

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 246

[FNS-2009-0001]

RIN 0584-AD71

#### Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Vendor Cost Containment

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** This rule makes administrative corrections to a final rule published in the **Federal Register** on October 8, 2009, entitled "Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Vendor Cost Containment."

**DATES:** *Effective Date:* March 30, 2010.

**FOR FURTHER INFORMATION CONTACT:** Sandra Clark, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305-2746, or [Sandy.Clark@fns.usda.gov](mailto:Sandy.Clark@fns.usda.gov).

**SUPPLEMENTARY INFORMATION:** The Food and Nutrition Service published a final rule in the **Federal Register**, entitled "Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Vendor Cost Containment," 74 FR 51745, on October 8, 2009. Pages 51754 and 51758 stated that two sentences would be added at the end of § 246.12 (g)(4)(i)(D). These two sentences were inadvertently omitted from the regulatory text of paragraph (g)(4)(i)(D) set forth in the final rule published on October 8, 2009. This final rule correction adds the two omitted sentences to § 246.12 (g)(4)(i)(D).

#### List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Civil rights, Food assistance programs, Grants programs—health, Indians, Infants and children, Maternal and child health, Nutrition, Penalties, Reporting and recordkeeping requirements, Women.

Accordingly 7 CFR part 246 is corrected by making the following correcting amendment:

#### PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

■ 1. The authority citation for part 246 continues to read as follows:

**Authority:** 42 U.S.C. 1786.

■ 2. Section 246.12 is amended by adding two sentences at the end of paragraph (g)(4)(i)(D) to read as follows:

#### § 246.12 Food delivery systems.

\* \* \* \* \*

(g) \* \* \*

(4) \* \* \*

(i) \* \* \*

(D) \* \* \* A State agency may exclude partially-redeemed food instruments from a quarterly cost neutrality assessment based on an empirical methodology approved by FNS. A State agency may not exclude food instruments from the quarterly cost neutrality assessment based on a rate of partially-redeemed food instruments.

\* \* \* \* \*

Dated: March 22, 2010.

**Julia Paradis,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 2010-6977 Filed 3-29-10; 8:45 am]

**BILLING CODE 3410-30-P**

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563-AC22

#### Common Crop Insurance Regulations; Florida Avocado 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 Avocado Crop Insurance Provisions to convert the Florida avocado pilot crop insurance program to a permanent insurance program for the 2011 and succeeding crop years.

**DATES:** *Effective Date:* April 29, 2010.

**FOR FURTHER INFORMATION CONTACT:** Claire White, Economist, Product Management, 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

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

##### Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563-0053 through March 31, 2012.

##### E-Government Act Compliance

The Risk Management Agency is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

##### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, 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 the UMRA.

##### Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132,

Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees, and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1,000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities 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 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 to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J, for the informal administrative review process 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 impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

### Background

On Wednesday, May 20, 2009, FCIC published a notice of proposed rulemaking in the **Federal Register** at 74 FR 23660–23664 to add 7 CFR 457.173 Florida avocado crop insurance provisions effective for the 2011 and succeeding crop years. Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions.

A total of 29 comments were received from three commenters. The commenters were two reinsured companies and one insurance service organization. The comments received and FCIC's responses are as follows:

#### General Comments

*Comment:* One commenter supports the proposed changes along with the conversion of the Florida Avocado Pilot Crop Insurance Provisions to a permanent program for 2011.

*Response:* FCIC thanks the commenter for their support.

*Comment:* One commenter agrees with the proposed deletion of the “order of priority” statement since the order of priority is covered in the Basic Provisions.

*Response:* FCIC agrees with the commenter that the “order of priority” statement is no longer needed.

*Comment:* One commenter states an underwriting guide was not developed for the Florida Avocado program during the pilot period as it was for other pilot programs. Underwriting guidelines are useful to ensure consistency among approved insurance providers (AIPs) and to provide guidance to AIPs throughout all aspects of the policy lifecycle.

*Response:* FCIC will provide underwriting guidelines for the Florida Avocado program in the Crop Insurance Handbook.

### Section 1—Definitions

*Comment:* Two commenters state the defined term “direct marketing” is referenced in section 10 and section 11(c)(1)(B) as “direct marketed.”

Therefore, the commenters recommend changing the defined term from “direct marketing” to “direct marketed” to be consistent with how it is referenced in sections 10 and 11(c)(1)(B).

*Response:* FCIC agrees the defined term “direct marketing” should be consistent with the terms used in sections 10 and 11(c)(1)(B). However, FCIC does not agree with the recommendation to change the defined term from “direct marketing” to “direct marketed.” Instead, FCIC has changed the term “direct marketed” in sections 10 and 11(c)(1)(B) to “direct marketing” to be consistent with the defined term since this is the term used in all other Crop Provisions. FCIC has also revised sections 10 and 11(c)(1)(B) by adding the phrase “sold by” before the term “direct marketing” so the provision reads clearly.

*Comment:* Two commenters suggest revising the definition of “type.” One commenter suggests revising the definition to be more consistent with other Crop Provisions to include, at the end of the definition, the phrase “as specified in the Special Provisions.” Another commenter suggests rearranging the definition so it reads “Either early varieties or late varieties of avocados,” unless it is done otherwise in the Crop Provisions for other tree fruit crops.

*Response:* FCIC agrees with both commenters and has revised the definition accordingly.

*Comment:* One commenter questions if the definition of “type” means all early varieties will be one type and all late varieties will be a second type, or whether there will be more than two types.

*Response:* There will only be two insurable types. All early varieties will be one type and all late varieties will be another type.

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

*Comment:* Two commenters state section 3(a) allows the producer to elect different coverage levels for each separate type being insured under these provisions, if the Special Provisions provide that the producer may elect different coverage levels for each avocado type listed in the Special Provisions. If this is the intent, one commenter states language needs to be clarified to read something like “\* \* \*

you may select a different coverage level for each separate type \* \* \*.” This revised language states a different coverage level can be elected for each type. When the language states one coverage level may be selected for each type, it is not clear if it must be the same or if it can vary by type. The language needs to be clarified so it is clear as to what is being intended. Another commenter states the language should be changed to something like “\* \* \* you may select a different coverage level for each avocado type \* \* \*” or “\* \* \* you may select one coverage level by type \* \* \*” to be clear that all types do not have to have the same (one) level except when Catastrophic Risk Protection (CAT) level of coverage is elected.

*Response:* FCIC agrees with the commenters. The provision has been revised to clarify that different coverage may be selected for each type if permitted by the Special Provisions.

*Comment:* One commenter states the added language in section 3(a) regarding CAT level of coverage states it “\* \* \* will be applicable to all insured types of avocados in the county.” This not only suggests there are more than two types, but also the insured might be able to choose to insure some but not all of the types, which does not appear to match the language in section 6(a). Perhaps the word “insured” should be deleted.

*Response:* FCIC agrees the word “insured” may cause confusion. All types of avocados in which the producer has a share must be insured. The producer cannot choose which types to insure. FCIC has revised section 3(a) by removing the word “insured.” The provision has also been clarified to state that the CAT level of coverage applies to all types grown by the producer.

*Comment:* One commenter states language has been added to section 3(a) to clarify if the producer elects the CAT level of coverage on any type, it must apply to all types in the county. The commenter suggests FCIC consider if similar language should be added in section 3(b) regarding the price election.

*Response:* FCIC agrees and has revised section 3(b) to include language similar to that in section 3(a) regarding the CAT level of coverage.

*Comment:* One commenter states the last sentence in section 3(b) refers to using the same price election percentage on “\* \* \* all other types.” This appears to be standard language, but see earlier comments about whether or not there are more than two types of avocados.

*Response:* FCIC agrees and has reworded the provision to specify that the 55 percent CAT coverage will apply

to each type the producer grows in the county.

*Comment:* Two commenters state section 3(d) allows the AIP to reduce the yield used to establish the production guarantee if certain things as specified in this section occur. The proposed provisions state the procedures for reducing the production guarantee are in accordance with the Special Provisions. The commenters say it is difficult to provide any comments since the proposed Special Provisions language is not provided, as this has been difficult to administer in the past. It would be helpful if FCIC would provide a copy of the proposed Special Provisions language so the commenters could offer input on how this is proposed to be implemented.

*Response:* FCIC realizes it is not necessary to provide the procedures for reducing the yield used to establish the production guarantee in the Special Provisions. After further review, FCIC determined providing a Special Provisions statement to cover all conditions listed in section 3(d) would be difficult. The effects of interplanting a perennial crop; removal of trees; trees that have been buckhorned; damage; or a change in practices on yield potential of the insured crop could provide a wide range of possible problems that may need to be evaluated on an individual basis. Therefore, FCIC has retained the provision as it was stated in the pilot Florida Avocado Crop Provisions. This provision is consistent with provisions in other perennial Crop Provisions, such as Texas citrus fruit, peaches and pears, regarding reducing the yield used to establish the production guarantee.

#### Section 6—Insured Crop

*Comment:* One commenter suggests removing the hyphen in the term “commercially grown” in section 6(a).

*Response:* FCIC agrees and has removed the hyphen.

*Comment:* One commenter asks for clarification in section 6(a). When this section refers to “\* \* \* types in the county listed in the Special Provisions for which a premium rate is provided \* \* \*” the commenter questioned whether it means the types listed in the SPOI or the county listed in the SPOI.

*Response:* FCIC agrees this language may be confusing. The language is intended to say the insured crop will be all commercially grown avocado types for which a premium rate is provided by the actuarial documents for the county. The provision has been revised accordingly.

*Comment:* One commenter suggests FCIC consider changing “\* \* \* actuarial

table” to “\* \* \* actuarial documents” in section 6(a) as has been done in other policies and procedures.

*Response:* FCIC agrees and has revised the provision accordingly.

*Comment:* Two commenters state section 6(b) provides that any avocados produced on trees that have not reached the fourth growing season after set out and have not produced the minimum production per acre as specified in the Special Provisions in at least one of the previous three crop years are not insurable. The commenter says since the proposed Special Provisions language is not provided, it is difficult to provide any comments. It would be helpful if FCIC would provide a copy of the proposed Special Provisions language so the commenters could know if a change from the current 50 bushels per acre is being considered and therefore know what, if any, comments might be made. One commenter asks if changes to more or less than 50 bushels are being considered.

*Response:* The Special Provisions allow changes in policy provisions by geographical area when appropriate based on agronomic conditions. When this policy is expanded, it is possible that the 50 bushels currently in the policy may not be appropriate to an area. Providing the minimum production per acre requirement in the Special Provisions will allow flexibility to change the minimum production per acre requirement, which will eliminate the administrative burden of revising the regulation when a simple numerical change is necessary. FCIC is not expecting the minimum production per acre to be more than 50 bushels.

*Comment:* One commenter notes section 6(b) is revised to state coverage is not provided “\* \* \* on trees that have not reached the fourth growing season after setout and have not produced the minimum production per acre as specified in the Special Provisions in at least one of the previous three crop years.” The explanation in the Proposed Rule is this provides flexibility for productive groves, compared to the current language, which states coverage is not provided “\* \* \* on trees that have not reached the fifth growing season after setout. However, we may agree in writing to insure avocados on acreage that has not reached this age if the acreage has produced at least 50 bushels of avocados per acre in a previous year.” The commenter asks if this proposed “flexibility” is only in relation to the possible changes from the current 50-bushel figure, or whether it is also supposed to be related to the change from the fifth to the fourth growing

season after setout. The latter flexibility appears to have already existed since the AIP could agree in writing to insure avocados from younger trees as long as they had produced at least 50 bushels per acre in a previous year. The commenter asks how often were such agreements in writing necessary, how often did avocado trees produce at least 50 bushels in the fourth growing season, and how often was that amount produced in the third or second growing seasons, which might no longer be insurable under the proposed language until the trees have reached the fourth growing season. The commenter also asks whether it is possible trees that have reached the fourth growing season (or more) will not yet have produced 50 bushels (or whatever the minimum production requirement per acre is as specified in the Special Provisions), and therefore not be insurable according to the proposed language.

*Response:* The explanation in the Proposed Rule states providing the minimum production per acre on the Special Provisions allows the flexibility to specify a different minimum production per acre for early and for late varieties. Therefore, “flexibility” relates to providing separate minimum amounts of production per acre on the Special Provisions, if needed, for early varieties and late varieties.

Insuring avocados on trees before the trees reached the fifth growing season after setout was allowed under the Florida Avocado Pilot Crop Insurance Provisions if the AIP agreed in writing. However, FCIC did not receive any written agreement requests to insure avocados grown on trees reaching the second, third or fourth growing season. Since FCIC did not receive any written agreements, FCIC cannot provide an estimate of how often avocado trees produced at least 50 bushels in the second, third or fourth growing seasons.

It is possible trees reaching the fourth growing season (or more) will not yet have produced the minimum production per acre specified in the Special Provisions. Avocados grown on trees not reaching the fourth growing season and not meeting the minimum production per acre specified in the Special Provisions will not be insurable until the trees on which the avocados are grown have met both requirements. A written agreement will not be available for trees not reaching the fourth growing season and not meeting the minimum production per acre requirement.

#### Section 8—Insurance Period

*Comment:* One commenter suggests moving the parenthetical phrase at the

end of both sections 8(a)(i) and 8(a)(ii) to an unnumbered paragraph following (ii) so it applies to both but is stated only once.

*Response:* FCIC agrees with the commenter. FCIC moved this parenthetical to a new section 8(a)(iii) and revised sections 8(a), 8(a)(i), and 8(a)(ii) to make the provisions less redundant.

*Comment:* One commenter suggests adding a hyphen in “\* \* \* 10-day period \* \* \*” in section 8(a)(1)(ii).

*Response:* FCIC agrees and has revised the provision accordingly.

*Comment:* One commenter states section 8(b)(1) only addresses acquiring an insurable share in acreage after coverage begins but on or before the acreage reporting date. The commenter suggests adding some additional language to address acquiring an insurable share in acreage after the acreage reporting date. The commenter recommends such additional language allow AIPs the opportunity to inspect and insure such acreage if they wish to do so. AIPs should have the opportunity to accept or deny coverage in these types of situations. This would be similar to what is currently allowed for acreage that is not reported per section 6(f) of the Basic Provisions.

*Response:* Section 8(b)(1) is silent regarding allowing AIPs the opportunity to inspect and insure acreage that was acquired after the acreage reporting date. Therefore, section 6(f) of the Basic Provisions, which allows the AIPs to determine by unit the insurable crop acreage, share, type and practice, or to deny liability if the producer failed to report all units, has been applied in this situation under other Crop Provisions and would apply here. The provisions in this final rule are consistent with provisions in other perennial Crop Provisions, such as Texas citrus fruit, peaches and pears and to change them here would suggest that section 6(f) of the Basic Provisions would not be applicable to these other policies, creating an unnecessary ambiguity. The Crop Insurance Handbook also allows for AIPs to revise an acreage report that increases 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. No change has been made.

#### Section 9—Causes of Loss

*Comment:* One commenter recommends the insured cause of loss in section 9(a)(2) be clarified as “Fire, due to natural causes, \* \* \*” (or “Fire, if caused by lightning, \* \* \*”), as in the

proposed revisions to the Tobacco Crop Provisions).

*Response:* Revising the insured cause of loss to read “Fire, due to natural causes, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the grove” is not necessary since section 12 of the Basic Provisions states all insured causes of loss must be due to a naturally occurring event. To repeat this requirement for a single cause of loss in the Crop Provisions will only create confusion regarding whether or not the other listed causes must be naturally occurring. FCIC also disagrees with revising the insured cause of loss to read “Fire, if caused by lightning \* \* \*” as in the proposed revisions to the Tobacco Crop Provisions. Due to public comments, the original provision, mirrored here and in other Crop Provisions, was retained. No change has been made.

*Comment:* One commenter notes “Insects, but not damage due to insufficient or improper application of pest control measures” in section 9(a)(7) and “Plant disease, but not due to insufficient or improper application of disease control measures” in section 9(a)(8) are at the end of the list of insured causes of loss. The commenter states the order makes sense since they are unlikely to be the cause of “Failure of the irrigation water supply caused by an insured peril specified in section 9(a)(1) through (5) that occurs during the insurance period,” which is stated in section 9(a)(6), but this is not the usual order of the causes of loss in other Crop Provisions.

*Response:* FCIC agrees this is not the usual order of the causes of loss in other Crop Provisions. However, while this is a change, it does not change the meaning of the provisions because failure of the irrigation water supply cannot be caused by insects or plant disease in this policy or any other policy.

#### Section 11—Settlement of Claim

*Comment:* One commenter suggests adding a comma in section 11(b)(2) before the phrase “\* \* \* if applicable” as in sections 11(b)(1) and 11(b)(4).

*Response:* FCIC agrees and has revised the provision accordingly.

*Comment:* One commenter suggests moving the comma in section 11(b)(4) after the parenthetical phrase “(see subsection 11(c))” and placing it before the parenthetical phrase.

*Response:* Moving the comma after the parenthetical could give a different meaning to the provision. Instead, FCIC has revised the provision by placing the parenthetical phrase between the words

“counted” and “by” because the parenthetical phrase is more appropriately placed here because section 11(c) is the provision regarding production to count. FCIC has also removed the word “subsection” in the parenthetical phrase and replaced it with “section” to be consistent with the other references to “section” in section 11.

*Comment:* One commenter suggests changing the semicolon after the phrase “\* \* \* abandon or no longer care for” to a comma in section 11(c)(1)(iv).

*Response:* In the Proposed Rule, a comma comes after the phrase “\* \* \* abandon or no longer care for.” Therefore, there is no need to change a semicolon to a comma. No change has been made.

In addition to the changes described above, FCIC has made the following changes:

1. Added a comma after the phrase “by type” in the introductory text in section 3(c) and after the phrase “and type” in section 3(c)(5)(i).

2. Removed the word “setout” in section 6(b)(1) and replaced it with the words “set out” to be consistent with the defined term “set out.”

3. Revised the provisions in section 8(a)(ii) to remove the phrase “, acreage and production reports are” and add the word “is” in its place. The current language states for the year of application, if the producer applies for coverage after November 21, but prior to December 1, insurance will attach on the 10th day after the producer’s properly completed application, acreage and production reports are received. It is not necessary for the producer to submit, at the time of application, his acreage and production reports, as those are not due until the acreage reporting date. Therefore, FCIC has removed the requirement for the producer to submit acreage and production reports at the time of application.

#### List of Subjects in 7 CFR Part 457

Crop insurance, Florida Avocado, Reporting and recordkeeping requirements.

#### Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457, Common Crop Insurance Regulations, for the 2011 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. Section 457.173 is added to read as follows:

#### § 457.173 Florida Avocado crop insurance provisions.

The Florida Avocado Crop Insurance Provisions for the 2011 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture Federal Crop Insurance Corporation

Reinsured policies: (Appropriate title for insurance provider)

Both FCIC and reinsured policies: Florida Avocado Crop Insurance Provisions.

1. Definitions.

*Bushel.* A unit of measure equal to 55 pounds of avocados, unless otherwise specified in the Special Provisions.

*Buckhorn.* To prune any limb at a diameter of at least four inches.

*Crop year.* A period beginning with the date insurance attaches to the avocado crop and extending through the normal harvest time. The crop year is designated by the calendar year after insurance attaches.

*Direct marketing.* Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer’s market, and permitting the general public to enter the fields for the purpose of picking all or a portion of the crop.

*Harvest.* Picking of the avocados from the trees or ground by hand or machine.

*Pound.* A unit of weight equal to sixteen ounces avoirdupois.

*Set out.* Transplanting a tree into the grove.

*Type.* Either early varieties or late varieties of avocados, as specified in the Special Provisions.

2. Unit Division.

Provisions in section 34 of the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established by type when provided for in the Special Provisions.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one coverage level for all the avocados in the county insured under this policy unless the Special Provisions provide that you may select a different coverage level for each

avocado type designated in the Special Provisions. However, if you elect the Catastrophic Risk Protection (CAT) level of coverage, the CAT level of coverage will be applicable to all types of avocados you produce in the county.

(b) You may select only one price election for all the avocados in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each avocado type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must choose 100 percent of the maximum price election for the other type. However, if you elect the CAT level of coverage, the price election percentage will be equal to 55 percent of the applicable price election for each type of avocado you produce in the county.

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

(1) Any damage, removal of trees, trees that have been buckhorned, change in grove practices, or any other circumstance that may reduce the expected yield per acre to less than the yield upon which the production guarantee per acre is based, and the number of affected acres;

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

(3) The age of the trees;

(4) Any acreage that is excluded under section 6 of these Crop Provisions; and

(5) For acreage interplanted with another crop:

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

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your production guarantee per acre.

(d) We will reduce the yield used to establish your production guarantee as necessary, based on the effect of interplanting a perennial crop; removal of trees; trees that have been buckhorned; damage; or a change in practices on the yield potential of the insured crop. If you fail to notify us of any circumstance as set out in paragraph (c) of this section, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change

date is August 31 preceding the cancellation date.

#### 5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are the first November 30th after insurance attaches.

#### 6. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the commercially grown avocado types for which a premium rate is provided by the actuarial documents for the county:

- (1) In which you have a share;
- (2) That are grown for harvest as avocados; and
- (3) That are grown on trees that, if inspected, are considered acceptable to us.

(b) In addition to the avocados not insurable in section 8 of the Basic Provisions, we do not insure any avocados produced on trees that have not:

- (1) Reached the fourth growing season after set out; and
- (2) Produced the minimum production per acre as specified in the Special Provisions in at least one of the previous three crop years.

#### 7. Insurable Acreage.

In lieu of the provisions in section 9 of the Basic Provisions that prohibits insurance attaching to a crop planted with another crop, avocados interplanted with another perennial crop are insurable unless we inspect the acreage and determine it does not meet the requirements of insurability contained in these Crop Provisions.

#### 8. Insurance Period.

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

- (1) For the year of application:
  - (i) If you apply for coverage on or before November 21st, coverage begins for the crop year on December 1 of the calendar year; or
  - (ii) If you apply for coverage after November 21 but prior to December 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 the requirements for insurability contained in your policy.
  - (iii) You must provide any information we require so we may determine the condition of the grove to be insured.
- (2) For continuous policies, coverage begins for the crop year on December 1 of the calendar 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, unless otherwise specified in the Special Provisions, is:

(i) The first November 30th after insurance attaches for early varieties of avocados.

(ii) The second March 31st after insurance attaches for late varieties of avocados.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(1) If you acquire an insurable share in any insurable acreage of avocados after coverage begins, but on or before the acreage reporting date of any crop year, and if after inspection we consider the acreage acceptable, then insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any acreage of avocados on or before the acreage reporting date of any crop year, insurance will not be considered to have attached to, no premium will be due and no indemnity paid for, such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity or a similar form approved by us is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

#### 9. Causes of Loss.

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur within the insurance period:

- (1) Adverse weather conditions;
- (2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the grove;
- (3) Wildlife, unless control measures have not been taken;
- (4) Earthquake;
- (5) Volcanic eruption;
- (6) Failure of the irrigation water supply caused by an insured peril specified in section 9(a)(1) through (5) that occurs during the insurance period.
- (7) Insects, but not damage due to insufficient or improper application of pest control measures; and
- (8) Plant disease, but not due to insufficient or improper application of disease control measures.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) Theft; or

(2) Inability to market the avocados for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production, etc.

#### 10. Duties in the Event of Damage or Loss.

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(a) You must notify us at least 15 days before any production from any unit will be sold by direct marketing.

(1) We will conduct a preharvest appraisal that will be used to determine your production. If damage occurs after the preharvest appraisal, and you can provide acceptable records to us that account for all production removed from the unit after our appraisal, we will conduct an additional appraisal that will be used to determine your production.

(2) Failure to give timely notice that production will be sold by direct marketing will result in an appraised production to count of not less than the production guarantee per acre if such failure results in an inability to make an accurate appraisal.

(b) If you intend to claim an indemnity on any unit, you must notify us 15 days prior to the beginning of harvest or immediately if damage is discovered during harvest so that we may inspect the damaged production.

(1) You must not destroy the damaged crop until after we have given you written consent to do so.

(2) If you fail to meet the requirements of this subsection, and such failure results in our inability to inspect the damaged production, we may consider all such production to be undamaged and include it as production to count.

#### 11. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide production records:

(1) For any optional unit, we will combine all optional units for which acceptable production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

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

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

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

(4) Multiplying the total production to be counted (see section 11(c)) by type, if applicable, by the respective price election;

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

(6) Subtracting the results in section 11(b)(5) from the results in section 11(b)(3); and

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

For example:

You have a 100 percent share in 50 acres of early variety A in the unit, with a guarantee of 140 bushels per acre and a price election of \$16.00 per bushel. You are only able to harvest 6,000 bushels due to an insured cause of loss. Your indemnity would be calculated as follows:

(1) 50 acres  $\times$  140 bushels = 7,000 bushel guarantee;

(2) 7,000 bushels  $\times$  \$16.00 price election = \$112,000.00 value of guarantee;

(4) 6,000 bushels  $\times$  \$16.00 price election = \$96,000.00 value of production to count;

(6) \$112,000.00 – \$96,000.00 = \$16,000 loss; and

(7) \$16,000  $\times$  100 percent = \$16,000 indemnity.

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

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements contained in section 10 of these Crop Provisions;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production;

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to adequately care

for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage.

12. Late and Prevented Planting.

The late and prevented planting provisions of the Basic Provisions are not applicable.

Signed in Washington, DC, on March 24, 2010.

**William J. Murphy,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 2010-6975 Filed 3-29-10; 8:45 am]

**BILLING CODE 3410-08-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 61

**[Docket No. FAA-2007-29015; Amdt. No. 61-125A]**

**RIN 2120-AJ10**

#### **Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft; Modifications to Rules for Sport Pilots and Flight Instructors With a Sport Pilot Rating; Correction**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** The FAA is correcting a final rule published on February 1, 2010. In that rule, the FAA amended its regulations for sport pilots and flight instructors with a sport pilot rating to address airman certification and operational issues that have arisen since regulations for the certification of aircraft and airmen for the operation of light-sport aircraft were implemented in 2004. This document corrects errors in the codified text of that document.

**DATES:** The final rule and this correction will become effective April 2, 2010.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this rule, contact Larry L. Buchanan, Light-Sport Aviation Branch, AFS-610, Regulatory Support Division, Flight Standards Service, Federal Aviation Administration, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; telephone (405) 954-6400; Mailing address: Light-Sport Aviation Branch, AFS-610, P.O. Box 25082, Oklahoma City, OK 73125.

For legal questions concerning this rule, contact Paul G. Greer, Regulations Division, AGC-200, Federal Aviation Administration, 800 Independence

Ave., SW., Washington, DC 20591; telephone (202) 267-3073.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On February 1, 2010, the FAA published a final rule entitled, “Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft; Modifications to Rules for Sport Pilots and Flight Instructors With a Sport Pilot Rating” (75 FR 5204).

In that final rule, the FAA revised § 61.327. Paragraph (a) introductory text of § 61.327 referenced endorsement requirements for a sport pilot operating “a light-sport aircraft that has a  $V_H$  less than or equal to 87 knots CAS.” Paragraph (b) introductory text of § 61.327 referenced endorsement requirements for persons operating “a light-sport aircraft that has a  $V_H$  greater than 87 knots CAS.” In the revision to § 61.315(c)(14)(i) and (c)(14)(ii), however, references to those paragraphs of § 61.327 were incorrectly cited.

Additionally, the FAA revised § 61.327 to require a sport pilot who seeks to operate a light-sport aircraft that has a  $V_H$  less than or equal to 87 knots CAS to receive and log training in an aircraft that has a  $V_H$  less than or equal to 87 knots CAS. In the preamble to the final rule, the FAA noted that it “does not believe that receiving training in an airplane with a  $V_H$  greater than 87 knots CAS will adequately prepare a sport pilot to operate a low-speed, high-drag airplane with a  $V_H$  less than or equal to 87 knots CAS without additional training.” The agency did not intend to require specific endorsements for other categories and classes of aircraft, such as powered parachutes and weight-shift-control aircraft that typically have a  $V_H$  that does not exceed 87 knots CAS. Accordingly the FAA is correcting § 61.327(a) and (c) to reflect the agency’s intent and is making conforming corrections in §§ 61.315(c)(14), 61.415(f), and 61.423(a)(2)(iii)(C).

Sections 61.319 and 61.323 were revised to eliminate the requirement that persons exercising sport pilot privileges have an aircraft make-and-model endorsement to operate an aircraft within a specific set of aircraft. The FAA therefore also should have included a conforming amendment to § 61.317 *Is my sport pilot certificate issued with aircraft category and class ratings?* to remove reference to the words “make and model.”

Lastly, §§ 61.315(c)(14)(ii) and 61.327(c) contained provisions that permit a sport pilot to operate an aircraft with a  $V_H$  less than or equal to 87 knots CAS if that person has logged flight time