

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563-AC14

Common Crop Insurance Regulations; Stonefruit Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Stonefruit Crop Insurance Provisions to allow coverage for plums under the Stonefruit Crop Insurance Provisions and to make other changes to clarify policy provisions. The proposed rule will also remove the Plum Crop Insurance Provisions from the *Code of Federal Regulations*. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of the producers, and to reduce vulnerability to program fraud, waste, and abuse. The changes will apply for the 2011 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business January 25, 2010 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments, titled "Stonefruit Crop Provisions", by any of the following methods:

- *By Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141-6205.

- *By Express Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, 9240 Troost Avenue, Kansas City, MO 64131-3055.

- *E-mail:* DirectorPDD@rma.usda.gov.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT:

Claire White, Economist, Product Management, Product Administration and Standards Division, Risk Management Agency, at the Kansas City, MO address listed above, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of 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 March 31, 2012.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, 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, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1,000 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 that small entities are given the same opportunities as large entities 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 proposed 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 or action by FCIC to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

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

Background

FCIC proposes to revise 7 CFR part 457, Common Crop Insurance Regulations, by removing and reserving § 457.157 and revising § 457.159 (Stonefruit Crop Insurance Provisions). Plums, along with apricots, nectarines, and peaches, are a member of the stonefruit family. Coverage under the Plum Crop Insurance Provisions is similar to the coverage under the Stonefruit Crop Insurance Provisions. Several requests have been made to combine the Plum Crop Insurance Provisions and the Stonefruit Crop Insurance Provisions to consolidate the Crop Provisions, underwriting procedures, and loss adjustment standards. Several requests also have been made for changes to improve the coverage offered, address program integrity issues, and improve clarity of the Stonefruit Crop Insurance Provisions. The provisions will be effective for the 2011 and succeeding crop years.

The proposed changes to § 457.159 are as follows:

1. *Section 1*—FCIC proposes to remove the definition of “grading standards” and replace it with a definition of “grade standards.” The term “grade standards,” rather than “grading standards,” is consistent with terminology in other Crop Provisions administered by FCIC. The term “grade standards” replaces the term “grading standards” everywhere it appears in the Stonefruit Crop Insurance Provisions.

FCIC proposes to revise the definition of “harvest.” The current definition says

“The picking of mature stonefruit either by hand or machine.” The proposed definition says “The physical removal of mature stonefruit from the tree either by hand or machine.” Use of the term “picking” created an ambiguity which is eliminated with the use of the term “physical removal.”

FCIC proposes to revise the table in the definition of “lug” to include plums and provide a weight for plums per lug. FCIC also proposes to revise the table in the definition of “lug” to change the unit weight measurement for fresh freestone peaches from 22 pounds per lug to 25 pounds per lug. Data indicates the peach industry now uses 25, rather than 22, pounds per lug. FCIC also proposes to revise the definition of “lug” to allow the flexibility to change the weight measurement through the Special Provisions, if necessary. This will eliminate the administrative burden of revising the regulation when a simple numerical change is necessary because of a change in industry practices.

FCIC proposes to revise the definition of “marketable.” The current definition states “Stonefruit production acceptable for processing or other human consumption, even if it fails to meet the State Department of Food and Agriculture minimum grading standard.” The proposed definition states “Stonefruit production that meets or exceeds the quality standards for U.S. No. 1 in accordance with the applicable grade standards or other standards specified in the Special Provisions or is accepted by a packer, processor or other handler.” The new definition clarifies that the grade standards will first be applied to determine whether the stonefruit is marketable. If the stonefruit does not make grade, it is not considered marketable unless a packer, handler or processor accepts the production not making grade. If accepted, it will be considered marketable.

FCIC proposes to revise the definition of “stonefruit” to include plums. FCIC also proposes to revise the definition of “stonefruit” to allow other stonefruit crops to be added via the Special Provisions, if such crops can be added without making any other changes to the Crop Provisions.

FCIC proposes to revise the definition of “type” to remove the word “class” and replace it with the word “category.” The proposed change is necessary due to administrative system changes in the near future. The definition of “type” is also revised to clarify the types are listed in the Special Provisions.

FCIC proposes to remove the definition of “varietal group.” “Varietal group” is defined as “a subclass of

type” and is used throughout the Crop Provisions. “Type” is also defined. However, the context in which “varietal group” is used is synonymous with “type.” Therefore, the term “varietal group” is not needed.

2. *Section 3*—FCIC proposes to redesignate paragraph (c) as paragraph (d) and designate the undesignated paragraph following paragraph (b)(4)(iii) as paragraph (c). FCIC proposes to revise redesignated section 3(c) to add provisions to specify if the insured fails to notify the insurance provider by the production reporting date of an event or action that may reduce the yield potential, any loss of production from such acreage will result in an appraisal for uninsured causes. The yield used to establish the insured’s production guarantee will also be reduced for the subsequent crop year. FCIC also proposes to revise redesignated section 3(c) to remove the list of possible effects on yield potential and instead cross-reference section 3(b)(1)–(4), which currently contains the possible effects on yield potential. This will eliminate the current redundancy.

3. *Section 4*—FCIC proposes to revise section 4 to add language to allow additional contract change dates to be specified in the Special Provisions. This provides additional flexibility to adjust the dates or add new dates as needed.

4. *Section 5*—FCIC proposes to revise section 5 to add language to allow additional cancellation and termination dates to be specified in the Special Provisions. This provides additional flexibility to adjust the dates or add new dates as needed.

5. *Section 6*—FCIC proposes to revise paragraph (b)(1) to allow insurance for trees that become commercially available after set out. Currently, insurance only attaches to trees that are commercially available at set out. However, there are situations where trees may become commercially available after they have been set out, such as trees that were set out for experimental purposes. In some cases these experimental trees become commercially acceptable and available after set out. According to the current provisions, these trees would not be eligible for insurance because they were not commercially available when they were set out. The proposed language allows these trees to be insurable.

FCIC proposes to revise paragraph (b) to include the provision currently in paragraphs (d), (e), (f), and (g) and remove paragraphs (d), (e), (f), and (g). Current paragraphs (b), (d), (e), (f), and (g) refer to conditions of insurability of the stonefruit trees so it provides clarity to combine the provisions into one

provision. However, currently, paragraph (e) suggests that the trees must be regulated by the state before they are insurable. There are some states where the trees are not regulated by the state. Therefore, FCIC proposes to revise the provisions of the new paragraph (b)(4) to clarify that the trees must be regulated by the state only if such regulations exist. Further, FCIC also proposes to revise the new paragraph (b)(5) to allow the stonefruit crop to be insurable if grown on trees that have produced a minimum amount of production in at least one of the previous four, instead of the previous three, actual production history crop years. This is consistent with the minimum production requirement in other perennial crops such as apples and pears.

FCIC proposes to remove paragraph (c), which states stonefruit is insurable if grown on trees that are irrigated. Requirements for irrigation will be contained in the Special Provisions. Removing this paragraph makes the Stonefruit Crop Insurance Provisions consistent with other Crop Provisions that include the insurable practices in the Special Provisions and actuarial documents.

6. Section 8—FCIC proposes to revise paragraph (a)(2) to establish an end of insurance period of September 30 for fresh plums in all states except California and to establish an end of insurance period of October 20 for fresh plums in California only. Under the current Plum Crop Insurance Provisions, which is currently only available in California, the end of the insurance period is September 30. September 30 will remain the end of insurance period for fresh plums in other counties in other states where insurance is available. However, according to published data, plums can be harvested as late as October 20 in California. Therefore, the end of the insurance period is extended to allow for harvesting until October 20.

List of Subjects in 7 CFR Part 457

Crop insurance, Stonefruit, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2010 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(o).

§ 457.157 [Removed and Reserved]

- 2. Remove and reserve § 457.157.
3. Amend § 457.159 as follows:
a. Amend the introductory text by removing "2001" and adding "2011" in its place;
b. Remove the undesignated paragraph immediately preceding section 1.
c. Amend section 1 by:
1. Adding a definition of "grade standards";
2. Removing the definitions of "grading standards" and "varietal group"; and
3. Revising the definitions of "harvest", "lug", "marketable", "stonefruit", "type".
d. Amend section 2(b) by removing the phrase "varietal group" in two places;
e. Amend section 3 by:
1. Revising paragraph (a) by removing the phrase " or varietal group" in all three places;
2. Revising the introductory text of paragraph (b) and (b)(4)(i); and
3. Redesignating paragraph (c) as paragraph (d), designating the undesignated paragraph following paragraph (b)(4)(iii) as paragraph (c), and revising redesignated paragraph (c).
f. Amend section 4 by adding the phrase " , or as specified in the Special Provisions" after the word "states".
g. Amend section 5 by adding the phrase " , or as specified in the Special Provisions" after the word "states".
h. Amend section 6 by:
1. Revising paragraph (b); and
2. Removing paragraphs (c), (d), (e), (f) and (g).
i. Amend section 8 by revising paragraphs (a)(2)(ii) and (a)(2)(iii) and adding a new paragraph (a)(2)(iv).
j. Amend section 11 by:
1. Revising paragraph (b);
2. Revising paragraph (c)(3)(ii) by removing the word "grading" and adding the word "grade" in its place in both instances it is found; and
3. Revising paragraph (c)(4).

The additions and revisions read as follows:

§ 457.159 Stonefruit crop insurance provisions.

- 1. Definitions.

Grade standards. The United States Standards for Grades of Peaches, the United States Standards for Grades of Nectarines, the United States Standards for Grades of Apricots, and the United States Standards for Grades of Fresh Plums and Prunes, or other such

standards specified in the Special Provisions.

Harvest. The physical removal of mature stonefruit from the tree either by hand or machine.

* * * * *

Lug. A container of fresh stonefruit of specified weight. Lugs of varying sizes will be converted to standard lug equivalents on the basis of the following average net pounds of packed fruit, or as specified in the Special Provisions:

Table with 2 columns: Crop, Pounds per lug. Rows include Fresh Apricots (24), Fresh Nectarines (25), Fresh Freestone Peaches (25), Fresh Plums (28).

Weight for Processing Apricots, Processing Cling Peaches, and Processing Freestone Peaches is specified in tons.

Marketable. Stonefruit production that meets or exceeds the quality standards for U.S. No. 1 in accordance with the applicable grade standards or other standards specified in the Special Provisions or is accepted by a packer, processor or other handler.

* * * * *

Stonefruit. Any of the following crops grown for fresh market or processing:

- (a) Fresh Apricots,
(b) Fresh Freestone Peaches,
(c) Fresh Nectarines,
(d) Fresh Plums,
(e) Processing Apricots,
(f) Processing Cling Peaches,
(g) Processing Freestone Peaches, and
(h) Other crops listed in the Special Provisions.

* * * * *

Type. A category of a stonefruit crop with similar characteristics that are grouped for insurance purposes, as listed in the Special Provisions.

* * * * *

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

* * * * *

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type, if applicable, for each stonefruit crop:

* * * * *

(4) * * *

(i) The age of the interplanted crop, and type, if applicable;

* * * * *

(c) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of such event or action of any of the items listed

in section 3(b)(1) through (4) as indicated below. If the event or action occurred:

(1) Before the beginning of the insurance period, we will reduce the yield used to establish your production guarantee for the current crop year as necessary. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee at any time we become aware of the circumstance;

(2) Or may occur after the beginning of the insurance period and you notify us by the production reporting date, we will reduce the yield used to establish your production guarantee for the current crop year as necessary; or

(3) Or may occur after the beginning of the insurance period and you fail to notify us by the production reporting date, we will appraise your production in accordance with section 11(c)(1)(ii). We will reduce the yield used to establish your production guarantee for the subsequent crop year.

* * * * *

6. Insured Crop.

* * * * *

(b) That is grown on trees that:

(1) Were commercially available when the trees were set out or have subsequently become commercially available;

(2) Are adapted to the area;

(3) are grown on root stock that is adapted to the area;

(4) Are in compliance with the applicable State's Tree Fruit Agreement or related crop advisory board for the state (for each insured crop and type), when such regulations exist;

(5) Have produced at least 200 lugs of fresh market production per acre, or at least 2.2 tons per acre for processing crops, in at least one of the four most recent actual production history crop years, unless we inspect such acreage and give our approval in writing;

(6) Have reached at least the fifth growing season after set out. However, we may agree in writing to insure acreage that has not reached this age if it meets the requirements of 6(b)(5); and

(7) Are grown in an orchard that, if inspected, is considered acceptable by us.

* * * * *

8. Insurance Period.

(a) * * *

* * * * *

(2) * * *

(i) * * *

(ii) September 30 for all nectarines and peaches;

(iii) In all states except California, September 30 for all fresh plums;

(iv) In California only, October 20 for all fresh plums; or

(v) As otherwise provided for specific counties or types in the Special Provisions.

* * * * *

11. Settlement of Claim.

* * * * *

(b) * * *

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

(2) Multiplying each result of section 11(b)(1) by the respective price election for the type;

(3) Totaling the results of section 11(b)(2) (if there is only one type, the result of (3) will be the same as the result of (2));

(4) Multiplying the total production to count (see section 11(c)), for each type, by the respective price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting the result of section 11(b)(5) from the result of section 11(b)(3) (if there is only one type, the result of (6) will be the same as the result of (5)); and

(7) Multiplying the result of section 11(b)(6) by your share.

Scenario 1:

You select 75 percent coverage level and 100 percent of the price election on 50 acres of type A stonefruit with 100 percent share in the unit. The guarantee is 500 lugs per acre and the price election is \$6.00 per lug. You are only able to harvest 5,000 lugs. Your indemnity would be calculated as follows:

(1) 50.0 acres × 500 lugs = 25,000 lug guarantee;

(2) 25,000 lugs × \$6.00 price election = \$150,000.00 value of guarantee;

(4) 5,000 harvested lugs × \$6.00 price election = \$30,000.00 value of production to count;

(6) \$150,000.00 – \$30,000.00 = \$120,000.00 loss; and

(7) 120,000.00 × 1.000 share = \$120,000 indemnity payment.

Scenario 2:

In addition to the above information in Scenario 1, you have an additional 50 acres of type B stonefruit with 100 percent share in the unit. The guarantee is 300 lugs per acre and the price election is \$3.00 per lug. You are only able to harvest 3,000 lugs. Your indemnity would be calculated as follows:

(1) 50.0 acres × 500 lugs type A = 25,000 lugs guarantee; and 50.0 acres × 300 lugs type B = 15,000 lugs guarantee;

(2) 25,000 lugs × \$6.00 price election = \$150,000.00 value of guarantee for type A; and 15,000 lugs × \$3.00 price

election = \$45,000.00 value of guarantee for type B;

(3) \$150,000.00 + \$45,000.00 = \$195,000.00 total value of guarantee;

(4) 5,000 harvested lugs type A × \$6.00 price election = \$30,000.00 value of production to count; and 3,000 harvested lugs type B × \$3.00 price election = \$9,000.00 value of production to count; and

(5) \$30,000.00 + \$9,000.00 = \$39,000.00 total value of production to count;

(6) \$195,000.00 – \$39,000.00 = \$156,000.00 total loss; and

(7) \$156,000.00 loss × 1.000 share = \$156,000 indemnity payment.

(c) * * * * *

(4) Harvested fresh or processing stonefruit production that is eligible for quality adjustment as specified in section 11(c)(3) will be reduced as follows:

(i) When packed and sold as fresh fruit or when insured as a processing crop, by dividing the value per lug or ton of marketable production by the highest price election and multiplying the result (not to exceed 1.00) by the quantity of such production; or

(ii) For all other fresh stonefruit, by multiplying the number of tons that could be marketed by the value per ton and dividing that result by the highest price election available for that type.

* * * * *

Signed in Washington, DC, on November 13, 2009.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E9-27988 Filed 11-23-09; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2009-0876; Airspace Docket No. 09-ASW-24]

Proposed Amendment of Class E Airspace; Stamford, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Stamford, TX. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Arledge Field