

Rules and Regulations

Federal Register

Vol. 75, No. 145

Thursday, July 29, 2010

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563-AC21

Common Crop Insurance Regulations; Stonefruit Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes amendments to the Common Crop Insurance Regulations, Stonefruit Crop Insurance Provisions, and removes the Plum Crop Insurance Provisions from the Code of Federal Regulations. The intended effect of this action is to allow coverage for plums under the Stonefruit Crop Insurance Provisions; provide policy changes and clarify existing policy provisions to better meet the needs of the producers; and to reduce vulnerability to program fraud, waste, and abuse to the Federal crop Insurance Program. The changes will be effective for the 2011 and succeeding crop years.

DATES: *Effective Date:* This rule is effective August 30, 2010.

FOR FURTHER INFORMATION CONTACT: Claire White, Economist, Product Management, Product Administration and Standards Division, Risk Management Agency, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141-6205 at the Kansas City, MO, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Paperwork Reduction Act of 1995

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

E-Government Act Compliance

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

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required

to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 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

On November 24, 2009, FCIC published a notice of proposed rulemaking in the **Federal Register** at 74 FR 61286–61289 to remove and reserve 7 CFR 457.157 and to revise 7 CFR 457.159 Stonefruit Crop Insurance Provisions. Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions.

A total of 50 comments were received from three commenters. The commenters were two reinsured companies and one insurance services organization. The comments received and FCIC's responses are as follows:

General Comments

Comment: Several commenters support combining the Plum Crop Insurance Provisions and the Stonefruit Crop Insurance Provisions since the policy provisions are so similar. A commenter specifically supports expanding plum coverage to the Pacific Northwest states.

Response: FCIC thanks the commenters for their support regarding combining the Plum Crop Insurance Provisions and the Stonefruit Crop Insurance Provisions. Combining the two Crop Provisions will enable expansion of plum insurance to producers beyond California, where there is supporting data.

Comment: A commenter recommends FCIC provide reinsured companies with a preview of the Special Provisions statements and a list of any areas intended for expansion.

Response: Providing the reinsured companies with a preview of the Special Provisions statements for intended areas of expansion exceeds the scope of this rule. FCIC cannot expand any program unless there is sufficient actuarial data upon which to establish premium rates. FCIC will coordinate with the reinsured companies through the normal course of business to ensure proper coverage is made available.

Comment: A commenter states there are some differences, such as provisions or phrases contained in the Plum Crop Insurance Provisions that are not contained in the current or proposed Stonefruit Crop Insurance Provisions, some of which are addressed in comments below. If the provisions apply only to plums, a number of “in lieu of” statements in the Plum Special Provisions statements will be required, which may not be worth combining these two sets of Crop Provisions. The commenter asked how this consolidation will affect the existing Special Provisions statements for the covered crops.

Response: Each crop insured under the Stonefruit Crop Insurance Provisions has a separate set of Special Provisions statements. Therefore, plums will have a separate set of Special Provisions statements. Each set of Special Provisions statements will clearly indicate any exclusions, restrictions, etc. for plums and for the other specific crops insured under the Stonefruit Crop Insurance Provisions. Further, FCIC has many policies, such as coarse grains and small grains, that apply to more than crop and there may be provisions that are unique to one crop. FCIC will similarly handle any such unique provisions for stonefruit and plums.

Comment: Two commenters asked if coverage will be expanded beyond the current counties with plums and stonefruit crops, and if so, the commenters asked where and when the expansion will occur.

Response: The new provisions will enable expansion of plum insurance to producers beyond California and stonefruit insurance to producers beyond the counties where stonefruit insurance is currently available, where there is actuarially sufficient data to establish premium rates. Requests to expand the Stonefruit crop insurance program should be submitted to the applicable Risk Management Agency (RMA) Regional Office.

Section 1—Definitions

Comment: A commenter states the proposed definition of “marketable” states “stonefruit production that meets or exceeds the quality standards for U.S. No. 1 in accordance with the applicable grade standards or other standards specified in the Special Provisions or is accepted by a packer, processor or other handler.” According to the Background section of the proposed rule, “* * * The new definition clarifies that the grade standards will first be applied to determine whether the stonefruit is marketable. If the stonefruit does not make grade, it is not considered marketable unless a packer, handler or processor accepts the production not making grade. If accepted, it will be considered marketable.” However, this is not clear in the revised definition, which still allows production to be considered “marketable” by either meeting the standards or being accepted by a processor, etc., without any indication that the grade standards must be applied first. Maybe that sequence is not needed since the production will be considered “marketable” either way, and this revision at least refers to the grade standards first (as compared to the current definition). But if it is truly

intended that the grade be determined first, before considering whether the production has been accepted, the language needs to be reworked to include the phrase “* * * or if it failed to meet the applicable standards but is accepted * * *” at the end of the definition.

A commenter states if the definition of “marketable” remains as is, then a comma should be added after “Special Provisions * * *”

A commenter states the definition could be revised to remove the words “or other standards specified in the Special Provisions” since this is already covered in the revised definition of “Grade Standards.”

Response: FCIC agrees the definition of “marketable” is not clear. FCIC has revised the definition of marketable to be consistent with the information provided in the Background section of the proposed rule. The definition has been revised to clarify the grade standards will first be applied to determine whether the stonefruit is marketable. If the stonefruit does not make the applicable grade, it is not considered marketable unless a packer, handler or processor accepts the production not making grade. FCIC also agrees with adding a comma after “Special Provisions” and has revised the provisions accordingly.

Comment: A commenter recommends adding a definition of “scion,” which is currently defined in the Plum Crop Insurance Provisions.

Response: A scion, according to the Plum Crop Insurance Provisions, is a “twig or portion of a twig of one plant that is grafted onto a stock of another.” The only other reference to scion in the Plum Crop Insurance Provisions is in section 6 regarding the minimum insurability requirements for plums produced on scions. Based on another comment FCIC received for section 6 of the proposed Stonefruit Crop Insurance Provisions, FCIC made a revision to section 6(b)(6) to specify minimum insurability requirements for trees that have been grafted. Since scions result from grafting, the reference to grafting will also include plums and other stonefruit. Therefore, it is not necessary to add a definition of “scion.” The recommended change has not been made.

Comment: Two commenters state the proposed rule adds flexibility by including several references to “* * * or as specified in the Special Provisions” throughout the Crop Provisions so policy changes can be made without having to go through the regulatory process. The commenters are interested to see what comments are

received from the reinsured companies. While some flexibility can be helpful, some of these changes could cause confusion, such as adding another stonefruit crop to be covered under these Crop Provisions without having any references to that crop other than in the Special Provisions. The commenters question whether the definition of "stonefruit" should allow for a new stonefruit crop to be added in the Special Provisions without having to go through the regulatory process of revising these Crop Provisions. That would seem to bypass the process that allows members of the crop insurance industry and other members of the public to review and comment to such a significant policy change. It also could make it difficult for producers to know what exactly their policy covers when the Crop Provisions do not include a complete list of which crops are insurable under the policy.

Response: FCIC does not agree creating the flexibility to add another stonefruit crop through the Special Provisions could cause confusion. Providing this flexibility eliminates the administrative burden of revising regulations if it is determined an additional crop can be adequately insured under the Stonefruit Crop Insurance Provisions. FCIC has retained the provisions. No change has been made.

Comment: A commenter states the usual format for FCIC's policy provisions is to use semicolons at the end of subsections (a)–(g) rather than commas.

Response: FCIC agrees and has revised the provisions accordingly.

Comment: A few commenters state the proposed definition of "type" states: "A category of a stonefruit crop with similar characteristics that are grouped for insurance purposes." The commenter states this definition indicates the types will be listed in the Special Provisions. It is difficult to consider and comment on how that might affect various aspects of the crop program without any indication of what those types might be and whether they will be the same as under the current Stonefruit Crop Insurance Provisions and Plum Crop Insurance Provisions or if there will be changes. There are many references to "type" in this proposed rule but reinsured companies cannot get an accurate idea of how type will apply to the various components of this proposed rule, such as unit division, unless a preview of the Special Provisions is also provided in advance.

Response: FCIC is using type instead of varietal group but the meaning has not changed. The current varietal groups

are now the new types. Therefore, the only change has been in nomenclature.

Section 2—Unit Division

Comment: Two commenters state the introductory sentence in this section uses the word "Notwithstanding" but recommends replacing this word with "In lieu of" to be more consistent with the terminology used in other Crop Provisions.

Response: Although this section was not included in the proposed rule, FCIC agrees and has revised the provisions accordingly, since it is merely a technical correction and does not change the meaning or intent of the provision.

Comment: Two commenters state section 2(b), as revised in the proposed rule, reads as follows: "Optional Units by Type: Optional units may be established by type if allowed by the Special Provisions." The commenters suggest revising section 2(b) to read as follows: "Optional Units by Type: Optional units may be established by type." Alternatively, based on a comment above, if a reference to the Special Provisions is still deemed as necessary, consider changing it to read as follows: "Optional Units by Type: Optional units may be established by type if different types are listed in the Special Provisions." The current phrase "if allowed" gives the appearance the Special Provisions will have a statement indicating whether or not optional units by type are allowed, which is not intended by this item.

Response: This section was not included in the proposed rule, the recommended change is substantive or could have unintended consequences, and the public was not provided an opportunity to comment. Therefore, FCIC cannot consider the recommended change.

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

Comment: A commenter recommends changing the phrase "one price election" to "one price election percentage." If this change is made, this might require revision of the rest of this subsection to reflect this change.

Response: This section was not included in the proposed rule, the recommended change is substantive or could have unintended consequences, and the public was not provided an opportunity to comment. Therefore, FCIC cannot consider the recommended change.

Comment: A commenter recommends changing the first reference to 'cling

peaches' from plural to singular ('cling peach') in section 3(a).

Response: Although this section was not included in the proposed rule, FCIC agrees and has revised the provisions accordingly, since it is merely a technical correction and does not change the meaning or intent of the provision.

Comment: A commenter suggests the reference to "Any damage * * *" in section 3(b)(1) might be clarified as "Any damage to the trees * * *" to distinguish it from damage to the previous year's fruit crop that would be reflected in a lower yield for the crop year.

Response: This section was not included in the proposed rule, the recommended change is substantive or could have unintended consequences, and the public was not provided an opportunity to comment. Therefore, FCIC cannot consider the recommended change.

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

Response: This section was not included in the proposed rule, the recommended change is substantive or could have unintended consequences, and the public was not provided an opportunity to comment. Therefore, FCIC cannot consider the recommended change. In addition, the information that must be submitted in accordance with section 3(b) is required in order to establish the producer's actual production history (APH) approved yield and the amount of his/her coverage. While section 3(b)(2) only requires the bearing trees on insurable and uninsurable acreage to be reported, the number of bearing and non-bearing

trees on insurable and uninsurable acreage must be reported on the PAW. Perennial crop policies contain provisions for “bearing trees” to identify trees that meet the eligibility requirements for insurance coverage. Since premium and indemnity payments are based on the number of trees that meet eligibility requirements, reinsured companies are required to track bearing trees as outlined in the Crop Provisions and the Crop Insurance Handbook.

Comment: A commenter states section 3(b) requires the producer to report for each stonefruit crop the age of trees and the planting pattern. The commenter states concerns have been raised about interplanting and tracking of age differences between plantings. Although this section of the existing Crop Provisions is not specifically included in this proposed rule, FCIC needs to address different planting patterns within a block and new plantings interplanted with mature trees. This issue is not specific to stonefruit as it affects most all Category C crops, but it is essential FCIC provide clear instructions. It is reasonable to address it during this time so it can be covered in these new provisions for 2011.

More specifically, the commenter states producers may have significant differences in age of trees within a block, even the same row. Many trees are already several years old but if damage results to a specific tree or group of trees, or if the tree is just not producing well, a producer may remove the tree and replace it with a new planting. This could be one or two trees within a row or one row within a block. Additionally, the planting pattern may start out the same but become closer or more spread out as it nears the end of the row or starts to go up a hill. FCIC must recognize that spacing requirements and planting patterns are not constant. This common practice results in inaccurate reporting because a procedure does not exist for this type of tracking. The policy language requires the producer to report the age of the trees and the planting pattern. Language needs to be added to address policies covering trees that vary in age and planting patterns.

Response: This section was not included in the proposed rule, the recommended change is substantive or could have unintended consequences, and the public was not provided an opportunity to comment. Therefore, FCIC cannot consider the recommended change. However, FCIC acknowledges situations, such as those outlined by the commenter, are not readily addressed by the general terms of the policy

provisions. For this reason, instructions are provided in the Crop Insurance Handbook.

Comment: A commenter questions the need to know the planting pattern. This requires space on the PAW that could better be used to ask if the producer is ‘intending to direct market’ any portion of their crop. The commenter states they already capture tree spacing and tree count and this is what is needed to determine if there have been tree removals or acreage reductions.

Response: FCIC requires the producer to report the planting pattern so the reinsured company can use this information to determine if there is adequate tree spacing for the producer to carry out recommended orchard management practices.

Comment: A commenter states section 3(c) specifically states that the yield used to establish the production guarantee will be reduced. This language only indicates when it will be reduced but not how a reinsured company should apply the reduction. Although much of this language is existing in the current Stonefruit Crop Insurance Provisions, FCIC must clarify how the yield used to establish the production guarantee will be reduced or the procedures to be applied to reduce the yield used to establish the production guarantee.

Response: Not all situations will be reduced the same so it is not practical to put the provisions in the Crop Provisions. Some guidance is provided in the Basic Provisions and will be provided in the Crop Insurance Handbook. No change has been made.

Comment: Two commenters state the reference to “* * * any event or action of any of the items listed in section 3(b)(1) through (4) * * *” in section 3(c) should be changed to refer to 3(b)(1), or possibly (1) and (4), since 3(b)(2) [number of bearing trees] and 3(b)(3) [age of trees and planting pattern] are not an “event or action” that will occur at a particular time and potentially reduce the yield used to establish the production guarantee.

Response: FCIC agrees that the items listed are not all events or actions. The provisions have been revised to refer to any of the “situations” specified in section 3(b)(1) through (4).

In addition, FCIC has removed the phrase “of any of the items” in section 3(c) because it is not needed.

Comment: A commenter states the phrase “as indicated below” at the end of the first sentence of 3(c) could be deleted since the subsequent phrase “If the event or action occurred:” leads in to sections 3(b)(1) through (3). Another commenter suggests revising the phrase

“as indicated below” to state “that occurred.”

Response: As stated above, FCIC has revised the provisions to refer to the situations listed because some are not actions or events and deleted the phrase “as indicated below.”

Comment: A commenter states throughout sections 3(c) and 3(c)(1) through 3(c)(3), it is stated that “We will reduce the yield used to establish your production guarantee, as necessary * * *” when certain events or actions have occurred. The commenter questions whether those events or actions would include when a reduced yield is due to insurable or uninsurable causes of loss that are normally reflected when the yield used to establish the production guarantee is established or updated.

Response: When situation occurs before the beginning of the insurance period, the yield used to establish the production guarantee will be reduced if the situation is due to either an insurable or uninsurable cause of loss. When the situation occurs after the beginning of the insurance period, regardless if the producer provides notification, the yield used to establish the production guarantee will be reduced if the event or action is due to an uninsurable cause of loss. FCIC has revised the provisions in sections 3(c)(1) through (3) to provide clarification.

Comment: A commenter states the wording in section 3(c)(1) is unclear:

- The first sentence states “[If the event or action occurred:] (1) Before the beginning of the insurance period, we will reduce the yield used to establish your production guarantee for the current crop year as necessary.” The phrases “we will reduce the yield used to establish your production guarantee” and “as necessary” are already stated in the preceding section 3(c). Perhaps this could be rewritten or rearranged to reduce the repetition.

- The second sentence states “If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee at any time we become aware of the circumstance.” Is it intended that the production guarantee will be reduced in this case, instead of the yield used to establish your production guarantee as is stated in the rest of sections 3(c) and 3(c)(1) through 3(c)(3), or should this also say “yield used to establish your production guarantee?” If the latter, then what is the difference in the penalty applied whether or not the producer notifies the reinsured company of the circumstance?

- The second sentence also states yield used to establish the production

guarantee will be reduced if the producer fails to notify the reinsured company “* * * of any circumstance that may reduce your yields from previous levels * * *” Will the yield used to establish the production guarantee be reduced if the producer fails to notify the reinsured company even if the “circumstance” does not reduce the yields used to establish the production guarantee after all? If not, the statement “we will reduce * * *” needs to be modified with the phrase “as necessary,” as used in the first sentence and in sections 3(c) and 3(c)(2).

- The second sentence should also be reworded to state “If you fail to notify us of any reduction in your yields from previous levels due to any circumstance that reduces the crop’s expected yield [or perhaps “yield potential” would be better] for the current crop year, we will reduce * * *”, rather than “If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce * * *”

Response: FCIC agrees the language in the first sentence of section 3(c)(1) needs to be rewritten and has revised the language to reduce repetition. FCIC has also revised the same language in sections 3(c)(2) and 3(c)(3).

FCIC agrees the language in the second sentence of section 3(c)(1) needs to be revised. The phrase “we will reduce your production guarantee” is replaced with the phrase “we will reduce the yield used to establish your production guarantee.” There is no difference in the penalty applied whether or not the producer notified the reinsured company of the circumstance prior to the beginning of the insurance period.

If the producer fails to notify the reinsured company before the beginning of the insurance period and the circumstance does not reduce the yield used to establish the production guarantee, the producer’s yield used to establish the production guarantee will not be reduced. FCIC does not agree the phrase “as necessary” needs to be added after the phrase “we will reduce” because it is clear in section 3(c) that the yield will only be reduced as necessary. The phrase has been removed in paragraphs (1) and (2).

FCIC does not agree with the recommended rewording of the second sentence. The suggestion does not significantly change or clarify the provisions. No change has been made.

Comment: Two commenters recommend language be added to the last sentence of section 3(c)(1) to read as follows: “* * * If you fail to notify us of any circumstance that may reduce your yields from previous levels, we

will reduce your production guarantee or assess uninsured cause of loss against your claim at any time we become aware of the circumstances.” The phrase “or assess uninsured cause of loss against your claim” is the additional suggested language being proposed. Producers have a responsibility to report to the reinsured company damage and removal of trees, etc. If they report it to the reinsured company timely, the reinsured company can adjust their production guarantee and premium. There should be a penalty if they do not timely report this information and it is discovered by the adjuster at claim time. Currently there is no penalty, so there is little incentive to timely report this information to the reinsured company.

Response: FCIC does not agree the additional suggested language be added. Section 3(c)(1) refers to circumstances that occur before the beginning of the insurance period. Coverage can never be provided for any damage occurring prior to the beginning of the insurance period. Therefore, premium cannot be charged and there cannot be any uninsured cause of loss appraisals for coverage that could not be provided. No change has been made.

Comment: Two commenters ask, regarding sections 3(c)(2) and 3(c)(3), will producers always be aware of an event or action that “may occur after the beginning of the insurance period * * *” in order to notify the reinsured company of that potential event or action? And if such notification is not provided and the event or action does not occur, does section 3(c)(3) still require the reinsured company to do an appraisal and reduce the APH approved yield? In addition, section 3(c)(3) indicates how to handle the yield used to establish the production guarantee for the subsequent crop year but does not address what to do with the yield used to establish the production guarantee for the current crop year. Is the yield used to establish the production guarantee for the current crop year impacted in this situation?

Response: Generally, producers should be aware of what is going on in their farming operations, including situations that may affect this year’s crop production that may occur after the beginning of the insurance period (e.g., a planned orchard renovation). Therefore, the producers should be able to timely notify their reinsured company. In situations where a planned event (e.g., grafting of new varieties on existing trees) does not occur, then no adjustments are made since the situation did not occur. For situations impacting the yield used to establish the production guarantee after insurance

has attached but the reinsured company was not notified, production lost due to uninsured causes equal to the amount of the reduction in the yield used to establish your production guarantee will be applied in determining any indemnity. The yield used to establish the production guarantee is not adjusted for the current crop year.

Comment: A commenter states it is unclear how the appraisal in section 3(c)(3) will be applied, suggesting the following as a possible alternative wording: “* * * an appraisal for production lost due to uninsured causes (see section 11(c)(1)(ii)) equal to the amount of the reduction in yield will be applied in determining any indemnity * * *”

Response: FCIC agrees and has revised the provisions.

Comment: A commenter states the provisions in section 3(d) are difficult to administer. The provisions state “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 used to establish the production guarantee of the insured crop is evident prior to the time that you request the increase.” The commenter recommends it be removed from the policy. The PAW contains the following question: “Has damage (i.e. disease, hail, freeze) occurred to Trees/Vines/Bushes/Bog or have cultural practices been performed that will reduce the insured crop’s production from previous levels?” If damage has occurred, and the question has been answered ‘yes,’ the yield used to establish the production guarantee will be adjusted accordingly to reflect the reduced potential production. This question on the PAW appears to address the issues this section is intending to handle. In addition, the sales closing dates are generally established based on the precept that any applications taken by that date will not be subject to adverse selection. If the decision is made to retain this provision, the commenter suggests clarifying 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.” Another suggestion is to rewrite this provision to read as follows: “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: This section was not included in the proposed rule, the

recommended change is substantive or could have unintended consequences, and the public was not provided an opportunity to comment. Therefore, FCIC cannot consider the recommended change.

Section 6—Insured Crop

Comment: Two commenters suggest revising the introductory language “* * * will be all of each stonefruit crop * * *” to “* * * will be any stonefruit crop * * *” or “* * * will be all acreage of each stonefruit crop * * *”

Response: FCIC agrees and has revised the language to read “will be all acreage of each stonefruit crop.”

Comment: A commenter recommends capitalizing the first word in section 6(b)(3) to be consistent with the first word in the other paragraphs.

Response: FCIC agrees and has revised the provision accordingly.

Comment: A commenter supports the proposed change in section 6(b)(5) to allow the crop to be insured if it meets the minimum production requirement in at least one of four years, as opposed to one in three years. This allows producers who may have had low yields due to circumstances beyond their control to still have an opportunity for coverage.

Response: FCIC thanks the commenter for their support of this change.

Comment: A commenter states section 6(b)(5) refers to the reinsured company’s “approval in writing” to insure acreage that has not yet produced the required amount of lugs or tons per acre, while section 6(b)(6) says the reinsured company “may agree in writing” to insure acreage that has not yet reached the fifth growing season after set out. The commenter asks whether the different phrases are intended to mean different things. The commenter asks whether “agree in writing” in section 6(b)(6) requires a written agreement while section 6(b)(5) does not? If not, consider using the same phrase to avoid confusion.

Response: The two phrases are intended to mean the same thing. FCIC has revised the provision in 6(b)(6) to be consistent with the provision in 6(b)(5).

Comment: A commenter states section 6(b)(6) states the stonefruit crop must have reached at least the fifth growing season after set out in order to be insurable. However, the reinsured company may agree in writing to insure acreage that has not reached this age if it meets the requirements of section 6(b)(5). The commenter states specific language relating to plums produced on scions and to grafted plums is not present in this section of the proposed rule. Language needs to be included to

address insurability when these two situations are present.

The commenter also states this proposed rule, as well as other perennial Crop Provisions, contain the following language in the: “[h]owever, we may agree in writing * * *” or “unless we inspect such acreage and give our approval in writing.” However, the policy does not state the yield that will be applied if approval is granted. FCIC must add language to specify how the yield is set if crops have not met the minimum age or production requirement.

Response: FCIC agrees language addressing the minimum insurability requirements for plums needs to be added. FCIC has addressed this by revising the provisions in section 6(b)(6) to include language regarding the minimum insurability requirements for trees that have been grafted.

FCIC does not agree language needs to be added to the Stonefruit Crop Insurance Provisions to specify how the yield is set if crops have not met the minimum age or production requirement. It would be difficult to address in the Crop Provisions all scenarios when minimum age or production requirements are not met. Therefore, instructions for handling situations for which minimum age or production requirements are not met are contained in section 7F(2)(f) of the Crop Insurance Handbook.

Section 8—Insurance Period

Comment: Two commenters state the end of the insurance period date in section 8(a)(2) for plums in California has been changed from September 30 to October 20. The background portion of the proposed rule indicates that based on published data plums can be harvested as late as October 20. The commenters are concerned about the increased exposure from extending this date and wondering if this extension should only apply to certain types of plum in certain areas rather than all plums in California. The commenters also asked what “published data” was used to support making this change.

Response: Based on the published data and an analysis conducted by FCIC, any increased exposure due to extending the end of insurance period for all plums in California from September 30 to October 20 will be minimal. The published data to which FCIC is referring is the United States Department of Agriculture National Agricultural Statistics Service Agriculture Handbook Number 729, which is titled “Fruits and Tree Nuts: Blooming, Harvesting, and Marketing Dates.” According to this handbook, the

Usual Harvesting Dates for Plums in California are May 15 through October 20. If other data becomes available that would warrant changing the end of insurance period for certain types of plums, section 8 of the Stonefruit Crop Insurance Provisions provides the flexibility to change the end of insurance period through the Special Provisions. No change has been made.

Comment: A commenter recommends consolidating and revising sections 8(a)(2)(ii) and 8(a)(2)(iii) to read as follows: “(ii) September 30 for all nectarines and peaches, and for all fresh plums in states other than California.”

Response: FCIC does not agree with consolidating and revising sections 8(a)(2)(ii) and 8(a)(2)(iii). While the dates may be the same, combining sections 8(a)(2)(ii) and 8(a)(2)(iii) as recommended may cause confusion. The suggested revision could be interpreted to mean all nectarines, all peaches and all plums in all states except California have an end of insurance period of September 30, rather than all nectarines and all peaches in all states have a September 30 end of insurance period and only plums in California have an end of insurance period of September 30. No change has been made.

Comment: Two commenters state the phrase “* * * after an inspection * * *” in section 8(b)(1) should be removed. If damage has not generally occurred in the area where such acreage is located, it should be up to the reinsured company’s discretion to decide whether the acreage needs an inspection to be considered acceptable. The language in this section already refers to the reinsured company having the ability to consider the acreage acceptable. Since the acreage and production reporting dates are after insurance attaches, the reinsured company may not know if the acreage was acquired after coverage began, but before the acreage reporting date. The commenters state reinsured companies need the right to inspect if they deem necessary, but this should not be a requirement.

The commenters also recommend language be added to section 8(b)(1) to allow reinsured companies the opportunity to inspect and insure any additional acreage that is acquired after the acreage reporting date if they wish to do so. Reinsured companies 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: This section was not included in the proposed rule, the recommended change is substantive or could have unintended consequences, and the public was not provided an opportunity to comment. Therefore, FCIC cannot consider the recommended changes. However, with respect to acreage acquired after the acreage report, section 6(f) of the Basic Provisions, which allows the reinsured company 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. The Crop Insurance Handbook also allows for reinsured company to revise an acreage report to increase liability if the crop is inspected and the appraisal indicates the crop will produce at least 90 percent of the yield used to determine the guarantee or amount of insurance for the unit.

Comment: Two commenters state the language in section 8(c) was added to most, if not all, of the perennial crops several years ago. The commenters are in agreement with the concept of continuous coverage applying for carryover producers but do have some concerns with language as it currently reads. The current language indicates, for each subsequent crop year, the policy remains continuously in force and coverage begins on the day immediately following the end of the insurance period for the prior crop year. The commenters question what happens if the damage occurs to next crop year's buds prior to this crop year's end of the insurance period. The commenters ask whether damage such as this is intended to be covered by this language. For example, assume a producer is insured and a severe hail storm occurs in July. This damage may injure this crop year's crop as well as the buds that will produce next crop year's crop. However, this damage would be outside the current insurance period based on the current language. If the intent is to cover this damage for carryover producers, the language should be revised to something along the lines of the language in the Adjusted Gross Revenue handbook, which states damage due to insurable causes of loss occurring during the previous crop year is covered. The commenters state 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 we will not cover damage that occurs the previous crop year if such damage occurs prior to the end of the previous crop year's end of insurance period.

Response: The Stonefruit Crop Provisions do not provide coverage for

damage to fruit if the damage occurs outside of the insurance period. FCIC recognizes situations such as the one highlighted by the commenter may occur, but believes from contacts within the agronomic community that the likelihood of those situations occurring is rare. This section was not included in the proposed rule, and the public was not provided an opportunity to comment. Therefore, FCIC cannot make changes to this section. However, FCIC will take into consideration the situation highlighted by the commenter and evaluate further if coverage should be included in the Stonefruit Crop Provisions in the future.

Comment: Two commenters suggest adding a comma after “* * *” and termination dates “* * *” in section 8(d).

Response: Although this section was not included in the proposed rule, FCIC agrees and has revised the provisions accordingly since it is merely a technical correction and does not change the meaning or intent of the provision.

Section 9—Causes of Loss

Comment: A 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 rule revisions to the Tobacco Crop Insurance Provisions).

Response: This section was not included in the proposed rule, the recommended change is substantive or could have unintended consequences, and the public was not provided an opportunity to comment. Therefore, FCIC cannot consider the recommended changes. 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.

Comment: A commenter recommends considering if all of section 9(a)(3) of the Plum Crop Insurance Provisions, “Wildlife, unless control measures have not been taken,” should be added to section 9(a)(3) of the Stonefruit Crop Insurance Provisions, which only states “Wildlife.”

Response: This section was not included in the proposed rule, the recommended change is substantive or could have unintended consequences, and the public was not provided an opportunity to comment. Therefore, FCIC cannot consider the recommended changes.

Comment: A commenter recommends considering if section 9(a)(3) of the Plum Crop Insurance Provisions

regarding insufficient number of chilling hours to effectively break dormancy should be added to section 9(a) in the Stonefruit Crop Insurance Provisions as an insurable cause of loss.

Response: This section was not included in the proposed rule, the recommended change is substantive or could have unintended consequences, and the public was not provided an opportunity to comment. Therefore, FCIC cannot consider the recommended changes.

Comment: A commenter states section 9(b)(2) of the existing Plum Crop Insurance Provisions states that rejection of the crop by the packing house due to being undersized, immature, overripe, or mechanically damaged is excluded as a covered cause of loss but is not excluded in this proposed rule. This language needs to be added back into the 2011 Stonefruit Crop Insurance Provisions as recent crop harvests have produced an abundance of good fruit, which results in lack of market due to high volume. The high volume of fruit results in packers rejecting what would normally be a nice sized piece of fruit. Although the language indicating what is covered is very specific and section 9(b)(3) of the Stonefruit Crop Insurance Provisions is also specific in the reference that inability to market is not covered, this particular language may prevent a misunderstanding among producers, RMA and reinsured companies as to the scope of coverage.

Response: This section was not included in the proposed rule, the recommended change is substantive or could have unintended consequences, and the public was not provided an opportunity to comment. Therefore, FCIC cannot consider the recommended changes. However, section 9(b)(3) of the Stonefruit Crop Insurance Provisions states “Inability to market the insured crop for any reason other than actual physical damage from an insurable cause of loss 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.” Therefore, rejection of the crop by the packing house is addressed under section 9(b)(3) of the Stonefruit Crop Insurance Provisions.

Section 10—Duties in the Event of Damage or Loss

Comment: Two commenters state the language in the second sentence of section 10(b) states, in part, that “We will conduct an appraisal that will be used to determine your production to count * * *” The commenters

recommend this language be revised as follows: "We will conduct an appraisal that may be used to determine your production to count * * *". Additional language in this paragraph indicates that " * * * These appraisals, and any acceptable records provided by you, will be used to determine your production to count * * *". The commenters state the reinsured company needs to maintain the ability to use the records if the reinsured company believes they are more accurate than the appraisal, as noted in this additional language. Therefore, the word "will" should be changed to "may" in order to allow reinsured companies the flexibility to apply this language accordingly.

Response: This section was not included in the proposed rule, the recommended change is substantive or could have unintended consequences, and the public was not provided an opportunity to comment. Therefore, FCIC cannot consider the recommended changes. his provision is consistent with provisions in other Crop Provisions, such as apples and pears, that contain language regarding production that is sold by direct marketing.

Comment: A commenter states section 10(c) states " * * * you must give us notice at least 15 days prior to the beginning of harvest * * *". The Plum Crop Insurance Provisions also includes the following phrase " * * * or immediately if damage is discovered during harvest, so that we may inspect the damaged production." The commenter asks if this is no longer needed, or should it be included in the new Stonefruit Crop Insurance Provisions.

Response: This section was not included in the proposed rule, the recommended change is substantive or could have unintended consequences, and the public was not provided an opportunity to comment. Therefore, FCIC cannot consider the recommended changes.

Comment: Two commenters suggest adding a comma after " * * * If you fail to notify us * * * " in section 10(c).

Response: Although this section was not included in the proposed rule, FCIC agrees and has revised the provisions accordingly, since it is merely a technical correction and does not change the meaning or intent of the provision.

Section 11—Settlement of Claim

Comment: Two commenters noted the quality loss adjustment instructions in the Stonefruit Loss Adjustment Standards Handbook (LASH) need to be clarified. There have been questions

surrounding quality for a number of years. The intent of the policy language relative to handling quality adjustment needs to be clearly spelled out in the final version of the Stonefruit LASH.

Response: FCIC will update the Stonefruit LASH to reflect any changes regarding quality adjustment made in the Final Rule, as applicable, and to clarify otherwise ambiguous language.

Comment: Two commenters state the settlement of claim example references the term "guarantee" throughout and recommend this reference be changed to "production guarantee" when reference is intended on a per acre basis as this is the term defined in the Basic Provisions. Additionally, the settlement of claim example is overly simplistic and could be considered misleading. The language that states in part "You are only able to harvest 5,000 lugs * * *" could lead someone to believe production to count for the claim is based on 'the amount of lugs they are able to harvest.' The commenters recommend revising the language to state something like "You only produce 5,000 lugs as production to count." The commenters would also like to see an example for a quality loss situation. It is simple when the entire fresh crop is rejected, sent to the processor, and a bulk price per pound is received for all the fruit. However, the commenters would like to see an example which is more realistic and likely to occur in which the stonefruit is grown for fresh market and is delivered to the packer. Assume that some of the fruit makes grade and receives full price. Some of the fruit receives a slightly reduced price and additional fruit receives varying prices less than 75 percent of the marketable value. The Stonefruit LASH requires the reinsured company field grade the fruit in the field, and it is very unclear whether the reinsured company uses the field grade, or the fruit pack-out, or a combination of both, and how all of this fits together to determine the final production to count for the claim. This has been a questionable issue for a number of years and this would be a great opportunity to clarify the intent via an example in the Stonefruit Crop Insurance Provisions. This would also provide clear direction for additional support and clarification that is also needed in the Stonefruit LASH.

Response: FCIC agrees and has replaced the term "guarantee" in the settlement of claim example with the term "production guarantee" when reference is intended on a per acre basis. FCIC agrees the sentence "You are only able to harvest 5,000 lugs." is misleading and has revised it as "You harvest 5,000

lugs." FCIC has also revised the sentence "You are only able to harvest 3,000 lugs" in Scenario 2 as "You harvest 3,000 lugs."

FCIC also agrees the settlement of claim example is simplified. As with other Crop Provisions, the settlement of claim example provided in the Stonefruit Crop Insurance Provisions is intended to be a simple step-by-step example. FCIC will revise the Stonefruit LASH to include examples of more complex situations and information suggested by the commenters.

Comment: A commenter recommends adding a hyphen between "25,000" and "lug" in scenario 1, step 1, of the settlement of claim section. The commenter also recommends adding a hyphen between "25,000" and "lugs" and "15,000" and "lugs" in scenario 2, step 1.

Response: FCIC agrees and has revised the provisions accordingly. In scenario 2, step 1, FCIC also replaced the word "lugs" with the word "lug" to be consistent with the terminology used in scenario 1, step 1.

Comment: A commenter states section 11(c)(3), which references the quality adjustment for the value of insured damaged fruit, is not clear. The commenter asks if the price the packer is going to pay will be used or will there be a reduction in value listed in the Special Provisions for that particular grade of fruit.

Response: The price the packer pays, minus any adjustments for costs incurred for harvest and delivery if allowed by the Special Provisions, is the price used to value the damaged fruit. A reduction in value for that particular grade of fruit will not be listed in the Special Provisions.

Comment: Two commenters suggest inserting the phrase "for the same type" after the portion of section 11(c)(4)(i) that states " * * * the highest price election * * *". This will clarify that the price election used for this computation is based on that for the same type that is being quality adjusted and is needed whenever the price election varies by type. Paragraph 11(c)(4)(ii) already contains similar language but the commenter recommends changing " * * * available for that type" to " * * * available for the same type."

Response: FCIC agrees and has revised sections 11(c)(4)(i) and 11(c)(4)(ii) accordingly.

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

1. Added a definition of "graft" due to added provisions in section 6(b)(6);
2. Revised section 3(c)(2) to clarify the yield used to establish the production

guarantee will be reduced only if the potential reduction in yield is due to an uninsured cause of loss; and

3. Removed the introductory phrase, "Notwithstanding paragraph (a)(1) of this section, for" and replaced it with the word "For" in section 8(c) to be consistent with other Crop Provisions, such as apples and grapes; and

4. Revised section 11(b)(2), section 11(b)(4), and the settlement of claim examples to address the applicability of the percent of the price election.

List of Subjects in 7 CFR Part 457

Crop Insurance, Stonefruit, 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 2011 and succeeding crop years for the Stonefruit Crop Insurance Provisions.

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(o).

§ 457.157 [Removed and reserved]

■ 2. Section 457.157 is removed and reserved.

■ 3. Amend § 457.159 as follows:

■ a. Amend the introductory text by removing "2001" and adding "2011" in its place;

■ b. Remove the undesignated paragraph immediately preceding section 1. Definitions;

■ c. Add definitions in section 1 for "grade standards" and "graft";

■ d. Remove the definitions in section 1 for "grading standards" and "varietal group";

■ e. Revise the definitions in section 1 for "harvest", "lug", "marketable", "stonefruit" and "type";

■ f. Remove the word "Notwithstanding" in the introductory text in section 2 and add in its place the phrase "In lieu of";

■ g. Revise section 2(b);

■ h. Revise section 3(a);

■ i. Amend the introductory text in section 3(b) and section 3(b)(4)(i) by removing the phrase "or varietal group" in all instances where it is found;

■ j. Amend section 3 by redesignating paragraph (c) as paragraph (d) and designating the undesignated paragraph following paragraph (b)(4)(iii) as paragraph (c);

■ k. Revise redesignated section 3(c);

■ l. Revise redesignated section 3(d);

■ m. Amend section 4 by adding the phrase "or as specified in the Special Provisions" after the word "states";

■ n. Amend section 5 by adding the phrase "or as specified in the Special Provisions" after the word "states";

■ o. Amend the introductory text in section 6 by adding the word "acreage" after the word "all";

■ p. Revise section 6(b);

■ q. Remove sections 6(c), 6(d), 6(e), 6(f) and 6(g);

■ r. Revise section 8(a)(2)(ii);

■ s. Amend section 8 by redesignating paragraph (a)(2)(iii) as (a)(2)(v) and adding new paragraphs (a)(2)(iii) and (a)(2)(iv);

■ t. Amend section 8(c) by removing the phrase "Notwithstanding paragraph (a)(1) of this section, for" and adding in its place the word "For";

■ u. Amend section 8(d) by adding a comma after the phrase "termination dates";

■ v. Revise section 11(b);

■ w. Amend section 11(c)(3)(ii) by removing the word "grading" and adding the word "grade" in its place in both instances it is found; and

■ x. Revise section 11(c)(4).

The additions and revisions read as follows:

§ 457.159 Stonefruit crop insurance provisions.

* * * * *

1. Definitions.

* * * * *

Grade standards. The United States Standards for Grades of Peaches, the United States Standards for Grades of Nectarines, the United States Standards for Grades of Apricots, and the United States Standards for Grades of Fresh Plums and Prunes, or other such standards specified in the Special Provisions.

Graft. To unite a shoot or bud with a rootstock in accordance with recommended practices to form a living union.

Harvest. The physical removal of mature stonefruit from the tree either by hand or machine.

* * * * *

Lug. A container of fresh stonefruit of specified weight. Lugs of varying sizes will be converted to standard lug equivalents on the basis of the following average net pounds of packed fruit, or as specified in the Special Provisions:

Crop	Pounds per lug
Fresh Apricots	24
Fresh Nectarines	25
Fresh Freestone Peaches	25
Fresh Plums	28

Weight for Processing Apricots, Processing Cling Peaches, and

Processing Freestone Peaches is specified in tons.

Marketable. Stonefruit production that meets or exceeds the quality standards for U.S. No. 1 in accordance with the applicable grade standards or other standards as specified in the Special Provisions, or if stonefruit production fails to meet the applicable grade standards, stonefruit production that is accepted by a packer, processor or other handler.

* * * * *

Stonefruit. Any of the following crops grown for fresh market or processing:

- (a) Fresh Apricots;
- (b) Fresh Freestone Peaches;
- (c) Fresh Nectarines;
- (d) Fresh Plums;
- (e) Processing Apricots;
- (f) Processing Cling Peaches;
- (g) Processing Freestone Peaches; and
- (h) Other crops listed in the Special Provisions.

* * * * *

Type. A category of a stonefruit crop with similar characteristics that are grouped for insurance purposes, as listed in the Special Provisions.

* * * * *

2. Unit Division.

* * * * *

(b) Optional Units by Type: Optional units may be established by type if allowed by the Special Provisions.

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

* * * * *

(a) You may select only one price election and coverage level for each crop grown in the county and listed in the Special Provisions that is insured under this policy. If separate price elections are available by type of a crop, 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 of cling peach, you must choose 100 percent of the maximum price election for all other types of cling peaches.

* * * * *

(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) Or may occur 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) Or may occur 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.

* * * * *

6. Insured Crop.

* * * * *

(b) That is grown on trees that:

(1) Were commercially available when the trees were set out or have subsequently become commercially available;

(2) Are adapted to the area;

(3) Are grown on root stock that is adapted to the area;

(4) Are in compliance with the applicable State's Tree Fruit Agreement or related crop advisory board for the state (for each insured crop and type), when such regulations exist;

(5) Have produced at least 200 lugs of fresh market production per acre, or at least 2.2 tons per acre for processing crops, in at least one of the four most recent actual production history crop years, unless we inspect such acreage and give our approval in writing;

(6) Have, after being set out or grafted, reached at least the fifth growing season. However, we may give our approval in writing to insure acreage that has not reached this age if it meets the requirements of 6(b)(5); and

(7) Are grown in an orchard that, if inspected, is considered acceptable by us.

* * * * *

8. Insurance Period.

(a) * * *

* * * * *

(2) * * *

* * * * *

(ii) September 30 for all nectarines and peaches;

(iii) In all states except California, September 30 for all fresh plums;

(iv) In California only, October 20 for all fresh plums; or

(v) As otherwise provided for specific counties or types in the Special Provisions.

* * * * *

11. Settlement of Claim.

* * * * *

(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 by its respective production guarantee;

(2) Multiplying each result of section 11(b)(1) by the respective price election for the type and by the percent of the price election;

(3) Totaling the results of section 11(b)(2) (if there is only one type, the result of (3) will be the same as the result of (2));

(4) Multiplying the total production to count (see section 11(c)), for each type, by the respective price election and by the percent of the price election;

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

(6) Subtracting the result of section 11(b)(5) from the result of section 11(b)(3) (if there is only one type, the result of (6) will be the same as the result of (5)); and

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

Scenario 1:

You select 75 percent coverage level and 100 percent of the price election on 50.0 acres of Type A stonefruit with 100 percent share in the unit. The production guarantee is 500.0 lugs per acre and the price election is \$6.00 per lug. You harvest 5,000 lugs. Your indemnity would be calculated as follows:

(1) 50.0 acres × 500.0 lugs = 25,000-lug production guarantee;

(2) 25,000 lugs × \$6.00 price election × 100 percent of the price election = \$150,000 value of production guarantee;

(4) 5,000 harvested lugs × \$6.00 price election × 100 percent of the price election = \$30,000 value of production to count;

(6) \$150,000–\$30,000 = \$120,000 loss; and

(7) 120,000 × 1.000 share = \$120,000 indemnity payment.

Scenario 2:

In addition to the above information in Scenario 1, you have an additional 50.0 acres of Type B stonefruit with 100 percent share in the unit. The production guarantee is 300.0 lugs per acre and the price election is \$3.00 per lug. You harvest 3,000 lugs. Your indemnity would be calculated as follows:

(1) 50.0 acres × 500.0 lugs Type A = 25,000-lug guarantee; and 50.0 acres × 300.0 lugs Type B = 15,000-lug guarantee;

(2) 25,000 lugs × \$6.00 price election × 100 percent of the price election = \$150,000 value of guarantee for Type A; and 15,000 lugs × \$3.00 price election × 100 percent of the price election = \$45,000 value of guarantee for Type B;

(3) \$150,000 + \$45,000 = \$195,000 total value of production guarantee;

(4) 5,000 harvested lugs Type A × \$6.00 price election × 100 percent of the price election = \$30,000 value of production to count; and 3,000 harvested lugs Type B × \$3.00 price election × 100 percent of the price election = \$9,000 value of production to count;

(5) \$30,000 + \$9,000 = \$39,000 total value of production to count;

(6) \$195,000–\$39,000 = \$156,000 total loss; and

(7) \$156,000 loss × 1.000 share = \$156,000 indemnity payment.

(c) * * *

* * * * *

(4) Harvested fresh or processing stonefruit production that is eligible for quality adjustment as specified in section 11(c)(3) will be reduced as follows:

(i) When packed and sold as fresh fruit or when insured as a processing crop, by dividing the value per lug or ton of marketable production by the highest price election for the same type and multiplying the result (not to exceed 1.00) by the quantity of such production; or

(ii) For all other fresh stonefruit, by multiplying the number of tons that could be marketed by the value per ton and dividing that result by the highest price election available for the same type.

* * * * *

Signed in Washington, DC, on July 21, 2010.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2010–18359 Filed 7–28–10; 8:45 am]

BILLING CODE 3410–08–P