DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC01

Common Crop Insurance Regulations; Florida Citrus Fruit Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Florida Citrus Fruit Crop Provisions. The intended effect of this action is to restrict the effect of the current Florida Citrus Fruit Crop Insurance Provisions to the 2008 and prior crop years and replace with new crop provisions to better meet the needs of the insured producers. The changes will apply for the 2009 and succeeding crop years.

DATES: *Effective Date:* March 10, 2008.

FOR FURTHER INFORMATION CONTACT: William Klein, Risk Management, Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it 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 June 30, 2008.

E-Government Act Compliance

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

Unfunded Mandates Reform Act of 1995

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

Executive Order 13132

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

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, or a notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

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

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which 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 12988

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

Background

On October 13, 2006, FCIC published a notice of proposed rulemaking in the **Federal Register** at 71 FR 60439–60444 to revise 7 CFR § 457.107 Florida Citrus Fruit Crop Insurance Provisions. Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions. Five sets of comments, for a total of 52 comments, were received from insurance providers, trade associations, an insurance service organization, and other interested parties. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization and an insurance provider commented that while it was not specifically mentioned in the proposed rule, the preamble should be deleted in the typeset policy, as in other recently revised policies, since the order of priority is covered in the Basic Provisions.

Response: FCIC agrees with the commenter and will remove the preamble containing the order of priority when the Florida Citrus Fruit policy is issued.

Comment: An insurance service organization and an insurance provider commented that the new terms in the definitions section, ''Citrus fruit crop'' and ''citrus fruit crop type (fruit type),'' both contain the words ''citrus fruit.'' They further commented that FCIC should consider if the term ''citrus fruit'' or even ''marketable citrus fruit'' should be defined.

Response: The policy specifically lists certain fruits designated as citrus fruits, and contained within a citrus fruit crop, such as early and mid-season oranges, grapefruit, tangelos and tangerines, etc. The reference to citrus fruit in such definition is to designate separate fruit and, as appropriate, to allow other types of fruit to be specified in the Special Provisions as a new citrus fruit crop or within an existing citrus fruit crop. Further, since citrus fruit is a common term, it will be given in common meaning. However, the insurable citrus fruit will be determined in accordance with the policy provisions. With respect to the term ''marketable citrus fruit,'' like many other fruit crops, it is not solely a grading standard or single criterion that determines whether the crop is marketable. It depends on a variety of factors that may change. Therefore, it is not practical to define the term. Instead, FCIC has included criteria in section 10 that will be used to determine whether the citrus fruit is marketable. Therefore, no change has been made.

Comment: An insurance service organization noted that FCIC added a new definition, ''fruit type,'' in the proposed rule. They questioned if there would ever be more than one kind of citrus fruit within a fruit type.

Response: FCIC redesignated the former ''citrus fruit type'' as ''citrus fruit crop,'' and the different fruit within a crop as ''citrus fruit types'' for clarity. For example, citrus fruit crop includes Citrus I, Citrus II, Citrus III, etc. Citrus fruit types for such citrus fruit crops would include early and mid-season oranges for Citrus I, late season oranges for Citrus II, and grapefruit for Citrus III, etc. At this time, there is no further subdivision of citrus fruit types and no current plans to further subdivide citrus fruit types.

Comment: An insurance service organization commented they were concerned about the addition of the new item (9) under the definition ''citrus fruit crop'' in section 1, allowing coverage for, ''Any other citrus fruit crop designated in the Special Provisions.'' They expressed their concern with this proposed additional crop, citing existing difficulties with a similar catch-all category of grapes in California. They requested the opportunity to work closely with the applicable RMA Regional Office in any proposed development of such additional citrus fruit crops before they are added in the Special Provisions. In addition, if this catch-all category is added, they questioned whether it would be identified as ''Citrus IX'' to be consistent with the other ''crop'' numbers, or would there be multiple additional citrus fruit crops added in the Special Provisions. The commenter also questioned how the crop or crops will be identified for data processing purposes and how many there might end up being.

Response: FCIC agrees with the commenter regarding a prefix of ''Citrus IX'' for ''Any other fruit crop designated in the Special Provisions,'' and has revised the provision accordingly. Given the constant changes in agriculture and the development of new types and varieties, having a category that would allow other citrus fruit crops to be added in the Special Provisions provides the flexibility to quickly provide insurance for a particular citrus fruit in the future, if warranted. RMA will work with Regional Offices and insurance providers when making a decision on adding any citrus fruit crop to the Special Provisions. If fruit crops are added in the future, they may or may not contain more than one fruit type depending on the fruit crop to be insured. However, if they contain more than one citrus fruit type, they will be identified for data processing purposes in the same manner as current citrus fruit crops containing multiple citrus fruit types. At this time, FCIC has no plans to add another citrus fruit crop to the Special Provisions.

Comment: An insurance service organization and an insurance provider recommended RMA include a list, in the Special Provision, of the citrus varieties that fall under the citrus ''crops'' and more specifically under crop types i.e., early, mid-season and late oranges, because while the varieties may be known in the citrus industry they may not be as well known by crop insurance agents and adjusters.

Response: The insurable citrus fruit crops and fruit types are identified in the definitions section and in the Special Provisions. FCIC does not require reporting down to the variety level. Further, when a new orange variety is developed it is categorized by the Cooperate State Research Education and Extension Service as early, mid-season or late-season. This information is made available to the industry, i.e. growers, buyers, trade associations, the extension service, and Florida Agricultural Statistics Service (FASS). Therefore, no change is made.

Comment: An insurance service organization recommended FCIC consider deleting ''crop'' in the new definition ''Citrus fruit crop type (fruit type).'' They suggest it would be less confusing if it were changed to ''Citrus fruit type.'' They further asked that FCIC consider replacing the last phrase ''* * * shown as Roman Numerals I through VIII'' with the words, ''* * * defined above.''

Response: The commenter is correct that the term ''citrus fruit type'' is less confusing and revised the provision accordingly. The definition also makes it clear that the citrus fruit type is one of the citrus fruit listed in the Special Provisions or in the definition of citrus fruit crop.

Comment: An insurance service organization and an insurance provider recommended adding the term ''Marketable citrus fruit'' since it is used throughout the crop provisions.

Response: Marketability is situational based on damage to the fruit and whether the fruit is to be utilized as fresh fruit or juice. Further, the marketable standards may be different for the different categories defined as a ''citrus fruit crop.'' Therefore, it would be difficult to create a single definition. It makes more sense to specify the criteria used to make such determinations of marketability in section 10, pertaining to the settlement of the claims. No change has been made.

Comment: An insurance service organization and an insurance provider expressed concern with the way the definition ''Potential production'' is written. They believe that item number (3) under ''Including citrus fruit'' which addresses citrus fruit ''* * * lost or damaged from either an insured or uninsured cause'' could result in confusion due to items shown under ''But not including citrus fruit.'' In particular, they cite under ''But not including citrus fruit'' item (1) ''Was lost before insurance attached for any crop year'' and item (2) ''Was lost by normal dropping * * *.'' They believe these two could be considered contradictory compared to item (3) under ''Including citrus fruit,'' ''Was lost or damaged from either an insured or uninsured cause * * *.'' They suggested adding the language ''* * * except as excluded below'' to item (3) under ''Including citrus fruit,''

Response: Including both the reference to production lost or damaged due to uninsured causes as ''potential production'' appears contradictory to those provisions that are not included as ''potential production,'' such as production lost before the insurance attached or normal dropping, which are also uninsured causes. The suggested change should help clarify when such production is included as ''potential production'' and when it is not. Therefore, item (3) is revised to be prefaced with ''Except as provided below.''

Comment: An insurance provider commented that the word ''lost'' is vague, yet it is used throughout the definition of ''potential production.'' They questioned whether citrus fruit ''lost by normal dropping'' should be described as ''lost.'' They recommend either using only the term 'destroyed', define 'lost,' or remove the term 'lost' completely.

Response: The commenter is correct that the term ''lost'' is used in several different contexts to refer to citrus fruit that is missing or destroyed but the common definition of ''lost'' also refers to both missing or destroyed. Therefore, the term is not used inappropriately. However, to avoid any misperception that lost only means missing, FCIC has revised the provisions to refer to missing, damaged or destroyed, as appropriate, instead of lost.

Comment: An insurance service organization recommended that the two lists of items under the definition of ''Potential Production'' be identified as (a)(1)–(6) for ''fruit including'' and b(1)–(3) for ''fruit not including'' for easier referencing.

Response: FCIC has revised the provisions accordingly.

Comment: An insurance service organization and an insurance provider recommended the terms ''buckhorned'' and ''interstock,'' be defined because they are used in the definition ''topworked.''

Response: FCIC agrees with the recommendation and has defined the terms ''buckhorned'' and ''interstock,'' consistent with how those terms are used in other Crop Provisions.

Comment: An insurance service organization and an insurance provider asked for clarification as to whether a change is intended in how basic units are established for Florida Citrus. They commented that while there was no explanation of any unit changes in the ''Background'' portion of the proposed rule, the previously defined term ''citrus fruit type'' was changed to ''citrus fruit crop.'' They questioned whether this would result in a change in how basic units are determined. For example, lemons and limes are part of the Citrus VI ''crop'' and therefore would be (and have been) part of one basic unit, but if it is intended for lemons and limes to qualify as two separate basic units, the term needs to be revised to ''citrus fruit type.''

Response: In the proposed rule, the term ''citrus fruit crop'' replaced the term ''citrus fruit type''. This was done to reduce the confusion created by defining ''types'' as crops. In conjunction with this change, in the proposed rule, FCIC also revised the provisions in section 2 regarding units to clarify that basic units will be divided into additional basic units by each citrus fruit crop. Therefore, there has been no change in the manner in which basic units are established. No change has been made.

Comment: An insurance service organization and an insurance provider commented that the changes in section 2, Unit Division, allow optional units by non-contiguous land, in addition to optional units by section, section equivalent, or FSN. They further commented this is a change from the previous language ''Instead of * * *,'' but there is no explanation in the ''Background'' as to why this change is proposed. Additionally, they noted that if optional units have changed, this should be identified in the summary of changes.

Response: FCIC has made no change in optional unit determination. The language changed from ''instead of'' to ''in addition to,'' to be consistent with other Crop Provisions. This change does not have any substantive effect. Use of the term ''instead of'' or ''in addition to'' both mean that optional units may be established by section, section equivalent, FSA farm serial number or non-contiguous land. While it does not effect how optional units are established, FCIC agrees the revision should have been identified and has done so in this final rule.

Comment: An insurance service organization and an insurance provider commented that since this is a dollar plan crop, production does not have to be reported by a certain date for underwriting purposes. They further commented the second sentence in section 3(b) is misplaced, since section 10 ''Settlement of Claim'' describes responsibilities in a loss situation. They recommended that provisions in section 3(b) be revised to state simply ''The production reporting requirements contained in section 3 of the Basic Provisions are not applicable.'' These provisions would replace the existing crop provisions that read, ''In lieu of the production reporting date contained in section 3 of the Basic Provisions, potential production for each unit will be determined during loss adjustment.''

Response: FCIC has revised the provision accordingly. However, the reference to the determination of potential production is still necessary. FCIC has determined the provision belongs in section 6 ''Insured Crop'' and has added a new section 6(e).

Comment: An insurance service organization commented that unless a different deadline applies to coverage changes requested for the initial year the revised crop provisions are effective, the opening phrase in section 3(e), ''For the 2008 and succeeding crop years * * *,'' seems to be unnecessary.

Response: FCIC has removed the opening phrase in section 3(e) accordingly.

Comment: An insurance provider commented that the current Crop Provisions provide for coverage beginning on May 1 while the proposed Crop Provisions indicate that coverage will begin on June 1. They questioned if it is FCIC's intention not to provide coverage for the month of May during the waiting period after insureds had requested increased coverage.

Response: FCIC acknowledges that the proposed rule failed to state what, if any coverage, would be applicable for the month of May. Further, as stated more fully below in the comments to section 8, there may be adverse consequences to producers as a result of this change. As a result, FCIC is moving the insurance period back to its original dates, with cancellation and termination dates of April 30, and the insurance attachment date of May 1. This will avoid any disruption of coverage. However, the sales closing date is moved back from April 30 to April 1 to be consistent with the one-month timeframe between sales closing and insurance attachment as provided in the Nursery and Florida Fruit tree policies.

Comment: An insurance provider commented that the Crop Provisions are proposed to be effective for the 2008 crop year, and section 3(e) is being added to address a 30-day waiting period for coverage changes as well as change the insurance period dates, to be consistent with the Nursery Crop Provisions and the Florida Fruit Tree Pilot Crop Provisions. They further commented the 30-day waiting period is difficult to administer and becomes a problem when a loss occurs before the waiting period is over.

Response: As a result of delays in the publication of this final rule, the revisions are not expected to take affect until the 2009 crop year. FCIC originally proposed to modify the insurance period in the proposed rule, establishing a June 1 insurance attachment date, to be consistent with the Nursery Crop Provisions and the Florida Fruit Tree Pilot Crop Provisions. However, as stated above, this would have resulted in a disruption of coverage for a month so FCIC is moving the insurance attachment date back to the original May 1 date, with a sales closing date of April 1. The 30-day waiting period helps maintain program integrity and allows insurance providers ample time to inspect the crop when deemed

appropriate, and if the crop is damaged to notify the insured of the status of their insurance on a timely basis.

Comment: An insurance provider questioned how a loss would be paid based on the provisions contained in section 3(e). They provided an example where an insured has $1,000 coverage in a previous crop year and requests $1,500 coverage for the new crop year. A hail loss occurs within 30-day waiting period. They acknowledge the insured is kept at $1,000 coverage based on the policy language. If the damage is assessed and the insurance provider finds 50 percent hail damage, they questioned how they were to reduce coverage. They noted the Florida Citrus Fruit policy is a dollar plan and percentage of loss policy. They questioned whether they should reduce coverage by 50 percent to $500 and still owe the insured $500 multiplied by 50 percent damage, or determine that 50 percent of the loss is not covered. Essentially, they questioned whether the proposed provisions provide coverage for insured losses during the month of May.

Response: The commenter did not indicate if the crop in the example was the current year's crop or the following year's crop, just that the loss occurred during the 30-day waiting period. If it was the current crop year, and the calendar date for the end of the insurance period has not passed, the loss would be indemnified just as in the past, based on the liability for that crop year. They would be paid the $1,000. If it was the crop set for the next crop year, it would not be covered until May 1 under the Final Rule. There would be no indemnity for that crop since insurance had not yet attached, and the amount of insurance would be reduced to reflect the remaining potential, consistent with section 3(f). Insured losses on or after May 1 will be covered just as they were in the previous policy.

Comment: An insurance service organization and an insurance provider commented that the provisions in section 3(f) have been added to address the crop being damaged prior to the beginning of the insurance period and reducing coverage based on the amount of damage. They further commented while in theory they agree with this concept, there are no procedures in place to address how coverage will be reduced. Additionally they commented this has been an issue on all of the perennial policies in Florida due to the number of hurricanes that have occurred in recent years. Provisions of existing policies have not been working as there are no procedures or guidance in place to properly implement. If these provisions remain, FCIC will need to provide additional guidance as to how the provisions are to be implemented.

Response: Underwriting procedures need to be in place to determine the appropriate reduction in the amount of insurance. While section 3(f) is new, reduction in the amount of insurance was applicable to interplanted acreage in the current Crop Provisions, but the methodology for determining damage was not specifically addressed in FCIC procedure. FCIC will modify the Florida Citrus Fruit Loss Adjustment Standards and the underwriting procedures by adding instructions for reducing the amount of insurance based on damage sustained on the acreage prior to insurance attaching.

Comment: A trade association commented on the provisions in section 6(b)(2), which state no fruit is insurable until the trees reach the ''fifth growing season.'' They noted production practices have changed significantly since the rule was put into place and viable production is now obtained at a much earlier age. They cited that USDA Agricultural Statistics Services considers citrus trees bearing at three years of age and, the statistics show the average tree production for the age category 3–5 years is 1.22 boxes per tree for early season orange varieties and 1.12 boxes per tree for late season orange varieties. With an average per acre planting of 120 trees, production of 1.22 boxes per tree amounts to more than 146 boxes per acre.

Response: There is a trend for recently set citrus trees to be placed at a higher density pattern for increased production capability. However, the statistics provided by the commenter were for age category 3–5 years. The commenter did not provide statistics separately for 3, 4, and 5 year old trees. Additionally, statistics were only provided for early and late season varieties. This is not sufficient information to make a blanket change in insurability of trees at an earlier age. However, section 6(b)(2) also allows trees to be insured at an earlier age if provided in the Special Provisions or by written agreement. Currently, when FCIC determines certain varieties of citrus fruit can produce significant fruit at an earlier age, those varieties are specified in the Special Provisions. Therefore, producers with trees that have the production capability cited by the commenter have access to coverage for such trees. No change has been made.

Comment: A trade association commented that provisions in section 6(c) state, in part, that a grower may elect to insure or exclude any acreage that has a potential production of less than 100 boxes per acre, under certain conditions. Therefore, it would be appropriate for three-year-old trees, which are capable of producing 50 percent more than an apparent minimum standard, to be eligible for coverage. They further suggested FCIC consider a modification to section 6(b)(2) to read in part ''Produced by citrus trees that have not reached the third growing season after being set out * * *'' Based on the current requirement that trees be set out prior to May 1 to be considered as a growing season, that would in most cases mean trees would be in their 4th year of growth.

Response: FCIC needs additional information in order to reduce the age of the tree for the purposes of eligibility for insurance under these Crop Provisions to the third or fourth growing season after setout. Further, as stated above, younger varieties with known higher production capabilities will be added to the Special Provisions. Further, producers will have access to written agreements. Therefore, no change has been made.

Comment: An insurance provider commented that section 6(b)(3) and (4) describes specific citrus fruit types that are not insurable, i.e., Meyer Lemons and oranges commonly known as Sour Oranges or Clementines, and those of the Robinson tangerine variety. They further commented that the citrus fruit crop into which these uninsurable types of citrus would fall should be specified in the provisions in order to remove the risk of assumption. For example, section 6(b)(4) should read, ''For Citrus IV, Robinson tangerine variety * * *''

Response: FCIC lists only insurable types of citrus under the definition ''Citrus fruit crop.'' in section 1. Therefore, it would not be appropriate to include uninsurable types in such definition. FCIC has added language at the beginning of section 1 to acknowledge that some of the varieties designated in section 6 as uninsurable may fall within one of the insurable categories of citrus fruit crops in section 1. The phrase ''Except as provided in section 6,'' is meant to reference citrus fruit that is not insurable, but does not to do so by citrus fruit crop. FCIC has also added a new section 6(b)(6) that states that any citrus fruit type not included in the Special Provisions or within the definition of ''citrus fruit crop'' is also uninsurable. This will further clarify the provisions.

Comment: An insurance service organization commented that the provisions in section 7(a), ''* * * interplanted with another citrus fruit crop * * *'' have been revised to ''* * *

interplanted with another crop * * *''. They further commented this suggests a broadening of the provisions to include the interplanting of citrus trees with a perennial or annual crop, though the intent is unclear since it is not specified in the ''Background'' portion of the proposed rule. Additionally, they commented that unless this is an intended change, and they are not sure how likely it is for citrus trees to be interplanted with non-citrus trees or crops, they believe the previous wording is clearer.

Response: FCIC intended the provisions be broadened to include other crops that may be interplanted with citrus. This could include tropicals interplanted in a citrus grove. To make the provisions clearer FCIC has modified the language to read ''* * * interplanted with another fruit type or another crop * * *''. A conforming change has also been made in section 3(d) so that the references to interplanting are consistent.

Comment: A trade association commented that the provisions in section 8(a)(1) of the proposed rule change the date coverage begins from April 30 (actually May 1) to June 1. They further commented that while they agree it is beneficial to growers to have tree and fruit insurance dates as similar as possible, moving the coverage date for fruit later in the growing season as proposed will have negative effects on producers' risk management. Additionally, they noted in some years citrus growers have an uncovered risk when the bloom is damaged by a peril and in fact, they currently have as much as 3 months when fruit set is not covered even with the current dates. They expressed concern about hail damage to a citrus crop in May, which would not be covered for their insureds. Finally, they concluded a later coverage date means growers will be without coverage for a longer period of time on a crop already set on the tree, and recommend FCIC retain the current April 30 sales closing date and May 1 insurance attachment date.

Response: FCIC received a number of similar comments regarding the date insurance attaches, and has determined it will remain as May 1. Thus, the new policy has the same insurance attachment date as the current policy and retains the same period of risk as the current policy. However, the sales closing date is set one month prior to insurance attachment, now on April 1, consistent with the 30-day period between the sales closing and insurance attachment for Florida Fruit Tree and Nursery policies. FCIC has determined the April 1 sales closing date is acceptable, based on feedback from insurance providers, insureds, and the industry. Further, as stated above, the 30-day waiting period is necessary to protect program integrity.

Comment: An insurance service organization and several insurance providers commented that because of the proposed changes in the coverage dates, this would result in a gap in coverage since the current policy's coverage for 2007 would have ended a month before the 2008 policy coverage would begin. They believe that unless it is intended that carryover policyholders have no coverage for the month of May, the policy provisions need to address how carryover coverage will be handled during that month. Further, if the gap in coverage is intended, it needs to be made very clear in the summary of changes to be provided to carryover policyholders. Otherwise, it does not seem necessary to specify ''* * * beginning with the 2008 crop year * * *'' since these Crop Provisions will not be effective prior to that crop year. A commenter stated that language needs to be added to these provisions to address the issue of damage occurring during May, so both insured's and insurance providers understand whether there is coverage during the month of May.

Response: As stated above, based on a number of comments addressed the additional risk insureds would bear due to no coverage for the month of May, FCIC has modified the date for insurance attachment from June 1 back to May 1 based on numerous comments received requesting that insurance attachment continue as specified in the current provisions. This means there will be no gap in coverage for current insureds.

Comment: An insurance provider commented that the calendar date for the end of the insurance period for citrus types already occurs as early as January 31, with some dates in February and March. By moving the coverage attachment date from May 1 to June 1, the gap in coverage has been extended an additional month. They further commented that May is a month when hail damage is a primary concern in Florida. Additionally they noted fruit trees bloom primarily in March and April, and they recognize that damage or loss occurring prior to May 1 is not an insurable cause of loss under the current or proposed crop provisions. However, they noted that some perennial crop programs provide continuous coverage, and wondered whether FCIC has considered doing something similar for Florida citrus fruit.

Response: FCIC has previously explored providing ''bloom coverage,'' i.e., year around coverage, with growers and grower groups. After several discussions, they concluded they favor the current policy where coverage attaches only to fruit on the tree. Determining damage or loss based on a reduction of blooms was considered problematic because only a small percentage of blooms actually set fruit. Additionally, FCIC has paid minimal indemnities for hail losses on a new crop during the month of May. The primary causes of loss, frost or freeze and hurricane damage, have not occurred in May. Further, as stated above, based on the comments, FCIC has decided to retain the May 1 insurance attachment date.

Comment: An insurance service organization and an insurance provider commented that FCIC should clarify that section 8(a)(1)(i) applies to new applicants and 8(a)(1)(ii) to carryover policyholders. They further recommended section 8(a)(1)(i) be prefaced with ''For new applications * * *'', and section 8(a)(1)(ii) be prefaced with ''For carryover insureds * * *.''

Response: While section 8(a)(1)(i) applies primarily to new applicants it could also apply to inspections performed on acreage of carryover insureds no longer meeting insurability requirements. The commenter is correct that section 8(a)(1)(ii) applies only to carryover insureds. Therefore, FCIC will revise the provisions to specifically identify whether they apply to new or carryover policies for clarification.

Comment: A Regional Office and trade association commented with regard to section 8(a)(2). One commenter stated that they previously recommended the end of the insurance period for Navels and Orlando Tangelos be changed to January 31. However, a closer look at the maturity date of these fruit types shows harvesting of Orlando Tangelos typically continues into early February. To accommodate this additional picking time, they recommend the end of insurance period for Navels and Orlando Tangelos be changed to the first week in February.

Response: Based on additional research, FCIC has determined it is appropriate to extend the calendar date for the end of the insurance period to February 7 for Navel Oranges and Orlando Tangelos. This modification addresses the important balance between a date late enough to cover the fruit through normal picking, but not so late as to pose an unacceptable risk.

Comment: A trade association commented that there were changes

made to the end of the insurance period in section 8(a)(2), and it is essential these dates do not exclude coverage when appropriate. They expressed concern that some earlier dates contained in the proposed rule would put some growers at risk of having paid premiums on policies yet have the insurance end before harvest is complete. They further commented harvest begins at different times from one year to the next based on date of bloom and whether maturity is early or late for that year. The trade association commented that it is appropriate the rule consider the latest harvest dates for fruit types. The trade association polled harvesters in Florida, and reviewed Ag Statistics Service data for the past 4 years on the highest percent of crop remaining on dates they recommended. They asked that the calendar date for the end of the insurance period be changed, based on percent of fruit remaining on the trees later in the season for the following fruit types; Early and Navel Oranges and Orlando Tangelos and Tangerines, February 28, Murcott Honey Oranges May 15, and Grapefruit and Late Season Oranges July 31.

Response: In determining the calendar date for the end of the insurance period, FCIC must find a balance between normal picking dates and good farming practices, versus not timely picking fruit, or leaving mature fruit on the tree in order to obtain a higher price. If FCIC were to set the end of the insurance period for a date when the last fruit for the fruit type is picked it could be weeks beyond the recommended final picking date. Additionally, a producer may leave the crop on the tree hoping for higher prices or conversely allowing a loss because the amount of insurance is greater than the market price. Fruit left on the tree beyond the optimal picking date is at much greater risk of damage or loss. For example, extending the date of Grapefruit and Late Season Oranges to July 31 exposes FCIC to an unacceptable risk of damage or loss due to the hurricane peril. However, based on additional research, FCIC has determined it can modify the calendar date for the end of the insurance period without incurring unacceptable risks as follows: Early and Navel Oranges and Orlando Tangelos and Tangerines, February 7; and Murcott Honey Oranges, May 15. RMA retained the current date for the end of the insurance period for Grapefruit and Late Season Oranges, June 30. Research shows these fruit types are, or should be, harvested by this date.

Comment: An insurance provider recommended language be added to replace sections 8(b)(1) and (2) to address situations where an existing insured acquires additional citrus acreage after the acreage reporting date. They added that an insurance provider should be able to add such acreage to an existing policy upon completion of an acceptable inspection of the added acreage, assuming the added acreage is not insured under an existing citrus policy. If the added acreage is already insured on an existing citrus policy, this provision should stipulate that a transfer of coverage and right to an indemnity can be completed to continue the existing coverage on the added acreage. They further commented this has been an issue in previous years and the FCIC has indicated they would try to address this coverage issue when the provisions were revised.

Response: Since no changes to section 8(b) were proposed, the proposed changes would be substantive in nature, and the public was not provided an opportunity to comment on the recommended changes, the recommendations cannot be incorporated in the final rule. No change has been made.

Comment: An insurance service organization and an insurance provider commented that currently the sales closing and acreage reporting dates are the same for Florida Citrus, so the situations addressed in sections 8(b)(1) and (2), acquiring or relinquishing an insurable share on or before the acreage reporting date, should not come up unless those dates will be changed. They commented that section 8(b)(1) could be removed. They further commented the procedure in 8(b)(2) regarding use of the Transfer of Right to an Indemnity could be applied to cases when the insurable share changes hands after the acreage reporting date.

Response: Since no changes to section 8(b) were proposed, the proposed changes would be substantive in nature, and the public was not provided an opportunity to comment on the recommended changes, the recommendations cannot be incorporated in the final rule. No change has been made.

Comment: An insurance service organization and an insurance provider recommended that the insured cause of loss in section 9(a) be clarified as ''Fire, due to natural causes, unless * * *'' or ''Fire, if caused by lightning * * *,'' as contained in the proposed revisions to the Tobacco Crop Provisions.

Response: Section 12 of the Basic Provisions already clearly states all causes of loss listed in the Crop Provisions must be due to a naturally occurring event. If this provision were changed for this policy or just for this cause of loss, it could create the mistaken impression that the other insurable causes do not have to be natural occurring. No change has been made.

Comment: An insurance service organization and an insurance provider commented that they had concern with the proposed addition in section 9(a) of ''Diseases, only if specified in the Special Provisions'' to the list of insured causes of loss. They further commented that certain diseases may cause a decline in yields, and the condition of the citrus trees, over a period of years but it would be difficult to know how to account for this when underwriting the cause of loss, and for developing loss adjustment procedures. Additionally they recommended that if this cause of loss is retained, either delete ''only'' or precede it with ''but,'' to read ''Diseases, but only if specified * * *.''

Response: FCIC has added this provision to provide flexibility to the Florida Citrus Fruit Crop Provisions in the event a disease manifests itself and FCIC determines it can be insured on an actuarially sound basis, with the proper underwriting and loss adjustment. Given the potential delay of several years to revise the policy through the rulemaking process, this provision will give the producer a chance to receive needed coverage on a more timely basis. However, FCIC will not specify a new disease in the Special Provisions without significant research regarding the feasibility and prudence of adding the disease. Further, FCIC does not plan on adding any diseases to the Special Provisions at this time. FCIC agrees that the addition of the word ''but'' before ''only,'' makes it consistent with the definition of diseases in other policies, and has revised the provision accordingly.

Comment: An insurance provider commented that adding disease as a cause of loss if specified in the Special Provisions causes them a great deal of concern from both the underwriting and loss adjustment standpoint. For example, if the FCIC were to add trestasia as a cause of loss, they asked how they would work a loss on groves losing production each year resulting from this type of disease. They further commented this disease causes a decline in condition of trees and yields, and it would be very difficult to underwrite and adjust for this type of disease. They added that citrus greening is another new disease that would result in similar problems and issues.

Response: As specified in the above response, FCIC has added ''Diseases, but

only if specified in the Special Provisions'' as a cause of loss to provide flexibility to the Florida Citrus Fruit Crop Provisions. However, no disease will be added to the Special Provisions unless the disease can be properly rated, underwritten and adjusted.

Comment: A trade association commented that they commend FCIC for the addition of ''Diseases, but only if specified in the Special Provisions,'' but are still concerned that damaging windstorms, which have not been classified by the National Weather Service as hurricanes, are not recognized as a legitimate peril. They commented that the weather conditions in Florida lend themselves to occasional high density windstorms, some even reaching a wind speed of hurricane force, but are formed either too rapidly to receive a hurricane designation or have wind gusts too brief to achieve a hurricane designation, but which are as damaging to fruit as a named hurricane. They concluded that for the fruit insurance policy in Florida to be an effective risk management tool and to fully meet the needs of those it is designed to serve, these unnamed storms with damaging wind intensity must be classified as a cause of loss in the policy.

Response: The commenter is correct that there may be winds that do not meet the definition of a hurricane or tornado that could damage the crop. Therefore, FCIC is including excess wind as a cause of loss but only if it causes damage to the extent that citrus fruit from Citrus IV, V, VII, and VIII is unmarketable as fresh fruit. FCIC has also added a definition of ''excess wind'' consistent with the definition in the Texas Citrus Fruit Crop Provisions.

Comment: An insurance service organization questioned whether the rewording of the parenthetical phrase in section 10(b)(2) of the proposed rule is an improvement over the current language. They suggested another alternative: ''* * * The percent of damage will be the amount of citrus fruit damaged by an insured cause, converted to boxes, and divided by the undamaged potential production.''

Response: FCIC believes the provisions contained in the proposed rule are clear and therefore, no change has been made.

Comment: An insurance service organization and an insurance provider asked that FCIC consider adding instructions to section 10(b)(4) to address situations when the result to this point is negative instead of positive. They questioned whether there would be any need in completing the rest of the steps, and if there would be no indemnity due in such a case.

Response: FCIC has revised the provision to add language that states that if the result of section 10(b)(3) is negative, no indemnity will be due.

Comment: An insurance service organization recommended FCIC rearrange the first sentence in the example in 10(b)(6) to read ''* * * assume a 55-acre unit sustains late season damage,'' instead of ending ''* * * on the 55 acres * * *'', which could suggest the unit contains more than ''the 55 acres'' that are damaged.

Response: FCIC has modified the provisions accordingly.

Comment: An insurance service organization recommended FCIC refer to the ''* * * level for the citrus crop * * *'' instead of ''citrus type'' in section 10(b)(6) since the choice of level is on a citrus crop basis, unless the ''type'' reference is related to the ''amount of insurance'' at the beginning of the sentence.

Response: The reference is related to the amount of insurance at the beginning of the sentence. In order to clarify, FCIC has modified the provisions by adding '', for the citrus crop, fruit type, and age of trees'' after '' based on the 75 percent coverage level''.

Additionally, FCIC requested input regarding the possible addition of Asiatic Citrus Canker (ACC) as a cause of loss. An insurance service organization commented they believe their members would oppose this since it has been problematic as a cause of loss in the Florida Fruit Tree Pilot policy. An insurance provider commented they are strongly opposed to providing coverage for ACC under the fruit policy. They believe the ACC disease is so widespread it is creating a multitude of problems with the Florida Fruit Tree Pilot Crop Provisions and they have concerns with it being covered in these provisions as well. Additionally, ACC coverage has been removed from the Florida Fruit Tree policy effective for the 2008 crop year.

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

1. Removed the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict. This same information is contained in the Basic Provisions. Therefore, it is duplicative and has been removed in the Crop Provisions.

2. Added the provisions, ''unless specified otherwise in the Special Provisions'' in section 8(a)(2) to allow greater flexibility in modifying the calendar date for the end of the insurance period. Given the rapid advances in technology, which could affect the insurance period, the policy needs the ability to respond quickly.

List of Subjects in 7 CFR Part 457

Crop insurance, Florida Citrus Fruit Crop Provisions.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457, Common Crop Insurance Regulations, for the 2008 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(l) and 1506(p).

■ 2. Revise § 457.107 to read as follows:

§ 457.107 Florida Citrus Fruit Crop Insurance Provisions.

The Florida Citrus Fruit Crop Insurance Provisions for the 2009 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: Florida Citrus Fruit Crop Insurance Provisions

1. Definitions

Amount of insurance (per acre). The dollar amount determined by multiplying the Reference Maximum Dollar Amount shown on the actuarial documents for each fruit type and age of trees, within a citrus fruit crop, times the coverage level percent that you elect, times your share.

Box. A standard field box as prescribed in the State of Florida Citrus Fruit Laws or contained in standards issued by FCIC.

Buckhorn. To prune any limb at a diameter of at least three inches for citrus.

Citrus fruit crop. Except as otherwise provided in section 6, any of the following:

(1) Citrus I—Early and mid-season oranges;

(2) Citrus II—Late oranges juice;

(3) Citrus III—Grapefruit for which freeze damage will be adjusted on a juice basis;

(4) Citrus IV—Tangelos and Tangerines;

(5) Citrus V—Murcott Honey Oranges (also known as Honey Tangerines) and Temple Oranges;

(6) Citrus VI—Lemons and Limes;

(7) Citrus VII—Grapefruit for which freeze damage will be adjusted on a fresh fruit basis, and late oranges fresh;

(8) Citrus VIII—Navel Oranges; and

(9) Citrus IX—Any other citrus fruit crop designated in the Special Provisions.

Citrus fruit type (fruit type). Any of the separate citrus fruit listed in the Special Provisions and contained within one of the citrus fruit crops designated as Citrus I through IX.

Excess wind. A natural movement of air that has sustained speeds exceeding 58 miles per hour recorded at the U.S. Weather Service reporting station operating nearest to the grove at the time of damage.

Freeze. The formation of ice in the cells of the fruit caused by low air temperatures.

Harvest. The severance of mature citrus fruit from the tree by pulling, picking, shaking, or any other means, or collecting the marketable citrus fruit from the ground.

Hurricane. A windstorm classified by the U.S. Weather Service as a hurricane.

Interstock. The area of the tree that is grafted to a rootstock. For example, the rootstock may be Sour Orange, and the interstock grapefruit, and the grafted scion Valencia orange.

Potential production. The amount, converted to boxes, of citrus fruit that would have been produced had damage not occurred.

(a) Including citrus fruit that:

(1) Was harvested before damage occurred;

(2) Remained on the tree after damage occurred;

(3) Except as provided in (b), was missing, damaged, or destroyed from either an insured or uninsured cause;

(4) Was marketed or could be marketed as fresh citrus fruit;

(5) Was harvested prior to inspection by us; or

(6) Was harvested within 7 days after a freeze;

(b) Not including citrus fruit that:

(1) Was missing, damaged, or destroyed before insurance attached for any crop year;

(2) Was damaged or destroyed by normal dropping; or

(3) Any tangerines that normally would not meet the 210 pack size (2 and 4/16 inch minimum diameter) under United States Standards by the end of the insurance period for tangerines.

Scion. A detached living portion of a plant joined to a stock in grafting.

Top worked. A buckhorned citrus tree with a new scion grafted onto the interstock.

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each citrus fruit crop designated in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

(c) In addition to establishing optional units by section, section equivalent, or FSA farm serial number, optional units may be established if each optional unit is located on non-contiguous land.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one coverage level for each citrus fruit crop shown in section 1 of these Crop Provisions, or designated in the Special Provisions, that you elect to insure. If different amounts of insurance are available for fruit types within a citrus fruit crop, you must select the same coverage level for each fruit type. For example, if you choose the 75 percent coverage level for one fruit type, you must also choose the 75 percent coverage level for all other fruit types within that citrus fruit crop.

(b) The production reporting requirements contained in section 3 of the Basic Provisions are not applicable.

(c) For the first year of insurance for acreage interplanted with another fruit type or another crop, and any time the planting pattern of such acreage is changed, you must report, by the sales closing date, the following:

(1) The age and fruit type of the interplanted citrus trees, as applicable;

(2) The planting pattern; and

(3) Any other information we request in order to establish your amount of insurance.

(d) We will reduce acreage or the amount of insurance or both, as necessary, based on our estimate of the effect of the interplanted fruit type or another crop on the insured fruit type. If you fail to notify us of any circumstance that may reduce the acreage or amount of insurance, we will reduce the acreage or amount of insurance or both as necessary any time we become aware of the circumstance.

(e) For carryover policies:

(1) Any changes to your coverage must be requested on or before the sales closing date;

(2) Requested changes will take effect on May 1, the first day of the crop year, unless we reject the requested increase based on our inspection, or because a loss occurs on or before April 30 (Rejection can occur at any time we discover loss has occurred on or before April 30); and

(3) If the increase is rejected, coverage will remain at the same level as the previous crop year.

(f) If your citrus fruit was damaged prior to the beginning of the insurance period, your amount of insurance (per acre) will be reduced by the amount of damage that occurred.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is January 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are April 30.

6. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all acreage of each citrus fruit crop that you elect to insure, in which you have a share, that is grown in the county shown on the application, and for which a premium rate is quoted in the actuarial documents.

(b) In addition to the citrus fruit not insurable in section 8 of the Basic Provisions, we do not insure any citrus fruit:

(1) That cannot be expected to mature each crop year within the normal maturity period for the fruit type;

(2) Produced by citrus trees that have not reached the fifth growing season after being set out, unless otherwise provided in the Special Provisions or by a written agreement to insure such citrus fruit (In order for the year of set out to be considered as a growing season, citrus trees must be set out on or before April 30 of the calendar year);

(3) Of ''Meyer Lemons'' and oranges commonly known as ''Sour Oranges'' or ''Clementines'';

(4) Of the Robinson tangerine variety, for any crop year in which you have elected to exclude such tangerines from insurance (You must elect this exclusion prior to the crop year for which the exclusion is to be effective, except that for the first crop year you must elect this exclusion by the later of the sales closing date or the time you submit the application for insurance);

(5) That is produced on citrus trees that have been topworked until the third crop year after topworking. The Special Provisions will specify the appropriate rate class for trees insurable following topworking, but that have not reached full production; or

(6) Of any fruit type not specified as insurable in the Special Provisions or within the definition of ''citrus fruit crop.''

(c) Prior to the date insurance attaches, and upon our approval, you may elect to insure or exclude from insurance any insurable citrus acreage that has a potential production of less than 100 boxes per acre. If you elect to:

(1) Insure such acreage, we will consider the potential production to be 100 boxes per acre when determining the amount of loss; or

(2) Exclude such acreage, we will disregard the acreage for all purposes related to this policy.

(d) In addition to the provisions in section 6 of the Basic Provisions, if you fail to notify us of your election to insure or exclude citrus acreage, and the potential production from such acreage is 100 or more boxes per acre, we will determine the percent of damage on all of the insurable acreage for the unit, but will not allow the percent of damage for the unit to be increased by including such acreage.

(e) Potential production will be determined during loss adjustment.

7. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance attaching to a crop planted with another crop:

(a) Citrus fruit from trees interplanted with another fruit type or another crop is insurable unless we inspect the acreage and determine it does not meet the requirements contained in your policy.

(b) If the citrus fruit is from trees interplanted with another fruit type or another crop, acreage will be prorated according to the percentage of the acres occupied by each of the interplanted fruit types or crops (For example, if grapefruit have been interplanted with oranges on 100 acres and the grapefruit trees are on 50 percent of the acreage, grapefruit will be considered planted on 50 acres and oranges will be considered planted on 50 acres).

(c) The combination of the citrus fruit acreage and the interplanted crop acreage cannot exceed the physical amount of acreage.

8. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) Coverage begins on May 1 of each crop year, unless:

(i) For new or carryover policies, as applicable, we inspect the acreage and determine it does not meet the requirements for insurability contained in your policy (You must provide any information we require for the fruit type, so we may determine the condition of the grove to be insured); or

(ii) For carryover policies, you report additional citrus acreage, or a greater share, such that the amount of insurance will increase by more than 10 percent and we notify you all or a part of your citrus acreage is not insurable.

(2) The calendar date for the end of the insurance period for each crop year, unless specified otherwise in the Special Provisions, is:

(i) February 7 for early and navel oranges, Orlando tangelos and tangerines;

(ii) February 28 for all other tangelos;

(iii) March 31 for mid-season and temple oranges;

(iv) April 30 for lemons, limes;

(v) May 15 for murcott honey oranges; and

(vi) June 30 for grapefruit and late season oranges.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(1) If you acquire an insurable share in any insurable acreage of citrus fruit after coverage begins, but on or before the acreage reporting date of any crop year, and if after inspection we consider the acreage acceptable, then insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of citrus fruit on or before the acreage reporting date of any crop year, insurance will not be considered to have attached, no premium will be due, and no indemnity payable, for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss to citrus fruit that occur within the insurance period:

(1) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the grove;

(2) Freeze;

(3) Hail;

(4) Hurricane;

(5) Tornado;

(6) Excess wind, but only if it causes the individual citrus fruit from Citrus IV, V, VII, and VIII to be unmarketable as fresh fruit; or

(7) Diseases, but only if specified in the Special Provisions.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) Damage to the blossoms or trees; or

(2) Inability to market the citrus fruit for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. 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 units, we will combine all optional units for which such production records were not provided; or

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

(b) If any citrus fruit within a unit is damaged by an insurable cause of loss, we will settle your claim by:

(1) Calculating the amount of insurance for the unit by multiplying the number of acres by the respective dollar amount of insurance per acre for each fruit type and multiplying that result by your share;

(2) Calculating the average percent of damage to the fruit within each respective fruit type, rounded to the nearest tenth of a percent (0.1%) (To determine the percent of damage, the amount of citrus fruit damaged from an insured cause must be converted to boxes and divided by the undamaged potential production);

(3) Subtracting the deductible from the result of section (10)(b)(2);

(4) If the result of section (10)(b)(3) is positive, dividing this result by the coverage level percentage (If the result of section 10(b)(3) is negative, no indemnity will be due);

(5) Multiplying the result of section (10)(b)(4) by the amount of insurance for the unit for the respective fruit type, to determine the value of all damage; and

(6) Totaling all such results of section (10)(b)(5) for all fruit types and subtracting any indemnities paid for the current crop year to determine the amount payable for the unit. (For example, assume a 55-acre unit sustains late season damage. No previous damage has occurred on the unit during

the crop year and no fruit has been harvested. The producer elected the 75 percent coverage level and has a 100 percent share. The amount of insurance is $1,180 per acre, based on the 75 percent coverage level, for the citrus crop, fruit type, and age of trees. The amount of potential production is 24,530 boxes and the amount of damaged production is 17,171 boxes. The loss would be calculated as follows:

1. 55 acres × $1,180 = $64,900 amount of insurance for the unit;

2. 17,171 ÷ 24,530 = 70 percent average percent of damage;

3. 70 percent damage − 25 percent deductible (100 percent − 75 percent) = 45 percent;

4. 45 percent ÷ 75 percent = 60 percent adjusted damage; and

5. 60 percent × $64,900 = $38,940 indemnity.

(c) Citrus fruit crops IV, V, VII, and VIII that are seriously damaged by freeze, as determined by a fresh-fruit cut of a representative sample of fruit in the unit in accordance with the applicable provisions of the State of Florida Citrus Fruit Laws, or contained in standards issued by FCIC, and that are not or could not be marketed as fresh fruit, will be considered damaged to the following extent:

(1) If less than 16 percent of the fruit in a sample shows serious freeze damage, the fruit will be considered undamaged; or

(2) If 16 percent or more of the fruit in a sample shows serious freeze damage, the fruit will be considered 50 percent damaged, except that:

(i) For tangerines of Citrus IV, damage in excess of 50 percent will be the actual percent of damaged fruit; and

(ii) Citrus IV (except tangerines), V, VII, and VIII, if it is determined that the juice loss in the fruit exceeds 50 percent, such percent will be considered the percent of damage.

(d) Notwithstanding the provisions of section 10(c) of these crop provisions as to citrus fruit of Citrus IV, V, VII, and VIII, in any unit that is mechanically separated using the specific-gravity (floatation) method into undamaged and freeze-damaged fruit, the amount of damage will be the actual percent of freeze-damaged fruit not to exceed 50 percent and will not be affected by subsequent fresh-fruit marketing. However, the 50 percent limitation on mechanically separated, freeze-damaged fruit will not apply to tangerines of Citrus IV.

(e) Any citrus fruit of Citrus I, II, III, and VI damaged by freeze, but that can be processed into products for human consumption, will be considered as marketable for juice. The percent of damage will be determined by relating the juice content of the damaged fruit to:

(1) The average juice content of the fruit produced on the unit for the three previous crop years based on your records, if they are acceptable to us; or

(2) The following juice content, if acceptable records are not furnished:

(i) Citrus I—52 pounds of juice per box;

(ii) Citrus II—54 pounds of juice per box;

(iii) Citrus III—45 pounds of juice per box; and

(iv) Citrus VI—43 pounds of juice per box;

(f) Any individual citrus fruit on the ground that is not collected and marketed will be considered as 100 percent damaged if the damage was due to an insured cause.

(g) Any individual citrus fruit that is unmarketable either as fresh fruit or as juice because it is immature, unwholesome, decomposed, adulterated, or otherwise unfit for human consumption due to an insured cause will be considered as 100 percent damaged.

(h) Individual citrus fruit of Citrus IV, V, VII, and VIII, that are unmarketable as fresh fruit due to serious damage from hail as defined in the applicable United States Standards for Grades of Florida fruit, or wind damage from a hurricane, tornado or other excess wind storms that results in the fruit not meeting the standards for packing as fresh fruit, will be considered 100 percent damaged.

11. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

Signed in Washington, DC, on January 31, 2008.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E8–2190 Filed 2–6–08; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. AMS–FV–07–0155; FV08–932–1 IFR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the California Olive Committee (committee) for the 2008 and subsequent fiscal years from $47.84 to $15.60 per assessable ton of olives handled. The committee locally administers the marketing order which regulates the handling of olives grown in California. Assessments upon olive handlers are used by the committee to fund reasonable and necessary expenses of the program. The fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective February 8, 2008. Comments received by April 7, 2008 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer R. Garcia, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or E-mail: *Jen.Garcia@usda.gov* or *Kurt.Kimmel@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''