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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB55

Common Crop Insurance Regulations; Sugar Beet Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of sugar beets. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and combine the current Sugar Beet Crop Insurance Regulations with the Common Crop Insurance Policy for ease of use and consistency of terms.

EFFECTIVE DATE: November 19, 1996.

FOR FURTHER INFORMATION CONTACT: Arden Routh, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is February 1, 2001.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments, data, and opinions on information collection requirements previously approved by OMB under OMB control number 0563–0003 through September 30, 1998. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, 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) of State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must also annually certify to the previous years production if adequate records are available to support the certification. The producer must maintain the production records to support the certified information for at least three years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before action for judicial review may be brought.

Environmental Evaluation

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

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Friday, May 31, 1996, FCIC published a proposed rule in the Federal Register at 61 FR 27315–27321 to add to the Common Crop Insurance Regulations (7 CFR part 457) a new section, 7 CFR § 457.109, Sugar Beet Crop Provisions. The new provisions will be effective for the 1997 and succeeding crop years in all States except Arizona and California, and for the 1998 and succeeding crop years in Arizona and California. These provisions will replace and supersede the current provisions for insuring sugar beets found at 7 CFR part 430 (Sugar Beet Crop Insurance Regulations). By separate rule, FCIC will restrict the effects of the Sugar Beet Crop Insurance Regulations through the 1996 and prior crop years and later remove that part. Following publication of that proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. A total of 72 comments were received from the crop insurance industry, sugar beet grower associations, and FCIC. The comments received, and FCIC's responses are as follows:

Comment: Two comments received from the crop insurance industry had a concern with the definition of ''Good farming practices,'' which makes reference to ''generally recognized by the Cooperative Extension Service.'' The comment indicated that the term ''generally'' would allow the use of unrecognized practices.

Response: FCIC agrees with the comment and has amended the definition accordingly.

Comment: One comment received from an FCIC Regional Service Office (RSO) recommended changing the definition of ''Harvest'' to read, ''means the completion of topping and lifting of sugar beets in the field.'' The commenter does not believe that removal of sugar beets from the field should be a condition to be considered harvested. If required, it would lengthen the insurance period and allow producers to pile beets in the field and expose the insurer to unintended risks.

Response: FCIC agrees with the comment and has amended the definition accordingly.

Comment: Two comments received from the crop insurance industry recommended adding the words ''and quality'' after the word ''quantity'' in the definition of ''Irrigated practice.''

Response: FCIC agrees that water quality is an important issue. However, since no standards or procedures have been developed to measure water quality for insurance purposes, FCIC has elected not to include quality in the definition. Therefore, no change will be made.

Comment: Two comments received from RSOs recommended removing or changing provisions pertaining to late planting. One of the commenters recommended changing the definition of ''Late planting period'' to read, ''The period that begins the day after the final planting date for the insured crop and ends 25 days after the final planting date, unless otherwise provided by the Special Provisions.'' The commenters added that: 1) the length of the late planting period should be determined by the RSO by crop, by county, depending on the length of the growing season, etc.; and 2) a blanket 25 days for all crops is not appropriate for an actuarially sound program.

Response: County by county determinations of the appropriate length of the late planting period would necessitate a substantial amount of additional paperwork and procedure. For a majority of the counties, the 25 day late planting period is appropriate to permit the crop to mature before the end of the insurance period. There is no evidence that insureds are abusing the current 25 day period. Therefore, no change will be made.

Comment: One comment received from the crop insurance industry recommended adding a definition for ''raw sugar'' since this term is used in the definition of ''local market price'' and elsewhere in the crop provisions.

Response: FCIC agrees with the comment and has added a definition for ''raw sugar.''

Comment: One comment received from a sugar beet growers group concerned ''Local market price.'' The commenter believes that the guarantee should not be established using the local market price because it may be vulnerable to fluctuation caused by market demand.

Response: FCIC believes that the commenter misinterpreted the provisions. The local market price is used to determine the production to count for sugar beets eligible for a quality adjustment. The local market price is not used to determine the insurance guarantee.

Comment: One comment received from an RSO recommended adding language indicating that it will not be considered practical to replant unless production for the replanted acreage can be delivered under the terms of the processor contract.

Response: FCIC agrees with the comment and has amended the definition accordingly.

Comment: Five comments, two from the crop insurance industry and three from FCIC RSOs, did not agree that the definition of ''Processor'' should limit processors to being only corporations and the language contained in redesignated section 7(b) (1) and (2), that requires a processor to be a corporation.

Response: FCIC agrees with the comments and has amended the definition and provisions accordingly.

Comment: Two comments received from the crop insurance industry concerned the definition of ''Replanting.'' The comments questioned the need to break this into two steps and recommended that FCIC consider something like the definition in the 1986–CHIAA 707: ''Performing the cultural practices necessary to replant insured acreage to sugar beets.''

Response: The suggested language would unnecessarily create an ambiguity because the cultural practices will always include the preparation of the land and planting the sugar beet seed into the insured acreage. Therefore, no change will be made.

Comment: One comment received from the crop insurance industry recommended adding a definition for RMA-Risk Management Agency.

Response: These regulations are published under the authority of the Federal Crop Insurance Act, which created FCIC and gave it the authority to offer this crop insurance program. As a result, the term FCIC rather than Risk Management Agency is used appropriately throughout these regulations. Therefore, no change will be made.

Comment: Two comments received, one from an FCIC RSO and one from the insurance industry, recommended clarifying the second to the last sentence of the first paragraph of redesignated section 2(c). The current wording may lead the insured to believe that premium may be refunded any time optional units are combined. That is not true. Premium is refunded only if there are no optional units within a basic unit. One of the comments recommended changing the provisions to read as follows: ''If failure to comply with these provisions is determined to be inadvertent and if all of the optional units within a basic unit are combined, that portion of the premium paid for the purpose of electing optional units will be refunded to you.''

Response: FCIC agrees with the comment and has amended the provisions accordingly.

Comment: One comment received from the insurance industry questioned why all optional units must be identified on the acreage report for each crop year. They asked if this reporting

is by crop or also by practice, type, and variety. Listing every possible combination for every crop on a policy could test the limits on the number of policy lines allowed.

Response: FCIC has clarified this provision to indicate that only those optional units selected for the specific crop year need be identified on the acreage report.

Comment: One comment received from the insurance industry indicated that provisions in section 2(a)(1) requiring verifiable records ''for at least the last crop year used to determine your production guarantee'' could cause confusion. The commenter asked whether this is the ''APH'' or the ''policy'' crop year because the reference to the last year used to determine the guarantee suggests it is the APH crop year. The comment questions whether this means that an insured cannot qualify for any optional units without certifying as many years as necessary to come up with one year of actual history for every potential unit database. A record of zero acres planted is an acceptable production report for maintaining continuity, but is not ''counted'' as a year of actual records when calculating the approved APH yield.

Response: The APH is based on the actual production of the producer for each crop year in which a crop is produced up to a maximum of 10 crop years. It is not required that a crop be insured for its production to be included in the APH data base. To qualify for optional units, the insured must have production records, by optional unit, for at least the last year the crop was actually produced. FCIC believes the provision is clearly stated and has not made changes.

Comment: One comment received from the insurance industry indicated that the requirement to have verifiable records of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee might be seen as a contradiction of the rotation requirements for sugar beets. These requirements do not allow sugar beets to be planted on the same acreage as the previous year.

Response: The proposed provisions do not require sugar beets to be grown on the same acreage in successive crop years. Only those crop years in which the crop was actually produced are included in the data base. The year the crop was not produced would not be considered as the last crop year used to determine the guarantee. Therefore, no changes have been made.

Comment: One comment received from the insurance industry concerning section 2(b)(2) recommended deleting ''In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number,'' and beginning the section with ''Optional units may be based on irrigated * * *'' Item 2(b) begins by saying one or more of (1) and (2) may apply.

Response: It is the intent of FCIC to allow optional units for irrigated and non-irrigated practices within an optional unit based on section, section equivalent, or FSA Farm Serial Number. Therefore, no change will be made.

Comment: One comment received from an RSO recommended the language in section 3(b)(1) be changed to read ''First stage, with a guarantee of 60 percent (60%) of the final stage guarantee, extends from planting until:''

Response: FCIC agrees with the comment and has amended the provision accordingly.

Comment: Five comments received, four from the insurance industry and one from a sugar beet growers group, recommended that the first stage guarantee should be eliminated, except possibly in California and other areas where the practice of thinning still exists. References to ''July 1,'' ''thinning'' or ''90 days'' cause more problems than they solve in other sugar beet areas where early season input costs are no longer greater than those incurred later in the season. It is the commenters understanding that machine or hand thinning is no longer a common practice in many sugar beet areas. Stage production guarantees were initially established when thinning was an expensive process. The reduction in guarantee for first stage only adds to the losses the producer incurs due to adverse weather conditions. Removal of the stage guarantee would likely result in increased premium costs.

Response: This would be a significant change which could result in higher premiums, therefore, an additional comment period would be required to allow interested parties to consider the effects of this change and any increase in the costs of insurance. No change will be made to the present rule; however, it will be considered in any future change to these provisions.

Comment: One comment received from the insurance industry concerning section 3, Insurance Guarantees, Coverage Levels, and Prices, recommended the language be changed to ''* * * select only one price percentage * * *'' it would not then be necessary to say so much for crops with different maximum prices by type.

Response: Methods used to select price elections vary between insurance providers. While some require selecting of a percentage, others require selection a specific dollar amount. The suggested change will not work in all circumstances. Therefore, no change will be made.

Comment: Three comments received, two from RSOs and one from a sugar beet growers group, concerned the cancellation and termination date. One commenter stated that the language in the Background section of the preamble printed in the proposed rule stated that the cancellation and termination dates for all States except Arizona and California were changed to March 15 but the dates contained in section 5 of the proposed Sugar Beet Crop Provisions were February 28. The commenter believed the correct date should be March 15. Another commenter advised that the cancellation and termination dates (February 28) are too early because contracting of acreage by the processor has not been completed.

Response: The language in the Background section concerning the cancellation and termination dates being changed from April 15 to March 15 for all States except Arizona and California is correct. The correct cancellation and termination dates for these States are March 15. FCIC corrected section 5 accordingly.

Comment: Two comments received from the insurance industry asked if the sales closing date will match the cancellation and termination dates contained in section 5. The commenters suggested that the cancellation and sales closing dates should match, and that the date should be March 15.

Response: The sales closing dates and the cancellation dates will match and, as stated above, the cancellation date has been changed to March 15 in most States.

Comment: One comment received from an RSO recommended adding provisions to indicate that the premium is based on the final stage production guarantee.

Response: FCIC agrees with the comment and has added a new section 6.

Comment: One comment received from the insurance industry recommended that FCIC consider whether redesignated section 7(a)(3) should specify that the processor contract show the insured's name. This may reduce the potential for abuse by persons without insurable interests.

Response: Processor contracts may not always indicate the name of all persons who have an insurable interest

in the acreage. In many cases a contract is held by a producer, but such contract also covers the share of one or more landlords. While it is imperative that an insurable interest be established, FCIC does not feel that the name on the processor contract is an adequate indicator of an insurable interest. Therefore, no change has been made.

Comment: One comment received from the insurance industry questioned the language contained in redesignated section 7(a)(4)(i) regarding acreage interplanted with another crop. The commenter stated that ''In some areas it is a common practice to plant a small grain crop on sugar beet ground, let it grow to 6–8 inches, kill it off with a chemical and then plant the sugar beets. The small grain residue serves as protection from both wind and cold damage to the beet seedlings. This should be considered a good farming practice and possibly addressed in this section. The commenter recalled a FCIC memorandum being issued a few years ago allowing the practice.

Response: The scenario presented in the comment would constitute sequential planting, not interplanting. The definition of ''interplanted'' requires the two crops be planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop. In the case presented, the small grain crop would not inhibit the maintenance or harvest of the sugar beets. Therefore, this practice is not prohibited.

Comment: One comment received from the insurance industry expressed concern regarding requirements for processor sales records contained in redesignated section 7(b)(3). An insurance provider cannot require an insured to provide copies of sales records for production owned by other parties.

Response: There is no need to provide the records from other persons. This provision only applies when a processor is also a sugar beet producer. All that is required is the records of the processor's sales to prove that it produced sugar the previous year. The provision has been amended to specify that it is the sales records of the processor showing the amount produced for the previous year that must be provided.

Comment: One comment received from the insurance industry questioned the requirement in redesignated section 7(b)(3) for companies to inspect the processing facilities. The comment expressed concern over the additional expenses incurred for the inspection process.

Response: An inspection of the processing facilities is necessary to verify that a producer who claims also to be a processor has facilities or access to facilities with adequate equipment to accept and process sugar beets in a reasonable amount of time after harvest. FCIC does not anticipate a large number of inspections will be necessary. Therefore, the extra expense should be minimal. No change will be made.

Comment: One comment received from an RSO recommended changing the language in redesignated section 8(a)(1) to read, ''the preceding crop year, unless otherwise specified in the Special Provisions for the county.'' The Special Provisions take precedence over these provisions; however, the policy statement of ''preceding crop year'' is a change for most States. The commenter stated that it would not hurt to remind insureds to refer to the Special Provisions.

Response: FCIC agrees with the comment and has amended the provision accordingly.

Comment: One comment received from the insurance industry states that redesignated sections 8(a) (1) and (3) seem to overlap. The commenter asked whether the requirement that sugar beets cannot have been planted on the same acreage the preceding crop year is covered by the rotation requirements in the Special Provisions. The commenter states that unless there are areas with no Special Provisions, item (1) seems to be an unnecessary repetition.

Response: There are areas with Special Provisions that do not contain rotation requirements and the provisions in redesignated section 8(a)(1) apply to these areas. Redesignated section 8(a)(3) applies to counties that may have other rotation requirements. Therefore, no change will be made.

Comment: One comment received from the insurance industry states that redesignated section 8(a)(2) appears to conflict with redesignated section 10(d) and request that redesignated section 8(a)(2) be rewritten to add ''or controlled as prescribed by University Extension'' to reduce the times a written agreement would have to be requested and processed.

Response: Redesignated section 10(d) does not conflict with redesignated section 8(a)(2). Redesignated section 8(a)(2) specifies that acreage is not insurable the following crop year after the acreage has been affected by rhizomania. Redesignated section 10(d) provides that disease is not an insurable cause of loss in the current crop year if caused by insufficient or improper application of disease control measures. Therefore, no change will be made.

Comment: Two comments received from RSOs recommended changing the language of redesignated section 8(a)(2) to read: ''In any crop year following the discovery of rhizomania on the acreage unless a written agreement or the Special Provisions allows otherwise; or.'' The sugar beet industry is rapidly developing rhizomania tolerant varieties. The commenters state that this revision will allow for insurance to attach when specified in the Special Provisions and avoid the need of a costly written agreement and allow for CAT level protection. This practice will only be included in the Special Provisions if there are available rhizomania tolerant varieties adapted to the area that exhibit adequate yields.

Response: FCIC agrees with the comment and has amended the section accordingly.

Comment: One comment received from a grower group indicated that there may be situations where replanting could occur in a location different than that originally planted. This may occur when it is not practical to replant in the same field, township or county. Consideration for replanting payments should be made in this circumstance.

Response: FCIC agrees that this concept should be studied. However, no procedure or provisions have been developed or proposed to accomplish the recommended change. FCIC will consider this recommendation for future use. Therefore, no change will be made.

Comment: One comment received from a sugar beet growers group recommended changing the calendar date for the end of insurance period to December 15 for North Dakota and Minnesota because sugar beets can be harvested after November 15. They are concerned that producers may file unnecessary claims to protect their interests. The commenter also states that production data is only available after November 15, therefore, the December 15 deadline would be more appropriate. They claim that supporting documentation is available for this change.

Response: FCIC understands that harvest may occur after November 15 in some exceptional years. However, virtually all sugar beets are harvested prior to this date. Extending the date for some exceptional years would adversely affect premium rates. Therefore, no change is necessary.

Comment: One comment received from an RSO recommended changing the language redesignated section 11(b) to specify ''the lesser of 10% of the final stage production guarantee or 1 ton, multiplied by your price election, multiplied by your share.''

Response: FCIC agrees with the comment and has amended redesignated section 11(b) accordingly.

Comment: One comment received from the insurance industry questioned why a tenant is not allowed to receive the landlord's share of the allowable replant payment if both are insured with the same company at a coverage level greater than CAT. Provisions allowing this are included in the Coarse Grains Crop Provisions (section 10(c)), and the commenter states that it should be applicable to sugar beets as well.

Response: FCIC has reevaluated this provision due to comments received on other regulations and determined that the provision is not equitable to all insureds. Specifically if a landlord and tenant are insured with one company, the provisions apply, but if the landlord and tenant are insured with different companies, the provisions do not apply. Therefore, no change will be made. Crop provisions containing these terms will be amended to eliminate them.

Comment: One comment received from a sugar beet growers group concerned redesignated section 12(b). The commenter recommended that the sugar beet processor contract include the terminology ''Maximum Plantable Acreage.'' The term ''plantable acres'' may differ from contracted acres.

Response: FCIC cannot require that such terminology be added to the processor contract. FCIC only requires that such contract be binding on the parties with respect to the production and purchase of a stated amount and a fixed price. The actual terms of the processor contract are established between the processor and the grower. Therefore, no change will be made.

Comment: One comment received from an RSO recommended changing redesignated section 13(c)(1) to read ''Multiplying the insured acreage by its respective production guarantee''.

Response: FCIC agrees with comment and has amended redesignated section 13(b) accordingly.

Comment: One comment received from an RSO recommended changing redesignated section 13(c)(1)(iii) to read: ''Unharvested production (unharvested sugar beets which have not reached the earliest delivery date designated by the processor's harvest schedule for the area will not be adjusted for quality deficiencies) * * *'' Current loss adjustment procedure distinguishes appraisal techniques based on crop maturity. Immature beets are appraised by percentage stand. Mature beets are appraised by weight. This proposed revision would allow samples to be submitted to the processor for determination of the percentage of sugar and to allow a more accurate appraisal of crop value. Samples submitted to the processor will also confirm whether or not beets are damaged and whether redesignated section 13(d) or redesignated section 13(e) is applicable.

Response: FCIC agrees with the substance of the comment and has amended the provisions accordingly.

Comment: One comment received from an RSO recommended changing redesignated section 13(d) to read: ''Any unharvested appraised production which has matured (reached the earliest delivery date designated by the processor's harvest schedule for the area) or harvested production of sugar beets acceptable according to the sugar beet processor contract or corporate resolution will be converted to standardized tons by:'' The commenter states that this revision incorporates the recommendation for redesignated section 13(d)(iii), and clarifies when the percent sugar adjustment is used.

Response: FCIC disagrees with the comment. The provisions in redesignated section 13(d) are intended for both harvested and unharvested production that is appraised after the earliest delivery date that the processor accepts harvested production and that meet the minimum acceptable standards contained in the processor contract. This provision will be clarified accordingly.

Comment: One comment received from the insurance industry recommended changing provisions in redesignated section 13(d)(2) that requires the percentage of sugar to be determined for each load at the time of delivery. Normal practice is to test every other load, because it has been discovered that the sugar percentage does not vary much between loads. Processors should not have to change this accepted practice to satisfy this policy requirement.

Response: FCIC agrees with the comment and has amended the provisions to conform with industry practices.

Comment: One comment received from an RSO recommended changing redesignated section 13(e) to read: ''Any unharvested appraised production which has matured (sugar beets which have reached the earliest delivery date designated by the processor's harvest schedule for the area) or harvested production of sugar beets that does not meet the minimum acceptable conditions specified in the sugar beet processor contract or corporate resolution due to insurable causes will be converted to standardized tons by:'' The revision incorporates the recommendation for redesignated section 13(c)(iii), and clarifies the specific conditions of the crop for which production to count is adjusted according to this subsection.

Response: FCIC disagrees with the comment. The provisions in redesignated section 13(e) are intended for both harvested and unharvested production that is appraised after the earliest delivery dated that the processor accepts harvested production and that does not meet the minimum acceptable standards contained in the processor contract. This provision will be clarified accordingly.

Comment: One comment received from an RSO recommended changing redesignated section 13(e) to read: ''Production that does not meet the minimum acceptable standards contained in the sugar beet processor contract or corporate resolution (damaged sugar beets) will be converted to standardized tons by:'' Redesignated section 13(e)(1) refers to ''damaged sugar beets.'' Without adding the clarification of damaged beets to redesignated section 13(e), there may be (and has been in the past) some confusion.

Response: FCIC agrees with the comment and has amended the section accordingly.

Comment: One comment received from an FCIC RSO recommended changing the language ''the insured crop'' to ''sugar beets'' in redesignated section 14, Late and Prevented Planting.

Response: Since the insured crop clearly is sugar beets, and the term is used in other provisions, no change will be made.

Comment: One comment received from an RSO recommended eliminating late and prevented planting provisions that reference participating in a USDA program that limits acreage planted, compliance with conservation plans, and base acreage. These do not apply.

Response: FCIC agrees that acreage limiting programs and base acreage do not apply to sugar beets and has amended the appropriate provisions. However, conservation plans may allow the insurance provider to verify an intent to produce or not produce the crop. Therefore, provisions regarding the use of conservation plans have not been changed.

Comment: One comment received from an RSO recommended adding a statement to the prevented planting provisions to assure compliance with rotation requirements contained in the Special provisions when determining eligible prevented planting acreage.

Response: FCIC does not believe the recommended change is necessary. It would be duplicative since the Insured

Crop section already contains this requirement. Therefore, no change will be made.

Comment: Three comments received from the insurance industry recommended limiting the number of acres eligible for prevented planting to the number of acres that are under the processor contract for the crop year.

Response: FCIC agrees with comment and has amended language to limit the number of acres eligible for prevented planting to the number of acres under the processor contract or the number of acres needed to produce the amount of contracted production based on the APH yield for the acreage.

Comment: One comment received from the insurance industry recommended that a written release be required from the processor before a prevented planting guarantee is provided.

Response: FCIC cannot require such a release for the purposes of the insurance contract since the processor contract is executed between the processor and the producer. If the producer meets the requirements for a prevented planting payment under this policy, the payment will be made regardless of whether the processor releases the acreage.

Comment: One comment received from the insurance industry recommended that late and prevented planting coverage should not be provided on crops grown under contract with a processor. The processor determines what the producer does if the insured crop is not planted during the normal planting period.

Response: FCIC believes that the inclusion of late and prevented planting provisions is appropriate for sugar beets. As the comment indicates, the processor may or may not allow planting within the late planting period. If planting is allowed under the contract, and the crop can reach maturity, coverage should be provided. Therefore, no change will be made.

Comment: Three comments received, two from the insurance industry and one from an RSO, asked whether the prevented planting coverage available when a substitute crop is planted will be dropped, or at least revised, for all affected crops for the 1997 crop year, and whether it is possible to remove (or revise) redesignated section 14(d)(1)(iii)(B) and 14(d)(2)(iii)(B).

Response: Consideration is being given to removal of prevented planting provisions that allow a substitute crop for all affected crops for the 1998 crop year. Necessary changes will be made in a separate rule for these and any other affected crop provisions. Therefore, no change will be made.

Comment: One comment received from the insurance industry recommended that the requirement for a written agreement to be renewed each year should be removed. Terms of the agreement should be stated in the agreement to fit the particular situation for the policy, or if no substantive changes occur from one year to the next, allow the written agreement to be continuous.

Response: Written agreements are intended to change policy terms or permit insurance in unusual situations where such changes will not increase risk. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to keep non-uniform exceptions to the minimum and to insure that the insured is well aware of the specific terms of the policy. Therefore, no change will be made.

Comment: One comment received from the insurance industry recommended that the policy language concerning written agreements should not be so detailed, but should be handled in procedure. The commenter suggested that redesignated sections 15 (a) and (c) should not be so specific as to the sales closing date, especially when it is possible to request some written agreements until the acreage reporting date. If these items are kept, the commenter suggests combining both sections into redesignated section 15(a) instead of having two separate items.

Response: FCIC disagrees with the comment. To prevent the practice of delaying the purchase of insurance until a loss is more probable, most written agreements must be requested by the sales closing date. It is only rare circumstances when an insured can request a written agreement after the sales closing date. FCIC believes the current format clearly states the necessary requirements for a written agreement. Written agreements are the exceptions, not the rule and their use must be strictly controlled. Therefore, no change will be made.

Comment: One comment received from an RSO recommended deleting paragraph (b) of redesignated section 15. A request for a written agreement is really a Request for Actuarial Change. If it is not approved, all contract provisions will remain in effect as before. The commenter receives requests for actuarial change for many situations and the requirement as outlined in part (b) seems cumbersome and unwarranted.

Response: This requirement is necessary to ensure that the producer will be aware of the terms of his insurance in case the request for written agreement is denied. Therefore, no change will be made.

In addition to the changes described above, FCIC has made the following changes to the Sugar Beet Provisions:

1. Moved Arizona from section 3(b)(1)(i) to section 3(b)(1)(ii) because production practices in Arizona are more similar to Central and Southern California than Northern California and other States.

2. Section 7(a)(3)—Added provisions to clarify that sugar beets are not insurable if excluded from the processor contract at anytime during the crop year.

3. Section 9—Added a provision to clarify that the insurance period ends when the production delivered to the processor equals the production stated in the sugar beet processor contract.

4. Section 13(b)—Clarified the calculations used to settle the claim.

5. Section 14(d)—Clarified that the production guarantee for prevented planting will be based on the final stage guarantee.

6. Section 14(d)(4)(ii)—Clarified when prevented planting coverage begins to include the 1997 crop year.

Good cause is shown to make this rule effective upon publication in the Federal Register. This rule improves the sugar beet insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The earliest contract change date that can be met for the 1997 crop year is November 30, 1996. It is therefore imperative that these provisions be made final before that date so that the reinsured companies and insureds may have sufficient time to implement these changes. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1997 crop year.

List of Subjects in 7 CFR Part 457

Crop insurance, Sugar beets.

Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Common Crop Insurance Regulations, (7 CFR part 457), effective for the 1997 and succeeding crop years in all States except Arizona and California and for the 1998 and succeeding crop years in Arizona and California, to read as follows:

PART 457—[AMENDED]

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

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

2. 7 CFR part 457 is amended by adding a new § 457.109 to read as follows:

§ 457.109 Sugar Beet Crop Insurance Provisions.

The Sugar Beet Crop Insurance Provisions for the 1997 and succeeding crop years are as follows:

FCIC Policies

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies

(Appropriate title for insurance provider)

Both FCIC and Reinsured Policies

Sugar Beet Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, and the Special Provisions; the Special Provisions will control these Crop Provisions and the Basic Provisions; and these Crop Provisions will control the Basic Provisions.

1. Definitions

Crop year—In Imperial, Lassen, Modoc, Shasta and Siskiyou counties, California and all other States, 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. In all other California counties, the period from planting until the applicable date for the end of the insurance period which is designated by:

(a) The calendar year in which planted if planted on or before July 15; or

(b) The following calendar year if planted after July 15.

Days—Calendar days.

FSA—Farm Service Agency of the United States Department of Agriculture, or a successor agency.

Final planting date—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—Topping and lifting of sugar beets in the field.

Initially planted—The first occurrence that land is considered as planted acreage for the crop year.

Interplanted—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Late planted—Acreage planted to the insured crop during the late planting period.

Late planting period—The period that begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

Local market price—The price per pound for raw sugar offered by buyers in the area in which you normally market the sugar beets.

Planted acreage—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Sugar beets must initially be planted in rows to be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Practical to replant—In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, and marketing window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. 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.

Prevented planting—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

Processor—Any business enterprise regularly engaged in processing sugar beets for sugar that possesses all licenses and permits for processing sugar beets required by the State in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process the contracted sugar beets within a reasonable amount of time after harvest.

Production guarantee (per acre):

(a) First stage production guarantee—The final stage production guarantee multiplied by 60 percent.

(b) Final stage production guarantee—The number of tons determined by multiplying the approved yield per acre by the coverage level percentage you elect.

Raw sugar—Sugar that has not been extracted from the sugar beet.

Replanting—Performing the cultural practices necessary to replace the sugar beet seed and then replacing the sugar beet seed in the insured acreage with the expectation of growing a successful crop.

Standardized ton—A ton of sugar beets containing the percentage of raw sugar specified in the Special Provisions.

Sugar beet processor contract—A written contract between the producer and the processor, containing at a minimum:

(1) The producer's commitment to plant and grow sugar beets, and to 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 the producer for the production stated in the contract.

Thinning—The process of removing, either by machine or hand, a portion of the sugar beet plants to attain a desired plant population.

Timely planted—Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

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

Written agreement—A written document that alters designated terms of this policy in accordance with section 15.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), a basic unit may be divided into optional units if, for each optional unit, you meet all the conditions of this section or if a written agreement to such division exists.

(b) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, variety, and planting period other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you.

(d) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must

be kept separate until loss adjustment is completed by us;

(4) The sugar beet processor contract provides that the processor will accept all the production from the number of acres designated in the contract (Acreage insured under a sugar beet processor contract which provides that the processor will accept a designated amount of production will not be eligible for optional units).

(5) Each optional unit must meet one or more of the following criteria, as applicable:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified Section. In the absence of Sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of Sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:* In addition to, or instead of, establishing optional units by Section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same Section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based. However, the corners of a field in which a center-pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit, they will be a part of the unit containing the irrigated acreage. However, non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all requirements of this section are met.

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

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one price election for all the sugar beets in the county insured under this policy.

(b) The production guarantees are progressive by stages, and increase at specified intervals to the final stage. The stages are:

(1) First stage, with a guarantee of 60 percent (60%) of the final stage production guarantee, extends from planting until:

(i) July 1 in Lassen, Modoc, Shasta and Siskiyou counties, California and all other States except Arizona; and

(ii) The earlier of thinning or 90 days after planting in Arizona and all other California counties.

(2) Final stage, with a guarantee of 100 percent (100%) of the final stage production guarantee, applies to all insured sugar beets that complete the first stage.

(c) The production guarantee will be expressed in standardized tons.

(d) Any acreage of sugar beets damaged in the first stage to the extent that growers in the area would not normally further care for the sugar beets will be deemed to have been destroyed, even though you may continue to care for it. The production guarantee for such acreage will not exceed the first stage production guarantee.

4. Contract Changes

In accordance with the provisions of section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is April 30 preceding the cancellation date for counties with a July 15 or August 31 cancellation date and November 30 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are:

State and County	Cancellation date	Termination date
Arizona; and Imperial County, California.	August 31 ...	August 31.
All California counties, except Imperial, Lassen, Modoc, Shasta and Siskiyou.	July 15	November 30.
All Other States, and Lassen, Modoc, Shasta and Siskiyou Counties, California.	March 15	March 15.

6. Annual Premium

In lieu of the premium computation method contained in section 7 (Annual Premium) of the Basic Provisions (§ 457.8), the annual premium amount is computed by multiplying the final stage production guarantee by the price election, the premium rate, the insured acreage, your share at the time of planting, and any applicable premium adjustment factors contained in the Actuarial Table.

7. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the sugar beets in the county for which a premium rate is provided by the Actuarial Table:

(1) In which you have a share;

(2) That are planted for harvest as sugar beets;

(3) That are grown under a sugar beet processor contract executed before the acreage reporting date and are not excluded from the processor contract at any time during the crop year; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop;

(ii) Planted into an established grass or legume; or

(iii) Planted prior to submitting a properly completed application.

(b) Sugar beet growers who are also processors may establish an insurable interest if they meet the following requirements:

(1) The processor must meet the definition of a ''processor'' in section 1 of these crop provisions and have a valid insurable interest in the sugar beet crop;

(2) The Board of Directors or officers of the processor must have duly promulgated a resolution that sets forth essentially the same terms as a sugar beet processor contract. Such resolution will be considered a sugar beet processing contract under the terms of the sugar beet crop insurance policy;

(3) The sales records of the processor showing the amount of sugar produced the previous year must be supplied to us to confirm the processor has produced and sold sugar in the past; and

(4) Our inspection of the processing facilities determines that they conform to the definition of processor contained in section 1 of these crop provisions.

8. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(a) We will not insure any acreage planted to sugar beets:

(1) The preceding crop year, unless otherwise specified in the Special Provisions for the county;

(2) In any crop year following the discovery of rhizomania on the acreage, unless allowed by the Special Provisions or by written agreement; or

(3) That does not meet the rotation requirements shown in the Special Provisions;

(b) Any acreage of the insured crop damaged before the final planting date, (or within 30 days of initial planting for those counties without a final planting date) to the extent that growers in the area would normally not further care for the crop, must be replanted unless we agree that replanting is not practical.

9. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the calendar date for the end of the insurance period is:

(1) July 15 in Arizona and in Imperial County, California;

(2) The last day of the 12th month after the insured crop was initially planted in all

California counties except Imperial, Lassen, Modoc, Shasta and Siskiyou;

(3) October 31 in Lassen, Modoc, Shasta and Siskiyou Counties, California, and in Klamath County, Oregon;

(4) November 25 in Ohio;

(5) December 31 in New Mexico and Texas; and

(6) November 15 in all other States and counties.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), regarding the end of the insurance period, 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.

10. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

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

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

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

11. Replanting Payments

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment is allowed if the crop is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent (90%) of the final stage production guarantee for the acreage and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 10 percent (10%) of the final stage production guarantee or one ton, multiplied by your price election, multiplied by your insured share.

(c) When sugar beets are replanted using a practice that is uninsurable for an original planting, our liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

12. Duties In The Event of Damage or Loss

In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8):

(a) 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; and

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

13. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

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

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Subtracting the total production to count from the result in paragraph (b)(1);

(3) Multiplying the result of paragraph (b)(2) by your price election; and

(4) Multiplying the result of paragraph (b)(3) by your share.

(c) The total production to count (in standardized tons) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

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

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (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));

(iv) Only appraised production in excess of the difference between the first and final stage production guarantee for acreage that does not qualify for the final stage guarantee will be counted, except that all production from acreage subject to section 13(c)(1) (i) and (ii) will be counted; and

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

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

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

(2) All harvested production from the insurable acreage.

(d) 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 sugar beet processor contract or corporate resolution will be converted to standardized tons by:

(1) Dividing the average percentage of raw sugar in such sugar beets by the raw sugar content percentage shown in the Special Provisions; and

(2) Multiplying the result (rounded to three places) by the number of tons of such sugar beets.

The average percentage of raw sugar will be determined from tests performed by the processor at the time of delivery. 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. 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 sugar beet processor contract due to an insured peril will be converted to standardized tons by:

(1) Dividing the gross dollar value of all of the damaged sugar beets on the unit (including the value of cooperative stock, patronage refunds, etc.) by the local market price per pound on the earlier of the date such production is sold or the date of final inspection for the unit;

(2) Dividing that result by 2,000; and

(3) Dividing that result by the county average raw sugar factor contained in the Special Provisions for this purpose.

For example, assume that the total dollar value of the damaged sugar beets is $6,000.00; the local market price is $0.10; and the county average raw sugar factor is 0.15. The amount of production to count would be calculated as follows: (($6,000.00÷$0.10)÷2,000)÷0.15=200 tons.

14. Late and Prevented Planting

(a) In lieu of provisions contained in the Basic Provisions (§ 457.8) regarding acreage initially planted after the final planting date and the applicability of a Late Planting Agreement Option, insurance will be provided for acreage planted to the insured crop during the late planting period (see section 14(c)), and acreage you were prevented from planting (see section 14(d)). These coverages provide reduced production guarantees and are applicable in all counties except California counties with a July 15 cancellation date. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. If the amount of

premium you are required to pay (gross premium less our subsidy) for late planted acreage or prevented planting acreage exceeds the liability on such acreage: coverage for those acres will not be provided; no premium will be due; and no indemnity will be paid for such acreage.

(b) You must provide written notice to us not later than the acreage reporting date if you were prevented from planting.

(c) Late planting.

(1) For sugar beet acreage planted during the late planting period, the production guarantee for the applicable stage for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (1%) for the 1st through the 10th day; and

(ii) Two percent (2%) for the 11th through the 25th day.

(2) In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of sugar beets continues after the final planting date, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Special Provisions for the insured crop; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from timely planting sugar beets, you may elect:

(i) To plant sugar beets during the late planting period. The production guarantee for such acreage will be determined in accordance with section 14(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be 35 percent of the final stage production guarantee for timely planted acres. For example, if your final stage production guarantee for timely planted acreage is 20.0 tons per acre, your prevented planting production guarantee would be 7.0 tons per acre (20.0 tons multiplied by 0.35). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with section 13; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the 10th day following the final planting date for the insured crop; or

(B) A production guarantee equal to 17.5 percent of the final stage production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the 10th day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your final stage production guarantee for timely planted acreage is 20.0 tons per acre, your prevented planting production guarantee would be 3.5 tons per acre (20.0 ton multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Production guarantees for timely, late, and prevented planting acreage within a unit will be combined to determine the production guarantee for the unit. For example, assume you insure 1 unit in which you have a 100 percent share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres were not planted but are eligible for a prevented planting production guarantee. The production guarantee for the unit will be computed as follows:

(i) For the timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(ii) For the late planted acreage, multiply the per acre production guarantee for timely planted acreage by 93 percent and multiply the result by the 50 acres planted late; and

(iii) For prevented planting acreage, multiply the final stage per acre production guarantee for timely planted acreage by:

(A) Thirty five percent and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(B) Seventeen and one-half percent and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (B) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see section 14(d)(1)(iii)).)

Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(3) You must have the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee. Proof that these inputs were available may be required.

(4) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase insurance for sugar beets for the 1997 crop year, prevented planting coverage will begin on the 1997 sales closing date for sugar beets in the county. If the sugar beet coverage remains in effect for the 1998 crop year (is not terminated or canceled during or after the 1997 crop year), prevented planting coverage for the 1998 crop year began on the 1997 sales closing date. Cancellation for the purpose of transferring the policy to a different insurance provider when there is no lapse in coverage will not be considered terminated or canceled coverage for the purpose of the preceding sentence.

(5) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all FSA Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) Eligible acreage will not exceed the number of acres required to be grown in the current crop year under a contract executed with a processor prior to the acreage reporting date or the number of acres needed to produce the amount of contracted production based on the APH yield for the acreage.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iii) A prevented planting production guarantee will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage was double-cropped in each of the last 4 years;

(E) On which the insured crop is prevented from being planted, if any other crop is

planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in section 14(d)(2)(iii)(A), or a substitute crop allowed in section 14 (d)(2)(iii)(B), unless you provide adequate records of acreage and production showing that the acreage was double-cropped in each of the last 4 years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double-cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of sugar beet acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of sugar beets on one optional unit and 40 acres of sugar beets on the second optional unit, your prevented planting eligible acreage would be reduced to zero (*i.e.*, 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(6) In accordance with the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee, the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

15. Written Agreements

Designated terms of this policy may be altered by written agreement. The following conditions will apply:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 15(e).

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election.

(d) Each written agreement will only be valid for one year. If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy.

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, DC, on November 13, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–29560 Filed 11–18–96; 8:45 am]

BILLING CODE 3410–FA–P

Commodity Credit Corporation

7 CFR Part 1485

RIN 0551–AA24

Agreements for the Development of Foreign Markets for Agricultural Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule revises regulations governing the Market Promotion Program to conform to section 244(b) of the Federal Agriculture Improvement and Reform Act of 1996. This rule changes the name of the program to the Market Access Program and amends the eligibility criteria for participation in the program.

EFFECTIVE DATE: November 19, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon L. McClure or Denise Fetters at (202) 720–5521.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this rule is ''significant''.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

Paperwork Reduction Act

This final rule does not impose any new reporting or record keeping requirements. The information collection requirements for participating in the MAP were previously approved for use by the Office of Management and Budget under OMB control number 0551–0027.

Executive Order 12372

This final rule is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 46 FR 29115 (June 24, 1983).

Executive Order 12988

This final rule has been reviewed under the Executive Order 12988, Civil Justice Reform. The rule would have pre-emptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The rule would not have retroactive effect. Administrative proceedings are not required before parties may seek judicial review.

Background

Section 244 of the Federal Agricultural Improvement and Reform Act of 1996 (''1996 Act'') amended the Market Promotion Program authorized by section 203 of the Agricultural Trade Act of 1978, 7 U.S.C. 5623. The Market Promotion Program is a Commodity Credit Corporation (''CCC'') program to encourage the development, maintenance and expansion of foreign markets for agricultural commodities. Section 244(a) of the 1996 Act changed the name of the program to the Market Access Program (''MAP'') and this rule revises the existing regulations to reflect that name change.

Section 244(b) of the 1996 Act changed the statutory eligibility criteria for new participants in the Market Access Program. MAP funds may not be used to provide direct assistance to any foreign for-profit firm for its use in promoting foreign-produced products. Secondly, MAP funds may not be used to provide direct assistance to any for-profit firm that is not recognized as a small business concern described in section 3(a) of the Small Business Act, 15 U.S.C. 632(a), other than cooperatives, associations authorized under 7 U.S.C. 291, *i.e.*, Capper-Volstead associations, and nonprofit trade associations. Finally, section 244(b) of the 1996 Act requires that beneficiaries of branded promotion