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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: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Prune Crop Insurance Provisions to remove the quality adjustment provisions for substandard prunes and to make other changes to clarify policy provisions. 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 2013 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business [insert date 60 days after publication in the Federal Register] and will be considered when the rule is to be made final.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC-11-0007, by any of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

- Mail: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205.

All comments received, including those received by mail, will be posted without change to http://www.regulations.gov, including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see http://www.regulations.gov. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823-4694 or by email at rmaweb.content@rma.usda.gov.

PRIVACY ACT: Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at http://www.regulations.gov/#!privacyNotice.

FOR FURTHER INFORMATION CONTACT: Chief, Policy Administration Branch, Product Administration and Standards Division, Risk Management Agency, at the Kansas City, MO, address listed above, telephone at (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.

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.

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 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 or 7 CFR part 400, subpart J for the informal review process of good farming practices as applicable, must be exhausted before any action against FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, 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 revising § 457.133, Prune Crop Insurance Provisions, to be effective for the 2013 and succeeding crop years. Several requests have been made for changes to improve the coverage offered, address program integrity issues, and improve clarity of the Prune Crop Insurance Provisions.

The proposed changes to § 457.133 are as follows:

1. FCIC proposes to remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of a conflict. This same information is contained in the Basic Provisions. Therefore, it is duplicative and should be removed in the Crop Provisions.

2. Section 1- FCIC proposes to remove the definitions of “market price for standard prunes” and “substandard prunes.” These terms and definitions are no longer needed with the proposed removal of quality adjustment for substandard prunes in section 11(e).

FCIC proposes to revise the definition of “standard prunes” to replace the phrase “grading standards” with the phrase “grade standards.” The term “grade standards,” rather than “grading standards,” is consistent with terminology in other Crop Provisions administered by FCIC and is a more accurate term.

3. Section 3 – FCIC proposes to revise paragraphs (a) and (b) to remove the phrase “varietal group” and replace it with the word “type” everywhere it appears. Varietal groups are typically identified in the Special Provisions. However, prunes are not categorized by varietal group in the Special Provisions, rather they are categorized by type. Therefore, using the word “type” is more appropriate.

FCIC proposes to redesignate section 3(c) as section 3(d) and designate the undesignated paragraph following section 3(b) as section 3(c). FCIC proposes to revise newly designated section 3(c) to add provisions to specify how yields will be reduced if an event or action occurs that may reduce the yield potential based on when the situation is reported. The current provision states that the insurance provider will reduce the yield used to establish the insured's production guarantee, but does not tell when or how. The proposed section 3(c)(1) states that if a situation that may reduce the insured's yield is reported before the beginning of the insurance period, the yield used to establish the insured's 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. The proposed section 3(c)(2) states that if a situation that may reduce the insured's yield is reported after the beginning of the insurance period and the insured notifies the insurance provider by the production reporting date, the yield used to establish the insured's production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish the insured's production guarantee is due to an uninsured cause of loss. The proposed section 3(c)(3) states that if a situation that may reduce the insured's yield is reported after the beginning of the insurance period and the insured fails to notify the insurance provider 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 and the insurance provider will reduce the yield used to establish the insured's production guarantee for the subsequent crop year.

FCIC also proposes to revise newly designated section 3(c) to remove the list of possible situations that affect yield and instead refer back to section 3(b), which contains the same information. This eliminates redundancy and is consistent with other perennial Crop Provisions, such as apples, grapes, and stonefruit.

4. Section 6 – FCIC proposes to revise section 6(c) by removing the requirements for the insured crop to be grown on tree varieties that were commercially available at set out and tree

varieties that are adapted to the area because these provisions have created confusion as to which varieties meet these requirements. FCIC proposes to add a requirement for the insured crop to be grown on trees that are listed in the Special Provisions. This provision will eliminate any confusion as to which varieties are insurable because insurable varieties will be listed in the Special Provisions. FCIC proposes to remove the requirement for trees to be irrigated because insurable practices are listed in the Special Provisions.

5. Section 8 – FCIC proposes to revise section 8(a) to state that the year of application coverage begins on March 1. FCIC proposes to revise section 8(c) to remove the phrase "Notwithstanding paragraph (a)(1) of this section." These changes will allow continuous coverage of the citrus fruit from year to year with no gaps in coverage. This proposed change is consistent with other perennial Crop Provisions, such as apples and grapes.

6. Section 9 – FCIC proposes to add provisions in section 9(a) that allow insects and disease to be insurable causes of loss unless damage is due to insufficient or improper application of control measures. FCIC proposes to remove the provisions in section 9(b)(1) that excludes insects and disease from insurability unless adverse weather prevents the proper application of control measures or causes properly applied control measures to be ineffective or causes disease or insect infestation for which no effective control mechanism is available. This will make insects and disease a presumed insurable cause of loss unless one of the stated conditions exists as opposed to a presumed uninsurable cause of loss unless one of the stated conditions exists.

7. Section 10 - FCIC proposes to add a new section 10(a) to clarify the insured must leave representative samples for appraisal purposes in accordance with the Basic Provisions. The rest

of the provisions are proposed to be redesignated.

8. Section 11 – FCIC proposes to revise section 11(b) to remove the phrase "varietal group" and replace it with the word "type" everywhere it appears. As stated above, varietal groups are typically identified in the Special Provisions. However, prunes are not categorized by varietal group in the Special Provisions, rather they are categorized by type. Therefore, using the word "type" is more appropriate.

FCIC proposes to revise the settlement of claim examples in section 11(b). FCIC proposes to revise the example by changing the term "varietal group" to "type" everywhere it appears in the example for reasons stated above. FCIC proposes to revise the example to illustrate the correct rounding of decimals and to identify units consistently. FCIC also proposes to revise the introductory paragraph of the second part of the example to clarify that information contained in the second part of the example is in addition to the information contained in the first part of the example. These changes are proposed to improve accuracy and readability of the example.

FCIC proposes to revise section 11(c) to replace the phrase "grade substandard or better" with the phrase "meet the definition of standard prunes." The phrase "grade substandard or better" is no longer applicable with the proposed removal of quality adjustment for substandard prunes in section 11(e).

FCIC proposes to remove section 11(e) which removes the provisions regarding quality adjustment for substandard prunes. The calculation used to determine the quality adjustment factor was the value per ton of substandard prunes divided by the market price per ton for standard prunes. In addition, there was a statement on the Special Provisions that reduced the value per ton by the harvest cost per ton prior to calculating the quality adjustment factor. The value per ton of substandard prunes is a value published by the Prune Bargaining Association (PBA). In recent years, PBA has either not published a substandard price or has published a price that is near or below zero. In some instances, PBA's value per ton for substandard prunes was so low that when the harvest cost per ton specified in the Special Provisions was deducted from the value per ton, the result was less than zero. When the value of substandard prunes is less than or equal to zero, substandard prune production does not count as production to count for claims purposes. The quality adjustment procedure was burdensome to the producer and the insurance provider who had to wait until the PBA published prices to settle claims and it generally had little to no effect on indemnities so the quality adjustment procedures are being removed from the policy. As proposed, only counting as production to count those prunes that meet the specified standards will take into consideration the quality of the prunes.

List of Subjects in 7 CFR Part 457

Crop insurance, Prunes, 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 2013 and succeeding crop years to read 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).

2. Amend § 457.133 as follows:

a. Amend the introductory text by removing “2001” and adding “2013” in its place;

b. Remove the undesignated paragraph immediately preceding section 1;

c. Amend section 1 to:

i. Remove the definitions of “market price for standard prunes” and “substandard prunes”; and

ii. Amend the definition of “standard prunes” by removing the word “grading” and replacing it with the word “grade” in paragraph (b);

d. Amend section 3 to:

i. Revise paragraph (a);

ii. Revise paragraph (b);

iii. Designate the undesignated paragraph following paragraph (b) as paragraph (c);

iv. Revise newly designated paragraph (c); and

v. Redesignate paragraph (c) as paragraph (d);

e. Amend section 6 to:

i. Revise paragraph (c); and

ii. Remove paragraphs (d) and (e);

f. Revise section 8(a)(1);

g. Amend section 8(c) by removing the phrase “Notwithstanding paragraph (a)(1) of this section, for” and replacing it with the word “For”;

h. Amend section 9(a)(5) by removing the word “or” after the semicolon at the end of the sentence;

i. Amend section 9(a)(6) by removing the period at the end of the sentence and adding a semicolon in its place;

j. Add a new section 9(a)(7);

k. Add a new section 9(a)(8);

l. Revise section 9(b);

m. Amend section 10 to:

i. Designate 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;

n. Amend section 11 to:

i. Revise paragraph (b);

ii. Revise paragraph (c); and

iii. Remove paragraph (e).

The additions and revisions read as follows:

§ 457.133 Prune crop insurance provisions.

* * * * *

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 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 3(b) is reported:

(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 will reduce the yield used to establish your production guarantee for the subsequent crop year.

* * * * *

6. Insured Crop.

* * * * *

(c) That are grown on trees that:

(1) Are listed in the Special Provisions;

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

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

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

* * * * *

8. Insurance Period.

(a) * * *

(1) For the year of application, coverage begins on March 1.

* * * * *

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. Settlement of Claim.

* * * * *

(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) if there is more than one type;

(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) if there is more than one type;

(6) Subtracting the result of section 11(b)(4) from the result of section 11(b)(2) if there is only one type or subtracting the result of section 11(b)(5) from the result of section 11(b)(3) if

there is more than one type; and

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

For example:

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 x 2.5 tons = 125.0 ton production guarantee;

(2) 125.0 ton guarantee x $630.00 price election = $78,750 value of production guarantee;

(4) 10.0 tons x $630.00 price election = $6,300 value of production to count;

(6) $78,750 - $6,300 = $72,450 loss; and

(7) $72,450 x 1.000 share = $72,450 indemnity payment.

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 x 2.5 tons = 125.0 ton production guarantee for type A and 50.0 acres x 2.0 tons = 100.0 ton production guarantee for type B;

(2) 125.0 ton guarantee x $630.00 price election = $78,750 value of production guarantee for type A and 100.0 ton guarantee x $550.00 price election = $55,000 value production guarantee for type B;

(3) $78,750 + $55,000 = $133,750 total value of production guarantee;

(4) 10.0 tons x $630.00 price election = $6,300 value of production to count for type A and 5.0 tons x $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 x 1.000 share = $124,700 indemnity payment.

(c) The total production to count (in tons) from all insurable acreage on the unit will include all harvested and appraised production of natural condition prunes that meet the definition of standard prunes and any production that is harvested and intended for use as fresh fruit. The total production to count will include:

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Signed in Washington, D.C., on ___November 22, 2011__.

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William J. Murphy
Manager
Federal Crop Insurance Corporation

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