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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC-11-0007]

RIN 0563-AC36

Common Crop Insurance Regulations; Prune Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Prune Crop Insurance Provisions. The intended effect of this action is to provide policy changes and clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The changes will apply for the 2013 and succeeding crop years.

DATES: This rule is effective October 26, 2012.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO, 64141-6205, 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.

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.

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.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

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 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 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 final 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 directing 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, or 7 CFR part 400, subpart J for determinations of good farming practices, as applicable, 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

This rule finalizes changes to the Common Crop Insurance Regulations (7 CFR part 457), Prune Crop Insurance Provisions that were published by FCIC on December 5, 2011, as a notice of proposed rulemaking in the **Federal Register** at 76 FR 75805–75809. The public was afforded 60 days to submit comments after the regulation was published in the **Federal Register**.

A total of 31 comments were received from 2 commenters. The commenters were an insurance provider and an insurance service organization.

The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

General

Comment: A few commenters stated they agree with the proposed change to remove the quality adjustment provisions from the Prune Crop Provisions.

Response: FCIC thanks the commenters for their review of the proposed rule and for their support.

Section 3—Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

Comment: A few commenters stated the “Background” of the proposed rule indicates that the phrase “varietal group” is being replaced by the word “type” everywhere it appears. It goes on to indicate that prunes are not categorized by varietal group in the Special Provisions rather they are categorized by type. In addition, section 6(c) has been revised to remove the requirements for the insured crop to be grown on tree varieties that were commercially available at set out and on tree varieties that are adapted to the area and replacing those requirements with a list of varieties (assume this means types) as shown in the Special Provision. The current Special Provisions for prunes list the type as “No Type Specified 997.” The commenters asked if there are plans to change the Special Provisions to list all of the insurable types in lieu of “No Type Specified 997” or will there be a separate listing of all of the possible insurable varieties somewhere else in the Special Provisions besides under the

“type” designation where all such varieties will be listed to comply with the new proposed rule language.

Response: For ease of administration, FCIC intends to classify the prune types as “Type 997” and then provide a list of all insurable types that qualify as a type 997.

Comment: A few commenters questioned using the word “bearing” in section 3(b)(2). The commenters stated producers are required to report their uninsurable acres and when trees are first planted they will be non-bearing. The commenters asked if it is really the intent for producers to report zero trees on their uninsurable acres. The commenters stated that if the block consists of older trees and younger interplanted trees of the same variety, and the insurance provider only counts the bearing trees, they will have inconsistencies with the acres, the tree spacing, and the density. If producers remove many older trees and replace them with younger trees, they will need to report them on the Producer's Pre-Acceptance Worksheet (PAW) as they have performed cultural practices that will reduce the yield from previous levels. Producers should be required to report all trees and this number should remain constant until they remove trees or plant new trees. Insurance providers should not be required to track only the trees that are bearing and be required to revise this figure each year.

Response: No changes were proposed to this provision and the comment does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended change because the public was not given an opportunity to provide comments. No change has been made to the final rule. However, in response to the concerns raised, the information that must be submitted in accordance with section 3(b) is required to establish the producer's actual production history (APH) approved yield and the amount of their coverage. While section 3(b)(2) only requires the bearing trees on insurable and uninsurable acreage to be reported, the number of bearing and non-bearing trees on insurable and uninsurable acreage must be reported on the PAW. Perennial crop policies contain provisions for “bearing trees” to identify such trees that meet the eligibility requirements for insurance coverage. Since premium and indemnity payments are based on the number of trees that meet eligibility requirements, insurance providers are required to track bearing trees as outlined in the Crop Provisions and the Crop Insurance Handbook (CIH). Requiring all trees be reported under section 3(b)(2) would

create confusion regarding insurability and could result in the overstatement of premium and liability.

Comment: In regard to section 3(b)(3), a commenter questioned the need to know the planting pattern. This requires space on the PAW that could better be used to ask if the producer is “intending to direct market” any portion of their crop. Insurance providers already capture tree spacing and tree count and this is what is needed to determine if there have been tree removals or acreage reductions.

Response: No changes were proposed to this provision and the comment does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended change because the public was not given an opportunity to provide comments. No change has been made to the final rule. However, with respect to the concerns expressed by the commenter, the planting pattern consists of tree spacing and arrangement. FCIC requires the producer to report the planting pattern so the insurance provider can use this information to determine if there is adequate tree spacing for the producer to carry out recommended orchard management practices and to determine the number of trees per acre.

Comment: In regard to section 3(c), a commenter stated there appears to be a lack of consistency between similar perennial crops whose Crop Provisions were recently revised or issued. The Olive, Pear and Macadamia Nut Crop Provisions all contain similar if not the same verbiage as found in the Prune Crop Provisions prior to this Proposed Rule. On the other hand, the Stonefruit Crop Provision language is very similar to the Prune Crop Provision Proposed Rule language with the significant difference in that the results as found in (c)(1), (2) and (3) are hinged upon when the situation “occurred” as opposed to when the situation was “reported.” This is a very significant difference. The commenter proposes some level of similarity and/or consistency be used for this provision for perennial crops.

Response: FCIC agrees with the commenter and the provision has been revised by changing the term “reported” to “occurred.”

Comment: A few commenters stated the last sentence in section 3(c)(3) states “We will reduce the yield used to establish your production guarantee for the subsequent crop year.” The commenters question what if the event that occurred was something that only affects the crop for the year in question and has no carryover effect on the yield into the next year. In this type of situation the yield used to establish the

production guarantee for the next year should not be affected by the event that occurred. However, based on the above referenced language, the yield would have to be reduced and reduced by the same amount as determined during the year in which the event occurred. This language needs to be revised to provide the insurance providers with some latitude as to whether the subsequent years yield should be reduced and to what extent it should be reduced. The producer could also have certain events that occur which have some effect on the next year, but the effect is less than the production that was assessed for the year in which the event occurred. Therefore, this sentence needs to be modified to allow the insurance providers to have some flexibility to be able to determine how much, if any, the yield should be reduced for the subsequent crop year.

Response: FCIC agrees with the commenter that some latitude should be allowed to determine if the yield should be reduced in subsequent years. FCIC has revised section 3(c)(3) to state the insurance provider “may” reduce the yield used to establish your production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees.

Comment: A few commenters stated section 3(d) states “You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.” The commenters feel this is a difficult provision to administer and recommend it be removed from the policy. The PAW contains the following question: “Has damage (i.e., disease, hail, freeze) occurred to Trees/Vines/Bushes/Bog or have cultural practices been performed that will reduce the insured crop’s production from previous levels?” If damage has occurred, and the question has been answered “Yes,” the approved APH yield will be adjusted accordingly to reflect the reduced potential production. This question on the PAW appears to address the issues this section is intending to handle. In addition, the sales closing dates are generally established based on the precept that any applications taken by that date will not be subject to adverse selection.

If the decision is made to retain this provision, it might help to clarify what time frame is meant by “* * * if a cause of loss * * * is evident prior to the time that you request the increase.” A cause of loss that occurred the previous crop

year would be “prior to the time that you request the increase.” Consider rewriting something like: “Your request to increase the coverage level or price election percentage will not be accepted if a cause of loss that could or would reduce the yield of the insured crop is evident when your request is made.”

Response: No changes were proposed to this provision and the comment does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended change because the public was not given an opportunity to provide comments. However, FCIC will consider this change the next time the Prune Crop Provisions are revised. No change has been made to the final rule.

Section 6—Insured Crop

Comment: A few commenters stated the proposed language in section 6(c) states “That are grown on trees [change from “tree varieties”] that: (1) Are listed in the Special Provisions * * *.” The commenters suggested keeping the original “tree varieties” (or “varieties of trees,” if preferred) since the Special Provisions presumably will list the “insurable varieties” (as stated in the “Background”) rather than some other description of “trees.” If this change is not accepted, at the very least section (c)(1) needs to include “varieties” after the word “Are”.

Response: FCIC agrees with the commenters. Since FCIC will list the insurable types of trees in the Special Provisions, the phrase “insurable types” has been added to section 6(c)(1).

Comment: A few commenters stated the 2001 Prune Crop Provisions reads “Are irrigated (except where otherwise provided in the Special Provisions)” but this would be deleted according to the “Background” because insurable practices are listed in the Special Provisions. The commenters question if this is a good argument; if so, why would 6(c)(1) be needed since the tree varieties also are listed in the Special Provisions? The commenters state that generally the Crop Provisions identify irrigated as the insurable practice when non-irrigated is not an equally available practice for the crop. This would seem to be more informative than having the Crop Provisions be silent on that matter and identifying any limitation of insurable practices only in the Special Provisions. The commenters recommended this section of the policy be retained as a part of the Final Rule.

Response: FCIC agrees with the commenters. The original language from section 6(c)(4) requiring crops to be grown on acreage that is irrigated has been retained.

Section 8—Insurance Period

Comment: A few commenters recommended combining sections 8(a)(1) and 8(c) since both identify when coverage begins, (a)(1) for the year of application, and (c) for subsequent crop years.

Response: FCIC agrees with the commenters. Sections 8(a)(1) and 8(c) have been combined under section 8(a)(1).

Comment: A few commenters stated the phrase “after an inspection” should be removed from section 8(b)(1). If damage has not generally occurred in the area where such acreage is located, it should be at the insurance provider’s discretion to decide whether the acreage needs an inspection to be considered acceptable. The language in this section already refers to the insurance providers having the ability to consider the acreage acceptable. Since the acreage and production reporting dates are after insurance attaches, the insurance provider may not know if the acreage was acquired after coverage began, but before the acreage reporting date. The insurance provider needs the right to inspect if they deem necessary, but this should not be a requirement. The commenters also recommended additional language be added to section 8(b)(1) to allow insurance providers the opportunity to inspect and insure any additional acreage that is acquired after the acreage reporting date if they wish to do so. Insurance providers should have the opportunity to accept or deny coverage in these types of situations. This would be similar to what is currently allowed for acreage that is not reported per section 6(f) of the Basic Provisions.

Response: No changes were proposed to this provision and the comment does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended changes because the public was not given an opportunity to comment. No change has been made to the final rule. However, with respect to acreage acquired after the acreage report, section 6(f) of the Basic Provisions, which allows the insurance provider to determine by unit the insurable crop acreage, share, type and practice, or to deny liability if the producer fails to report all units, would apply. FCIC approved procedures allow the insurance provider to revise an acreage report to increase liability if the crop is inspected and the appraisal indicates the crop will produce at least 90 percent of the yield used to determine the guarantee or amount of insurance for the unit.

Comment: A commenter stated the provision in section 8(c) has been added to most, if not all, of the perennial crops. The commenter agrees with the concept of continuous coverage applying for carryover producers, but has some concerns with language as it currently reads. The present language indicates for each subsequent crop year the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. The commenter raised issues about damage that occurs to next year's buds prior to this year's end of the insurance period date. The commenter asked whether this damage is intended to be covered by this language. For example, assume a producer is insured and a severe hail storm occurs in July. This damage may injure this year's crop as well as the buds that will produce next year's crop. However, this damage would be outside the current insurance period based on the current language. If the intent is to cover this damage for carryover producers, the language should be revised to something along the lines of the language in the Adjusted Gross Revenue handbook which states that insurance providers cover damage that occurred due to insurable causes during the previous crop year. The commenter feels that it will be difficult to assess such damage and that it should be covered under the policy. If this is not the intent, it should be stated very clearly that insurance providers will not cover damage that occurs the previous crop year if such damage occurs prior to the end of the previous year's end of insurance period.

Response: The Prune Crop Provisions do not provide coverage for damage to fruit if the damage occurs outside of the insurance period as provided in section 9(a). FCIC disagrees language should be added to section 8(c) to clarify that coverage is not provided for damage to fruit if the damage occurs outside of the insurance period since this information is already contained in section 9(a). FCIC cannot consider the recommended change to the Prune Crop Provisions to provide coverage for damage that occurs outside of the insurance period since this change was not proposed, the comment does not address a conflict or vulnerability, and the public has not been given an opportunity to provide comments. However, FCIC will consider this change the next time the Prune Crop Provisions are revised. No change has been made to the final rule.

Section 9—Causes of Loss

Comment: A commenter recommended that section 9(a)(2)

insured cause of loss be clarified as "Fire, due to natural causes, * * *" (or "Fire, if caused by lightning, * * *").

Response: No changes were proposed to this provision and the comment does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended changes because the public was not given an opportunity to comment. No change has been made to the final rule. However, section 12 of the Basic Provisions already states all insured causes of loss must be due to a naturally occurring event. In addition, the Federal Crop Insurance Act is clear that only natural causes can be covered under the policy.

Section 10—Duties in the Event of Damage or Loss

Comment: A few commenters stated the language in the second sentence of section 10(b)(2) states in part that "We will conduct an appraisal that will be used to determine your production to count * * *". The commenters recommend that this language be revised as follows: "We will conduct an appraisal that may be used to determine your production to count * * *". Additional language in this section indicates that "* * * These appraisals, and any acceptable records provided by you, will be used to determine your production to count * * *". Insurance providers need to maintain the ability to use the actual records if they believe those records are more accurate than the appraisal as noted in this additional language. Therefore, the word "will" should be changed to "may" in order to allow insurance providers the flexibility to apply this language accordingly.

Response: No changes were proposed to this provision and the comment does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended changes because the public was not given an opportunity to provide comments. No change has been made to the final rule. However, this provision is consistent with other Crop Provisions, such as apples, stonefruit and pears, that contain language regarding production that is sold by direct marketing.

Section 11—Settlement of Claim

Comment: A commenter questioned if it is correct that only prunes meeting the definition of standard prunes will be counted as production to count for claims and APH purposes, and although a producer may sell prunes of lesser quality, such production will not be counted as production to count as described above.

Response: FCIC disagrees that only prunes meeting the definition of

standard prunes will be counted as production to count for claims and APH purposes. Only counting standard prunes as production to count regardless of the cause of loss would create a program vulnerability. FCIC proposed to remove the quality adjustment provision to alleviate the time and effort required to apply a quality adjustment factor which ultimately results in zero production to count for harvested substandard prunes damaged due to insured causes of loss. The proposed removal of the quality adjustment provision, which only adjusts the quantity of substandard prunes damaged by insurable causes of loss, was not intended to prevent substandard prunes damaged by uninsurable causes of loss or production sold as standard prunes from being considered as production to count. Therefore, section 11(c)(1) has been revised to clarify that for appraised unharvested production, only prunes meeting the definition of standard prunes will be considered as production to count unless the prunes are damaged due to an uninsurable cause of loss or the prunes or prune acreage meets any of the other conditions described in section 11(c)(1). Section 11(c)(2) has been revised to clarify that for harvested production, prunes meeting the definition of standard prunes, prunes harvested for fresh fruit, prunes sold as standard prunes and prunes damaged due to uninsured causes will be considered as production to count.

In addition to the changes described above, FCIC has made minor editorial changes.

List of Subjects in 7 CFR Part 457

Crop insurance, Prune, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2013 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), 1506(o).

■ 2. Amend § 457.133 as follows:

■ a. In the introductory text by removing "2001" and adding "2013" in its place;

■ b. By removing the undesignated paragraph immediately preceding section 1;

■ c. In section 1:

- i. By removing the definitions of “market price for standard prunes” and “substandard prunes”; and
- ii. In the definition of “standard prunes” by removing the word “grading” and adding in its place the word “grade” in paragraph (b).
- d. In section 3:
 - i. By revising paragraph (a);
 - ii. By revising paragraph (b) introductory text and (b)(4)(i);
 - iii. By redesignating paragraph (c) as paragraph (d);
 - iv. By designating the undesignated paragraph following paragraph (b) as paragraph (c); and
 - v. By revising newly designated paragraph (c).
- e. In section 6:
 - i. By revising paragraph (c); and
 - ii. By removing paragraphs (d) and (e).
- f. In section 8:
 - i. By revising paragraph (a)(1);
 - ii. By removing paragraph (c);
 - iii. By redesignating paragraph (d) as paragraph (c); and
 - iv. In newly designated paragraph (c) by adding a comma after the phrase “cancellation and termination dates”.
- g. In section 9(a)(5) by removing the word “or” after the semicolon at the end of the sentence;
- h. In section 9(a)(6) by removing the period at the end of the sentence and adding a semicolon in its place;
- i. By adding section 9(a)(7);
- j. By adding section 9(a)(8);
- k. By revising section 9(b);
- l. In section 10:
 - i. By designating the introductory text as paragraph (b) and adding a new paragraph (a); and
 - ii. Redesignate paragraphs (a) through (d) in redesignated paragraph (b) as (1) through (4), respectively;
- m. By revising section 11(b)(1) through (7) and the example;
- n. By revising section 11(c) introductory text, (c)(1)(iii), and (c)(2); and
- o. By removing section 11 (e).

The revisions and additions read as follows:

§ 457.133 Prune crop insurance provisions.

* * * * *
 3. * * * * *
 * * * * *

(a) You may select only one price election for all the prunes in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the

maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

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

* * * * *
 (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 the effect of any such situation listed in section 3(b) that may occur. If you fail to notify us of any situation in section 3(b), we will reduce the yield used to establish your production guarantee at any time we become aware of the circumstance. If the situation in section 3(b) occurred:

(1) Before the beginning of the insurance period, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the situation was due to an insured or uninsured cause of loss;

(2) After the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) After the beginning of the insurance period and you fail to notify us by the production reporting date, an amount equal to the reduction in the yield will be added to the production to count calculated in section 11(c) due to uninsured causes when determining any indemnity. We may reduce the yield used to establish your production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees.

* * * * *
 6. * * *

* * * * *

(c) That are grown on trees that:

(1) Are listed as insurable types in the Special Provisions;

(2) Are grown on rootstock that is adapted to the area;

(3) Are irrigated (except where otherwise provided in the Special Provisions);

(4) Are grown in an orchard that, if inspected, is considered acceptable by us; and

(5) Have reached at least the seventh growing season after being set out.

* * * * *

8. * * *

(a) * * *

(1) For the year of application, coverage begins on March 1. For each subsequent crop year the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

* * * * *

9. Causes of Loss.

(a) * * *

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

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

(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 inability to market the prunes 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. Duties in the Event of Damage or Loss.

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples in accordance with our procedures.

* * * * *

11. * * *

* * * * *

(b) * * *

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

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

(3) Totaling the results of section 11(b)(2);

(4) Multiplying the total production to count (see section 11(c)), of each type, if applicable, by its 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); and

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

Example 1: You select 75 percent coverage level, 100 percent of the price election, and have a 100 percent share in 50.0 acres of type A prunes in the unit. The production guarantee is 2.5 tons per acre and your price election is \$630.00 per ton. You harvest 10.0 tons. Your indemnity would be calculated as follows:

- (1) 50.0 acres × 2.5 tons = 125.0-ton production guarantee;
- (2) 125.0-ton guarantee × \$630.00 price election = \$78,750 value of production guarantee;
- (4) 10.0 tons × \$630.00 price election = \$6,300 value of production to count;
- (6) \$78,750 – \$6,300 = \$72,450 loss; and
- (7) \$72,450 × 1.000 share = \$72,450 indemnity payment.

Example 2: In addition to the information in the first example, you have an additional 50.0 acres of type B prunes with 100 percent share in the same unit. The production guarantee is 2.0 tons per acre and the price election is \$550.00 per ton. You harvest 5.0 tons. Your total indemnity for both types A and B would be calculated as follows:

- (1) 50.0 acres × 2.5 tons = 125.0-ton production guarantee for type A and 50.0 acres × 2.0 tons = 100.0-ton production guarantee for type B;
- (2) 125.0-ton guarantee × \$630.00 price election = \$78,750 value of production guarantee for type A and 100.0-ton guarantee × \$550.00 price election = \$55,000 value of production guarantee for type B;
- (3) \$78,750 + \$55,000 = \$133,750 total value of production guarantee;
- (4) 10.0 tons × \$630.00 price election = \$6,300 value of production to count for type A and 5.0 tons × \$550.00 price election = \$2,750 value of production to count for type B;
- (5) \$6,300 + \$2,750 = \$9,050 total value of production to count;
- (6) \$133,750 – \$9,050 = \$124,700 loss; and
- (7) \$124,700 loss × 1.000 share = \$124,700 indemnity payment.

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

(1) * * *

* * * * *

(iii) Unharvested production that meets the definition of standard prunes; and

* * * * *

(2) All harvested production from the insurable acreage that:

- (i) Meets the definition of standard prunes;
- (ii) Is intended for use as fresh fruit;
- (iii) Is sold as standard prunes; or
- (iv) Is damaged due to uninsured causes.

* * * * *

Signed in Washington, DC, on September 18, 2012.

Michael F. Hand,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 2012–23571 Filed 9–25–12; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Part 630

RIN 3052–AC77

Disclosure to Investors in System-Wide and Consolidated Bank Debt Obligations of the Farm Credit System; System Audit Committee

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, us, we, or our) amends our regulations related to the Federal Farm Credit Banks Funding Corporation (Funding Corporation) System Audit Committee (SAC) and the Farm Credit System (System) annual report to investors. The final rule removes the provision for a two-thirds majority vote of the Funding Corporation board of directors to deny a request for resources by the SAC and requires the SAC to use resources to preserve and promote the safety and soundness of the System. The rule also requires quarterly reporting by the SAC to the Funding Corporation board and annual reporting to investors on resources used.

DATES: This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Deborah Wilson, Senior Accountant, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4434, or Laura McFarland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this final rule are to:

- Allow the SAC unrestricted access to resources to engage legal counsel, consultants and outside advisors; and
- Clarify that the SAC must have the agreement of the Funding Corporation board of directors in order to appoint, compensate, and retain the external auditor of the combined System-wide reports.

II. Background

The Farm Credit Act of 1971, as amended (Act),¹ authorizes the FCA to issue regulations implementing the

Act's provisions.² Our regulations are intended to ensure the safe and sound operations of System institutions and to govern the disclosure of financial information to shareholders of, and investors in, the System. Section 630.6(a) of our existing regulations requires the Funding Corporation to establish and maintain the SAC, including providing monetary and nonmonetary resources for SAC operations. Our existing regulation requires a two-thirds vote of the full Funding Corporation board to deny any SAC request for resources.

In a May 2010 petition, the SAC requested that we amend § 630.6(a) to allow the SAC the unfettered ability to engage outside advisors, consultants and legal counsel in the performance of its duties. In a February 14, 2012, proposed rulemaking, we proposed:

- Removing the requirement that the Funding Corporation Board deny a SAC request for resources by a two-thirds majority vote of the full board;
- The SAC use resources in a manner that would not adversely affect the safety and soundness of the System; and
- Disclosure of resources used by, and the composition of, the SAC.³

The 60-day comment period for the proposed rule closed on April 16, 2012.

III. Comments and Our Responses

We received comment letters on the proposed rule from each of the four Farm Credit banks, the Farm Credit Council (Council) on behalf of its membership, and a joint letter from the Funding Corporation and the SAC (joint letter). The Farm Credit banks and the Council expressed support for the comments made in the joint letter. We discuss the comments to our proposed rule and our responses below. Unless otherwise discussed in this preamble, those areas of the proposed rule not receiving comment are finalized as proposed.

A. System Audit Committee Authority [§ 630.6(a)]

All commenters supported removing the requirement that a two-thirds majority vote of the full Funding Corporation board of directors was needed to deny a SAC request for resources. Also, commenters supported the requirement that the SAC report at least quarterly to the Funding Corporation board on its use of resources.

Commenters expressed concern with the requirement that the SAC use Funding Corporation resources in a

¹ Public Law 92–181, 85 Stat. 583 (1971), 12 U.S.C. 2001 *et seq.*

² 12 U.S.C. 2252(a)(8), (9) and (10).

³ 77 FR 8179 (Feb. 14, 2012).