



This document is scheduled to be published in the Federal Register on 07/28/2014 and available online at <http://federalregister.gov/a/2014-17491>, and on [FDsys.gov](http://FDsys.gov)

Billing Code 3410-08-P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Docket No. FCIC-13-0003

RIN 0563-AC42

Common Crop Insurance Regulations; Pear 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, Pear Crop Insurance Provisions. The intended effect of this action is to improve coverage available to pear producers, to clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. Changes are also proposed to the Optional Coverage for Pear Quality Adjustment Endorsement to broaden coverage available to producers to manage their risk more effectively. The proposed changes will be effective for the 2015 and succeeding crop years.

DATES: This rule is effective [insert the 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 not-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), Pear Crop Insurance Provisions that were published by FCIC on April 11, 2014, as a notice of proposed rulemaking in the Federal Register at 79 FR 20110 – 20114. The public was afforded 30 days to submit comments after the regulation was published in the Federal Register.

A total of 107 comments were received from 4 commenters. The commenters were insurance providers and an insurance service organization.

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

General

Comment: A commenter stated that a number of the proposed changes appear to provide additional flexibility, as requested by the growers (according to the background in the proposed rule) and which appears to be part of a general trend (separate units, coverage levels and price election percentages by practice/type). The commenter stated that while such flexibility can be beneficial in many ways, they are concerned with the potential impact on loss ratios if the premium rates do not reflect the potential risk being added.

Response: FCIC is required by the Federal Crop Insurance Act to take actions, including the establishment of adequate premiums, as are necessary, to assure the actuarial soundness of the Federal crop insurance program. To maintain actuarial soundness in accordance with the Federal Crop Insurance Act, FCIC will adjust premium rates to reflect any additional risk associated with changes to the Pear Crop Provisions.

Comment: A few commenters stated that FCIC has made several changes to the Pear Crop Provisions that are similar to changes that have previously been made as a part of

the 2011 Apple Crop Provisions. However, the commenters stated that some of the changes in the 2011 Apple Crop Provisions were not carried over and should be considered as well, as indicated in other specific comments provided. The commenters also asked that FCIC consider making some additional changes to other parts of the Pear Crop Provisions that were not published in order to minimize the number of problems or issues that could arise with implementing the proposed changes.

Response: FCIC believes the pear policy is distinctly different from the apple policy primarily because of the inherent differences in the industry. Therefore, not all of the provisions from the Apple Crop Provisions were proposed to be included in the Pear Crop Provisions. FCIC cannot make changes that were not proposed unless a flaw or vulnerability is identified. FCIC has made several changes in the final rule due to the suggestions of commenters.

#### Section 1 – Definitions

Comment: A few commenters stated that the definition of “marketable” needs to be clarified. The commenters questioned exactly what it means to be “acceptable for processing or other human consumption even if failing to meet any US or applicable state grading standard.” The commenters stated that a definition is needed that is simple, so that agents and growers can understand. The commenters stated the apple policy makes it clear that U.S. No. 1 processing grade is the standard for the basic policy and for actual production history (APH) purposes. A similar simple definition is needed for pears so it is clear exactly what to count for claim purposes as well as for APH purposes. A few commenters stated the grade standards for Summer and Fall, and Winter types have the lowest grade as U.S. No. 2. The only other grade these standards address is unclassified.

Unclassified pears are defined as pears which have not been classified in accordance with any of the grades. The term unclassified is not a grade within the meaning of these standards, but is provided as a designation to show that no grade has been applied to the lot. The standards for grades of pears for processing includes a definition for culls and defines them as pears which do not meet the requirements of the grades. The commenters stated that from all of this language it is unclear exactly what we would count as production for APH or for loss adjustment. The commenters asked if growers delivered all of their production to a packing shed, and the packing shed did not pay them for their culls, would the culls still be counted as production since they were accepted, but not paid for. The commenter asked if the grower did not harvest, whether graders would grade the pears U.S. No. 2 grade since that is the lowest level addressed as marketable in the standards or would all pears be counted since everything makes cull grade according to the processing pear grade standards. The commenters stated it would appear that for pears the insurance providers should count all pears that meet the standard of U.S. No. 2 processing grade or any production sold for human consumption even if such production fails to meet the U.S. No. 2 processing grade. A few commenters stated that without a clear definition of “marketable,” insurance providers will not know how they are expected to handle the situations where growers deliver all of their production to a packing shed, and the packing shed discards, rather than pays for their culls. The commenters stated that without a specific definition of “marketable” the insurance providers will not have language to use to defend their determination of production to count in instances where growers do not harvest their crop.

Response: FCIC agrees that without specifying a grade standard in the definition of

marketable, it is unclear what pears would be acceptable for processing or human consumption. FCIC also agrees that U.S. No. 2 processing is the lowest grade that would be acceptable for human consumption. While the definition of “marketable” was not included in proposed rule, the commenter has identified a vulnerability that needs to be addressed because without a clear definition of “marketable” there is the potential for producers to be treated disparately. FCIC has revised the definition of “marketable” to state that it means pear production that grades U.S. No. 2 processing or better, unless otherwise provided in the Special Provisions, or that is sold (even if failing to meet any U.S. or applicable state grading standard). This definition clearly identifies what pears are acceptable for human consumption, while also considering anything that is sold as marketable, even if the sold pears are not graded or fail to meet the specified grade. This change is consistent with the intent of the current policy and clarification should prevent confusion about what pears should be considered production to count. This change is also similar to the Apple Crop Provisions because a minimum grade used to determine production to count will be specified.

Comment: A few commenters stated the proposed rule does not include a definition of the term “type.” The commenters stated that perhaps it is sufficiently understood as used in the Crop Provisions and Special Provisions (actuarial documents), but perhaps there should be a definition such as the one in the Apple Crop Provisions: “A category of pears as designated in the Special Provisions.”

Response: A definition of type was not proposed because insurable types are specified in the actuarial documents. No change has been made in the final rule.

Comment: A few commenters asked if the new “types” will be the same as the

existing “varietal groups” (Bartlett, and others, depending on the county/state).

Response: Insurable types will be specified in the actuarial documents. In most regions there will be a type for Summer and Fall pears and a type for Winter pears. However, some regions may have additional types depending on prices and data availability. The varieties that belong to the current types will be reorganized into the new types based on their maturity dates. The Special Provisions will identify which varieties will be included in each type. There will no longer be an “all other” type, so varieties that were previously insured as “all other” will now fall under either Summer and Fall or Winter.

#### Section 2 – Unit Division

Comment: The proposed rule background states that “FCIC proposes to revise section 2 to allow optional units by irrigated and non-irrigated practices” and “Optional units will also be available by type if specified in the Special Provisions” However, a few commenters stated the proposed language in section 2 also suggests another change is being made since the possibility of optional units by non-contiguous land or by type is “In addition to the provisions in section 34 of the Basic Provisions.” The current 2011 policy language allows for optional units by non-contiguous land only “instead of” the applicable optional unit provisions in section 34 of the Basic Provisions (section, section equivalent, or FSA farm number). Optional units by varietal group are “In addition to, or instead of” the other optional unit provisions so that is unchanged. The commenters stated that if this change is intended, it should be identified as such and that it could result in pear producers having a large number of optional units because of the combinations of legal description, non-contiguous land, and type, which could lead to complications in

administration and loss adjustment. The commenters asked if this change is made, will the premium rates be reviewed for possible adjustment.

Response: FCIC did not intend to allow additional unit structure options with the exception of irrigated/non-irrigated and the change from varietal group to type. Section 2(b) in the current Pear Crop Provisions allows the producer to choose optional units by non-contiguous land instead of optional units by section, section equivalent, or FSA Farm Serial Number. The proposed language would eliminate this choice and allow optional units by non-contiguous land in addition to optional units by section, section equivalent, or FSA Farm Serial Number. FCIC agrees that the proposed change could result in pear producers having a large number of optional units, which could lead to complications in administration and loss adjustment. Therefore, FCIC has revised this section to clarify optional units may be established either: (1) in accordance with section 34(c) of the Basic Provisions (by section/section equivalent/FSA Farm Serial Number, irrigated/non-irrigated practices, and organic farming practices); or (2) by non-contiguous land. In addition, FCIC has revised the section to clarify that optional units are also available by type. As with any policy change, FCIC will evaluate such changes to determine whether they will have an impact on premium rates and make such adjustments as required.

Comment: According to the proposed rule background, “FCIC proposed to remove the definition of “varietal group” and replace it with the term “type,” the unit structure will be by type as specified in the Special Provisions.” A few commenters stated that the last phrase regarding unit structure is not as clear as the statement in the proposed rule background that states “Optional units will also be available by type if specified in the Special Provisions.”

Response: FCIC agrees the phrase “unit structure will be by type” could be misleading if taken out of context. FCIC did not intend to imply that the policyholder’s unit structure options are limited to optional units by type. Unit structure is determined by the policyholder in accordance with the Basic Provisions, Crop Provisions and Special Provisions. FCIC has revised section 2 to allow the policyholder to elect optional units by type if allowed by the Special Provisions.

Comment: A few commenters stated that although the proposed language in section 2 makes it clear that separate optional units are now available by type, this language does not address situations where the types are interplanted on the same acreage. The commenters stated that this needs to be clarified, especially in light of allowing different coverage levels and percent of prices for different types. The Bartlett type is often interplanted with other types of pears, and if we cannot provide optional units by type in this situation, we could end up having to combine existing units resulting in different percent of prices and different coverage levels within a single unit. The commenters asked if it is the intent of FCIC to allow separate optional units by type if a Bartlett type is interplanted with another type on the same acreage.

Response: FCIC agrees that the issue with interplanted acreage needs to be addressed. Therefore, FCIC has retained the provision that nullifies section 34(b)(1) of the Basic Provisions. However, FCIC has reworded to specifically state that the requirements of section 34 of the Basic Provisions that require the crop to be planted in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit are not applicable for optional units by type. This will allow separate optional units for types that do not have a clear and discernable planting

pattern, such as situations where types are interplanted. However, it is important to note that separate records of production must still be maintained for each optional unit in accordance with section 11(a) of the Pear Crop Provisions.

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

Comment: FCIC is proposing to revise section 3(a) to allow different coverage levels and price election percentages by type. The proposed rule states that risks may not be the same for each type of pear, so this gives the producer an opportunity to tailor the coverage to the specific risks associated with each type. The commenters asked if this change is made in the Pear policy, has the FCIC considered the potential increased risk of adverse selection involved in allowing producers to vary the coverage levels and prices by type rather than by crop/county. A commenter asked, if current rates are not currently established to recognize these differences in risk, will they be revised accordingly.

Response: FCIC agrees that allowing different coverage levels and price election percentages by type may increase risk. As with any policy change, FCIC will evaluate such changes to determine whether they will have an impact on premium rates and make such adjustments as required.

Comment: A few commenters stated they are concerned with how allowing different coverage levels and price percentages by type, which may or may not be set up as separate optional units, will work. The commenters asked if it is determined that the different types do not qualify as separate optional units, what happens to the different coverage levels and prices. The comments asked if the provisions are intended to allow different coverage levels and prices within the same basic unit. The commenters asked

whether it is intended to allow producers to elect basic units, but still choose different coverage levels and prices by type within a basic unit. The commenters also asked how FCIC plans to administer this provision when multiple types are interplanted on the same acreage.

Response: Many policies allow more than one type to be selected under a unit. When there is more than one type in a unit the guarantee is calculated separately for each type within the unit and then the guarantee for each type is added together to determine the guarantee for the unit. Therefore, allowing separate coverage levels and price election percentages to be selected for each type will simply require different values for coverage level and price election percentage to be used in the guarantee calculation. When production records contain comingled production, FCIC plans to develop procedures for determining how production will be allocated to each type within unit. The procedures will be similar to procedures for other APH crops that allow multiple types to be selected within a unit in that comingled production will be prorated using a method similar to the comingled production worksheet contained in the Crop Insurance Handbook. Even if it is determined that the policyholder does not qualify for separate optional units by type because they do not have separate production records for establishing their APH guarantee or the producer does not choose optional units by type, because the damaged crop must be appraised, it will still be possible to settle the claim with separate coverage levels and price elections by type.

Comment: A few commenters suggested revising the first sentence of section 3(a) to state, “You may select different coverage levels and percent of price elections for each type in the county as specified in the Special Provisions except if you elect Catastrophic

Risk Protection (CAT) on any individual type.”

Response: FCIC agrees the phrase in section 3(a) should be revised to provide an exception if CAT is elected. The CAT Endorsement supersedes the Crop Provisions in order of precedence and, therefore, the Crop Provisions cannot override the CAT Endorsement. The CAT Endorsement applies to the entire crop in the county. FCIC has revised section 3(a) consistent with the commenter’s recommendation.

Comment: A few commenters stated they acknowledge similar changes were made in the 2011 Apple Crop Provisions (allowing different coverage levels) and 2013 Peach Crop Provisions (different coverage levels and price percentages), but prior to these Crop Provisions being changed the general rule has been that only one coverage level and price percentage could be elected for all the acreage of the crop in the county unless separate types were treated as if they were separate “crops” (grapes in California, for example), in which case the insured also could choose whether to insure all or just some of those types (which is not proposed in this draft, and was not changed for Apples or Peaches).

Response: FCIC agrees that the general rule in section 3(b)(2) of the Basic Provisions allows the insured to select different coverage levels and price elections if the Crop Provisions allow the insured to separately insure an individual type, in which case these types are treated like separate crops and charged separate administrative fees. However, under the Pear policy, the types are not considered separate crops so they are not subject to the provision in section 3(b)(2) of the Basic Provisions.

Comment: A few commenters questioned using the word “bearing” in section 3(b)(2). The commenters stated that producers are required to report their uninsurable acres, and when trees are first planted, they will be non-bearing. The commenters asked

if it is really the intent for producers to report zero trees on their uninsurable acres. The commenters stated that if the block consists of older trees and younger interplanted trees of the same variety, and only bearing trees are counted, then there will be inconsistencies with the acres, the tree spacing, and the density. If growers remove many older trees and replace them with younger trees, they will need to report them on the Producer's Pre-Acceptance Worksheet (PAW) as they have performed cultural practices that will reduce the yield from previous levels. Growers should be required to report all trees and this number should remain constant until they remove trees or plant new trees. The commenters concluded it should not be a requirement to track only the trees that are bearing and to revise this figure each year.

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

Crop Provisions and the Crop Insurance Handbook (CIH). Requiring all trees be reported under section 3(b)(2) would create confusion regarding insurability and could result in the overstatement of premium and liability.

Comment: A commenter questioned the need to know the planting pattern as required in section 3(b)(3). The commenter stated that tree spacing and tree count is already captured and this is what is needed to determine if there have been tree removals or acreage reductions.

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

Comment: A few commenters questioned if it is possible to rewrite section 3(c) so the phrase “yield used to establish your production guarantee” does not have to be repeated seven times in this section.

Response: Section 3(c) contains three subparagraphs (1) through (3) to describe different scenarios during the insurance period. While the phrase is repetitive, it is necessary for the provision. This is standard language that has been added to most of the perennial APH Crop Provisions and to maintain consistency with other perennial APH

policies, no change has been made in the final rule.

Comment: A few commenters stated that the proposed rule background refers to the addition of “subparagraphs (1) through (4)” but there are only three subparagraphs in section 3(c). The commenters stated that presumably this is a typo in the background, rather than the fourth subparagraph being left out.

Response: FCIC agrees with the commenters that the proposed rule background should have referenced paragraphs 3(c)(1) through (3). A subparagraph (4) was neither proposed nor intended to be included in the proposed rule.

Comment: The proposed rule states in section 3(c) that we will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any situation listed in sections 3(b)(1) through (b)(4). A few commenters asked how 3(b)(2) through (4) impacts yield as it relates to 3(c)(1) and (2). The commenters stated that they are using the information reported by the production reporting date in 3(b)(2) through (4) to establish the approved yield/guarantee. Only damage as referenced in (b)(1) would have a relationship to insured or uninsured causes. Removal of trees might affect both the insured acres and yield/guarantee depending on the trees removed. If old, poorly producing trees are removed, the yield/guarantee could actually increase. The commenters stated the relationship to insured and uninsured damage is unclear. A few commenters asked how the reductions in the proposed paragraphs 3(c)(2) and (3) are being coordinated with the loss adjustment procedure. The commenters stated that these provisions will be difficult to enforce (i.e. you may never know and if an insurable event occurs later in the season or at harvest, any prior uninsurable damage will be masked).

The commenters stated that after insurance attaches, this all seems like a loss adjustment issue and not yield adjustment.

Response: Sections 3(b)(2) through (4) involve the reporting requirements that are necessary to track whether there are changes in the unit that could affect the guarantee. Sections 3(b)(2) through (4) refer to the number of bearing trees, the age of the trees, and interplanted trees. The number of trees can affect the yield because fewer trees will likely result in fewer pears per acre, although this is not always true, such as the case of overcrowded orchards. The age of trees also affects yield because the productive capacity of trees generally follow a bell shaped curve over the life of the tree. Interplanted acreage affects the production per acre because there are fewer trees per acre of a given crop to produce fruit. All of these variables have the potential to affect the productive capacity of the tree and can be caused by insured or uninsured causes. FCIC agrees that the damage occurring after insurance has attached appears to be a loss adjustment issue but these are the types of damage that are expected to affect the production capacity of the unit in the following year so for this reason the guarantee is adjusted to reflect the expected production capacity in the current year but only if the losses are result of uninsured causes. This will have the same effect as assigning production for uninsured causes for the year in which the damage occurred so there is no double counting, but the adjusted guarantee will be effective for the subsequent crop year. For insured causes of loss, the guarantee remains the same for the existing crop year and the losses measured. For the subsequent crop year, the procedures in section 3(c)(1) are applicable to adjust the guarantee to reflect the expected production capacity of the unit. Although FCIC agrees these variables can and often will be handled through

acreage adjustments in accordance with FCIC approved procedures, the proposed provision allows for the possibility of adjusting the yield “as necessary.” FCIC will revise the Pear Loss Adjustment Handbook to ensure it is clear how to address situations that require an adjustment at the time of loss. No change has been made in the final rule.

Comment: A few commenters stated the Pear Crop Provisions provide continuous coverage for a carryover policyholder and, therefore, damage due to an insured cause that would have occurred within the prior crop year and should be reflected in current year actual production history and also in the number of insured acres in a situation where trees were damaged/destroyed. Example: For the 2014 crop year a policyholder has a one acre block composed of 109 trees. Lightning sparks a fire, destroying 22 trees and the production on the trees. Based on harvested records each tree (remaining) produced an average of 100 lbs., with a total loss of production for 22 trees equal to 2,200 lbs. This reduction in yield of 1.1 ton/acre will directly impact the APH for the 2015 crop year. Additionally, because of the destroyed trees, the percent of stand will reduce the insurable acres from 1.0 to 0.8. The commenter states this subsection implies the insurance provider would further reduce the APH yield by 1.1 tons/acre. This would appear to subject the insured to double reduction of his/her APH yield.

A few commenters stated that sections 3(c)(2) and (3) differ in the fact that in (2) the insured provides notice of a situation occurring after the beginning of the insurance period by the production reporting date, whereas in (3) the insured fails to provide notice of a situation during the same time period. If the same example above occurred during the 2015 crop year and the cause of loss was a small aircraft crashing and destroying the trees, then provisions imply the impact would be as such: in accordance with (c)(2) the

APH yield would be reduced by 1.1 ton/acre and only 0.8 acres would be insurable; in accordance with (c)(3) for the 2015 crop year, the production guarantee would be assessed for the acreage for any indemnity claim (result: no indemnity paid) and the acreage would be reduced to 0.8 acres; and in accordance with the last sentence of section (c)(3) for the 2016 crop year, the APH yield would be reduced by 1.1 ton/acre. If these results are correct, the commenters ask if this is FCIC's intent with these provisions.

Response: FCIC disagrees with the commenters. A policyholder's APH is based on at least 4 years of yields building to 10 years. Therefore, a single years loss will have some effect of the APH, but would not have the same effect as if a situation arises that affects the future production capacity of the unit, such as the loss of trees. Section 3(c) is required to address this latter situation where instead of using the historical production to establish the guarantee, the guarantee is reset based on the best estimate of the effect of the loss on the production capacity of the unit. Therefore, there is no double counting because the adjustment effectively overrides the normal APH process. Further, the provisions in section 3(c) are not cumulative. Each is applicable depending on the timing of the notice of one of the conditions in section 3(b)(2) through (4). No change has been made in the final rule.

Comment: In section 3(c)(3), the last sentence states "We will reduce the yield used to establish your production guarantee for the subsequent crop year." A few commenters asked what if the event that occurred was something that only affects the crop for the year in question and has no carryover effect on the yield into the next crop year. The commenters stated the word "will" should be changed to "may" to provide the flexibility to either reduce or not reduce the yield for the subsequent year depending on whether the

effect of the damage will carry over to that year. This language needs to be revised to allow the insurance providers to have some flexibility in determining how much, if any, the approved APH yield should be reduced for the subsequent year. The commenter stated that FCIC responded to similar comments to the Peach proposed rule by saying that insurance providers already have that flexibility according to the opening statement in section 3(c) of the Pear Crop Provisions that refers to reducing the yield “as necessary, based on our estimate of the effect.” However, the commenters stated they still have a concern with this language as proposed. The specifics in subsection (1) refer to reducing the yield “any time we become aware”, and in (2) to “only if the potential reduction... is due to an uninsured cause,” so when (3) states flatly that “We will reduce the yield... for the subsequent crop year” with no qualifiers, it could be taken as not being subject to any determination of necessity.

Response: The stem in section 3(c) states that it is only applicable if the conditions in sections 3(b)(2) through (4) exist and the insurance provider determines that an adjustment is necessary. If the insurance provider determines that an adjustment is necessary because the yield capacity of the unit has been affected then the application of the adjustment must be required, otherwise there may be disparate treatment between policyholders and insurance providers.

Comment: Section 3(d) states “You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.” A few commenters stated that this is a difficult provision to administer and we would recommend that it be removed from the policy.

The Producer's Pre-acceptance Worksheet (PAW) contains the following question: "Has damage (i.e. disease, hail, freeze) occurred to Trees/Vines/Bushes/Bog or have cultural practices been performed that will reduce the insured crop's production from previous levels?" If damage has occurred, and the question has been answered "Yes", the approved APH yield will be adjusted accordingly to reflect the reduced potential production. This question on the PAW appears to address the issues that this section is intending to handle. In addition, the sales closing dates are generally established based on the precept that any applications taken by that date will not be subject to adverse selection. If the decision is made to retain this provision, we have the following comments: Might help to clarify what time frame is meant by "if a cause of loss... is evident prior to the time that you request the increase." A cause of loss that occurred the previous crop year would be "prior to the time that you request the increase." The commenters ask FCIC to consider rewriting something like: "Your request to increase the coverage level or price election percentage will not be accepted if a cause of loss that could or would reduce the yield of the insured crop is evident when your request is made."

Response: No changes were proposed to this provision and the comment does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended change because the public was not given an opportunity to provide comments. No change has been made to the final rule. However, with respect to the inquiry, the provision in section 3(d) already contains a timeframe that is identified by when the cause of loss occurred relative to when the insured requests the increase. According to the provision, if a cause of loss that could or would reduce the yield has

occurred prior to the time the insured requests the increase, the policyholder is prohibited from increasing their coverage level or the ratio of the price election to the maximum price election. Therefore, even if the cause of loss occurred during the prior crop year, if the cause of loss could or would reduce the yield for the crop year in which the request is made, no increase is allowed.

#### Section 6 – Insured Crop

Comment: A few commenters asked if the 5-ton minimum requirement in section 6(c) is appropriate for all types. A commenter asked if production varies by type, would it be more appropriate to provide the minimum production by type in the Special Provisions as opposed to providing a minimum in section 6(c). The commenter stated that if 5 tons covers most all types, then perhaps that is why the policy only need to provide for the exceptions.

Response: The 5-ton minimum is appropriate for most types of pears. The language in section 6(c) is drafted so as to provide an exception through the Special Provisions if the 5-ton minimum is determined to be inappropriate in certain areas or for certain varieties.

Comment: A commenter asked if approval in writing as referenced in section 6(c) infers a written agreement and if so, why not state “if allowed by written agreement.” A few commenters stated that the proposed rule background is clear that “This change is proposed to allow the approval of the level of production to be made without a written agreement,” but not so clear in the proposed policy language. It will need to be clearly stated in the underwriting procedures to avoid any confusion. The phrase “approval in writing” sounds similar to “agreement in writing,” which has sometimes been used to

refer to written agreements. A few commenters asked if the intent of section 6(c) is to allow these situations to go through the RMA Regional Office determined yield process rather than the written agreement process. A few commenters stated that section 6(c) is a proposed change to allow insurance providers to accept coverage for production levels less than what the Crop Provisions require. The commenters state this language is vague without instruction provided. The commenters asked what the parameters are for such an agreement. The commenters stated that instruction should at least be referenced in the proposed rule in order for an insured to know if they are being treated equitably. A commenter asked if the determination of whether or not to allow a lower production level becomes the responsibility of the insurance provider instead of the RMA Regional Office, will this mean a change in which policy provisions regarding arbitration, mediation, etc, apply if the insured disagrees with that determination (if the insurance provider refused to allow the lower production level, for example).

Response: Although the current provision allows for an exception to the minimum production requirement through a written agreement, the written agreement handbook instructs the insurance provider to instead request a determined yield from the Risk Management Agency Regional Office. The proposed change in the Pear Crop Provisions from the term “written agreement” to “approval in writing” was intended to direct the insurance provider to the written agreement handbook without giving the impression that a written agreement was required. However, due to the number and nature of comments received it appears that this change will create more confusion than clarity. Therefore, no changes to section 6 have been made in the final rule.

Comment: A few commenters asked if there will be impacts to T-Yields and rates

when an insurance provider elects to insure a lower production level than what is allowed under section 6(c) of the Crop Provisions. A commenter asked how many policy exceptions written agreements for producers who did not meet the minimum production requirement were requested in previous years, and how many of those requests were approved. Did any of them involve a different premium rate than what would apply if the AIP approves the lower production level? If so, the commenter stated this is another resulting change since AIPs would not have that authority.

Response: As stated in response to the previous comment, FCIC has retained the original language from the 2011 Pear Crop Provisions and does not intend to change current procedure. Because these exceptions are handled through determined yields, T-Yields and rates are not changed on a case by case basis. Because no change has been made, this provision will continue to affect county T-Yields and rates in the same manner that it has in the past. Because of the small number of producers that have historically been allowed to insure pears in this manner, this provision is expected to continue to have minimal effect on county T-Yields and rates.

#### Section 8 – Insurance Period

Comment: A few commenters stated the language in section 8(a)(2) has been added to most, if not all, of the perennial Crop Provisions several years ago. The commenters stated they are in agreement with the concept of continuous coverage applying for renewal policyholders, but do have some concerns with language as it currently reads. The present language indicates that for each subsequent crop year the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. The commenters asked about damage that

occurs to next year's buds prior to this year's end of the insurance period. The comments asks whether this is the damage that is intended to be covered by this language. For example, assume a grower is insured and a severe hail storm occurs in July. This damage may injure this year's crop as well as the buds that will produce next year's crop. However, this damage would be outside the current insurance period based on the current language. If the intent is to cover this damage for renewal policyholders, the language should be revised to something along the lines of the language in the Adjusted Gross Revenue handbook that states that the policy covers damage that occurred due to insurable causes during the previous crop year. The commenters stated they feel that it will be difficult to assess such damage and that it should be covered under the policy. If this is not the intent, it should be stated very clearly that the policy will not cover damage that occurs the previous crop year if such damage occurs prior to the end of the previous year's end of insurance period.

Response: Section 8 simply describes the period of insurance and clarifies that the pear policy is now a 12 month policy. Section 9 covers insurable causes of loss and makes it clear that to receive an indemnity any damage must result from an insurable cause of loss occurring within the insurance period. Therefore, no additional language is required and FCIC does not want to create any potential ambiguity by referencing insurable causes of loss and when they must occur to be indemnified in section 8. This means that the Pear Crop Provisions do not provide coverage for damage to fruit if the damage occurs outside of the insurance period and, in reference to the example provided, the policy does not cover any reduction in production that was caused by damage to the buds in a prior crop year. FCIC cannot consider the recommended change to the Pear

Crop Provisions to provide coverage for damage that occurs outside of the insurance period because this change was not proposed, the comment does not address a conflict or vulnerability, and the public has not been given an opportunity to provide comments. No change has been made to the final rule.

Comment: A few commenters asked FCIC to consider removing the phrase “after an inspection” from section 8(b)(1). If damage has not generally occurred in the area, it should be up to the insurance provider's discretion as to whether or not an inspection is needed for them to “consider the acreage acceptable.” Because the acreage and production reporting dates are after insurance attaches, the insurance provider might not know if the acreage was acquired after coverage began, but before the acreage reporting date. The commenters stated the insurance providers should be able to inspect if they decide it is necessary, but it should not be a requirement. The commenters also asked FCIC to consider adding language to allow insurance providers the opportunity to inspect and insure any additional acreage acquired after the acreage reporting date if they wish to do so (similar to what is currently allowed for acreage that is not reported per section 6(f) of the Basic Provisions).

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

procedures allow the insurance provider to revise an acreage report to increase liability if the crop is inspected and the appraisal indicates the crop will produce at least 90 percent of the yield used to determine the guarantee or amount of insurance for the unit.

#### Section 9 – Causes of Loss

Comment: A commenter recommended the insured cause of loss be clarified as “Fire, due to natural causes, unless weeds...” (or “Fire, if caused by lightning, unless weeds...”).

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

#### Section 11 – Settlement of Claim

Comment: The proposed rule states that 11(c)(3)(iii)(A) would be revised to size 165. A commenter asks if the revised section needs to be shown [in the settlement of claims example] or is listing in the section 11 revisions sufficient.

Response: FCIC did not include the adjustments that are applicable only to California in the example because it is intended to show the basic process for settling a claim as outlined in section 11(b). FCIC has added a phrase to indicate the example is for a state other than California.

#### Section 13 – Fresh Pear Quality Adjustment Endorsement

Comment: A few commenters suggested adding the term “Fresh” in the heading prior to the phrase “Pear Quality Adjustment Endorsement.” A commenter stated that otherwise producers could make the case that this endorsement applies to both fresh and processing and this change would clarify that this is not true. A few commenters stated there are growers in the Northwest U.S. who generally grow pears for the fresh market. However, some of these growers may grow some Bartletts for the cannery and some Bartletts for fresh market usage. These Bartletts may be in the same optional unit, and attempting to break out fresh verses processing as separate type designations will not be possible administratively. The commenters asked how FCIC proposes that these situations be addressed for purposes of coverage under the Quality Adjustment Endorsement.

Response: Although the Pear policyholders are not currently required to report fresh and processing intended uses, the Pear Quality Adjustment Endorsement only applies to fresh pear acreage. Section 13(b) states, “If the fresh pear production is damaged by an insured cause of loss.” Accordingly, if production practices necessary to produce fresh pears are not applied to the entire unit, the unit will not qualify for the endorsement. To provide further clarification, FCIC has revised the heading of section 13 by adding the term “Fresh” and added language to clarify that the endorsement is only applicable to a unit if all trees in the unit are managed for the production of fresh market pears.

Comment: The proposed rule states that premium rating for the changes in the Pear Quality Adjustment Endorsement in section 13 will be reviewed to establish appropriate premium rates to maintain actuarial soundness. FCIC is proposing to revise the minimum size requirement in section 11(c)(3)(iii)(A) from 180 to 165 or smaller for California pear

quality adjustment. A commenter stated that it appears any cull count back has also been eliminated. A few other commenters stated that the proposed rule proposes to cover damage due to all covered causes of loss in place of hail only; and the grade to meet has increased to U.S. No. 1 from U.S. No. 2 and, therefore, it would be reasonable to expect a significant rate increase for coverage under the Endorsement. The commenters asked if these changes are being considered in the new rating.

Response: FCIC agrees with the commenter that changing the minimum size for California pears should have an impact on indemnities. FCIC also agrees that eliminating the cull count back, expanding the causes of loss, and increasing the grade to U.S. No. 1 should affect frequency and severity of losses under the Quality Adjustment Endorsement. FCIC will revise premium rate factors for the Quality Adjustment Endorsement accordingly to cover the additional expected losses.

Comment: A few commenters stated that as this endorsement is in concept very similar to the Apple Quality Adjustment Endorsement, it would appear the likelihood exists that an insured could receive a greater indemnity under the base policy than under the endorsement in situations where damage caused a small percentage of the pears to meet the grade standard set in the endorsement. As such, the commenters stated that a statement such as found in section 14(a) of the Apple Crop Provisions should be added: “Insureds who select this option cannot receive less than the indemnity due under section 12.”

Response: Because policyholders will be charged a higher premium, it would not be appropriate if the policyholder received a smaller indemnity under the Quality Adjustment Endorsement than they would have received under the base policy.

Therefore, FCIC has revised section 13 by adding a provision that clarifies that the policyholder cannot receive an indemnity less than due under section 11.

Comment: A few commenters stated that the Quality Adjustment Endorsement appears to now be available to pear producers in California. Under section 11(c)(3)(iii), California production may be reduced if a percentage of the pears are of a specific size or smaller. The commenters stated that because the Pear Quality Adjustment Endorsement provides for no such reduction, size is not a consideration for pear production under the endorsement.

Response: The Quality Adjustment Endorsement under 13(a)(1) states it is available in the states where coverage is provided for in the actuarial documents and for which there is a designated premium rate for the endorsement. A premium rate will be provided for only those states where the quality adjustment applies. There are no plans to include California under the Quality Adjustment Endorsement and, therefore, no premium rate will be provided for the endorsement in the actuarial documents for California. With respect to size requirements under the Quality Adjustment Endorsement, size is only a consideration to the extent that it is specified in the applicable grade standards.

Comment: A few commenters stated that it would seem prudent due to the similarities between the two crop endorsements to add the following statement from the Apple Crop Provisions: “Any pear production not graded or appraised prior to the earlier of the time pears are placed in storage or the date the pears are delivered to a packer, processor, or other handler will not be considered damaged pear production and will be considered production to count under this option.”

Response: FCIC agrees with the commenter that a statement such as the one included

in the Apple Crop Provisions is needed to avoid a policy vulnerability. Because insurance ends at harvest, it is necessary to appraise the crop before it leaves the field. It could be difficult or impossible to determine if damage occurred before or after the pears were placed into storage or delivered to the packer or processor. Additionally, production could become comingled making it difficult or impossible to make an accurate determination of what unit the production came from. To avoid a potential vulnerability, FCIC has added a provision in section 11 stating that any pear production not graded or appraised prior to the earlier of the time pears are placed in storage or the date the pears are delivered to a packer, processor, or other handler will not be considered damaged pear production and will be considered production to count. This provision is applicable to both the Quality Adjustment Endorsement and the underlying policy.

Comment: A few commenters recommended FCIC reconsider the damage thresholds and triggers for coverage under this endorsement. The commenters stated this proposed rule has changed the grade trigger from U.S. No. 2 to U.S. No. 1, as well as allowed this coverage to apply due to damage from all perils rather than just hail, but yet the damage chart has remained the same. The commenters stated that based on their field knowledge and experience, they are concerned that keeping the damage trigger at 11 percent may be cost prohibitive for many growers. The commenters recommended FCIC consider having the damage chart trigger at 21 percent rather than 11 percent as a compromise between the rate impact and increased quality standards that are now being proposed. In addition, the commenters pointed out that the apple damage chart uses 65 percent as the point at which there is zero production to count while the pear chart uses 60 percent. The commenters recommended FCIC consider changing the 60 percent level for pears to 65

percent to be consistent with what is used for apples. The commenters stated this would also be more cost effective for the growers to use 65 percent for pears as well.

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, some of the changes to the Quality Adjustment Endorsement such as the elimination of the cull add-back and change in the grade trigger were requested by producers and industry personnel because of the diminished value of low quality pears. These changes will more accurately adjust production to count to represent the value of low quality pears. While FCIC agrees these changes are likely to result in increased premium rate factors for the Quality Adjustment Endorsement, it remains to be seen whether the cost for the coverage changes requested will be considered cost prohibitive by producers. FCIC will monitor and evaluate the performance of the Quality Adjustment Endorsement and consider potential changes that may be needed the next time the Pear Crop Provisions are revised.

Comment: Section 13(b)(3) states, “if you sell any of your fresh pear production as U. S. No. 1 or better.” A commenter stated that this language suggests that a less than No.1 pear is being mis-graded as a No. 1 and sold as such. A few commenters asked if FCIC is trying to say that the pears are sold for the same price applicable to a No. 1 or better. A few commenters asked what it is sold for and why. The commenters asked if it would it be clearer if the disposition was specified.

Response: A different number of pears being sold as U.S. No. 1 or better than what was appraised does not necessarily mean the pears were mis-graded when appraised. The

appraisal only utilizes a representative sample to extrapolate the estimated number of pears that meet the U.S. No. 1 grade. Because this is an estimate, there is a degree of error, which means the actual number of fruit that meet the U.S. No. 1 grade is likely to be somewhat more or less than what is determined in the appraisal. The provision is also intended to include any sold pears that receive a price greater than or equal to the value of a U.S. No. 1, regardless of grade. Additionally, pears on the ground during an appraisal would be considered unmarketable, but if these pears are later sold as U.S. No. 1 or better, they should be included as production to count.

Comment: A commenter stated that the language “all such sold production will be included as production to count” proposed to be included in section 13(b)(3) is very confusing and misleading. The apple handbook had to include an exhibit to show how to address this language. It would be so much more clear if the wording was rewritten to say “If you sell any of your fresh pear production as U.S. No. 1 or better, your production to count will be the greater of the production you sold as U.S. No. 1 or better, or your production determined under sections 13 (b)(1) and (2).”

Response: FCIC agrees that the proposed wording of this provision could be misleading because it is not clear if the pear production sold as U.S. No. 1 is included as production to count in addition to the quantity determined in the appraisal or instead of the quantity determined in the appraisal. FCIC has revised this provision to clarify that the quantity of pears sold as U.S. No. 1 or better that exceed the quantity of pears determined to grade U.S. No. 1 in the appraisal will be included as production to count.

Comment: A few commenters stated that the provision in 13(b)(3) has been in the Apple Crop Provisions for a number of years and has caused a significant amount of

concern. If the provision is retained in the final rule, it is important that pear insureds, agents, insurance providers, etc., understand that losses under the endorsement cannot be finalized until the actual amount of production that was sold as U.S. No. 1 or better is known. The commenter stated that perhaps as an alternative, in situations where damage is such that 60 percent or more of the pears fail to meet grade (100 percent resultant damage) and the insured will be selling some production, the 15 percent cull add-back be utilized.

Response: FCIC agrees with the commenters that it is necessary to wait until the final deposition of the crop is known to settle a claim. However, the provision is necessary to allow FCIC to account for sold production. Not including the pears sold as U.S. No. 1 as production to count when the quantity of such pears exceeds the quantity determined in the appraisal could lead to a vulnerability. Section 13(b)(3) has been retained in the final rule, but revised for clarity as stated in response to the previous comment.

Comment: A few commenters stated it was very beneficial to have language in the policy that stated pears knocked to the ground by wind are not considered marketable production. The commenters recommended this language from section 13(c) be retained or the definition of harvest be revised to match that of apples in order to address this item. The commenters stated they often have growers who are not in a loss situation, but want their acreage appraised for APH purposes. The commenters stated it is very helpful to have a statement or definition to point to that clearly shows pears on the ground are not counted as a part of production for APH purposes.

Response: FCIC agrees with the commenters that pears on the ground should not be

appraised as production to count. As stated in response to a previous comment, FCIC has made revisions to clarify the lowest grade standards that will be considered as production to count. The grade standards for U.S. No. 2 Pears require these pears to be “hand-picked” which means they cannot show any evidence of being on the ground. Therefore, pears on the ground during an appraisal clearly should not be counted as production to count. However, if the pears on the ground are picked up and sold they, should be counted against their guarantee. Therefore, FCIC has included pears that are sold (even if failing to meet any U.S. or applicable state grading standard) in the definition of “marketable.”

Comment: FCIC is proposing to add a new section 13(d) stating production to count under the Quality Adjustment Endorsement will not apply in determining the producer’s APH. The proposed rule states that the APH will be based on all harvested and appraised marketable production from insurable acreage. The proposed rule also states this change is proposed in order to maintain consistency in APH reporting, as coverage is optional for the Quality Adjustment Endorsement and can be cancelled in writing on or before the cancellation date. Therefore, the APH can vary significantly from year to year. A commenter stated this would then suggest that the rate for the option would not be yield dependent relative the actual/approved APH yield.

Response: Premium is set to cover expected losses and a reasonable reserve. The premium rate factor for the Quality Adjustment Endorsement will be calculated using historical loss data under the endorsement adjusted for increased frequency and severity of losses due to the changes to the Quality Adjustment Endorsement.

Comment: A few commenters asked, if in fact 150 tons were graded No. 1 or better

as stated in the Optional Coverage for Pear Quality Adjustment Example in section 13, then why weren't they sold as No. 1 and why should the graded No. 1 production be reduced for quality. The commenters asked if FCIC is suggesting that based on a sample grade, 75 percent of the 200 tons (i.e. 150 tons) would have graded No. 1 and that the No. 1s could not be separated, thus the entire 200 tons could not be marketed as fresh No. 1 pears and, therefore, the entire 200 tons is subject to quality adjustment.

Response: The production to count under the Quality Adjustment Endorsement is reduced because in theory, the cost to harvest the undamaged production increases exponentially as the percent of damage increases until you reach a point where it is no longer economically feasible to harvest the undamaged production. The Quality Adjustment Endorsement has a threshold set when 60 percent of the pears fail to grade U.S. No. 1, then it is considered uneconomical to harvest and at that point the entire crop would be eligible for quality adjustment. In the example, the amount of production that graded less than U.S. No. 1 did not meet this 60 percent threshold and, therefore, the entire crop is not eligible for quality adjustment.

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

List of Subjects in 7 CFR Part 457

Crop insurance, Pear, 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 2015 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 § 457.111 as follows:

- a. In the introductory text by removing “2011” and adding “2015” in its place;
- b. In section 1 by:
  - i. Revising the definition of “marketable”; and
  - ii. Removing the definition of “varietal group”;
- c. Revise section 2;
- d. In section 3 by:
  - i. Removing the phrase “(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)” in the introductory text;
  - ii. Revising paragraph (a);
  - iii. In paragraph (b) introductory text by: removing the phrase “(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)” and removing “varietal group” and adding the term “type” in its place;
  - iv. Revising paragraph 3(b)(4)(iii);
  - v. Redesignating paragraph (c) as (d); and
  - vi. Adding new paragraph (c);
- e. In section 4 by removing the phrase “(Contract Changes)”;
- f. In section 5 by removing the phrase “(Life of Policy, Cancellation, and Termination)” in the introductory text;
- g. In section 6 by removing the phrase “(Insured Crop)” in the introductory text;
- h. In section 7 by removing the phrase “(Insurable Acreage)” in the introductory text;
- i. In section 8 by:

- i. Revising paragraphs (a) introductory text and (a)(1);
- ii. Redesignating paragraph (a)(2) as paragraph (a)(3) and revising newly redesignated paragraph (a)(3);
- iii. Redesignating paragraph (c) as paragraph (a)(2) and revising newly redesignated paragraph (a)(2);
- iv. Redesignating paragraph (d) as paragraph (a)(4); and
- v. Removing the phrase “(Insurance Period)” in paragraph (b) introductory text;
- j. In section 9 by:
  - i. Removing the phrase “(Cause of Loss)” in paragraph (a) introductory text;
  - ii. Removing the term “or” at the end of paragraph (a)(4);
  - iii. Removing the period at the end of paragraph (a)(5) and adding a semicolon in its place;
  - iv. Adding new paragraphs (a)(6) and (7);
  - v. Removing the phrase “(Causes of Loss)” in paragraph (b) introductory text;
  - vi. Removing paragraph (b)(1); and
  - vii. Redesignating paragraphs (b)(2) and (3) as (b)(1) and (2) respectively;
- k. In section 10 by:
  - i. Redesignating paragraphs (a), (b), and (c) as paragraphs (b)(1), (2), and (3) respectively;
  - ii. Designating the introductory text of the section as the introductory text of paragraph (b) and removing the phrase “(Duties in the Event of Damage or Loss)” in newly redesignated paragraph (b);
  - iii. Adding a new paragraph (a);

l. In section 11 by:

i. Removing the term “varietal group” in paragraph (b)(1) and adding the term “type” in its place;

ii. Revising paragraph (b)(2);

iii. Revising paragraph (b)(4);

iv. Removing the word “this” in paragraph (b)(6) and adding the word “the” in its place;

v. Revising paragraph (b)(7);

vi. In paragraph (c)(3)(iii)(A) by removing the number “180” and adding the number “165” in its place;

vii. Removing the phrase “varietal group” in paragraph (c)(3)(iii)(B) and adding in its place the term “type”; and

viii. Adding a new paragraph (d);

m. Revise section 13.

The revisions and additions read as follows:

§ 457.111 Pear crop insurance provisions.

\* \* \* \* \*

1. \* \* \*

\* \* \* \* \*

Marketable – Pear production that grades U.S. Number 2 processing or better, unless otherwise provided in the Special Provisions, or that is sold (even if failing to meet any U.S. or applicable state grading standard).

\* \* \* \* \*

2. Unit Division

(a) Optional units may either be established in accordance with section 34(c) of the Basic Provisions or by non-contiguous land, but not both.

(b) In addition to establishing optional units in accordance with section 2(a), optional units may be established by type if allowed by the Special Provisions. The requirements of section 34 of the Basic Provisions that require the crop to be planted in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit are not applicable for optional units by type.

3. \* \* \*

(a) You may select different coverage levels and percent of price elections for each type in the county as specified in the Special Provisions, unless you elect Catastrophic Risk Protection (CAT) on any type.

(1) For example, if you choose 75 percent coverage level and 100 percent of the maximum price election for one type, you may choose 65 percent coverage level and 75 percent of the maximum price election for another type. However, if you elect the CAT level of coverage for any pear type, the CAT level of coverage will be applicable to all insured pear acreage for all types in the county.

(2) Notwithstanding section 3(b)(2) of the Basic Provisions, pear types will not be considered as separate crops and will not be subject to separate administrative fees.

(b) \* \* \*

(4) \* \* \*

(iii) Any other information that we request in order to establish your approved yield.

(c) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any situation listed in sections 3(b)(1) through (b)(4). If the situation occurred:

(1) Before the beginning of the insurance period, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the situation was due to an insured or uninsured cause of loss (If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce the yield used to establish your production guarantee at any time we become aware of the circumstance);

(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, production lost due to uninsured causes equal to the amount of the reduction in yield used to establish your production guarantee will be applied in determining any indemnity (see section 11(c)(1)(ii)). We will reduce the yield used to establish your production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees.

\* \* \* \* \*

8. \* \* \*

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

(1) For the year of application, coverage begins:

(i) In California, on February 1, except that if your application is received after January 22 but prior to February 1, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10-day period and determine that it does not meet insurability requirements (You must provide any information that we require for the crop or to determine the condition of the orchard); or

(ii) In all other states, on November 21, except that if your application is received after November 11 but prior to November 21, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10-day period and determine that it does not meet insurability requirements (You must provide any information that we require for the crop or to determine the condition of the orchard).

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

(3) The calendar date for the end of the insurance period for each crop year is:

(i) September 15 for all types of summer or fall pears;

(ii) October 15 for all types of winter pears; or

(iii) As otherwise provided for specific types in the Special Provisions.

\* \* \* \* \*

9. \* \* \*

(a) \* \* \*

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

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

\* \* \* \* \*

10. \* \* \*

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

\* \* \* \* \*

11. \* \* \*

\* \* \* \* \*

(b) \* \* \*

(2) Multiplying the results of section 11(b)(1) by your price election for each type, if applicable;

\* \* \* \* \*

(4) Multiplying the total production to be counted of each type, if applicable, by your price election;

\* \* \* \* \*

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

Basic Coverage Example:

You have a 100 percent share of a 20-acre pear orchard located in a state other than California. You elect 100 percent of the \$500/ton price election. You have a production

guarantee of 15 tons/acre; you are only able to produce 10 tons of pears per acre. Your indemnity will be calculated as follows:

(1) 20 acres x 15 tons/acre = 300-ton production guarantee;

(2) \$500/ton (100 percent of the price election) x 300-ton production guarantee;

(3) = \$150,000 value of production guarantee;

(4) 20 acres x 10 tons = 200-ton production to count;

(5) \$500/ton (100 percent of the price election) x 200-ton production to count = \$100,000 value of production to count;

(6) \$150,000 value of production guarantee - \$100,000 value of production to count = \$50,000 loss; and

(7) \$50,000 x 100 percent share = \$50,000 indemnity payment.

[END OF EXAMPLE]

\* \* \* \* \*

(d) Any pear production not graded or appraised prior to the earlier of the time pears are placed in storage or the date the pears are delivered to a packer, processor, or other handler will not be considered damaged pear production and will be considered production to count.

\* \* \* \* \*

### 13. Fresh Pear Quality Adjustment Endorsement

In the event of a conflict between the Pear Crop Insurance Provisions and this option, this option will control. Insured who select this option cannot receive less than the indemnity due under section 11.

(a) This endorsement applies to any crop year, provided:

(1) The insured pears are located in a State designated for such coverage on the actuarial documents and for which there is designated a premium rate for this endorsement;

(2) All the pear trees in the unit are managed for the production of fresh market pears (Units that are not managed for the production of fresh market pears do not qualify for this endorsement);

(3) You have not elected to insure your pears under the CAT Endorsement;

(4) You elect it on your application or other form approved by us, and did so on or before the sales closing date for the initial crop year for which you wish it to be effective (By doing so, you agree to pay the additional premium designated in the actuarial documents for this optional coverage); and

(5) You or we do not cancel it in writing on or before the cancellation date. Your election of CAT coverage for any crop year after this endorsement is effective will be considered as notice of cancellation of this endorsement by you.

(b) If the fresh pear production is damaged by an insured cause of loss, and if eleven percent (11%) or more of the harvested and appraised production does not grade at least U.S. Number 1 in accordance with the United States Standards for Grades of Summer and Fall Pears or the United States Standards for Grades of Winter Pears, as applicable, the amount of production to count will be reduced as follows:

(1) By two percent (2%) for each full one percent (1%) in excess of ten percent (10%), when eleven percent (11%) through sixty percent (60%) of the pears fail the grade standard; or

(2) By one hundred percent (100%) when more than sixty percent (60%) of the pears fail the grade standard.

(3) If you sell more of your fresh pear production as U. S. Number 1 or better than the quantity of pears determined to grade U.S. Number 1 or better in the appraisal, the quantity of such sold production exceeding the amount determined to grade U.S. Number 1 or better in the appraisal will be included as production to count under this option.

(c) Marketable production that grades less than U.S. Number 1 due to uninsurable causes not covered by this endorsement will not be reduced.

(d) Any adjustments that reduce your production to count under this option will not be applicable when determining production to count for Actual Production History purposes.

#### Fresh Pear Quality Adjustment Example:

You have a 100 percent share of a 20-acre pear orchard. You have a production guarantee of 15 tons/acre. You elect 100 percent of the \$500/ton price election. You are only able to produce 10 tons/acre and only 7.5 tons/acre grade U. S. Number 1 or better ( $7.5 \times 20 = 150$  tons). Your indemnity would be calculated as follows:

(1) 20 acres x 15 tons per acre = 300 tons production guarantee;

(2) 300 tons production guarantee x \$500/ton = \$150,000 value of production guarantee;

(3) The value of fresh pear production to count is determined as follows:

(i) 200 tons harvested production minus 150 tons that graded U.S. Number 1 or better = 50 tons failing to make grade;

(ii)  $50 \text{ tons failing grade} / 200 \text{ tons of production} = 25 \text{ percent of production failing to grade U.S. Number 1};$

(iii)  $25 \text{ percent minus } 10 \text{ percent} = 15 \text{ percent in excess of } 10 \text{ percent allowance failing to make grade};$

(iv)  $15 \text{ percent} \times 2 = 30 \text{ percent total quality adjustment for pears failing to grade U.S. Number 1};$

(v)  $200 \text{ tons production} \times 30 \text{ percent quality adjustment} = 60 \text{ tons of pears failing to make grade};$

(vi)  $200 \text{ tons production minus } 60 \text{ tons failing to make grade} = 140 \text{ tons of quality adjusted fresh pear production to count};$

(vii)  $140 \text{ tons of quality adjusted fresh pear production to count} \times \$500/\text{ton price election} = \$70,000 \text{ value of fresh pear production to count};$

(4)  $\$150,000 \text{ value of production guarantee minus } \$70,000 \text{ value of fresh pear production to count} = \$80,000 \text{ value of loss};$

(5)  $\$80,000 \text{ value of loss} \times 100 \text{ percent share} = \$80,000 \text{ indemnity payment.}$

[END OF EXAMPLE]

Signed in Washington, D.C., on July 18, 2014.

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[FR Doc. 2014-17491 Filed 07/25/2014 at 8:45 am; Publication Date: 07/28/2014]