Billing Code 3410-08-P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Docket No. FCIC-12-0006

RIN 0563-AC39

Common Crop Insurance Regulations; Florida Citrus Fruit 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, Florida Citrus Fruit 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 proposed changes will apply for the 2014 and succeeding crop years.

DATES: This rule is effective **[**insert date 30 days after this rule is published in the Federal Register].

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), Florida Citrus Fruit Crop Insurance Provisions that were published by FCIC on July 16, 2012, as a notice of proposed rulemaking in the Federal Register at 77 FR 41709 – 41716. The public was afforded 30 days to submit comments after the regulation was published in the Federal Register.

A total of 80 comments were received from 6 commenters. The commenters were insurance providers, an insurance service organization, and a grower organization.

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

General

Comment: A commenter asked that FCIC conduct at least one public forum meeting, with

current citrus growers, insurance provider loss adjustment management, agents, and grower groups, before all the proposed changes are implemented and binding in regards to the 2014 Florida Citrus Fruit policy.

Response: FCIC representatives have been present at several meetings where Florida citrus fruit stakeholders, including loss adjusters and grower groups have been present. At these meetings some of the proposed changes to the Florida Citrus Fruit Crop Provisions (Crop Provisions) were discussed and the stakeholders provided valuable input. The information gathered at these meetings was considered when drafting the proposed rule. FCIC regrets if all interested parties were not in attendance at these meetings or if the topics covered did not encompass all of the proposed changes. Further, all interested parties have had an opportunity to comment on all the proposed changes. Therefore, FCIC does not intend to conduct any additional meetings to discuss the proposed changes prior to finalizing the Crop Provisions.

Comment: A few commenters stated FCIC's proposed system for reclassifying citrus fruit is more cumbersome than the one currently used by the agency. The commenters stated they can find no reason to change the system and doing so will only cause confusion. Growers are familiar with the current system as it has been in place for over 50 years. Changing such a widely accepted, time tested system simply for the purpose of standardization with other commodities makes no sense.

Response: FCIC understands the concerns of the commenters that the proposed changes to terminology and policy structure could initially create confusion for stakeholders. However, these changes are necessary in order to meet the objectives of the Acreage Crop Reporting Streamlining Initiative, which has a broader goal of simplifying reporting requirements for producers. Currently, different USDA programs have different reporting requirements and terminology. In order to streamline the reporting process, accommodations have been made

within all the affected programs to standardize their reporting. In the long run, producers will benefit from this streamlined process. Stakeholders should become more comfortable with the changes to terminology and policy structure over time. No change has been made to the final rule.

Comment: A commenter stated the proposed changes within the policy for reclassifying citrus into commodities have their purpose and could be perceived as a move in the right direction. However, instead of renaming all Florida citrus and citrus fruit nationwide, the commenter suggested that FCIC align and broaden coverage. The commenter stated that claims should be separated at the variety level and not offset another variety. If unit structures and coverage were enhanced and broadened, then growers that only purchase catastrophic coverage would be inclined to analyze their risk and management thereof and purchase better protection.

Response: FCIC appreciates the commenter's suggestion that allowing units to be separated at the varietal level would be more desirable to producers and would result in producers selecting higher levels of coverage on the varieties with a higher perceived risk. While the proposed "citrus fruit groups" could be used to allow separate basic units and coverage levels by variety, no such changes were proposed and such changes would be significant, requiring the public to receive an opportunity to comment. In considering such changes in the future, more research would be necessary to determine the impact on premium rates and the producers' willingness to pay for any increased rates. No change has been made to the final rule.

Comment: A few commenters stated it would be helpful if FCIC would clarify and publish all intended unit structures, commodity types, intended uses and any other information that would be helpful to understanding or explaining the information that will be contained in the Special Provisions.

Response: As stated in the proposed rule, basic units will be determined by citrus fruit

group. The optional unit structure has not changed. Although the commodity types and intended uses are subject to change based on price availability and rating needs, the anticipated commodity types, intended uses, and citrus fruit groups for the 2014 crop year are as follows:

Citrus Fruit Commodity	**Commodity Type**	**Intended Use**	**Citrus Fruit Group**
Oranges	Early-season	Juice	A
Oranges	Mid-season	Juice	A
Oranges	Late-season	Juice	B
Oranges	Late-season	Fresh	C
Oranges	Navel	Fresh	D
Grapefruit	No Commodity Type Specified	Juice	E
Grapefruit	No Commodity Type Specified	Fresh	F
Tangelos	No Commodity Type Specified	Fresh	G
Mandarins/Tangerines	No Commodity Type Specified	Fresh	H
Tangors	Murcotts	Fresh	I
Tangors	Temples	Fresh	I
Lemons	No Commodity Type Specified	Juice	J
Limes	No Commodity Type Specified	Juice	K

Comment: A commenter stated it would have been helpful if FCIC would have provided a sample Special Provisions or some other example to illustrate the distinctions between the terms, "citrus fruit commodities" and "citrus fruit groups." According to the definitions and the background information in the proposed rule, it appears that a "citrus fruit commodity" may be subdivided into "citrus fruit groups" made up of various combinations of "commodity types" and "intended uses" (and perhaps also "classes" and "subclasses"). At a guess, an example of "commodity types" might be early-season, mid-season and late-season oranges, and "intended uses" might be fresh and juice. The commenter stated that while the proposed definition of

"citrus fruit commodity" includes all oranges together, various types of oranges were designated in the current Florida Citrus Fruit Crop Provisions as Citrus I (early and mid-season oranges), Citrus II (late oranges juice), Citrus VII (late oranges fresh), and Citrus VIII (navel oranges), with each of these being separate "crops" that the producer could choose to insure or not. It appears that the new subdivision of "citrus fruit group" provides for similar insurance choices within the "commodity" of oranges, so that a producer might choose to insure "late-season oranges fresh" but not "late-season oranges juice" (if these are separate "groups" of "commodity types" and "intended uses"). The commenter asked if this correct.

Response: FCIC agrees with the commenter's interpretation of the proposed rule. Within each citrus fruit commodity, such as oranges, the producer can elect which citrus fruit groups to insure. However, once a producer elects to insure a citrus fruit group, all oranges qualifying for the citrus fruit group will be insured. The response to the previous comment provides more detail on the commodity types and intended uses FCIC plans to offer and how different combinations of the commodity types and intended uses will be used to form citrus fruit groups.

Comment: A commenter stated there are numerous references to changes being made due to the expansion of type and practice into four different new subcategories for each of these items. It would be extremely beneficial if RMA would provide a sample of a proposed Special Provision as a part of the proposed rule as this would assist those reviewing the proposed rule when developing comments. It is difficult to review and comment on various parts of this proposed rule without knowing what the Special Provisions will contain under this new format. The commenter requested that RMA consider publishing a sample Special Provision as a part of all future proposed rule changes to Crop Provisions.

Response: FCIC will consider posting a sample Special Provision onto regulations.gov along with future proposed rules.

Comment: A commenter stated they recognize that, as stated in the background information in the proposed rule, some of the proposed terminology changes are made "to be consistent with the terms developed under the Acreage Crop Reporting Streamlining Initiative" such as changing "citrus fruit crop" to "citrus fruit commodity" and "citrus fruit type" to "commodity type." Also, the terms "commodity type" and "intended use" are part of the expanded types/practices that will be implemented. The commenter stated that these terms will become easier to deal with as stakeholders become more familiar with them. However, the commenter stated that some of the distinctions and coordination among the new definitions of "citrus fruit commodities," "citrus fruit groups," "commodity types," and "intended uses" (replacing the current definitions of "citrus fruit crop" and "citrus fruit type") are not entirely clear and can result in some confusion as to what exactly is being proposed.

Response: FCIC agrees that the new terminology will become easier to understand over time. FCIC also agrees that not all commodity types, intended uses, and citrus fruit groups were included in the proposed rule. However, FCIC has listed all currently intended commodity types, intended uses, and citrus fruit groups in response to a previous comment.

Comment: A commenter stated changes in terminology will result in many additional inspections for the 2014 crop year and this is a concern.

Response: FCIC disagrees that changes in terminology will result in additional inspections. Inspections will not be required for carryover policyholders who have to fill out a new application solely as a result of the revised terminology in the Crop Provisions. Inspections may be required for carryover policyholders if: damage, production methods, or cultural practices will reduce the insured's crop production; trees have been removed or replaced with uninsurable trees; new land units are added; the insured transfers to a different insurance provider; or when spot checks are completed. However, inspection under these circumstances was previously

required. FCIC approved procedures will provide additional information on required inspections.

Comment: A commenter recommended a series of changes to be made in order to maintain consistency with the already-established expanded types and practices. The commenter stated that this series of changes will be more effective than the proposed changes, while still meeting the apparent objectives of the proposed rule. First, the commenter suggests removing the term "citrus fruit group" from the proposed rule. Second, the commenter suggests that each of the citrus fruit commodities (oranges, grapefruit, etc.) should reflect the commodities upon which separate coverage levels and administrative fees are based. More specifically, the commenter states that each commodity should be a separate insurable commodity and a separate eligible crop insurance contract. Third, the commenter suggests the actuarial documents be issued with the commodity of oranges containing commodity types of early-season and late-season with intended uses of fresh and processing for each commodity type and the rest of the eight type practice fields indicating they are unspecified. Fourth, the commenter suggested coverage levels should be elected by commodity, and therefore, it is important that the Crop Provisions clearly state this in both section 3 (Insurance Guarantees, Coverage Levels and Prices for Determining Indemnity) and section 6 (Insured Crop).

Response: FCIC disagrees with the commenter that citrus fruit groups should be removed from the final rule and that administrative fees, basic units, and coverage levels should be based on the citrus fruit commodity. The reason the citrus fruit groups were proposed to be added was to keep the basis for administrative fees, basic units, and coverage levels as similar to the current structure as possible while still meeting the objectives of the Acreage Reporting and Streamlining Initiative. Basing administrative fees, basic units, and coverage levels on the new citrus fruit commodities would constitute a major shift in how administrate fees, basic units, and

coverage levels are determined and restrict the choices available to producers. No change has been made to the final rule.

Section 1 – Definitions

Comment: A few commenters recommended FCIC not change the term "citrus fruit crop" to "citrus fruit commodity." The term "commodity" is infrequently used in the industry and would only confuse policyholders. The commenters stated that presently, the only time that citrus crops are called commodities is on the futures market. The goal of any language change should be to make the policy more understandable to the policyholder who purchased it.

Response: FCIC proposed changing the term "crop" to "commodity" because of a USDA initiative known as the Acreage Crop Reporting and Streamlining Initiative. This initiative has an objective of standardizing terms and consolidating acreage reports across participating USDA agencies so that information can be shared across agencies, thereby reducing the number of times producers are required to report the same information to different agencies. As a result of the Acreage Crop Reporting and Streamlining Initiative, the term "crop" is being replaced by the more universally used term of "commodity" in RMA's Actuarial Information Browser and where applicable as Crop Provisions are revised. Because the term "commodity" is used in the Actuarial Information Browser, changing the term "crop" to "commodity" in the Florida Citrus Fruit Crop Provisions should help to eliminate confusion for producers accessing the Actuarial Information Browser. No change has been made to the final rule.

Comment: A commenter stated that replacing the existing citrus fruit crops (Citrus I, Citrus II, etc.) with oranges, grapefruit, etc. will allow for greater clarity as to what commodity is being covered. However, because there is not a one-to-one correlation between the old and new designations, it is appropriate to require producers to complete new applications. Even if the final rule does not include this requirement, it is important to include this requirement in any

announcement that accompanies the publication of the final rule, so that insurance providers, agents and producers may prepare accordingly.

Response: FCIC agrees that the producer will be required to complete new applications for certain citrus fruit groups that do not have a one-to-one correlation with the old citrus fruit crop. Therefore, carryover policyholders with a policy for Citrus IV (Tangelos and Tangerines), Citrus VI (Lemons and Limes), or Citrus VII (Grapefruit for which freeze damage will be adjusted on a fresh fruit basis, and late oranges fresh) will be required to complete a new application. FCIC will include information on completing the new applications in an informational memorandum and in the Crop Insurance Handbook. As stated above, even though new applications may be required, this does not mean that new inspections must be performed.

Comment: A commenter stated the definition of "citrus fruit group" states that various "commodity types and intended uses within a citrus fruit commodity… may be grouped together for the purposes of electing coverage levels, establishing basic units, and assessing administrative fees." According to the background information in the proposed rule, this change is intended "to make the insurance coverage as similar to that which was previously provided while still being consistent with the Acreage Crop Reporting Streamlining Initiative." This suggests that, for example, early and mid-season oranges are likely to be a citrus fruit group [previously Citrus I] while late oranges for juice [Citrus II] and late oranges for fresh [Citrus VII, along with grapefruit adjusted on a fresh basis] will be separate citrus fruit groups, and producers would be able to choose whether or not to insure any or all of these groups, with separate basic units by "group," and different coverage levels possible, instead of the choice of insurance (and level, etc.) being by "citrus fruit commodity" (so that all oranges would have to be insured). It appears that lemons and limes will no longer be grouped together [previously Citrus VI] since they are set up as separate "citrus fruit commodities," so producers will be able to insure one and

not the other, which was not possible before. This change for lemons and limes is indicated in the background information in the proposed rule, so the commenter assumes that perhaps this is the only significant difference between the previous "citrus fruit crops" and the proposed "citrus fruit groups" (as opposed to comparing to the proposed "citrus fruit commodities").

Response: FCIC agrees with the commenter's interpretation of the proposed rule. FCIC has tried to maintain the current insurance options and flexibility available to producers to the maximum extent possible. However, in addition to Citrus VI (lemons and limes), the citrus fruit crops Citrus IV (tangelos and tangerines) and Citrus VII (Grapefruit for which freeze damage will be adjusted on a fresh fruit basis, and late oranges fresh) will also be split apart into separate citrus fruit commodities. This increases the insurance options available.

Comment: A commenter stated that based on the definitions of "citrus fruit commodity" and "citrus fruit group," it appears the "citrus fruit group" is the basis of coverage (similar to the current "citrus fruit crops" of Citrus I through Citrus IX) while "citrus fruit commodity" is a more generic reference to the different kinds of citrus (oranges, grapefruit, etc.). The commenter questioned if there is much benefit in identifying "oranges" as the "citrus fruit commodity" if producers will continue to be able to choose to insure "late oranges fresh" while not insuring any other oranges (or insuring them at different coverage levels and prices).

Response: The benefit to changing to commodity names to be consistent with commodity names used by other USDA agencies is this will allow information to be shared with other USDA agencies. This change is intended to reduce the number of times a producer has to report the same information to different agencies. Although other USDA programs may not use all of the same terminology, some of the added terms are necessary to maintain the current flexibility allowed by the policy. Additionally, changing the commodity names to be consistent between the different regions FCIC insures these commodities will simplify the administration of the

Federal crop insurance program.

Comment: A few commenters stated the proposed rule does not appear to align with the expanded type and practice attributes established by FCIC (commodity type, class, subclass, intended use, cropping practice, irrigated practice, organic practice and interval) for some crops with the 2013 reinsurance year. The proposed term "citrus fruit group" is defined as "a designation in the actuarial documents used to identify commodity types and intended uses within a citrus fruit commodity that may be grouped together for the purposes of electing coverage levels, establishing basic units and assessing administrative fees." There is no "group" attribute in the now established expanded types and practices. Adding a ninth attribute will require redesigning the actuarial data tables and a significant amount of programming changes. It seems as though the citrus fruit commodities listed in the proposed rule, should be the "citrus fruit group" used to elect coverage levels and assess administrative fees since this would be most similar to the groups established under the 2009 provisions.

Response: FCIC disagrees that the citrus fruit commodities should be the citrus fruit group. The purpose of the change is to allow for the streamlining of reporting while maintaining current flexibility. Eliminating the citrus fruit commodities defeats this purpose. However, the commenter is correct that adding a ninth attribute to the type/practice tab in the Actuarial Information Browser will require significant programing changes. Therefore, FCIC will instead list the citrus fruit groups in a Special Provisions statement. FCIC has revised the definition of "citrus fruit group" by removing the phrase "actuarial documents" and adding the phrase "Special Provisions" in its place. Additionally, FCIC has revised the definition of "citrus fruit group" to clarify that different combinations of commodity types and intended uses may grouped together to form citrus fruit groups.

Comment: A few commenters stated if the definition of "citrus fruit group" is kept, it does

not need to state that the group designation is used to establish basic units. If each group is considered a separate "crop policy," there is no alternative except to allow for separate basic units if each group to be insured must be designated on the application form.

Response: FCIC agrees with the commenter that it is not necessary to state the citrus fruit group will be used to establish basic units. The commenter is correct that since each citrus fruit group would be considered a separate insured crop, the producer would be entitled to separate basic units by insured crop in accordance with the definition of "basic unit" in the Basic Provisions. Therefore, FCIC has revised the definition of "citrus fruit group" by removing references to basic units and administrative fees and adding a phrase that indicates the citrus fruit group will be used to identify the insured crop in its place. FCIC has also revised section 2 to state that basic units will be established in accordance with section 1 of the Basic Provisions.

Comment: A few commenters stated they agree with changing the definition of "Excess Wind" and expanding the number and location of weather recording stations.

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

Comment: A commenter requested clarification on the intent of the definition of "intended use." The interpretation could go many different ways when you get into claim situations. This would be another benefit of being able to see a sample Special Provision.

Response: FCIC agrees that the definition of "intended use" is ambiguous because there is no indication of what intended uses are available. FCIC has revised the provision to clarify that insurable intended uses are specified in the Special Provisions. Currently, the only intended uses FCIC plans to insure under the Florida Citrus Fruit Crop Provisions are fresh and juice. The intended use that is selected will be used to determine the dollar amount of insurance and the loss adjustment procedures for settling claims. Producers who choose an intended use of fresh will

be required to provide management records upon request to verify good fresh citrus fruit production practices were followed from the beginning of bloom stage until harvest. In addition, unless otherwise provided in the Special Provisions acceptable fresh fruit sales records must be provided upon request from at least one of the previous three crop years; or for fresh fruit acreage new to the operation or for acreage in the initial year of fresh fruit production, a current year fresh fruit marketing contract must be provided upon request.

Comment: A commenter stated according to subsection (a)(3) of the definition of "potential production," it includes citrus fruit that "Except as provided in (b), was missing, damaged or destroyed from either an insured or uninsured cause"; while subsection (b)(1) excludes citrus fruit that "Was missing, damaged, or destroyed before insurance attached for any crop year." The commenter questioned whether this means that subsection (a)(3) applies only when these events occur after insurance attached. The commenter also questioned if subsection (a)(3) should specifically reference subsection (b)(1), or do subsections (b)(2) and (3) also factor into the equation. The commenter suggested changing the period at the end of the opening sentence to a colon. The commenter also suggested revising subsection (b)(3) by removing the phrase "Any tangerines that" and adding the phrase "For tangerines," to better follow the lead-in.

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 any potential changes because the public was not given an opportunity to comment. No change has been made to the final rule. However, with respect to the question raised by the commenter, FCIC agrees subsection (b)(1) includes citrus fruit that was missing, damaged, or destroyed from either an insured or uninsured causes after insurance attached for the crop year. Additionally, potential production does not include citrus fruit that was missing, damaged or destroyed due to insured or uninsured causes that are damaged or destroyed due to normal dropping as described in

subsection (b)(2) or that are tangerines that normally would not meet the 210 pack size as described in subsection (b)(3).

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

Comment: A commenter stated as reworded, the first sentence of section 3(a) ["You may select only one coverage level for each citrus fruit group designated within a citrus fruit commodity in the actuarial documents that you elect to insure."] might be interpreted either as being able to elect insurance by citrus fruit group or by citrus fruit commodity. This could be clarified by putting parentheses around the phrase "designated within a citrus fruit commodity in the actuarial documents."

Response: FCIC agrees that as proposed section 3(a) may be misinterpreted. Since the definition of "citrus fruit group" specifies that the citrus fruit group is within a citrus fruit commodity, it is not necessary to restate this everywhere the term "citrus fruit group" is used. Therefore, FCIC has revised section 3(a) by removing the phrase "designated within a citrus fruit commodity in the actuarial documents."

Comment: A few commenters requested clarification of the purpose of section 3(c)(1). The commenters stated it is unclear exactly what the provision is requiring producers to report. The provision states "you must report any event or action that could reduce the yield per acre" but it is unclear what the starting point is for assessing if a reduction has occurred. The commenters stated that if the purpose of section 3(c)(1) is to have the grower report any condition that will prevent the acreage from being capable of producing a crop that will have a value at least equal to the amount it is insured for, it should state it that way. The commenters stated that because this is a dollar plan of insurance and losses are determined by the percent of damage and not historical yields, reduction in productive capacity should be irrelevant. The commenters stated the same coverage should be provided for a unit regardless of the productive capacity. The

commenters questioned how units with different productive capacities can treated differently under this type of plan. The commenters questioned if the true intent is to notate and capture uninsured damage, tree removal, etc. The commenters also questioned how greening effects are reported and suggested that this might already be handled with the current 10% tolerance factors.

Response: The purpose of section 3(c)(1) is to collect information that can be used to establish the amount of insurance and insurable acreage. The Reference Maximum Dollar Amount used to establish the amount of insurance per acre is based on the productive capacity of a healthy, fully stocked citrus grove. When the productive capacity of trees in a grove is reduced, it is not appropriate to maintain the same amount of insurance because that would result in over-insuring the grove because situations could occur that would make it impossible to produce the amount of insurance even if no insurable loss has occurred. Therefore, in section 3(c), FCIC is capturing the information needed to evaluate the productive capacity of the grove so it can be compared with the Reference Maximum Dollar Amount. Further, section 3(d) specifies that if the productive capacity of the grove is reduced, the acreage or amount of insurance can be reduced. Procedures for reporting damage, disease, etc. and reducing acreage or the amount of insurance will be included in the Crop Insurance Handbook. No change has been made to the final rule.

Comment: A commenter stated the proposed provision in section 3(c) changes the deadline from sales closing date to acreage reporting date and would require reporting of the specified information each year rather than only the first year of interplanting and any time the interplanted acreage's planting pattern changes. The commenter stated the significance of this change is not clearly specified in the background information in the proposed rule. The commenter stated the current section 3(c) also requires the additional information listed when citrus trees were interplanted for the first time, and when the planting pattern of the interplanted

acreage subsequently changed. The proposed language removes all but one reference to "interplanted trees," making the reporting requirement applicable in all cases every year rather than only when there is interplanting and any subsequent change. The commenter stated that this change, along with the change in deadline to the acreage reporting date, seems to make this provision more applicable to a "Report of Acreage" section corresponding to section 6 of the Basic Provisions, rather than additional information required in certain circumstances. The commenter requested FCIC consider moving these provisions to a "Report of Acreage" section corresponding to section 6 of the Basic Provisions.

Response: FCIC disagrees with the commenter that the provisions in section 3(c) should be moved to a "Report of Acreage" section corresponding to section 6 of the Basic Provisions. While the deadline may have changed to the acreage reporting date, the purpose of the provisions is to establish the amount of insurance for the crop, which has been contained in section 3 in many of the other perennial crops and does not affect the purpose or the meaning of the provisions. FCIC agrees that certain reporting requirements in section 3(c) are annual. However, the Florida Citrus Fruit Crop Provisions does not currently contain a section for report of acreage and adding a new section would require redesignating other sections. Further, the possibility exists that cross references may be missed. The risk of this outweighs any benefit from creating a new section especially since it would not clarify or change the meaning of the proposed provisions. FCIC's proposal to revise section 3(c) by changing the deadline for reporting from the sales closing date to the acreage reporting date has no impact on stakeholders because these dates are the same. No change has been made to the final rule.

Comment: A commenter stated the reporting requirements in the background information in the proposed rule includes "age of the trees, interplanted trees, planting pattern" in addition to the new requirements in sections 3(c)(1) and (2). The commenter stated this is similar to the

sequence in sections 3(c)(1) and (2) of the current Crop Provisions, but "interplanted trees" is not in the proposed section 3(c)(3). The only mention of "interplanted trees" is in the parenthetical list in section 3(c)(1) of events or actions that could reduce the yield. The commenter questioned whether interplanting of citrus trees will always be considered to be likely to result in a reduction of potential yield. The commenter stated to consider if section 3(c)(1) should be moved to section 3(c)(3) since there will not always be an "event or action that could reduce the yield" to report every year.

Response: FCIC agrees with the commenter that section 3(c)(1) is not the appropriate place to list interplanted trees since section 3(c)(1) lists circumstances that would result in a reduction in the guarantee per acre. Because interplanted trees would result in an acreage reduction instead of a reduction in the guarantee per acre, FCIC has removed the reference to interplanted trees from section 3(c)(1) and added a reference to interplanted trees to section 3(c)(2).

Comment: A commenter stated the proposed provision in section 3(d) references a reduction in the yield potential and expected yield. The commenter stated this reference is misplaced as this is a dollar plan of insurance and not based on an approved yield. If the potential yield drops below 100 boxes per acre such acreage would then be addressed by sections 6(c) and (d). Since yields normally do change from year to year, the commenter questioned what would constitute a yield reduction for purposes of this provision. The commenter stated it appears this provision could generate additional unnecessary inspections on the part of the insurance providers.

Response: FCIC agrees sections 6(c) and (d) address situations when the yield potential drops below 100 boxes. However, FCIC disagrees that the amount of insurance or insurable acreage should not be reduced when the yield potential is reduced by a quantifiable amount from the maximum potential, but remains greater than 100 boxes per acre. Even though this is a dollar plan of insurance, FCIC has an obligation to ensure that it is not over-insuring the crop. This

means that while any given grove may have a unique maximum yield potential at any given time, FCIC does not consider it appropriate to maintain the same amount of insurance when the yield potential of a grove is reduced below a certain level due to damage to the trees, disease, reduction in stand density, or other causes. Reduction in yield potential will be identified by assessing the health and vigor of the trees, as well as damage. It may be necessary to review production records to determine if a reduction in productive capacity has occurred. Although yields may normally fluctuate from year to year, it should still be possible to determine if there has been a reduction in productive capacity due to damage to the trees, disease, reduction in stand density, or other causes. Additional guidance will be provided in the Crop Insurance Handbook for determining if a reduction in productive capacity has occurred. FCIC does not consider inspections needed to reduce the amount of insurance or acreage to the appropriate level unnecessary. No change has been made to the final rule.

Comment: A commenter stated that according to the background information in the proposed rule, "FCIC proposed to revise section 3(d) by clarifying the reasons FCIC will reduce insurable acreage or the amount of insurance, or both. The reasons given for a reduction are consistent with the reporting requirements contained in the proposed revision of section 3(c)." However, the commenter stated the added details in section 3(d) of what might require a reduction do not seem to match what is listed in section 3(c)(1). Both section 3(c) and (d) mention "interplanted trees" and "practices," although section 3(d) specifies "cultural practices," "damage," and "disease." The commenter questioned if "a decrease in plant stand" is supposed to be similar to "removal of trees." The commenter also questioned if a reference to "plant stand" is appropriate for tree crops, but stated perhaps it is, since it is used in the Special Provisions statement.

Response: FCIC considers the phrase "decrease in plant stand" appropriate for tree crops

since trees are technically plants and this is a common phrase used in literature referring to trees. Removal of trees would be one reason for a decrease in plant stand, but other reasons could include natural attrition, blow-down, and mortality due to disease. Since section 3(c) includes any event or action that could reduce the yield per acre, FCIC did not include an all-encompassing list of what must be reported. However, FCIC agrees the reporting terms in section 3(c) should match as closely as possible the terms in section 3(d). Therefore, FCIC has revised section 3(c)(1) by adding the term "cultural" prior to the term "practices" to be consistent with section 3(d)(3). FCIC has also revised section 3(c)(1) by adding the term "disease" to be consistent with the terminology in section 3(d)(4).

Comment: A commenter stated the proposed language in section 3(e) refers to circumstances "that may reduce the yield per acre from previous levels" but no longer refers to the possibility that they might reduce the acreage as in the last sentence of current section 3(d). The commenter questioned if that change was intended.

Response: FCIC did not intend for the proposed language in section 3(e) to exclude circumstances that might reduce the acreage. FCIC has revised section 3(e) to include circumstances that may reduce the acreage.

Section 5 – Cancellation and Termination Dates

Comment: A commenter questioned whether the date changes in sections 3(f) and 8(a)(1) should have any effect on the April 30 cancellation and termination dates that are unchanged in section 5.

Response: As stated below in response to a comment regarding section 8(a)(1), the proposed date changes to sections 3(f) and 8(a)(1) have not been retained in the final rule. Therefore, there is no change needed to the April 30 cancellation and termination dates contained in section 5. No change has been made to the final rule.

Section 6 – Insured Crop

Comment: A commenter suggested revising section 6(a) by adding parentheses around the phrase "designated within a citrus fruit commodity in the actuarial documents" to make it clear that it is the "citrus fruit group" (not the "citrus fruit commodity") that a producer may elect to insure.

Response: FCIC agrees that as proposed, section 6(a) may be misinterpreted. Because the definition of "citrus fruit group" specifies the citrus fruit group is within a citrus fruit commodity, it is not necessary to restate this everywhere the term "citrus fruit group" is used. Therefore, FCIC has revised section 6(a) by removing the phrase "designated within a citrus fruit commodity in the actuarial documents."

Comment: A commenter stated they are disappointed that the age of insurability in section 6(b)(2) was not lowered from five years to three years. Citrus has moved toward increased production at younger ages because of newer varieties and advanced production methods. Insurability should be at three years.

Response: FCIC did not propose to lower the minimum age of insurability for citrus trees because section 6(b)(2) already allows for trees that have not reached the fifth growing season after set out to be insured by written agreement or if allowed by the Special Provisions. Since the public was not given the opportunity to comment on this change and it does not address a conflict or vulnerability, FCIC cannot consider the recommended change. No change has been made to the final rule.

Comment: A commenter stated the insurability of younger trees (fruit) should be addressed. Presently, trees have to be in the fifth growing season (for their fruit) to be insured. The commenter stated in today's commercial citrus growing environment, trees that are three years old are producing fruit. Unless the fruit from the younger trees is appraised and excluded from

production and losses, it is being counted as insured production and should be insured. The commenter stated this could be addressed by allowing up to 25 percent resets in a block/grove to be insured.

Response: FCIC disagrees the insurability of fruit from younger trees could be addressed by allowing up to 25 percent resets in a block/grove. FCIC provides guidance for commingled production and stand reduction in the Crop Insurance Handbook. Currently the Crop Insurance Handbook allows up to a 10 percent decrease in plant stand before adjustments are made to acreage. A stand reduction could include resets that have not reached the minimum age requirement. However, a stand reduction could also include trees that have been removed, but not replaced. Therefore, increasing the proportion of the stand that can be reduced before acreage is adjusted could result in over-insurance in situations where trees have been removed and not replaced or when the trees have been replaced and have not yet began producing. Furthermore, while the production from younger trees could potentially be considered under current procedures when determining the percent of damage, it is not likely to affect the overall percent of damage. As stated in response to the previous comment, FCIC did not propose to lower the minimum age of insurability for citrus trees because section 6(b)(2) already allows for trees that have not reached the fifth growing season after set out to be insured by written agreement or if allowed by the Special Provisions. Since the public was not given the opportunity to comment on this change and it does not address a conflict or vulnerability, FCIC cannot consider the recommended change. No change has been made to the final rule.

Comment: A few commenters stated that there is no reason to exclude Ambersweet oranges from insurability as proposed in section 6(b)(3). Ambersweet oranges exhibit typical characteristics of other insured varieties of oranges from a risk standpoint. Therefore, the commenters stated there is no more risk of loss as compared to other varieties. Furthermore, the

commenters stated while not grown in large quantities, there are commercial blocks of Ambersweet oranges still in production. The commenters stated they are puzzled as to why Ambersweet oranges have been singled out. Additionally, the commenters would like any new varieties to be insurable within the appropriate class and type.

Response: FCIC agrees with the commenters that Ambersweet oranges should not be excluded from insurability in the Crop Provisions at this time due to lack of available information to substantiate excluding them from insurability. However, FCIC will continue to evaluate Ambersweet oranges to determine if it is appropriate to continue to offer insurance on this variety. New varieties that are commercially available will be evaluated on a case by case basis for insurability. The Special Provisions will list the varieties that comprise each insurable commodity type. FCIC has revised section 6(b)(3) by removing Ambersweet oranges from the list of uninsurable citrus fruit.

Comment: The proposed section 6(f) states, unless otherwise provided in the Special Provisions, acceptable fresh fruit sales records must be provided upon request from at least one of the previous three crop years; or for fresh fruit acreage new to the operation or for acreage in the initial year of fresh fruit production, a current year fresh fruit marketing contract must be provided upon request. A commenter questioned what are considered to be "acceptable records" for purposes of this provision and if the procedures will indicate what are considered to be acceptable records for this purpose.

Response: Acceptable fresh fruit sales records should indicate the citrus fruit commodity, commodity type, name of the insured, name of the buyer, date the production was sold, location, the amount of production sold, and the price. Acceptable fresh fruit sales records may include: trip tickets, pack-out statements, year-end settlement sheets that indicate by citrus fruit commodity/commodity type the number of standard size boxes packed or the net weight of the

packed fruit, daily sales records, and records from a State Marketing Program. FCIC will also provide guidance in the Crop Insurance Handbook as to what will be considered acceptable fresh fruit sales records.

Section 7 – Insurable Acreage

Comment: A commenter stated to consider if the references to "another commodity" in sections 7(a)(1) and (2) should be changed to "another agricultural commodity" as defined in the Basic Provisions.

Response: FCIC agrees with the commenter and has changed the provisions accordingly. Additionally, FCIC has revised paragraph (a) by removing the phrase "a crop planted with another crop" and replacing it with the phrase "interplanted acreage" to be consistent with the phrasing in section 9 of the Basic Provisions.

Comment: A commenter stated to consider if the phrase "the interplanted crop acreage" in section 7(a)(3) should be revised to "the interplanted commodity acreage" to match other such revisions.

Response: FCIC agrees the term "crop" should be removed from section 7(a)(3). FCIC has revised the provision to state the combination of the citrus fruit acreage and the interplanted acreage cannot exceed the physical amount of acreage.

Comment: A commenter stated there is no premise in either the Crop Provisions or Special Provisions to establish the threshold for insurability for acreage that has been abandoned and subsequently undergone remediation as proposed in section 7(b). The commenter stated this is a dollar plan policy and is not based on actual production. If the market price for such citrus fruit is high then even a reduced amount of production and/or production that is of poor quality may still meet or exceed the Reference Maximum Dollar Amount.

Response: FCIC agrees with the commenter that FCIC does not currently provide a basis for

determining the amount of production necessary to meet the Reference Maximum Dollar Amount. Therefore, FCIC has revised the proposed section 7(b) to simply state any acreage that has been abandoned is not insurable.

Section 8 – Insurance Period

Comment: A few commenters stated they do not think moving the date insurance attaches from May 1 to April 16 in section 8(a)(1) is a good move. A vast majority of fruit that sets after bloom drops from the tree naturally by May 1. After that date, fruit drop is minimal and it is easy to determine what fruit has been damaged. Therefore, trying to accurately assess damage that may occur in April will prove difficult. The commenters stated that if the concern is to shrink the time between sales closing date and the policy inception date, a better approach would be to extend the sales closing date.

Response: FCIC agrees the date insurance attaches should not be moved from May 1 to April 16 because it will be more difficult to determine potential production during this period. Additionally, moving the sales closing date to April 16 eliminates the time needed to perform an inspection to determine insurability prior to insurance attaching. Therefore, FCIC has retained the original date of May 1 as the date insurance attaches in section 8(a)(1). Consequently, FCIC has also retained the original dates in the redesignated section 3(f).

Comment: A commenter stated they would like FCIC to address the issue of insuring young setting fruit that is damaged by an insured peril before the current date insurance attaches on May 1. The commenter questioned if there is anything that can be done to cover such damage while still affording a reasonable sales closing date.

Response: FCIC proposed changing the date insurance attaches from May 1 to April 16. This proposed change would have addressed insuring young setting fruit. However, as stated previously this change has not been retained in the final rule due to potential problems it could

cause for determining potential production and determining insurability. FCIC has not proposed any other change to address this issue and the comment does not address a conflict or vulnerability. 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.

Comment: A commenter stated they presume the proposed date change from May 1 to April 16 in section 8(a)(1) has no effect on the unchanged calendar dates for the end of the insurance period in section 8(a)(2).

Response: FCIC agrees with the commenter that the proposed changes to section 8(a)(1) would have no effect on the provisions in section 8(a)(2). However, as stated previously the date changes to section 8(a)(1) have not been retained in the final rule.

Comment: A commenter stated they are pleased to see FCIC proposing to change the end of insurance period date for early oranges to February 28. The commenter stated this date is much more in line with current harvesting practices and will provide welcome peace of mind for those policyholders with early oranges still on the tree in February.

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

Comment: A commenter stated they agree with the proposed shifting of the reference to a transfer of coverage and right to indemnity from (b)(2) [relinquishing a share on or before the acreage reporting date] to (b)(1) [acquiring acreage after the acreage reporting date]. However, the commenter questioned whether the removal of the phrase "if after inspection we consider the acreage acceptable" means it is not possible for the insurance provider to accept coverage following a favorable inspection. The commenter stated maybe this was never an option since, as stated in the background information in the proposed rule, "none of the crops insurable under the Florida Citrus Fruit Crop Provisions have an acreage reporting date that occurs after the date

insurance attaches for the crop year."

Response: As stated in the proposed rule, the provision in section 8(b)(2) would never be applicable since none of the crops insurable under the Florida Citrus Fruit Crop Provisions have an acreage reporting date that occurs after the date insurance attaches for the crop year. Therefore, section 8(b)(2) never gave the authority to accept coverage following a favorable inspection. However, section 8(a)(1)(i) contains language giving the insurance provider the authority to inspect acreage to determine if it meets the insurability requirements prior to insurance attaching.

Comment: A commenter recommend that in lieu of the proposed language in section 8(b)(1), language should be added 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. The commenter stated insurance providers should have the opportunity to accept or deny coverage in these types of situations. This could be a substantial number of acres that may not have coverage for the crop year they were added if they were not insured by the previous owner. This would be similar to what is currently allowed for acreage not reported in accordance with section 6(f) of the Basic Provisions.

Response: This change was not proposed 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.

Section 9 – Causes of Loss

Comment: A commenter recommended the insured cause of loss in section 9(a)(1) 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, with respect to the concerns expressed by the commenter, 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. These provisions apply to fire.

Comment: A commenter stated that feasibility should be considered and studied to offer coverage for disease and insect infestation. Citrus greening is the largest peril and loss to today's citrus grower. Excess rain/flooding should also be a covered peril. Perils of the tree and fruit policy should be aligned and duplicated because what affects the trees has a direct effect on the fruit production. Maybe adding "adverse weather" as an insurable cause of loss would standardize Florida's policy to be more in line with California and Texas.

Response: The Crop Provisions allow disease to be added as an insurable cause of loss through the Special Provisions. However, expanding coverage to include insects and disease would likely result in significant rate increases due to the prevalence of disease affecting citrus in Florida. Additional research would be necessary to determine producers' willingness to pay additional premium for coverage of disease. With the exception of disease, the suggested changes would require changes to the Crop Provisions that were not proposed and the comment does not address a conflict or vulnerability. 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. FCIC will consider the feasibility of expanding coverage to more perils the next time the Crop Provisions are revised.

Comment: A commenter stated the provision in section 9(a)(7) that allows "disease" as an insured cause of loss, if specified in the Special Provisions, continues to cause a great deal of

concern from both the underwriting and loss adjustment standpoint. The commenter questioned how a loss would be worked on groves with a disease that causes a decline in condition of trees and yields. The commenter stated they believe it would be very difficult to underwrite and adjust losses for disease.

Response: Although the Crop Provisions allow disease to be added as an insurable cause of loss through the Special Provisions, the Special Provisions do not currently specify disease as an insurable cause of loss. Because disease is not currently considered an insurable cause of loss, any production damaged by disease is treated like any other production damaged by an uninsurable cause of loss. Additionally, since losses are adjusted on a percent of damage basis, decline in production may not directly affect the percent of damage. Because decline in the productive capacity of the trees due to disease may affect the expected yield, disease should be considered when establishing or adjusting the amount of insurance in accordance with section 3. FCIC intends to refine guidance for adjusting the amount of insurance due to the incidence of disease in insured groves in the Crop Insurance Handbook.

Section 10 – Settlement of Claim

Comment: A commenter stated sections 10(b)(1), (2), (5), and (6) now reference the "age of trees." The commenter questioned if the expectation is that the liability and amount of damage will be established separately for each tree in the unit. The commenter stated this would cause major problems with the adjustment process.

Response: The amount of insurance will continue to be established separately by the age class of trees, but the amount of insurance will not be established separately for each individual tree in the unit. FCIC has added a definition of "age class" to specify that the trees are grouped together by age and that each grouping has a separate Reference Maximum Dollar Amount. Guidance in the Crop Insurance Handbook explains how age classes will be determined if more

than one age class exists within a unit. The proposed references to age of trees were intended to clarify the amount of insurance per acre is dependent on the age class of the trees. FCIC has revised section 10(b) as well as the definition of "amount of insurance per acre" by adding the term "class" following the term "age" to clarify the intent of the provisions.

Comment: A few commenters stated section 10(b)(1) describes a calculation requiring multiplying by the "age of trees." The commenter recommended re-wording the provision because any form of this calculation multiplied by a tree's actual age does not yield a meaningful number. The same comment applies to the language in sections 10(b)(5) and (6).

Response: FCIC disagrees with the commenter that section 10(b)(1) describes a calculation requiring multiplying by the age of trees. The calculation described in section 10(b)(1) requires multiplying the number of acres by the respective amount of insurance per acre and totaling the results for all acreage in the unit. The amount of insurance per acre is determined by multiplying the Reference Maximum Dollar Amount shown in the actuarial documents for each applicable combination of commodity type, intended use, and age class of trees times the coverage level elected times the share. FCIC has revised section 10(b) as well as the definition of amount of insurance per acre by adding the phrase "combination of" prior to the phrase "commodity type, intended use, age class of trees" to clarify the intent of these provisions.

Comment: A commenter requested clarification of the last part of the provision in section 10(b)(2). The commenter questioned what is meant by "divided by the undamaged potential production" prior to the cause of loss and how is this determined.

Response: The phrase "undamaged potential production" in section 10(b)(2) is referring to the total amount of production that would have been produced if damage had not occurred. Since potential production is defined as such in section 1 of the Crop Provisions, it is not appropriate to use the term "undamaged" in section 10(b)(2) because it could be misinterpreted

to mean only the potential production that is not damaged. FCIC has revised section 10(b)(2) by removing the term "undamaged." In accordance with section 6(e), potential production will be determined at the time of loss using FCIC approved procedures.

Comment: A few commenters stated the proposed section 10(c) should be reworded. The proposed policy language does not appear to match the explanation given in the background information in the proposed rule, which states "the proposed section 10(c)(1) will contain the information from section 10(f), but will be revised to clarify individual fruit damaged due to an insurable cause that is on the ground and unmarketable is 100 percent damaged." This does not have the same meaning as the proposed language in 10(c)(1), which states the fruit "is unmarketable because it is: (1) On the ground" and therefore "will be considered 100 percent damaged." The commenters stated the proposed revision to section 10(c) presumes the fruit is unmarketable. The commenters questioned if it is possible the new wording would encourage producers to leave fruit on the ground even if it could be collected and marketed. Simply declaring fruit on the ground as unmarketable and 100 percent damaged could lead to program vulnerability. The commenters also stated the background information in the proposed rule refers to an "insurable" cause of loss, while the proposed provision refers to an "insured" cause of loss. Furthermore, the commenters suggested trying to rearrange the proposed section 10(c) to eliminate the duplication of the phrase "will be considered as 100 percent damaged."

Response: FCIC agrees with the commenters that the proposed language in section 10(c) does not have the same meaning as stated in the background information in the proposed rule. FCIC also agrees the proposed language could lead to program vulnerability by considering production as unmarketable because it is on the ground. Therefore, FCIC has revised section 10(c) to be consistent with the explanation provided in the background of the proposed rule and the intent of the change and specify that individual citrus fruit will be considered 100 percent

damaged if due to an insurable cause it is on the ground and unmarketable. Furthermore, FCIC has revised section 10(c) by changing the term "insured" to "insurable" and eliminating the duplication of the phrase "will be considered as 100 percent damaged."

Comment: A commenter stated the introductory paragraph of section 10(d) begins with the phrase "In addition to section 10(c), any citrus fruit that can be processed into products for human consumption will be considered marketable." The commenter contends this phrase does not appear to correspond to redesignated section 10(c), which addresses citrus fruit that has been determined to be unmarketable.

Response: FCIC agrees with the commenters that the phrase "In addition to section 10(c)" is not necessary, although both the unmarketable and marketable fruit must be considered when determining the average percent of damage. Therefore, FCIC has revised section 10(d) by removing the phrase "In addition to section 10(c)."

Comment: A commenter stated the proposed rewriting of section 10(d) is a significant improvement over the previous language and should help in addressing various questions. However, the commenter raised a question about the meaning of the word "relating" in section 10(d)(1) and whether there might be a clearer, more precise term. The commenter stated if "relating" means "dividing," then perhaps the term "dividing" would be clearer.

Response: FCIC thanks the commenters for their review and support of this proposed change. The term "relating" was retained from the previous Crop Provisions and refers to a method used in the Florida Citrus Fruit Loss Adjustment Standards Handbook that is more complicated than simply dividing. FCIC has removed the term "relating" in the final rule and revised the provision to instead show the process the term "relating" references.

Comment: A commenter stated section 10(d)(1)(ii) as proposed, still uses a comparison for loss purposes to a set of standards for juice content in normal fruit. However, the standards have

been proposed to be removed from the Crop Provisions and instead would be listed in the Special Provisions. The commenter stated this change can definitely provide some flexibility to the program by allowing FCIC to make changes that will keep the standards more current. However, the commenter stated it would be helpful to know what standards FCIC is planning to put in the Special Provisions for 2014, which would give stakeholders comfort this movement of terminology in not in fact adverse.

Response: As stated in the proposed rule FCIC intends to publish the default juice contents in the Special Provisions. The default juice contents to be listed in the 2014 Special Provisions are not expected to change from what was listed in the Crop Provisions for the 2013 crop year.

Comment: A commenter stated section 10(d)(2) does not flow from the lead-in of the introductory paragraph of section 10(d) and repeats much of the same phrasing. The commenter also suggested revising section 10(d)(1) by adding the phrase "For citrus fruit insured as juice," to the beginning of the provision to clarify the provision only applies to fruit insured as juice.

Response: FCIC agrees section 10(d)(2) does not flow from the lead-in from section 10(d). Therefore, FCIC has revised section 10(d)(2) to make it flow with the lead-in from section10(d). FCIC disagrees that section 10(d)(1) should be revised by adding the phrase "For citrus fruit insured as juice" to the beginning of the provision because this provision applies to both citrus fruit insured as fresh and juice. However, the provision is not intended to apply to citrus fruit sold as fresh or damaged due to uninsured causes. Therefore, FCIC has added a parenthetical following the references to marketable fruit in section 10(d) to clarify the adjustments do not apply to fruit sold as fresh or damaged due to uninsured causes.

Comment: A few commenters stated section 10(d)(2) creates a new method for calculating fresh fruit losses when some salvage of fruit that cannot be sold as fresh exists. It is impossible to accurately judge the effectiveness of this proposed change without seeing the actual numbers

to be used as Fresh Fruit Factors and working through some examples. Consequently, it would be helpful if FCIC would publish the Fresh Fruit Factor tables and some examples of claims calculations.

Response: FCIC disagrees it is not possible to judge the effect of the proposed changes without FCIC posting the Fresh Fruit Factors. FCIC described the method to be used for determining the Fresh Fruit Factors in the proposed rule. FCIC considers the information contained in the proposed rule adequate for estimating the Fresh Fruit Factors and determining the effect they will have on indemnity calculations. FCIC will publish the Fresh Fruit Factors in the Special Provisions based on the method described in the proposed rule.

Comment: A commenter requested FCIC consider redesignating section 10(e) as section 10(d)(3) or an unnumbered paragraph following section 10(d)(2)(iii) since both sections addresses citrus fruit insured as fresh.

Response: FCIC disagrees section 10(e) should be redesignated as section 10(d)(3) or an unnumbered paragraph following section 10(d)(2)(iii). Although both sections 10(d) and 10(e) address citrus fruit insured as fresh, these sections describe different processes for determining the percent of damage. Therefore, FCIC considers it more appropriate to list these provisions separately. However, since these provisions are intended to work together in situations where fruit insured as fresh is sold for an alternative use, FCIC has added a phrase to section 10(e) to clarify that the percent of damage for any production sold for an alternative use will be adjusted in accordance with section 10(d). FCIC has also removed the phrase "a default juice content or" because all commodity types will have a default juice content provided in the Special Provisions.

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

List of Subjects in 7 CFR Part 457

Crop insurance, Florida citrus fruit, 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 2014 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 § 457.107 as follows:

a. In the introductory text by removing "2009" and adding "2014" in its place;

b. In section 1:

i. By revising the definitions of "amount of insurance (per acre)," and "excess wind";

ii. By adding the definitions of "age class," "citrus fruit commodity," "citrus fruit group," "commodity type," "intended use," and "unmarketable" in alphabetical order; and

iii. By removing the definitions of "citrus fruit crop" and "citrus fruit type (fruit type)";

c. By revising section 2(a);

d. In section 3:

i. By revising paragraph (a); and

ii. By revising paragraphs (c) through (f);

e. In section 6:

i. By revising paragraph (a);

ii. In paragraph (b)(1) by removing the term "fruit type" and adding the term "commodity type" in its place;

iii. In paragraph (b)(2) by removing the number "30" and adding the number "15" in its place;

iv. By revising paragraph (b)(3);

v. By revising paragraph (b)(6); and

vi. By adding a new paragraph (f).

f. In section 7:

i. By designating the undesignated introductory paragraph as paragraph (a);

ii. In the newly designated paragraph (a) by removing the phrase “crop planted with another crop” and adding the phrase “interplanted acreage” in its place;

iii. By redesignating paragraphs (a), (b), and (c) as (a)(1), (2), and (3) respectively;

iv. By revising the redesignated paragraph (a)(1);

v. By revising the redesignated paragraph (a)(2);

vi. In paragraph (a)(3) by removing the term “crop”; and

vii. By adding a new section 7(b).

g. In section 8:

i. In paragraph (a)(1)(i) by removing the phrase “for the fruit type” and by removing the term “grove” and adding the term “acreage” in its place;

ii. In paragraph (a)(2)(i) by removing the phrase “early and”;

iii. In paragraph (a)(2)(ii) by adding the phrase “early-season oranges and” after the phrase “February 28 for”;

iv. In paragraph (a)(2)(iii) by removing the phrase “and temple oranges” and adding the phrase “oranges and temples” in its place;

v. In paragraph (a)(2)(iv) by removing the comma after the term “lemons” and adding the term “and” before the term “limes”;

vi. In paragraph (a)(2)(v) by removing the phrase “murcott honey oranges” and adding the term “murcotts” in its place;

vii. In paragraph (a)(2)(vi) by removing the space between the terms “late” and “season” and

adding a hyphen in its place; and

viii. By revising paragraphs (b)(1) and (2).

h. In section 9(a)(6) by removing the phrase ", but only if it causes the individual citrus fruit from Citrus IV, V, VII, and VIII to be unmarketable as fresh fruit";

i. In section 10:

i. In paragraph (b)(1) by removing the phrase "fruit type" and adding the phrase "applicable combination of commodity type, intended use, and age class of trees in the unit" in its place;

ii. In paragraph (b)(2) by removing the term "fruit type" and adding the phrase "combination of commodity type, intended use, and age class of trees" in its place and by removing the term "undamaged";

iii. In paragraph (b)(3) by removing the parentheses around the number "10";

iv. In paragraph (b)(4) by removing the parentheses around the number "10";

v. In paragraph (b)(5) by removing the parentheses around the number "10" and by removing the term "fruit type" and adding the phrase "combination of commodity type, intended use, and age class of trees" in its place;

vi. By revising paragraph (b)(6);

vii. Amending the example in paragraph (b) by removing the opening parenthesis before the phrase "For example" and by removing the phrase "citrus crop, fruit type, and age of trees" and adding the phrase "commodity type, intended use, and age class of trees" in its place;

viii. By removing paragraphs (c) and (d);

ix. By adding a new paragraph (c);

x. By redesignating paragraph (e) as (d) and revising the newly redesignated paragraph (d);

xi. By removing paragraph (f) and (g); and

xii. By redesignating paragraph (h) as (e) and revising the newly redesignated paragraph (e).

The revisions and additions read as follows:

§ 457.107 Florida citrus fruit crop insurance provisions.

* * * * *

1. * * *

Age class. Trees in the unit are grouped by age, with each insurable age group of a particular citrus fruit commodity, commodity type, and intended use receiving a Reference Maximum Dollar Amount shown in the actuarial documents that is used to calculate the amount of insurance for the unit.

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

* * * * *

Citrus fruit commodity. Citrus fruit as follows:

(1) Oranges;

(2) Grapefruit;

(3) Tangelos;

(4) Mandarins/Tangerines;

(5) Tangors;

(6) Lemons;

(7) Limes; and

(8) Any other citrus fruit commodity designated in the actuarial documents.

Citrus fruit group. A designation in the Special Provisions used to identify combinations of commodity types and intended uses within a citrus fruit commodity that may be grouped together

for the purposes of electing coverage levels and identifying the insured crop.

Commodity type. A specific subgroup of a commodity having a characteristic or set of characteristics distinguishable from other subgroups of the same commodity.

Excess wind. A natural movement of air that has sustained speeds exceeding 58 miles per hour (50 knots) recorded at the U.S. National Weather Service (NWS) reporting station (reported as MAX SUST (KT)), the Florida Automated Weather Network (FAWN) reporting station (reported as 10m Wind (mph)), or any other weather reporting station identified in the Special Provisions operating nearest to the insured acreage at the time of damage.

* * * * *

Intended use. The producer's expected end use or disposition of the commodity at the time the commodity is reported. Insurable intended uses will be specified in the Special Provisions.

* * * * *

Unmarketable. Citrus fruit that cannot be processed into products for human consumption.

2. * * *

(a) Basic units will be established in accordance with section 1 of the Basic Provisions.

* * * * *

3. * * *

* * * * *

(a) You may select only one coverage level for each citrus fruit group that you elect to insure. If different amounts of insurance are available for commodity types within a citrus fruit group, you must select the same coverage level for each commodity type. For example, if you choose the 75 percent coverage level for one commodity type, you must also choose the 75 percent coverage level for all other commodity types within that citrus fruit group.

* * * * *

(c) You must report, by the acreage reporting date designated in the actuarial documents:

(1) Any event or action that could reduce the yield per acre of the insured citrus fruit commodity (including but not limited to removal of trees, any damage, disease, change in cultural practices, or any other circumstance that may reduce the productive capacity of the trees) and the number of affected acres;

(2) The number of trees on insurable and uninsurable acreage, including interplanted trees;

(3) The age of the trees and the planting pattern; and

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

(d) We will reduce insurable acreage or the amount of insurance or both, as necessary:

(1) Based on our estimate of the effect of the interplanted trees on the insured commodity type;

(2) Following a decrease in plant stand;

(3) If cultural practices are performed that may reduce the productive capacity of the trees;

(4) If disease or damage occurs to the trees that may reduce the productive capacity of the trees; or

(5) Any other circumstance that may reduce the productive capacity of the trees or that may reduce the yield per acre from previous levels.

(e) If you fail to notify us of any circumstance that may reduce the acreage, the productive capacity of the trees, or the yield per acre from previous levels, we will reduce the acreage or amount of insurance or both as necessary any time we become aware of the circumstance.

(f) 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.

* * * * *

6. * * *

(a) In accordance with section 8 of the Basic Provisions, the insured crop will be all acreage of each citrus fruit group 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) * * *

* * * * *

(3) Of "Meyer Lemons," "Sour Oranges," or "Clementines";

* * * * *

(6) Of any commodity type not specified as insurable in the Special Provisions.

* * * * *

(f) For citrus fruit for which fresh fruit coverage is available as designated in the actuarial documents:

(1) Management records must be available upon request to verify good fresh citrus fruit production practices were followed from the beginning of bloom stage until harvest; and

(2) Unless otherwise provided in the Special Provisions:

(i) Acceptable fresh fruit sales records must be provided upon request from at least one of the previous three crop years; or

(ii) For fresh fruit acreage new to the operation or for acreage in the initial year of fresh fruit production, a current year fresh fruit marketing contract must be provided to us upon request.

7. * * *

(a) * * *

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

(2) If the citrus fruit is from trees interplanted with another commodity type or another agricultural commodity, acreage will be prorated according to the percentage of the acres occupied by each of the interplanted commodity types or agricultural commodities. 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.

* * * * *

(b) In addition to section 9 of the Basic Provisions, any acreage of citrus fruit that has been abandoned is not insurable.

8. * * *

* * * * *

(b) * * *

(1) Acreage acquired after the acreage reporting date for the crop year is not insurable unless a transfer of coverage and right to indemnity is executed in accordance with section 28 of the Basic Provisions.

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

* * * * *

10. * * *

* * * * *

(b) * * *

* * * * *

(6) Totaling all such results of section 10(b)(5) for all applicable combinations of commodity types, intended uses, and age classes of trees in the unit and subtracting any indemnities paid for the current crop year to determine the amount payable for the unit.

(c) Any individual citrus fruit will be considered 100 percent damaged, if due to an insurable cause of loss it is:

(1) On the ground and unmarketable; or

(2) Unmarketable because it is immature, unwholesome, decomposed, adulterated, or otherwise unfit for human consumption.

(d) Any citrus fruit that can be processed into products for human consumption will be considered marketable. The percent of damage for the marketable citrus fruit (excluding citrus fruit sold as fresh or damaged due to uninsured causes) will be determined by:

(1) Subtracting the juice content of the marketable citrus fruit (excluding citrus fruit sold as fresh or damaged due to uninsured causes) from:

(i) 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

(ii) The default juice content provided in the Special Provisions, if at least three years of acceptable juice records are not furnished or the citrus fruit is insured as fresh;

(2) Subtracting the juice content of the marketable citrus fruit (excluding citrus fruit sold as fresh or damaged due to uninsured causes) from the official weight per box for the applicable commodity type provided in the Special Provisions;

(3) Dividing the result of section 10(d)(1) by the result of 10(b)(2);

(4) Dividing the official weight per box for the applicable commodity type provided in the Special Provisions by:

(i) 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

(ii) The default juice content provided in the Special Provisions, if at least three years of acceptable juice records are not furnished or the citrus fruit is insured as fresh; and

(5) Multiplying the result of section 10(b)(3) by the result of 10(b)(4); and

(6) For citrus fruit insured as fresh that has a Fresh Fruit Factor listed in the Special Provisions, making an additional adjustment to the percent of damage by:

(i) Subtracting the result of section 10(d)(5) from 100;

(ii) Multiplying the result of section 10(d)(6)(i) by the applicable Fresh Fruit Factor located in the Special Provisions; and

(iii) Adding the result of section 10(d)(6)(ii) to the result of section 10(d)(5).

(e) Notwithstanding section 10(d), for citrus fruit insured as fresh that do not have a Fresh Fruit Factor provided in the Special Provisions, any individual citrus fruit not meeting the applicable United States Standards for packing as fresh fruit due to an insured cause of loss will be considered 100 percent damaged, except that the percent of damage for any production sold for an alternative use will be adjusted in accordance with section 10(d).

* * * * *

Signed in Washington, D.C., on _December 18, 2012_____.

_____

William J. Murphy

Manager
Federal Crop Insurance Corporation

[FR Doc. 2012-30842 Filed 12/20/2012 at 8:45 am; Publication Date: 12/21/2012]