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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563-AB24

Common Crop Insurance Regulations; Malting Barley Price and Quality Endorsement Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation ("FCIC") hereby issues additional regulations for provisions to insure malting barley. This action will add a second endorsement, the Malting Barley Price and Quality Endorsement, under which malting barley may be insured. The current malting barley endorsement will remain in effect for the 1996 crop only and, effective with the 1997 crop year, will be replaced by the new Malting Barley Price and Quality Endorsement. The intended effect of this rule is to improve the insurance coverage now available for producers who grow malting barley under contract and provide a new option that will allow producers without contracts (open market producers) to obtain insurance for their malting barley.

EFFECTIVE DATE: March 4, 1996.

ADDRESSES: For information concerning submission of comments on information collection, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the Cost-Benefit Analysis to the Malting Barley Price and Quality Endorsement Crop Insurance provisions, contact Diana Moslak, United States Department of Agriculture, Federal Crop Insurance Corporation, Washington, D.C. 20250. Telephone (202) 720-0713.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Departmental Regulation 1512-1

This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512-1. 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 July 1, 2000.

This rule has been determined to be "significant" for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget ("OMB").

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that the expected benefits of this action outweigh the costs. The new Malting Barley Price and Quality Endorsement will simplify program operations, benefit FCIC and reinsured companies, and enhance the insurance coverage for malting barley producers.

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), Pub. L. 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. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires

FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 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. The impact of obtaining or delivering these policies will not vary significantly from that required to obtain or deliver the present policy. 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 12372

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

Executive Order 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. 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 at 7 CFR part 11, must be exhausted before action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have any 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 program to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Monday, December 11, 1995, FCIC published a proposed rule in the Federal Register at 60 FR 63457 to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.103, Malting Barley Option Provisions, effective for the 1996 and succeeding crop years. However, the December 31, 1995, date by which contract changes must be made for the 1996 crop year passed before the provisions could be published as a final rule. Therefore, for the 1996 crop year only, FCIC will make both the current Malting Barley Endorsement (§ 457.103) and this new Malting Barley Price and Quality Endorsement (§ 457.118) available. The new endorsement will make insurance coverage available to malting barley producers who do not hold a production contract with a malting or brewing company, and to improve coverage for those producers who do have such a contract. Beginning with the 1997 crop year, the Malting Barley Price and Quality Endorsement will replace the current Malting Barley Endorsement.

Following publication of the proposed rule, the public was afforded 15 days to submit written comments, data, and opinions. FCIC received 33 comments. The comments received and FCIC responses are as follows:

Comment: One comment received from a State Commissioner of Agriculture recommended adding the following to the supplementary information in the preamble: "FCIC must offer producers the right to mediation as required under Pub. L. No. 103-354, as part of the informal administrative appeal process."

Response: FCIC agrees that mediation may be required in some instances but that requirement is contained in the appeal regulations.

Comment: Three comments were received regarding the length of the comment period for the proposed rule. One received from the legal counsel of a reinsured company stated that FCIC's proposed rulemaking is in violation of the Administrative Procedure Act. Two comments, one from the insurance industry and one from a State Commissioner of Agriculture, indicated that the comment period was too short.

Response: FCIC published its proposed regulation with a shortened comment period in order to allow sufficient time to consider all comments and publish the final rule with sufficient time before the sales closing date to permit the sale of the insurance policies and training of insurance providers. Further, interested parties were kept apprised of the proposed changes to the malting barley program, and the date of its publication, in order to facilitate their ability to provide meaningful comments within the short time period. No violation of the Administrative Procedure Act has occurred.

Comment: One comment received from the insurance industry recommended that implementation of this rule be delayed until the 1997 crop year. The comment indicated that it is too late to implement the proposed program changes for the 1996 crop year because: (1) The Standard Reinsurance Agreement (SRA) is already in place and approved; (2) Agent training is completed in many areas, and procedures for 1996 are in place; and (3) Little time for training and marketing will be available. The comment states that changing the endorsement for the 1996 crop year will require FCIC to allow companies to make changes to the SRA fund and percentage elections; and that reimbursement of company costs associated with marketing, training, and reissuance of procedures will need to be addressed under the 1996 SRA.

Response: There is nothing in the SRA that precludes FCIC from changing the terms of an insurance contract prior to the contract change date or offering new insurance products after implementation of the current years' SRA. FCIC is offering the new Malting Barley Price and Quality Endorsement as a new insurance product to be sold in conjunction with the currently available malting barley endorsement. Nothing requires any company to sell the endorsement. The Company may do so if it believes that making the option available is good business.

Comment: One comment received from a barley industry organization indicated that the new endorsement will offer an important option to many North

Dakota open-market barley producers. The comment further stated that these producers now will be afforded the opportunity to insure against quality losses at representative prices.

Response: FCIC agrees.

Comment: One comment received from the Farm Service Agency (FSA) asked if the endorsement will be available in all counties that currently have a feed barley insurance program or only in counties that currently have malting barley insurance.

Response: The new endorsement will initially be available only in counties that currently have a malting barley insurance program in place.

Comment: One comment received from the insurance industry indicated it would be advantageous for producers to elect Option A or B on a yearly basis rather than the initial selection being continuous. The comment stated that insureds with Option B will think they have an endorsement in effect even if they fail to execute a malting barley contract.

Response: This recommendation would result in unnecessary additional paperwork and administrative expense each crop year. The endorsement is clear that there is no coverage when the producer fails to obtain a malting barley contract. Further, a producer can cancel an Option and select another, provided it is done prior to the sales closing date. Also, there are large malt barley growing areas in which there is very little, if any, contracted production. Requiring producers to affirmatively select option A each year is unnecessary in these areas. No changes in the proposed provisions have been made.

Comment: One comment received from a State Commissioner of Agriculture suggested adding the following language to section 2 of the endorsement: "Producers who sign up for coverage Option A at the time of the sales closing date, and subsequently enter into a contract with some or all of their malting barley production will retain the Option A malting barley coverage. The malting barley production guarantee for the producer then will be the same as the coverage guaranteed under the Option A insurance contract." The comment indicated that malting barley contracts can be entered into in the late spring and that growers with Option A coverage should not forego their insurance coverage if they do enter into such a contract.

Response: FCIC agrees with the comment. Section 2 and language in the heading of Option A have been amended accordingly.

Comment: Two comments were received, one from FSA and one from

the insurance industry, that recommended clarifying whether the additional value price election percentage can vary from that selected for feed barley or if the percentages must be the same.

Response: It is intended that producers be allowed to select a price election percentage for malting barley that varies from that selected for feed barley. FCIC agrees that clarification is needed and has amended the provisions in section 3 accordingly.

Comment: One comment received from the insurance industry indicated that the provision requiring a producer to select an additional value price election at the time of application would work the first year of insurance, but would be a problem in succeeding years. The comment also asked what procedure would be followed to change price elections from year to year.

Response: Under any crop insurance policy, the producer is required to select a price election. There is greater uncertainty under Option B because the price upon which the election is based is not established prior to the sales closing date. However, there is too great a risk of adverse selection associated with permitting producers to select their price elections after their prices have been established by contract. The maximum price election is stated in Option B. Procedures to change price elections from year to year will be the same as those in effect for other crops. No change has been made to the proposed provision.

Comment: One comment received from a State Commissioner of Agriculture recommended providing prevented planting coverage under the terms of the endorsement.

Response: Determining a producer's intentions would make prevented planting difficult to administer. Under other insurance products, all terms of the contract are known on or before the sales closing date. However, under this endorsement, a producer may not know if the malting barley will be under contract, the number of acres insurable under the endorsement or the price until the acreage reporting date. This uncertainty makes it difficult to establish an actuarially sound premium rate. Therefore, FCIC finds it appropriate to provide prevented planting coverage on the basis of the feed barley production guarantee and price election. If reliable methods to administer a prevented planting program can be devised, then the endorsement can later be amended. No change to the proposed provision has been made.

Comment: One comment received from a producer organization indicated that the proposed "cap" of 200% of the maximum additional value price election shown on the Special Provisions is too low to cover the contract prices received for malting barley. The comment suggested "capping" the additional value price election under Option B at \$2.00 per bushel.

Response: FCIC agrees and has revised the provisions as recommended.

Comment: One comment received from the insurance industry recommended changing the time by which a producer must submit a claim for indemnity to the earlier of the date of final disposition of all production or May 31 of the calendar year following the year the crop is normally harvested.

Response: FCIC agrees that the time of disposition of all production should be considered and has amended the provisions in section 7 accordingly.

Comment: Two comments received from the insurance industry indicated concern regarding the extended date for settling claims. One comment stated that keeping claims open until May 31 places the insurance provider well into the following crop year when early losses are being worked, and increases the likelihood of errors. This comment also recommended using a system of discount factors to allow claims to be worked at harvest time. The other comment indicated that the settlement date will delay needed benefits to producers and complicate settlement under the Standard Reinsurance Agreement.

Response: Losses will have initially been adjusted as soon as possible after the notice of loss. It is only when there is production that fails to meet the quality criteria that the claim remains open. If the claim remains open, adjustment only occurs if, and when, the producer is able to sell such production. If such production is later sold, there is little or no economic loss to producers. Even though settlement of claims may be delayed, the use of discount factors or settlement of claims at harvest time is not actuarially sound since it will allow the producer to receive payments to which he may not be entitled. Further, since the May 31 deadline still falls under the same Standard Reinsurance Agreement, settlement should not be complicated by this delay. Therefore, no change has been made to the proposed provisions.

Comment: One comment received from the insurance industry indicated that some producers may contract the production from some acreage but also grow additional acreage for open-market

sales. The comment indicated that it would be difficult to track the acreage separately and that the problem might be rectified by allowing the uncontracted acreage to be insured under Option A.

Response: The endorsement already requires producers who grow both contracted and non-contracted production within the same crop year to insure such production under Option A. As indicated in the comment, it is difficult to track the specific acreage from which malting barley production is harvested. Therefore, no change is required.

Comment: Two comments received from the insurance industry recommended using the same Actual Production History (APH) database for both feed and malting barley. One of the comments recommended using a temporary yield in the malting barley APH database to avoid a one year difference in the databases between malting and feed barley. This comment also recommended making reference to the APH crop year in section 1 of Option A to avoid confusion.

Response: FCIC considered using temporary yields in malting barley databases but elected not to do so because of the extra paperwork and administrative expense involved with replacing the temporary yields each year. FCIC agrees that adding a reference to APH in section 1 of Option A may help clarify record requirements and has amended the section accordingly.

Comment: One comment received from the insurance industry recommended that the malting barley APH database reflect only acreage from which malting barley was actually sold. The comment indicated that a guarantee based on the total acreage planted to malting varieties and the production sold for malting purposes would misrepresent potential production.

Response: Since all acreage planted to approved malting varieties is insured and the production available for sale, it must be considered in the database. Otherwise, FCIC would be providing insurance for changes in the market, which is not an insured cause of loss. No changes have been made to the proposed provisions.

Comment: One comment received from a State Commissioner of Agriculture recommended changing the number of yearly records of sale of malting barley that are required from at least four years to three out of the previous five years. The comment further recommended that "acceptable records" be defined.

Response: Allowing the producer to select the years for which production

records are provided might result in the poorest production years not being reflected in the data base. This would result in excessive production guarantees, losses, and loss ratios.

Specific production record requirements are statutory and will be contained in procedural handbooks. No change has been made to the proposed provision.

Comment: One comment received from a State Commissioner of Agriculture recommended removing provisions that limit the malting barley production guarantee to that determined for feed barley. The comment recommends using only the malting barley records to determine coverage under Option A, and only the contracted amount of production to determine coverage under Option B.

Response: The production guarantee is intended to determine that portion of the expected production that will be insured. Producers should not receive a guarantee in excess of what the acreage could reasonably be expected to produce. Under Option A, the best indicator of the expected production is using the APH for feed barley because it takes into consideration all the actual production from the insured acreage, whether or not sold as malting barley. Under Option B, the producer's insurance is limited to contracted acreage or production. However, the contracted amount may differ from the actual production of the acreage. Therefore, the actual production must be taken into consideration. No change has been made to the proposed provisions.

Comment: One comment received from the insurance industry recommended changing the date by which a producer must submit a copy of the malting barley contract from the acreage reporting date to the sales closing date. The comment stated that adverse selection would be reduced by changing this requirement to an earlier date.

Response: In many cases, malting barley contracts are not completed until April or May. Changing the contract submission date to the March 15 sales closing date would cause many growers who normally complete contracts after this date to be ineligible for coverage under Option B. No change has been made in the proposed provisions.

Comment: One comment received from the insurance industry stated that the insurance guarantee under Option B would be underestimated when a grower plants more acreage to approved malting varieties than the number of acres grown under contract.

Response: Option B is not available to producers who grow more acreage of

malting barley than is under contract. Option A should be used by producers who grow all open-market production or a combination of contracted and open-market production.

Comment: One comment received from the insurance industry asked if an additional data base would have to be established for malting barley.

Response: Separate production data bases will be required for any acreage planted to approved malting barley varieties and acreage planted for feed barley.

Comment: One comment received from the FSA recommended expanding the premium computation contained in Option B, section 3(b) (redesignated as 3(c) in the final rule) to include the factors to be applied, whether or not a separate liability is to be calculated, and the applicable premium rate (feed barley or a separate rate).

Response: The comment misinterprets the term "premium" in this subsection. As used in Option B, section 3(c), the term refers to an additional dollar amount (above the base) paid to the producer for barley production meeting contractual requirements rather than the premium amount charged for insurance. The provision has been clarified by using the term "premium price per bushel."

Comment: One comment received from the FSA recommended that the definition of unit be clarified to indicate that units by share will be available. The comment stated that the proposed provisions indicate that basic units will not be available.

Response: All acreage of malting barley is insurable under a single unit; basic units are not available. All insurable shares in the malting barley will be designated on the acreage report for the single unit. No changes have been made in the proposed provisions.

Comment: One comment received from a State Commissioner of Agriculture recommended that producers have the option of designating, on an acre by acre basis, either feed barley insurance coverage or malting barley insurance coverage. The comment further suggested that producers have the option of designating separate insurance units.

Response: To prevent selecting against the insurance provider, all acreage planted to approved malting varieties must be insured as malting barley. Allowing malting barley insurance only on acreage selected by the producers would allow them to designate malting barley insurance only on acreage where they have had difficulty producing barley meeting malting barley standards and, thus,

receiving a larger indemnity than would be available for feed barley. Allowing units would create situations in which growers could deliver 100 percent or more of the malting barley guarantee and still receive an indemnity for a malting barley loss on one or more units. This not only violates an accepted principle of insurance that the insured should not profit by a loss, it also makes it difficult to develop an adequate premium rate for the coverage. No changes in the provisions have been made.

Comment: One comment received from a State Commissioner of Agriculture recommended removing the requirement that potential unharvested production be counted against the insurance guarantee. The comment indicated that the intent of provisions in section 4(a)(2) of Option B is unclear.

Response: This section may be unclear because of a drafting error. Section 4(a)(2) of Option B should not begin with the word "either." This correction has been made. This section is intended to require that all harvested production and all production that is not harvested be considered when determining the amount of production to count against the production guarantee.

Comment: One comment received from the FSA pointed out a typographical error in the second sentence of section 7 (redesignated as section 6 in this final rule) in Option B. The sentence should read as follows: Assume that *each* unit contains....

Response: The correction has been made.

Comment: One comment received from the insurance industry asked for clarification of the 2,100 bushel guarantee reference in section 7 (redesignated as section 6 in this final rule) of Option B.

Response: This provision has been revised to clarify how an indemnity will be paid.

Comment: One comment received from the crop insurance industry indicated that the producer's share needs to be added to the provisions regarding calculation of the claim amount.

Response: FCIC agrees and has amended the provisions as recommended.

In addition to the changes indicated above, FCIC has determined that it is necessary to:

- (1) Modify the definition of "Malting barley contract" for the purpose of clarification;
- (2) Add provisions in section 9 to indicate that production of approved malting varieties and any production of

feed barley varieties must not be commingled prior to the insurance provider making all necessary determinations for the purposes of this coverage; Failure to keep production separate may result in denial of indemnity under the endorsement;

(3) Delete the definition of "Value per bushel." This definition was used to describe how production not meeting quality standards contained in the endorsement was to be valued if such production was ultimately sold as malting barley. The definition is unnecessary because the value of such production will simply be the sale price per bushel of the damaged production;

(4) Add provisions in section 4(b) of both Options A and B to allow conditioning costs to be subtracted from the value of production that could not be sold for malting purposes without conditioning; and

(5) Relocate provisions regarding delayed settlement of claims from section 5 of both Options to section 7 of the provisions that apply to both Options. These provisions were identical in the proposed rule and should not be duplicated. Provisions 6 and 7 of both Options have been redesignated as sections 5 and 6, respectively.

Good cause is shown to make this rule effective upon publication in the Federal Register and without the 30-day period required by the Administrative Procedure Act. This rule substantially improves the malting barley insurance coverage. Public interest requires the agency to act immediately to make this endorsement available for the 1996 crop year. The rule expands coverage availability to producers who do not hold a production contract with a malting or brewing company and improves coverage for those producers who do have such a contract. Therefore, good cause is shown to make this final rule effective in less than 30 days after publication.

List of Subjects in 7 CFR Part 457

Crop insurance, Malting Barley Price and Quality Endorsement Crop Provisions.

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) by adding a new § 457.118, effective for the 1996 and succeeding crop years, 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 § 457.118 to read as follows:

§ 457.118 Malting Barley Crop Insurance.

The malting barley crop insurance provisions for the 1996 and succeeding crop years are as follows:

United States Department of Agriculture
Federal Crop Insurance Corporation Small
Grains Crop Insurance Malting Barley Price
and Quality Endorsement

(This is a continuous endorsement. Refer to section 2 of the Common Crop Insurance Policy.)

In return for your payment of premium for the coverage contained herein, this endorsement will be attached to and made part of the Common Crop Insurance Policy (§ 457.8) and Small Grains Crop Provisions (§ 457.101), subject to the terms and conditions described herein.

1. You must have the Common Crop Insurance Policy (§ 457.8) and the Small Grains Crop Insurance Provisions (§ 457.101) in force to elect to insure malting barley under this endorsement.

2. You must select either Option A or Option B on or before the sales closing date. Failure to select either Option A or Option B, or if you elect Option B but fail to have a malting barley contract in effect by the acreage reporting date, will result in no coverage under this endorsement for the applicable crop year. If you elect coverage under Option A, and subsequently enter into a malting barley contract, your coverage will continue under the terms of Option A. Your selection (Option A or B) will continue from year to year unless you cancel or change your selection on or before the sales closing date.

3. You must select either an additional value price election or a percentage of the maximum additional value price election on or before the sales closing date. The percentage of the maximum additional value price election you select does not have to be the same as that selected under the Small Grains Crop Provisions for feed barley. In the event that you choose a percentage of the maximum additional value price election, we will multiply that percentage by the maximum additional value price election specified in Option A or B to determine the additional value price election that pertains to your contract.

4. The additional premium amount for this coverage will be determined by multiplying your malting barley production guarantee per acre by your selected additional value price election, times the premium rate stated in the Actuarial Table, times the acreage planted to approved malting barley varieties, times your share at the time coverage begins.

5. In addition to the reporting requirements contained in section 6 of the Common Crop Insurance Policy (§ 457.8), you must provide the information required by the Option you select.

6. In lieu of the provisions regarding units and unit division in the Common Crop Insurance Policy (§ 457.8) and the Small Grains Crop Provisions (§ 457.101), all barley acreage in the county that is planted to malting varieties that is insurable under the Small Grains Crop Provisions for feed barley and your selected Option must be insured under this endorsement and will be considered as one unit regardless of whether such acreage is owned, rented for cash, or rented for a share of the crop. The producer's shares in the malting barley acreage to be insured under this endorsement must be designated on the acreage report.

7. In lieu of the provisions in the Common Crop Insurance Policy (§ 457.8) that requires us to pay your loss within 30 days after we reach agreement with you, whenever any production fails one or more of the quality criteria specified herein, the claim may not be settled until the earlier of:

(a) The date you sell, feed, donate, or otherwise utilize such production for any purpose; or

(b) May 31 of the calendar year immediately following the calendar year in which the insured malting barley is normally harvested.

If the production meets all quality criteria contained herein or grades U.S. No. 4 or lower in accordance with the grades and grade requirements for the subclasses Six-rowed and Two-rowed barley, and for the class Barley in accordance with the Official United States Standards for Grain, the claim will be settled within 30 days in accordance with the Common Crop Insurance Policy (§ 457.8).

8. This endorsement does not provide additional prevented planting coverage. Such coverage is only provided in accordance with the provisions of the Small Grain Crop Provisions for feed barley.

9. Production from all acreage insured under this endorsement and any production of feed barley varieties must not be commingled prior to our making all determinations necessary for the purposes of this insurance. Failure to keep production separate may result in denial of your claim for indemnity.

10. Definitions:

(a) APH—Actual production history as determined in accordance with 7 CFR part 400, subpart G.

(b) Approved malting variety—A variety of barley specified as such in the Special Provisions.

(c) Brewery—A facility where malt beverages are commercially produced for human consumption.

(d) Contracted production—A quantity of barley the producer agrees to grow and deliver, and the buyer agrees to accept, under the terms of the malting barley contract.

(e) Licensed grain grader—A person authorized by the U.S. Department of Agriculture to inspect and grade barley under the U.S. Standards for malt barley.

(f) Malting barley contract—An agreement in writing between the producer and a brewery or a business enterprise that produces or sells malt or processed mash to a brewery, or a business enterprise owned by such brewery or business, that contains the

amount of contracted production, the purchase price, or a method to determine such price, and other such terms that establish the obligations of each party to the agreement.

(g) Objective test—A determination made by a qualified person using standardized equipment that is widely used in the malting industry, and following a procedure approved by the American Society of Brewing Chemists when determining percent germination or protein content; grading performed by following a procedure approved by the Federal Grain Inspection Service when determining quality factors other than percent germination or protein content; or by the Food and Drug Administration when determining concentrations of mycotoxins or other substances or conditions that are identified as being injurious to human or animal health.

(h) Subjective test—A determination made by a person using olfactory, visual, touch or feel, masticatory, or other senses unless performed by a licensed grain grader; or that uses non-standardized equipment; or that does not follow a procedure approved by the American Society of Brewing Chemists, the Federal Grain Inspection Service, or the Food and Drug Administration.

(i) Unit—All insurable acreage of approved malting varieties in the county on the date coverage begins for the crop year.

Option A—(Available for Producers of Production Contracted After the Sales Closing Date, Non-Contracted Production, or a Combination of Contracted and Non-Contracted Production)

This option provides coverage for malting barley production and quality losses at a price per bushel greater than that offered under the Small Grains Crop Provisions.

1. To be eligible for coverage under this option, you must provide us acceptable records of your sales of malting barley and the number of acres planted to malting varieties for at least the four crop years in your APH database prior to the crop year immediately preceding the current crop year. For example, to determine your production guarantee for the 1996 crop year, records must be provided for the 1991 through the 1994 crop years, if malting barley varieties were planted in each of those crop years. Failure to provide acceptable records or reports as required herein will make you ineligible for coverage under this endorsement. You must provide these records to us no later than the production reporting date specified in the Common Crop Insurance Policy (§ 457.8).

2. Your malting barley production guarantee per acre will be the lesser of:

(a) The production guarantee for feed barley for acreage planted to approved malting varieties calculated in accordance with the Small Grains Crop Provisions and APH regulations; or

(b) A production guarantee calculated in accordance with APH procedures using the malting barley sales and acreage records provided by you.

3. The additional value price per bushel elected cannot exceed the maximum price designated in the Special Provisions.

4. The amount of production to count against your malting barley production guarantee will be determined as follows:

(a) Production to count will include all:

(1) Appraised production determined in accordance with sections 11(c)(1) (i) and (ii) of the Small Grains Crop Provisions;

(2) Harvested production and potential unharvested production that meets, or would meet if properly handled;

(i) Tolerances established by the Food and Drug Administration or other public health organization of the United States for substances or conditions, including mycotoxins, that are identified as being injurious to human health; and

(ii) The following quality standards, as applicable:

	Six-rowed malting barley (percent)	Two-rowed malting barley (percent)
Protein (dry basis).	14.0 maximum.	14.0 maximum
Plump kernels.	65.0 minimum.	75.0 minimum
Thin kernels .	10.0 maximum.	10.0 maximum
Germination .	95.0 minimum.	95.0 minimum
Blight damaged.	4.0 maximum	4.0 maximum
Injured by mold.	5.0 maximum	5.0 maximum
Mold damaged.	0.4 maximum	0.4 maximum
Sprout damaged.	1.0 maximum	1.0 maximum
Injured by frost.	5.0 maximum	5.0 maximum
Frost damaged.	0.4 maximum	0.4 maximum

(3) Harvested production that does not meet the quality standards contained in section 4(a)(2) of this Option, but is accepted by a buyer for malting purposes. For such production, the production to count may be reduced or the price used to settle the claim may be adjusted in accordance with sections 4 (b), (c), and (d) of this Option.

(b) The quantity of production that initially fails any quality standard contained in section 4(a)(2), but is sold as malting barley (except production included in section 4(c)), may be reduced as described in this subsection, provided the failure of such production to meet these standards is due to insurable causes. The production to count of production sold under section 4(a)(3) will be determined by:

(1) Adding the maximum barley price election under the Small Grains Crop Provisions and the maximum additional value price;

(2) Dividing the result of paragraph (1) by the price per bushel received for the damaged production; and

(3) Multiplying the result of paragraph (2) (not to exceed 1.000) by the number of bushels of damaged production.

(c) The production to count for production that initially fails any quality standard contained in section 4 (a)(2), sold as malting barley, but is conditioned before the sale will

not be reduced under section 4(b). Such production will be considered separately from all other production to count. (See section 5(d).)

(d) The additional value price election per bushel used to determine the value of the production to count for production that initially fails any quality standard contained in section 4(a)(2), but is sold as malting barley, may be reduced by the cost incurred for any conditioning required to improve the quality of production so that it is marketable as malting barley, provided the failure of such production to meet these standards is due to insurable causes.

(e) No reduction in the production to count or the additional value price election will be allowed for moisture content, damage due to uninsured causes; costs or reduced value associated with drying, handling, processing, or quality factors other than those contained in section 4(a)(2) of this Option; or any other costs associated with normal handling and marketing of malting barley.

(f) All grade and quality determinations must be based on the results of objective tests. No indemnity will be paid for any loss established by subjective tests. We may obtain one or more samples of the insured crop and have tests performed at an official grain inspection location established under the U.S. Grain Standards Act or laboratory of our choice to verify the results of any test. In the event of a conflict in the test results, our results will determine the amount of production to count.

5. In the event of loss or damage covered by this policy, we will settle your claim by:

(a) Multiplying the insured acreage times your malting barley production guarantee per acre;

(b) Multiplying the result in subsection (a) of this section times your additional value price election per bushel;

(c) Multiplying the number of bushels of production to count determined in accordance with sections 4(a) and (b) of this Option times your elected additional value price per bushel;

(d) Multiplying the production to count determined under section 4(c) of this Option times the additional value price per bushel determined in section 4(d) of the Option;

(e) Adding the results of subsections (c) and (d) of this section;

(f) Subtracting the result of subsection (e) of this section from the result in subsection (b); and

(g) Multiplying the result of subsection (f) of this section times your share.

6. For example, assume you insure two units of barley under the Small Grains Crop Provisions in which you have a 100% share and that are planted to approved malting varieties. Assume the following:

(a) Each unit contains 40 acres;

(b) You have sold an average of 20 bushels per acre of malting barley for each of the last 6 years;

(c) You have selected the 70 percent coverage level;

(d) Your production guarantee under the Small Grains Crop Provisions and the APH regulations for feed barley is 30 bushels per acre;

(e) Your total production from all units under the Small Grains Crop Provisions is

1,000 bushels, all of which fails to meet the quality standards specified by this Option. Two hundred bushels are sold for malting purposes after conditioning. Conditioning costs are \$0.05 per bushel; and

(f) Your additional value price election is \$0.40 per bushel.

Your malting barley production guarantee is 1120.0 bushels (the lesser of 20 or 30×70 percent coverage level ×80 acres). The value of your production guarantee is \$448.00 (1120 bushels ×\$0.40 per bushel). Your production to count is 200 bushels. The value of your production to count is \$70.00 (200 bushels ×\$0.35 (\$0.40—\$0.05)). Your indemnity for the malting barley unit is \$378.00 ((\$448.00—\$70.00)×100 percent share). Any remaining loss is paid under the Small Grains Crop Provisions for feed barley.

Option B—(Available for Producers of Contracted Production Only)

This option provides coverage for malting barley production and quality losses at a price per bushel greater than that offered under the Small Grains Crop Provisions provided you have a malting barley contract.

1. If you elect this option you must provide us a copy of your malting barley contract on or before the acreage reporting date. All terms and conditions of the contract, including the contract price or futures contract premium price, must be specified in the contract and be effective on or before the acreage reporting date. If you fail to timely provide the contract, or any terms are omitted, we may elect to determine the relevant information necessary for insurance under this Option (B), or deny liability. Only contracted production or acreage is covered by this Option (B).

2. Your malting barley guarantee per acre will be the lesser of:

(a) The production guarantee for feed barley for acreage planted to approved malting barley varieties calculated in accordance with the Small Grains Crop Provisions and APH regulations; or

(b) The number of bushels obtained by:

(1) Dividing the number of bushels of contracted production by the number of acres planted to approved malting varieties in the current crop year; and

(2) Multiplying the result by the percentage for the coverage level you elected under the Small Grains Crop Provisions.

3. The additional value price election per bushel will be the lesser of, as applicable:

(a) The guaranteed sale price per bushel established in the malting barley contract (without regard to discounts or incentives that may apply) minus the maximum price election for feed barley; or

(b) The premium price per bushel (without regard to discounts or incentives) if the sale price is based on a future market price as specified in the malting barley contract.

Under no circumstances will the additional value price election per bushel exceed \$2.00 per bushel.

4. The amount of production to count against your malting barley production guarantee will be determined as follows:

(a) Production to count will include all:

(1) Appraised production determined in accordance with sections 11(c)(1) (i) and (ii) of the Small Grains Crop Provisions;

(2) Harvested production and potential unharvested production that meets, or would meet if properly handled, the minimum acceptance standards contained in the malting barley contract for protein, plump kernels, thin kernels, germination, blight damage, mold injury or damage, sprout damage, frost injury or damage, and mycotoxins or other substances or conditions identified by the Food and Drug Administration or other public health organization of the United States as being injurious to human health, or the following quality standards as applicable:

	Six-rowed malting barley	Two-rowed malting barley
	(percent)	(percent)
Protein (dry basis).	14.0 maximum.	14.0 maximum
Plump kernels.	65.0 minimum.	75.0 minimum
Thin kernels .	10.0 maximum.	10.0 maximum
Germination .	95.0 minimum.	95.0 minimum
Blight damaged.	4.0 maximum	4.0 maximum
Injured by mold.	5.0 maximum	5.0 maximum
Mold damaged.	0.4 maximum	0.4 maximum
Sprout damaged.	1.0 maximum	1.0 maximum
Injured by frost.	5.0 maximum	5.0 maximum
Frost damaged.	0.4 maximum	0.4 maximum

(3) Harvested production that does not meet the quality standards contained in section 4(a)(2) of this Option, but is accepted by a buyer for malting purposes. For such production, the production to count may be reduced or the price used to settle the claim may be adjusted in accordance with sections 4 (b), (c), and (d) of this Option.

(b) The quantity of production that initially fails any quality standard contained in section 4(a)(2), but is sold as malting barley (except production included in section 4(c)), may be reduced as described in this subsection, provided the failure of such production to meet these standards is due to insurable causes. The production to count of production sold under section 4(a)(3) will be determined by:

(1) Adding the maximum barley price election under the Small Grains Crop Provisions and the maximum additional value price;

(2) Dividing the result of paragraph (1) by the price per bushel received for the damaged production; and

(3i) Multiplying the result of paragraph (2) (not to exceed 1.000) by the number of bushels of damaged production.

(c) The production to count for production that initially fails any quality standard contained in section 4(a)(2), sold as malting barley, but is conditioned before the sale will not be reduced under section 4(b). Such production will be considered separately

from all other production to count. (See section 5(d).)

(d) The additional value price election per bushel used to determine the value of the production to count for production that initially fails any quality standard contained in section 4(a)(2), but is sold as malting barley, may be reduced by the cost incurred for any conditioning required to improve the quality of production so that it is marketable as malting barley, provided the failure of such production to meet these standards is due to insurable causes.

(e) No reduction in the production to count or the additional value price election will be allowed for moisture content, damage due to uninsured causes; costs or reduced value associated with drying, handling, processing, or quality factors other than those contained in section 4(a)(2) of this Option; or any other costs associated with normal handling and marketing of malting barley.

(f) All grade and quality determinations must be based on the results of objective tests. No indemnity will be paid for any loss established by subjective tests. We may obtain one or more samples of the insured crop and have tests performed at an official grain inspection location established under the U.S. Grain Standards Act or laboratory of our choice to verify the results of any test. In the event of a conflict in the test results, our results will determine the amount of production to count.

5. In the event of loss or damage covered by this policy, we will settle your claim by:

(a) Multiplying the insured acreage times your malting barley production guarantee per acre;

(b) Multiplying the result in subsection (a) of this section times your additional value price election per bushel;

(c) Multiplying the number of bushels of production to count determined in accordance with sections 4 (a) and (b) of this Option times your elected additional value price per bushel;

(d) Multiplying the production to count determined under section 4(c) of this Option times the additional value price per bushel determined in section 4(d) of the Option;

(e) Adding the results of subsections (c) and (d) of this section;

(f) Subtracting the result of subsection (e) of this section from the result in subsection (b); and

(g) Multiplying the result of subsection (f) of this section times your share.

6. For example, assume you insure two units of barley under the Small Grains Crop Provisions in which you have a 100% share and that are planted to approved malting varieties. Assume the following:

(a) Each unit contains 40 acres;

(b) You have a contract for the sale of 2500 bushels of malting barley;

(c) You have selected the 70 percent coverage level;

(d) Your production guarantee under the Small Grains Crop Provisions and the APH regulations for feed barley is 35 bushels per acre;

(e) Your total production from all units under the Small Grains Crop Provisions is 1,000 bushels, all of which fails to meet the quality standards specified by this Option.

Two hundred bushels are sold for malting purposes after conditioning. Conditioning cost \$0.05 per bushel; and

(f) Your additional value price election is \$0.60 per bushel.

Your malting barley production guarantee is 1750.0 bushels (the lesser of 35 or 21.875 (2500 contracted bushels ÷ 80 acres x 70 percent coverage) x 80 acres). The value of your production guarantee is \$1050.00 (1750 bushels x \$0.60 per bushel). Your production to count is 200 bushels. The value of your production to count is \$110.00 (200 bushels x \$0.55 (\$0.60—\$0.05)). Your indemnity for the malting barley unit is \$940.00 ((\$1050.00—\$110.00) x 100 percent share). Any remaining loss is paid under the Small Grains Crop Provisions for feed barley.

Done in Washington, D.C., on March 1, 1996.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance
Corporation.

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 242

[INS No. 1716-95]

RIN 1115-AE13

Order to Show Cause and Notice of Hearing; Apprehension, Custody and Detention

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends existing Immigration and Naturalization Service (Service) regulations, by adding the position of institutional hearing program director to the list of Immigration and Naturalization Service officials authorized to issue orders to show cause and warrants of arrest. This is an internal change only and is necessitated by the placement of Service special agents at correctional institution sites to process criminal aliens for deportation proceedings. The modification is intended to facilitate the processing of incarcerated criminal aliens. The position of patrol agent in charge is also being added to the list of officials authorized to issue orders to show cause and warrants of arrest. This change will allow the Service to obtain more efficient use of its personnel and resources and is in keeping with current organizational command structure and program responsibility with a Border Patrol sector. This rule also deletes positions from the list of officials authorized to issue orders to show cause

and warrants of arrest which are no longer necessary.

EFFECTIVE DATE: March 6, 1996.

FOR FURTHER INFORMATION CONTACT: Ira L. Frank, Senior Special Agent, Investigations Division, Immigration and Naturalization Service, 425 I Street NW., Room 1000, Washington, DC 20536, telephone: (202) 514-0747.

SUPPLEMENTARY INFORMATION: This rule adds the position of institutional hearing program director and patrol agent in charge to the list of Immigration and Naturalization Service officials authorized to issue orders to show cause, thereby initiating deportation proceedings pursuant to 8 CFR 242.1(a). It also amends 8 CFR 242.2(c)(1) to permit the same officials to sign warrants of arrest.

The Institutional Hearing Program (IHP) represents one of the Service's major undertakings to process criminal aliens while they are incarcerated in correctional institutions and to obtain orders of deportation prior to their release from imprisonment. The correctional institutions designated as IHP sites are often geographically situated a great distance from an existing Service office that has an official designated to sign orders to show cause and warrants of arrest. Sending orders to show cause or warrants of arrest to another Service office location frequently causes an unnecessary delay in the processing of the criminal alien. This rule will permit the institutional hearing program director, in charge of a staff at a correctional institution designated as an IHP site, to sign orders to show cause and warrants of arrest.

Frequently, patrol agents in charge are also geographically remote from the sector officials currently authorized to issue orders to show cause and warrants of arrest. The addition of patrol agents in charge to the list of immigration officials authorized to issue orders to show cause and warrants of arrest will allow the Service to obtain more efficient use of its personnel and resources, and is in keeping with current organizational command structure and program responsibility within a Border Patrol sector.

The Service is withdrawing authorization for the Director, Organized Crime Drug Enforcement Task Force (OCDETF), and the Assistant Director, OCDETF (New York, NY; Houston, TX; Los Angeles, CA; and Miami, FL), to issue orders to show cause and warrants of arrest. These organizational positions cease to exist. The Service is also withdrawing authorization for the Assistant

Commissioner, Refugees, Asylum and Parole, to issue orders to show cause, because this organizational position no longer exists.

The Service's implementation of this rule as a final rule is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B). The reason and the necessity for immediate implementation of this final rule is as follows: This is a rule of agency organization, practice, or procedure and does not include action which goes beyond formality and substantially affects the rights of those over whom the agency exercises authority.

The rule will not have a significant economic impact. It does not affect parties that are small entities.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities as discussed in the Supplemental section of this document.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 242

Administrative practice and procedure, Aliens, Deportation.

Accordingly, part 242 of chapter I of title 8 of the Code of Federal Regulations is amended as follows: