvested, the early harvested acres could be capped at the APH of the remaining harvested acres. If all of the unit is early harvested, the sugar content from previous tests performed by the processor could be used. This may not include lost tonnage, however. Maybe capping at APH is ok.

Another commenter stated that while "early harvest factor" allows producers to add a one-

percent-per-day adjustment to their "production to count" for crops harvested prior to "full maturity," it cannot result in an annual "production to count" in excess of the insured crop's current APH. The commenter suggests that this APH cap be removed or adjusted.

The commenter's principal concern is that an APH cap fails to account for the fact that sugar beet yields, measured both in tonnage and sugar content, have been rising sharply in recent years due to adoption of new technologies, principally new bioengineered seeds and seed treatments. As a result, sugar beet APHs, which generally reflect a ten-year average of yields, often lag well behind current crop potentials. For instance, according to USDA's National Agricultural Statistical Service (NASS), over the past dozen years, sugar beet yields have grown (a) from a national average 25.5 to 32.8 tons per acre of beets and (b) from 3.79 to 4.87 tons per acre of actual sugar, increases of over 28 percent overall and of over 2.3 percent per year. In some regions, the growth has been even sharper.

**National Growth in Sugar Beet Yields**

<b>Crop Year</b>	<b>Yield per harvested acre/ tons</b>	<b>Sugar per harvested acre/ tons</b>
2007/2008	25.5	3.79
2008/2009	26.8	4.15
2009/2010	25.9	3.98
2010/2011	27.7	4.03
2011/2012	23.8	4.04
2012/2013	29.3	4.22
2013/2014	28.4	4.15
2014/2015	27.3	4.27
2015/2016	30.9	4.47
2016/2017	32.8	4.53
2017/2018	31.7	4.71
2018/2019	32.8	4.87

Source: NASS, data as of 9/17/2018

This lag in APHs behind production trends has been recognized by FCIC through its approval of the privately-developed Trend-Adjusted APH Yield program for a number of crops.

Capping the impact of an early harvest adjustment at a farmer's current APH thus creates an unintended penalty. It creates a ceiling below a crop's actual potential, and it hinders the ability of a farmer's yield history to catch up with rising yield trendlines. In regions where early-harvest has occurred over the years without the benefit of an early-harvest factor, this lag of APHs behind current trendlines is especially pronounced. Given that the one-percent-per-day formula itself is based on sound underwriting data reflecting real-world experience, the commenter suggests either eliminating the APH cap entirely as unneeded or adjusting it to a more reasonable level of 125 percent of APH.

Another commenter stated that Insurance Providers have concerns about capping the production after the early harvest adjustment is applied to the APH. Capping the production would not allow the insured to capture the true production potential of the crop given the new seed technology that has become available. Some APH databases still have conventional seed use included when now Roundup Ready seed is the primary use.

Response: The rule added an early harvest adjustment in response to sugar beet processors requesting a portion of contracted acres be harvested early. Early harvested beets are often lower in weight and sugar content, resulting in what could appear to be a production loss that would lower the producer's future Actual Production History (APH). A solution was requested to prevent an early harvest from reducing a producer's future guarantee. The rule added an early harvest adjustment, which increases the producer's yield(s) on their early harvested acreage for that year's harvest, preventing a decline in the producer's future insurable yield due to early harvest. However, the early harvest adjustment was limited to not exceed the unit's approved

APH. Additionally, FCIC had developed and released procedures detailing guidance for applying the early harvest adjustment including the Frequently Asked Questions at <https://www.rma.usda.gov/News-Room/Frequently-Asked-Questions/Sugar-Beet> and the Sugar Beet Loss Adjustment Handbook at <https://www.rma.usda.gov/-/media/RMAweb/Handbooks/Loss-Adjustment-Standards---25000/Sugar-Beet/2019-25450-1H-Sugar-Beet-Loss-Adjustment-Standards.ashx>.

After further analysis, FCIC determined that due to upward trending yields, the maximum adjustment could be overly punitive. Therefore, FCIC is revising the limit for the early harvest adjustment to not result in a yield greater than the higher of the producer's approved APH yield or the actual yield of the sugar beets harvested after full maturity from the unit. This change will better reflect the unit's production capabilities, especially in instances of a bumper crop because it uses the actual yield from the unit if that yield is higher than the approved APH yield.

Comment: A commenter stated that in reference to 13(f)(3): This provision indicates that the early dig adjustment cannot result in production to count in excess of the insured's actual production history. Should "actual production history" be replaced by "approved yield" as this is the defined term found in the CCIP Basic Provisions as well as the basis for establishing coverage under this policy? Also, what happens if you have a scenario where this occurs? Do you not use the early dig adjustment at all or do you limit the production to count to the approved yield? The commenter would recommend that this provision be further clarified so that there is no misunderstanding for how this should be handled when this situation occurs.

Response: FCIC is revising the limit for the early harvest adjustment to not result in a yield greater than the higher of the producer's approved APH yield or the actual yield of the sugar beets harvested after full maturity from the unit. This change will better reflect the unit's

production capabilities, especially in instances of a bumper crop because it uses the actual yield from the unit if that yield is higher than the approved APH yield. Regarding the scenario the commenter outlined, the adjustment will still be made, but it will be limited to the higher of the approved actual production history yield or the actual yield of the sugar beets harvest after full maturity from the unit.

Comment: Is this ‘capping’ clause referring to the insured’s actual yield of “full maturity” beets for the current crop year or the highest value within the insured’s APH database history?

Response: The “capping clause” refers to the insured’s approved actual production history yield, but after further analysis, FCIC determined that due to upward trending yields, the maximum adjustment could be overly punitive. Therefore, FCIC is revising the limit for the early harvest adjustment to not result in a yield greater than the higher of the producer’s approved APH yield or the actual yield of the sugar beets harvested after full maturity from the unit. This change will better reflect the unit’s production capabilities, especially in instances of a bumper crop because it uses the actual yield from the unit if that yield is higher than the approved APH yield.

Comment: The commenter stated on 13(f) that the Risk Management Agency (RMA) has proposed adding an early dig factor to increase the production to count for both claims and APH purposes once a certain threshold has been reached as indicated in the actuarial documents. The commenter does agree that this type of production adjustment is needed for sugar beets when the crop is harvested early. It would be beneficial for everyone reviewing these provisions to know what these thresholds are as a part of this published rule so that the commenter would be able to review and comment on the proposed threshold as a part of these comments.

Another commenter stated in regard to 13(f), RMA has proposed adding an early dig factor

to increase the production to count for both claims and APH purposes once a certain threshold has been reached as indicated in the actuarial documents. Commenter agrees that this type of production adjustment is needed for sugar beets when the crop is harvested early. It would be beneficial for everyone reviewing these provisions to know what these thresholds are as a part of this published rule so that we would be able to review and comment on the proposed threshold as a part of these comments. It would also be helpful to know what the proposed calendar dates for the end of the insurance period for the different states are in order to be able to adequately comment on the full maturity date derived using the 45-day period used for the early dig factor.

Response: FCIC thanks the commenter and appreciates their input. The threshold and calendar dates for the end of insurance period have been made publicly available in the actuarial documents. FCIC does not produce actuarial documents as part of the rule making process and therefore did not provide the threshold or calendar dates for the end of insurance period in the rule. These requests have been forwarded to the regional offices for review and further consideration. Other local or county-based concerns can be addressed to the RMA regional office. Any interested person may find contact information for the applicable regional office on RMA's website at <https://www.rma.usda.gov/RMALocal/Field-Offices/Regional-Offices>.

Comment: The commenter stated as framed in the new Crop Insurance Provisions, the "early harvest factor" adjustment will apply only if the percentage of insured acreage harvested before full maturity exceeds a threshold level specified in the FCICs annual actuarial documents. The concern behind this provision, as the commenter understands it, is that applying the factor to very small fractions of a field could complicate its implementation, raising costs. The commenter appreciates RMA's decision to place the actual threshold level in its actuarial documents -- rather than freezing it in policy terms — since this will make it easier to adjust in

the future as experience is gained over time.

If a threshold is to be imposed, however, the commenter believes it must be set initially at a level that reflects farm-level realities. The commenter discussed this issue with members from various regions of the country and found that early harvest practices vary widely. For instance, some processors that require early harvest deliveries will spread the burden among large numbers of members to minimize the impact on each one. This could result in early harvests quotas of, say, 10 percent or so on each farm. In other situations, growers will be encouraged to harvest "openings" or small portions of fields during the early harvest. In other cases, early harvest can include entire fields or larger portions. In addition, the commenter understands that much of this data burden for implementing the new process will rest on sugar beet processing companies who record deliveries on a regular basis, and that crop insurance industry professionals, including agents and AIP staff, generally have access to automated systems to facilitate reporting.

Given these factors, particularly the wide range of farming practices, the commenter urges RMA initially to set the threshold at a relatively low level, 5 percent. This would allow RMA, AIPs, processors, and producers to gain experience on how the early harvest adjustment operates in a wide range of conditions. The commenter also urges RMA to review its experience after the first two years to see if any adjustment in the threshold is justified.

Another commenter stated in regard to 13(f), commenter agrees with the changes allowed when harvesting prior to full maturity. However, due to the workload involved when a small acreage is involved or a small fraction of a unit, consider establishing the percentage of the unit entered in the Special Provisions to be more than 25% and maybe up to 50% of unit acreage before this increase factor would be allowed.

Since most of the time the early harvested acreage is minimal with only end rows or point rows harvested early, the overall impact to the production to count is minimal in relation to the whole unit (and to the extra work involved to adjust each load by each date). However, when the acreage exceeds 25% of the unit it starts to become relevant, and as the acreage approaches 50% it can become very significant. Perhaps 33% of a unit's acreage would be a good place to begin increasing production. If so, suggest that if more than one-third of the unit's acreage is harvested prior to full maturity, then the production from those acres could be increased; if less than one-third was harvested early, no adjustment would be allowed.

Another commenter stated in regard to 13(f), going with a percentage of acreage before applying an early harvest adjustment might be a good idea in theory, but when a notice of claim is submitted in the middle or after harvest, there really is no way to determine the acres harvested early, other than taking the farmer's word for it. Early harvest tickets will reflect the tons per truckload and the date, but there is no way to ascertain early harvested acreage.

Another commenter stated that clarification is needed on how to track the early harvested acres. The current settlement and summary sheets available do not show the individual loads with the delivery dates. The actual weight tickets would have to be requested. These receipts are prone to fading, are misplaced during harvest, and can be difficult to read. Additional time may be needed by the processors to allow them to include the additional information needed to the settlement and summary sheets.

Another commenter stated regarding the reference in (f) to "...exceeds the threshold specified in the actuarial documents..." and the language in (f)(1) & (3): What is the tentative/proposed threshold amount which is to be specified in the actuarial documents? Is it to be a percentage of the unit's total planted acreage, or a percentage of the unit's total insured

acreage, i.e., planted and prevented planted? And what will the percentage be: 5%, 10%, or something else?

Another commenter stated that in reference to section 13(f) that the commenter agrees with the changes allowed when harvesting prior to full maturity. However due to the workload involved (agents, insured's, AIP's) when dealing with small acreages or small fractions of a unit, the commenter would like to see the percentage of the unit entered in the Special Provisions to be more than 25% and maybe up to 50% of unit acreage before this increase factor would be implemented. Since most of the time the early harvested acreage is minimal with only end rows or point rows harvested early, the overall impact to the production to count is minimal in relation to the whole unit (and to the extra work involved to adjust each load by each date). However, when the acreage exceeds 25% of the unit, it starts to become relevant. As the acreage approaches 50% it can become very significant. Perhaps 33% (one third) of a unit's acreage would be a good place to begin increasing production. So, a suggestion the commenter has is, if more than one third of the unit acreage is harvested prior to full maturity, then production from those acres could be increased using the factor provided. If less than 1/3 of a unit's acreage was harvested early, no adjustment would be allowed.

Response: FCIC thanks the commenters and appreciates their input. The threshold was initially set low (at 10 percent), as suggested by one of the commenters. FCIC will continually monitor this threshold and update as needed. Additionally, the amount of production harvested early will be determined from processor production records obtained by the insured. It is the insureds' responsibility to provide acceptable production records to the AIP.

Comment: The commenter stated in 13(f)(1): that the commenter predicated on what the commenter believes the calendar date for the end of insurance period will be based on prior

years. The commenter does not believe that 45 days prior to the end of the insurance period for the date of full maturity is accurate for all areas where sugar beets are grown. The commenter suggests that 30 days prior to the end of the insurance period would be more appropriate in Colorado, Nebraska and Wyoming. Using 45 days in these states would result in a September 16 full maturity date. The beets will continue to mature past this date and sugar content increases dramatically after a hard freeze. The average frost date for western Nebraska is September 20 and probably a few days later in Colorado. Using 30 days prior to the end of the insurance period date would be October 1. Early harvest started on September 5 this year. An 11% production adjustment (1% per day from harvest beginning to September 16) would not make this production whole by the full maturity date. This could also be an issue for Idaho as the local sugar beet company in this region requires some growers to start digging early to help get the factories up and running, which usually begins after September 1. Most growers finish harvest by October 31st and there is a penalty by the local sugar beet company if they harvest beets after November 5th. The commenter would recommend that RMA further review the full maturity dates for each state and consider increasing the production by 2% per day (rather than 1% per day) if the producer digs early, which would be similar to the factor used in the potato policy.

Another commenter stated that regarding the interaction between section 9 calendar date of the end of insurance (EOI) and the early harvest dates derived according to 13(f)(1), please refer to the attached Excel file for detailed information. The 'NASS harvest dates' tab tallies the beginning, most active, and ending harvest dates for each state, and are representative of the 2009-time period. The '4 state progress' tab tallies the NASS weekly harvest progress reports from the four major sugar beet states, representing each state's average percent harvested during crop years 2012 through 2016; these dates and percentages corroborate the harvest dates for the

2009-time period remain applicable to current years' activities.

If the November 15 calendar EOI date is to remain unchanged (for 2019) then the 45-day default works quite well in capturing the 'early harvest' phase for the states of Minnesota and North Dakota. However, for the other states (not withstanding California) the 45-day default significantly misses 'early harvest' activities in states like Idaho and Michigan. <<Refer to cells C72 to K73 within the 'NASS harvest dates' sheet >>

If the calendar EOI dates are re-established for 2019, and if October 31 is used for Minnesota and North Dakota, then a 35-day time window may be more appropriate for these two states. If a November 10 EOI were established for Idaho, Michigan and Colorado, then a 35-day window would seem to function reasonably as well.

Additional challenges are foreseen for the states of Oregon, Montana, Nebraska, and Wyoming. Their 'Beginning to Active Beginning' harvest phases are relatively short in duration and could represent minimal if any harvest before full maturity based on the county's location or district differences (e.g., Wyoming's Big Horn Basin versus its Southeast region).

Without knowing what EOI dates are changing for 2019, and which counties will have variance to the 45-day default, it is essentially impossible to properly evaluate these interacting policy components.

Another commenter stated there also are concerns about how to determine the early dig factor. The policy changes do not address the definition or date for early harvest. The definition and date could be different based on location. This may have to be addressed in the county special provisions. Early harvest is mandatory per the processor contract and not voluntary. The insured can choose which acres to harvest during early dig.

Another commenter stated that depending on what the calendar date for the end of insurance

period will be, commenter questions if 45 days prior to the end of the insurance period for the date of full maturity is accurate for all areas where sugar beets are grown. commenter would recommend that RMA further review the full maturity dates for each state and consider increasing the production by 2% per day (rather than 1% per day) if the producer digs early, which would be similar to the factor used in the potato policy.

As an example, in Colorado, Nebraska, and Wyoming, with an EOI of 11/15, the language in section 13(f) might be ok. That is 1% per day starting with 10/1. That means a producer would get 25% for beets harvested on September 5, the beginning of early harvest. Also, subsection 13(f)(1) allows for a number of days prior to EOI other than 45. It states “unless otherwise specified in the SP.”

Another commenter stated, as this whole subsection is new procedure for the crop, what are the proposed variances that will be noted in the Special Provisions? Which states and counties? Can the number of days be less than or greater than the default of 45 days?

Another commenter stated regarding the slated change to remove the calendar date for the EOI period from section 9 and display that information solely within the actuarial documents (AIB Date Table), this has significant impacts particularly with respect to the new element within section 13(f), i.e., early harvest production adjustments. Are there to be revisions to the EOI date for select regions? Notwithstanding California’s Imperial County, essentially all remaining states or regions with active sugar beet processing facilities have a November 15th date as their EOI date. Comparing this November 15 date with the most current NASS ‘Usual Planting and Harvesting dates’ for sugar beets [October 2010] suggests significant adjustments are warranted for the calendar EOI dates. Example: Minnesota and North Dakota typically

conclude harvest during the last week of October; this constitutes approximately three weeks of extended coverage after harvest is routinely complete.

The final rule notes the administrative advantages to establishing and displaying the calendar EOI date within the actuarial documents, but without being informed of what date changes are to be made for 2019 it is impossible for policyholders and insurance providers to evaluate the impact on potential early harvest adjustments.

Response: The Crop Provisions as written in section 13(f)(1) states that the Special Provisions can specify exceptions for the 45 days prior to the calendar date for the end of insurance provision. These requests have been forwarded to the regional offices for review and further consideration. Other local or county-based concerns can be addressed to the RMA regional office. Any interested person may find contact information for the applicable regional office on RMA's website at <https://www.rma.usda.gov/RMALocal/Field-Offices/Regional-Offices>.

Additionally, FCIC set the increasing production rate to 1% per day by gathering data from multiples stakeholders and continues to collect more data from implementation of the Crop Provisions.

Comment: The commenter appreciates RMA's intent that the early harvest adjustment not apply where a grower experiences actual damage resulting in a claim from rain, flood, drought, freeze, or some other covered hazard. Hence, the provision specifies that "an adjustment will not be made if the sugar beets are damaged by an insurance cause of loss and leaving the crop in the field would reduce production." The inclusion of that final clause — "leaving the crop in the field would reduce production" — raises a question, however, whether the factor might inadvertently limit or annul a producer's legitimate insurance claim in some cases.

For instance, one serious problem faced by sugar beet producers is root rot, a condition caused by excess moisture. Root rot not only damages beets in the field, but also continues to damage surrounding beets after they are delivered to a processor. As a result, these beets cannot be effectively stored for extended periods, and processors often ask that they be delivered early to avoid later problems. Nevertheless, if left in the field, beets affected by root rot do not necessarily continue to deteriorate and may bounce back to some extent.

If a field is affected by root rot early in the growing season, reducing yields below the crop's insurance guarantee, and the crop is subsequently delivered early because of a requirement of the processor, it appears the early harvest adjustment could reduce the size of a farmer's claim, or potentially raise "production to count" above the deductible. Similarly, the existence of the factor could act as a disincentive for growers to deliver the affected beets early, creating damage during storage. Clarification of the provision is needed to avoid such unintended results.

Response: FCIC will not further specify the causes of loss in the crop provisions as specifying the causes of loss could have unintended consequences since impacts could differ by region and event. Loss adjusters will determine, on a case-by-case basis, the insurable cause of loss and if the early harvest adjustment is to be applied. FCIC is aware that there may be some disagreements between AIPs and the insured or inconsistencies between AIPs. Controversial claims procedure is already in place if an insured does not agree with the AIP's final loss adjustment determination. This procedure allows the claim to be referred from the loss adjuster to the AIP in order to resolve the claim, when the insured disagrees with the loss adjuster. Additionally, the Common Crop Insurance Policy, Basic Provisions provides a process for insureds and AIPs to settle disputes, including disputes with loss adjustment determinations, such as mediation and arbitration.

Additionally, depending on situations that develop around harvest time, bulletins may be issued to address specific situations that arise. FCIC will continue to monitor the performance of this provision and can address additional program changes that may be needed in future crop provision and procedural revisions.

Comment: Commenter stated in reference to 13(f)(3): Change the semicolon at the end to a period.

Response: FCIC changed the semicolon at the end of the section to a period.

Comment: Commenter stated about 13(e): Much more has changed in this section than just the correction to show raw sugar instead of standardized tons.

This paragraph is for production that did not meet the specifications in the contract and was damaged by an insured cause of loss. The production will be based on the tons delivered times the average sugar. Any damage should result in lower tons and/or sugar. Since the production did not meet the terms of the contract, presumably the processor will not accept it. Therefore, there should be a way to put a salvage value on it. (The LMP definition has been removed.)

If the production is damaged by an uninsured cause of loss, then it is presumed that an appraisal for uninsured causes would be done for unharvested production and a determination would be made for harvested production. See section 13(c)(1)(ii).

The instructions for appraising sugar beets for replant qualifications (Exhibit 7 in the LASH) appear to be adequate. Nothing should change here except APH will now be expressed in pounds of raw sugar instead of tons. The calculation was APH/Plant population (for 1/100 of an acre). The appraisal then multiplied this by the remaining population and compared it to 90% of the APH x coverage level. (One could actually take APH out of this equation and it would still be valid.)

Another commenter stated in regards to 13(e)(1): The way this currently reads, if due to an insurable cause of loss the beets will not meet the minimum acceptable standards in the processor contract, then the AIP would count ALL of the production (“by multiplying the tons of such damaged beets by 2000 and by the average percent of raw sugar...”). That does not seem to be fair to an insured. If the beets are damaged to the point that the processor will not accept them and the beets are destroyed, then there should be no production to count. Additionally, the wording in the previous sugar beet policy contained what might be called a “salvage value” in that, if such damaged beets could not meet the terms of the processor contract, but did have some value, then that value should be used by converting it back to production to count.

Recommend retaining this “salvage value” language, although reworded slightly to accommodate the change from standardized tons to pounds of raw sugar. Also revise the language to reflect zero production to count in situations where it does not meet the standards and is destroyed.

Additionally, the 2018 Sugar Beet Loss Adjustment Standards Handbook has several examples of these types of situations and those examples should also be retained (with changes to pounds of raw sugar).

Another commenter believes the language needs to be adjusted to reflect zero production to count in situations where it does not meet the standards and is destroyed. Additionally, the 2018 Sugar Beet Loss Adjustment Standards Handbook has several examples of these types of situations and those examples should also be retained (with changes to pounds of raw sugar).

Another commenter stated that in regard to section 13(e): Much more has changed in this section than just the correction to show raw sugar instead of standardized tons, as summarized in the regulations. The way this currently reads, if due to an insurable cause of loss the beets will

not meet the minimum acceptable standards in the processor contract then the insurance provider would still count ALL of them (by multiplying the tons of such damaged beets by 2000 and by the average percent of raw sugar). That does not seem to be fair to an insured. If the beets are damaged so that the processor will not accept and the beets are destroyed, then there should be no production to count.

Another commenter stated that the wording in the previous sugar beet policy contained what the commenter might call a salvage value in that, if such damaged beets could not meet the terms of the processor contract but did have some value---then that value should be used by converting it back to production to count. The commenter believes this salvage value language should remain although reworded slightly to accommodate the change from standardized tons to pounds of raw sugar.

Response: Section 13(e) is to address sugar beets that are damaged but are still accepted by the processor. FCIC agrees that the salvage value language should be maintained in the crop provisions and is adding language back into the provisions as outlined in 13(g) to provide that if harvested production is damaged due to an insurable cause of loss and is rejected by the processor, but is sold to a salvage buyer at a reduced price: Compute the pounds of raw sugar of the sold production by dividing the gross dollar amount paid by the salvage buyer by the established price.

FCIC is also adding the following language in section 13(h) to address the zero production to count scenarios, providing that if production is damaged due to an insurable cause of loss to the extent that the processor will not accept the production, such as the production did not meet the standards contained in the production agreement; and there are no salvage markets for the production, then there would be no value for production and there would be no

production to count provided the production is destroyed in a manner acceptable to us.

Additionally, salvage value and zero production to count language has been maintained in the Sugar Beet Loss Adjustment Standards Handbook to address both situations at <https://www.rma.usda.gov/-/media/RMAweb/Handbooks/Loss-Adjustment-Standards---25000/Sugar-Beet/2019-25450-1H-Sugar-Beet-Loss-Adjustment-Standards.ashx>.

Comment: The commenter supports the addition of a new "early harvest factor" adjustment to the Sugar Beet Crop Insurance Provisions. Sugar beets differ from other major crops in that they are grown almost exclusively under contract to regionally-based grower-owned processing companies. Producers deliver their harvested beets to the processor, which then refines them into pure sugar. The timing of each farmer's delivery of their raw beets to the processing factory is critical to its efficient operation. As a result, producers are often required to harvest and deliver portions of a crop prior to its full maturity, before the crop's tonnage and sugar content have reached normal peak levels. The result can be an unintended penalty, through no fault of the individual farmer, against the annual yield (called "production to count") that the farmer can count toward his or her historical APH, the basis for determining future coverage.

The "early harvest factor" adjustment addresses this problem by allowing a producer, if required to harvest early, to adjust the "production to count" for that portion of the crop for purposes of calculating their future APH. The adjustment is equal to 1 percent per day for each day prior to full maturity, and "full maturity" is defined as 45 days before the end of the insurance period. The size of the adjustment is based on an extensive set of data assembled by outside counsel for ASGA from each of the grower owned processing companies, showing the precise amount by which tonnage and sugar content vary during the early-harvest period.

The commenter believes this new process will benefit many sugar beet producers while

protecting the underwriting soundness of the FCIC program. That said, the commenter wishes to comment on three operational points that could have a significant effect on its performance.

Response: FCIC thanks the commenter and appreciates their input.

Comment: The changes being implemented by the 2019 Sugar Beet Crop Provisions rewrite have several significant elements that are not fully disclosed in the final rule as many are now to be solely contained in the actuarial documents (of which no drafts are provided), e.g., calendar date for EOI, variances to the Early Harvest default date, updated percentages of raw sugar, etc. Without knowing what changes will be made it is impossible to adequately review and comment. For the reasons outlined above, it is recommended that this CFR rule change be delayed until the 2020 crop year and tentative actuarial document references are available for review.

Postponing the proposed changes until the 2020 crop year would allow time for:

- The Special Provisions, CIH, and LASH to be updated;
- The AIPs to receive the clarification needed to convert the APH from standardized tons to pounds of raw sugar; and
- The sugar beet processors to update the software to capture any additional information that may be needed for claims to be processed when the early dig factor needs to be applied.

Response: FCIC thanks the commenter and appreciates their input.

Comment: Commenter is frustrated that the commenter is unable to see any comments on this at all. If insurance regulators or sugar beet farmers are supposed to take an active role in the rule-making process, comments should be made public. This may be one of many rules being promulgated, but there is no reason to treat this any differently than another rule. You should re-open the notice and comment section again and allow comments to be made public.

Response: FCIC is summarizing public comments received and addressing those comments in this final rule and is opening the rule for further public comment.

### **Effective Date and Notice and Comment**

In general, the Administrative Procedure Act (APA, 5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the Federal Register for interested persons to be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation and requires a 30-day delay in the effective date of rules, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. This rule involves matters relating to contracts and therefore the requirements in section 553 do not apply. Although not required by APA, FCIC has chosen to request comments on this rule.

The Office of Management and Budget (OMB) designated this rule as not major under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, FCIC is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Accordingly, this rule is effective November 30, 2019.

### **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.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” requires that in order to manage the private costs required to comply with Federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. As this rule is designated as not significant, it is not subject to Executive Order 13771.

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by SBREFA, generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because as noted above, this rule is exempt from APA and no other law requires that a proposed rule be published for this rulemaking initiative.

### **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 12372**

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with State and local officials that would be directly affected by proposed Federal

financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

#### **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 13132**

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

#### **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. 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, FCIC 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.

### **Unfunded Mandates**

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 Catalog of Federal Domestic Assistance to which this rule applies is No. 10.450 – Crop Insurance.

### **Paperwork Reduction Act of 1995**

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the rule does not change the information collection approved by OMB under control numbers 0563-0053.

### **E-Government Act Compliance**

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

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

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

### **Final Rule**

For the reasons discussed above, FCIC amends 7 CFR part 457, effective for the 2020 and succeeding crop years in states with a November 30 contract change date and for the 2021 and succeeding crop years in all other states, 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) and 1506(o).

2. Amend § 457.109 as follows:

a. In section 1:

- i. Remove the definition of “Initially planted”;
- ii. Add definitions for “Percentage of raw sugar” and “Pound” in alphabetical order;

- iii. Revise definition of “Practical to replant”;
  - iv. Remove the definition of “Processor contract”; and
  - v. Add definitions for “Production agreement” and “Ton” in alphabetical order;
- b. Revise sections 2 and 3;
  - c. Add section 6;
  - d. In section 7:
    - i. Revise paragraphs (a)(3) and (b)(2); and
    - ii. In paragraph (b)(4), add quotation marks around the term “processor”;
  - e. Revise section 12; and
  - f. In section 13:
    - i. Revise paragraphs (d) introductory text, (d)(1), (e) introductory text, and (e)(1);
    - ii. Revise paragraphs (f)(2) and (3); and
    - iii. Add paragraphs (f)(4) and (5), (g), and (h).

The revisions and additions read as follows:

**§ 457.109 Sugar Beet Crop Insurance Provisions.**

\* \* \* \* \*

1. Definitions

\* \* \* \* \*

*Percentage of raw sugar.* Quantity of sugar determined from analytical tests of samples performed by the processor or other laboratories approved by us.

\* \* \* \* \*

*Pound.* Sixteen (16) ounces avoirdupois.

*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 production agreement, 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.

\* \* \* \* \*

*Production agreement.* A written contract 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;
- and
- (2) The processor's commitment to purchase the production stated in the contract.

\* \* \* \* \*

*Ton.* Two thousand (2,000) pounds avoirdupois.

## 2. Unit Division

In addition to the requirements of section 34 of the Basic Provisions, basic units may be divided into optional units only if you have a production agreement that requires the processor to accept all production from a number of acres specified in the production agreement. Acreage insured to fulfill a production agreement which provides that the processor will accept a designated amount of production or a combination of acreage and production will not be eligible for optional units.

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

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

\* \* \* \* \*

## 6. Report of Acreage

In addition to the requirements of section 6 of the Basic Provisions, you must provide a copy of all production agreements to us on or before the acreage reporting date.

7. Insured Crop

(a) \* \* \*

(3) That are grown under a production agreement and are not excluded from the production agreement 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 production agreement. Such corporate resolution will be considered a production agreement under the terms of the sugar beet crop insurance policy;

\* \* \* \* \*

12. Duties in the Event of Damage or Loss

In accordance with the requirements of section 14 of the Basic Provisions, representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

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 production agreement 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 or other laboratories approved by us at the time of delivery or sample acquisition (appraisal).

(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 your previous tests performed by the processor or other laboratories approved by us during the crop year if it is determined that such results are representative of the total production.

\* \* \* \* \*

(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 production agreement 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. The average percentage of raw sugar will be determined from tests performed by the processor or other laboratories approved by us at the time of crop delivery or sample acquisition (appraisal).

(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 your previous tests performed by the processor or other laboratories approved by us during the crop year if it is determined that such results are representative of the total production.

\* \* \* \* \*

(f) \* \* \*

(2) The 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 a yield greater than the higher of your approved actual production history yield or the actual yield of the production harvested after full maturity from the unit.

(4) The adjustment will only be made if early harvest is required in the production agreement, or the processor requests early harvest prior to full maturity.

(5) If the production agreement does not require early harvest and the processor has not requested early harvest, and the processor:

(i) Accepts the early harvested production, the early harvested production will be counted but no early harvest adjustment will apply.

(ii) Does not accept the early harvested production, the production to count will be the production guarantee for the acreage harvested early.

(g) If harvested production is damaged due to an insurable cause of loss and is rejected by the processor but is sold to a salvage buyer at a reduced price: Compute the pounds of raw sugar of the sold production by dividing the gross dollar amount paid by the salvage buyer by the established price.

(h) If production is damaged due to an insurable cause of loss to the extent that the processor will not accept the production, such as the production did not meet the standards contained in the production agreement; and there are no salvage markets for the production, then there would be no value for production and there would be no production to count provided the production is destroyed in a manner acceptable to us.

\* \* \* \* \*

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Martin R. Barbre,

Manager,

Federal Crop Insurance Corporation.

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