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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Sugarcane Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes crop provisions for the insurance of sugarcane. The intended effect of this action is to provide policy changes to better meet the needs of the insured. The changes will apply for the 2003 and subsequent crop years.

EFFECTIVE DATE: This rule is effective August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Arden Routh, Risk Management Specialist, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Kansas City, MO 64133, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through April 30, 2004.

Unfunded Mandates Reform Act of 1995

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

Executive Order 13132

The policy contained in this rule does not have any substantial direct effect on 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. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. Additionally, the regulation does not require any greater action on the part of small entities than is required on the part of large entities. The amount of work required of the insurance companies will not increase because the information must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. 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 requires 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 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

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

Background

On October 18, 2000, FCIC published a notice of proposed rulemaking in the **Federal Register** at 65 FR 62311–62313 to revise 7 CFR 457.116 Sugarcane Crop Insurance Provisions, effective for the 2002 and succeeding crop years.

Following publication of the proposed rule the public was afforded 60 days to submit written comments and opinions. A total of 18 comments were received from two reinsured companies and a trade association. The comments received and FCIC's responses are as follows:

Comment. A comment from a trade association stated that the language in section 5(b)(1) is not clear as to which year's production guarantee will be used to determine if the sugarcane is damaged to the extent that it is uninsurable. The commenter also asked who will make the determination that such sugarcane will not produce the production guarantee. The commenter recommended clarifying this section by stating that we will not insure a field of sugarcane that did not produce the production guarantee the previous year.

Response. FCIC disagrees with the commenter's recommended change to section 5(b)(1). Adoption would render the sugarcane uninsurable any time an indemnity is paid the previous year even if the sugarcane has recovered. However, FCIC has clarified that

sugarcane damaged the previous crop year will not be insurable for the current crop year if the sugarcane is unable to produce the yield used to establish the production guarantee for the unit. This clarification is consistent with other crop policies. Company loss adjusters must inspect damaged sugarcane prior to the dates listed in section 7(a)(3) or (4), to determine if such sugarcane is insurable.

Comment. A trade association and an approved insurance provider questioned what age limitations (number of years) will be applicable in section 5(b)(2)?

Response. The age limitation by sugarcane variety, if applicable, will be listed in the Sugarcane Special Provisions. A general example of such a statement would be ''Sugarcane variety LCP 85–384 will not be insurable the sixth year after the initial planting of the sugarcane.''

Comment. An approved insurance provider objected to adding an age limitation on insurable sugarcane in section 5(b)(2). The commenter said the age is not the key variable in the yield but rather care and cultural practices determine yields.

Response. Research shows that sugarcane production decreases with the age of a sugarcane stand and at some point the sugarcane will be unable to produce the yield used to establish the production guarantee. It would violate the principals of insurance to insure a crop that has no expectations of producing the production guarantee. Therefore, no change has been made.

Comment. A trade association recommended that approved insurance providers be given the ability to review the age limitations that will be contained in the Special Provisions prior to issuance of the Special Provisions. This would allow them the opportunity to suggest any changes to these provisions.

Response. The Risk Management Agency Regional Offices will work with all appropriate parties to obtain the information to determine the appropriate age limitations. Any comments will be considered during the process.

Comment. A trade association and an approved insurance provider recommended that FCIC list in the Sugarcane Loss Adjustment Standards Handbook the new and old varieties of sugarcane currently being grown. The commenters also stated that current producers are obtaining good yields on some varieties of sugarcane for up to six years and nearly all varieties for up to four years.

Response. The list of insurable sugarcane must also be available to producers. Therefore, the Sugarcane Special Provisions, which are issued annually, will contain a list of insurable sugarcane varieties and their age limitations. FCIC will examine the yields of the varieties of sugarcane when setting the age limitations.

Comment. A trade association and an approved insurance provider commented about the language in section 5(b)(2) as some producers may have sugarcane that exceeds the age limitation for insurance but the producers prefer to continue to keep such sugarcane under production. In addition, the commenters asked if a producer must request coverage by written agreement to continue to insure such sugarcane.

Response. Coverage for sugarcane that has exceeded the age limitation may be provided if the producer requests that such sugarcane be insured and the insurance provider agrees in writing to insure such acreage. Agreements in writing must not be provided unless the producer can show that the crop has the expectation of producing at least the yield used to establish the production guarantee.

Comment. A trade association stated that although limiting the age at which sugarcane can be insured may eliminate the need for performing stand appraisals, there will still be the need for some type of appraisal if the producer requests insurance of such sugarcane by written agreement.

Response. FCIC agrees there is a need for an appraisal method to determine the insurability of sugarcane that has exceeded the age limitation. The appraisal method will be described in the Sugarcane Loss Adjustment Standards Handbook, which is posted on FCIC's website at: www.rma.usda.gov.

Comment. A trade association asked if the dates in sections 7(a)(3) and (4) are needed if insurance coverage is not allowed on sugarcane that was damaged the previous year. Also, if a written agreement is allowed, language should be provided to state that a field inspection is or is not required.

Response. Sugarcane damaged the previous year may be insurable if it is able to produce the yield used to establish the production guarantee for the current crop year. The dates specified in sections 7(a)(3) and (4) are the dates when insurance will attach to such sugarcane. Language has been added to section 5(b)(2) to specify that an appraisal is needed to determine whether the sugarcane is able to produce the yield used to establish the production guarantee for the current crop year.

Comment. A trade association asked if the proposed language in section 7(b)(2) means that a subsequent year's coverage for a sugarcane crop in all other states except Louisiana could begin prior to the end of the previous year's insurance period of April 30.

Response. FCIC has revised section 7(b)(2) to specify the later of April 15, or 30 days following harvest of the previous crop for stubble cane. This will allow time for an appraisal before insurance attaches.

Comment. A trade association recommended clarifying the language in section 9(a)(2) to state that sugarcane cut for seed without an appraisal will be considered as destroyed without consent and not less than the production guarantee will be considered as production to count. The commenter also requested clarification as to what production will be used to update the actual production history database for the following year for such acreage.

Response. FCIC agrees that not more than the production guarantee should be assigned as production to count and has revised the provision accordingly. This is consistent with section 10(c)(1)(i)(B). For actual production history purposes, the number of acres of sugarcane destroyed without consent will be counted in the total acreage for the unit, but the production to count for such acreage will be zero.

Comment. Two comments were received, one from a trade association and one from an approved insurance provider regarding section 9(a)(2) that a producer knows which acreage is going to be planted or replanted, but may not know which acreage will be cut for seed.

Response. Producers should certainly know before they harvest the crop, which acres are going to be harvested for seed. The 15 day requirement is needed to allow the approved insurance provider time to appraise the acreage. Therefore, no change has been made.

Comment. A trade association commented on the addition of language in section 9(a)(2) that requires an appraisal of sugarcane that will be cut for seed, even though there may not be a loss on the sugarcane. This will result in additional expense to the companies.

Response. The current Sugarcane Crop Provisions in section 9(a)(2) requires the producer to give at least 15 days notice prior to cutting sugarcane for seed and after such notice the sugarcane will be appraised for its sugar potential. Section 9(a)(3), requires a producer to request an appraisal if any time during the crop year sugarcane acreage cut for seed will not produce at least the production guarantee. If an

appraisal is not requested the production to count for such acreage will be the production guarantee. No additional expenses will be incurred by approved insurance providers, because this is currently a requirement in the policy. Therefore, no change has been made.

Comment. A trade association recommended for consistency that the same production guarantee be used in the settlement of claim examples in section 10.

Response. FCIC agrees with the comment and has clarified the settlement of claim examples by using the term production guarantee, where applicable, and the same number of pounds for the production guarantee.

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

1. Added language in section 7(a)(1) to clarify when insurance attaches for plant cane.

2. Clarified that the language in section 9(a)(3) refers to sugarcane cut for seed.

3. Replaced the term ''approved yield'' with ''production guarantee'' in section 9(a)(2) to be consistent with section 10(c)(1)(i)(B) of the current Sugarcane Crop Provisions and also in section 9(a)(3) to be consistent with section 10(c)(1)(iv) of this final rule.

List of Subjects in 7 CFR Part 457

Crop insurance, Sugarcane, reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends the Common Crop Insurance Regulations (7 CFR part 457) for the 2003 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

2. Amend 457.116 as follows:

a. Revise the first sentence of the introductory text;

b. In the crop insurance provisions:

i. In Section 1, revise the definition of ''sugarcane'';

ii. Revise sections 3, 5, 6, and 7;

iii. Revise section 9(a) introductory text and 9(a)(2), and add section 9(a)(3);

iv. Add 2 examples following section 10(b)(4);

v. Remove section 10(c)(1)(iv);

vi. Redesignate sections 10(c)(1)(v) and (c)(1)(vi) as sections 10(c)(1)(iv) and (c)(1)(v), respectively; and

vii. Revise newly designated sections 10(c)(1)(iv) and (c)(1)(v) introductory text.

The revisions and additions read as follows:

§ 457.116 Sugarcane crop insurance provisions.

The Sugarcane Crop Insurance Provisions for the 2003 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Sugarcane. The grass, Saccharum officinarum, that is grown to produce sugar.

* * * * *

3. Contract Changes.

In accordance with section 4 of the Basic Provisions (§ 457.8), the contract change date is June 30 preceding the cancellation date.

* * * * *

5. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions (§ 457.8), the crop insured will be all the sugarcane in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That is grown for processing for sugar or for seed; and

(3) That is not interplanted with another crop, unless allowed by a written agreement.

(b) In addition to the crop listed as not insured in section 8(b) of the Basic Provisions (§ 457.8), we will not insure any sugarcane:

(1) That was damaged the previous crop year to the extent the sugarcane is unable to produce the yield used to establish the production guarantee for the unit for the current crop year; or

(2) That exceeds the age limitations (by variety, if applicable) contained in the Special Provisions , unless we agree in writing to insure such acreage. An agreement in writing will not be provided unless, after an appraisal, we determine that the crop is able to produce at least the yield used to establish the production guarantee for the unit for the current crop year.

6. Insurable Acreage.

Section 9(a)(3) of the Basic Provisions (§ 457.8), is not applicable to the Sugarcane Crop Insurance Provisions.

7. Insurance Period.

(a) In addition to the provisions of section 11 of the Basic Provisions (§ 457.8), insurance attaches:

(1) On the later of the day we accept your application or at the time of planting for plant cane;

(2) On the first day following harvest of the previous crop for stubble cane except as contained in sections 7(a)(3) and (4);

(3) On the later of April 15 or 30 days following harvest of the previous crop for stubble cane damaged during the previous crop year in all states (except Louisiana); and

(4) On the later of April 30 or 30 days following harvest of the previous crop for stubble cane damaged during the previous crop year in Louisiana.

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

(1) January 31 in Louisiana; and

(2) April 30 in all other states.

* * * * *

9. Duties in the Event of Damage or Loss or Cutting the Sugarcane for Seed.

(a) In addition to your duties under section 14 of the Basic Provisions (§ 457.8), in the event of damage or loss:

(1) * * *

(2) You must give us notice at least 15 days before you begin cutting any sugarcane for seed. Your notice must include the unit number and the number of acres you intend to harvest as seed. Failure to give us timely notice will cause the acreage cut for seed to be considered as put to another use without consent. The production to count for such acreage will not be less than the production guarantee.

(3) You must request an appraisal if any time during the crop year sugarcane acreage cut for seed will not produce at least the production guarantee so we can determine the production to count. If you do not request an appraisal, the production to count for such acreage will be the production guarantee.

* * * * *

10. Settlement of Claim.

* * * * *

(b) * * *

(4) * * *

Example 1: Assume you have a 100 percent share in a unit of 100 acres of sugarcane, an approved yield of 6,000 pounds of raw sugar per acre, a coverage election of 65 percent, and a price election of $0.12 a pound. The production guarantee would be 3,900 pounds of raw sugar per acre (6,000 × 65%). Further assume that you are only able to harvest 200,000 pounds of raw sugar because the unit was damaged by an insurable cause of loss. Your indemnity would be calculated as follows:

(1) 100 acres × 3,900 pound production guarantee = 390,000 pound production guarantee;

(2) 390,000 pound production guarantee − 200,000 pounds harvested production = 190,000 pound production loss;

(3) 190,000 pound production loss × $0.12 price election = $22,800 loss; and

(4) $22,800 loss × 100 percent share = $22,800 indemnity payment.

Example 2: Assume the same set of facts. Also, assume that you cut 20 acres of this unit for seed without giving notice that you were cutting this acreage for seed and that you are only able to harvest 200,000 pounds from the remaining 80 acres. Your indemnity would be calculated as follows:

(1) 100 acres × 3,900 pound production guarantee = 390,000 pound production guarantee;

(2) 390,000 pound production guarantee − 278,000 (200,000 pounds harvested production + 78,000 pounds production for putting acreage to another use without consent, (20 acres × 3,900 pound production guarantee per acre)) = 112,000 pound production loss;

(3) 112,000 pound production loss × $0.12 price election = $13,440 loss; and

(4) $13,440 loss × 100 percent share = $13,440 indemnity payment.

(c) * * *

(1) * * *

(iv) Potential production on insured acreage harvested for seed (see section 9(a)(3));

(v) Potential production on insured acreage you want to put to another use or you wish to abandon and no longer care for, 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:

* * * * *

Signed in Washington, DC, on June 26, 2002.

Ross J. Davidson, Jr.,

Administrator, Federal Crop Insurance Corporation.

[FR Doc. 02–16680 Filed 7–11–02; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–244–AD; Amendment 39–12816; AD 2002–14–16]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model 717–200 airplanes, that requires repetitive inspections for cracking of the spoiler hold-down actuator supports located on the left and right wing rear spars; adjustment of the spoiler hold-down actuators; and replacement of cracked spoiler hold-down actuator supports with new, improved supports. This AD also requires replacement of all spoiler hold-down actuator supports with new, improved supports, which terminates the repetitive inspections. The actions specified by this AD are intended to detect and correct as well as to prevent cracks in the spoiler hold-down actuator supports, which could lead to reduced spoiler hold-down capability, resulting in loss of the back-up protection of the spoiler float hold-down and unavailability of monitoring for an uncommanded spoiler movement.

DATES: Effective August 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241; fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCI text,

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model 717 series airplanes was published in the **Federal Register** on January 4, 2002 (67 FR 538). That action proposed to require repetitive inspections for cracking of the spoiler hold-down actuator supports located on the left and right wing rear spars; adjustment of the spoiler hold-down actuators; and replacement of cracked spoiler hold-down actuator supports with new, improved supports. That action also proposed to require replacement of all spoiler hold-down actuator supports with new, improved supports which terminates the repetitive inspections.

Explanation of Change to Applicability

The FAA has revised the applicability of the existing AD to identify the model designation as published in the most recent type certificate data sheet for the affected models.

Explanation of Changes to Paragraph (a) of this AD

Paragraph (a) of the proposed rule pertains to both initial and repetitive inspections of the spoiler hold-down actuator supports. For purposes of clarity, this AD has been revised to specify requirements for the initial inspection in paragraph (a) of this AD and those for repetitive inspections in paragraph (b) of this AD.

In addition, the FAA has changed all reference to a ''detailed visual inspection'' to a ''detailed inspection'' in this final rule.

Explanation of Changes to Notes 3 and 4

Information pertaining to inspections accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 717–57A0002, Revision 01, dated February 28, 2001, has been removed from Note 3 of the proposed rule and incorporated into paragraph (c) of this AD to clarify the compliance time for performing the next repetitive inspection.

Information pertaining to replacement of a spoiler hold-down actuator support, accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 717–57–0004, dated May 30, 2001, has been removed from Note 4 of the proposed rule and incorporated into paragraph (d) of this AD to clarify that the replacement constitutes terminating action for the particular actuator support.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Extend Compliance Time for Terminating Action

Two commenters request that the compliance time for terminating action be extended from 15 months to 60 months after the effective date of the AD. The commenters suggest that the proposed repetitive inspections at intervals of 500 flight hours will ensure airworthiness until the 60-month time limit is reached.

The FAA does not concur. The 15-month compliance period was based upon study of the consequences of failure of the spoiler hold-down actuator supports and associated parts, the availability of replacement parts, typical maintenance intervals, and the work