

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Raisin Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of raisins. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and to include the current Raisin Endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business November 29, 1996 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through December 30, 1996.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, USDA, 14th and Independence Avenue, S.W., Washington, D.C., 8:15 a.m. to 4:45 p.m., est Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: John Meyer, Program Analyst, Research and Development Division, Product Development Branch, FCIC, at the Kansas City, MO, address listed above, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 30, 2001.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563-0003 through September 30, 1998.

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Raisin Crop Insurance Provisions." Information previously collected includes a crop insurance application and a raisin tonnage report. This rule also requires the insured to file a location and unit report to indicate an insured's acreage prior to the time insurance attaches. Submitting this report before insurance attaches will protect the integrity of the program by reducing the opportunity to inflate losses after damage occurs. Information collected from the location and unit reports, tonnage reports, and application is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of raisins that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of

the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,669,970 hours.

FCIC is requesting comments for the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Bonnie Hart, USDA, FSA, Advisory and Corporate Operations Staff, Regulatory Review Group, P.O. Box 2415, STOP 0572, Washington, D.C. 20013-2415, telephone (202) 690-2857. Copies of the information collection may be obtained from Bonnie Hart at the above address.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate 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. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of

power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities or treat small and large entities disproportionately. Under the current regulations, a producer is required to complete an application and tonnage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. These requirements apply to all insureds regardless of size, and this regulation does not alter these requirements. Although this rule requires each insured to file an additional report (a location and unit report), the required information is readily available. Further, the benefit of protecting program integrity outweighs any impact on the insured or insurance provider. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 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 No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before any action 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.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR § 457.124, Raisin Crop Insurance Provisions. The new provisions will be effective for the 1997 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring raisins found at 7 CFR § 401.142 Raisin Endorsement. By separate rule, FCIC will revise 7 CFR § 401.142 to restrict its effect through the 1996 crop year and later remove that section.

This rule makes minor editorial and format changes to improve the Raisin Endorsement's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring raisins as follows:

1. Section 1—Add the definition of “days,” “RAC,” and “written agreement” for clarification. A definition of “location and unit report” is also added to describe the form to be used to report acreage information prior to the time insurance attaches. Delete the definition of “USDA Inspection” because the term is no longer used.

2. Section 3(c)(2)—Provisions allowing the use of tray weights to establish the number of insured tons when production is not removed from the vineyard have been deleted. Experience has proven that tray weights and counts may not be accurate indicators of production amounts. Instead, when appraisals are required, the amount of raisin tonnage lost will be determined in sample areas. These amounts will then be used to determine the total amount lost in the vineyard.

3. Section 3(c)(3)—Add a provision indicating that raisins used for a purpose other than dry edible fruit will be considered to contain 24.3 percent moisture if they contain greater than that amount at the time of delivery. Currently, available measurement techniques can not measure moisture amounts greater than this.

4. Section 6—Add provisions that require the insured to report raisin acreage prior to the time insurance attaches. This will prevent adverse selection that is possible when insureds do not report any information until the end of the insurance period.

5. Section 9—Add provisions adding total destruction of all raisins in the

unit, final adjustment of the loss, and abandonment of the raisins as events that end the insurance period to be consistent with other crop policies.

6. Section 11—Add provisions that authorize a reconditioning payment to be made when raisins are damaged by rain and are found to contain mold, embedded sand, micro-contamination in excess of Raisin Administrative Committee standards, or moisture in excess of 18 percent. Previous provisions allowed a reduction in the value of raisin tonnage to count when production was reconditioned, but did not provide any benefit unless the value of delivered tonnage minus the reconditioning allowance was less than the amount of insurance for the unit. This payment, like replant payments on certain annual crops, is intended to mitigate potentially larger insurance benefit payments.

7. Section 12—Add provisions indicating the specific information required from the insured when providing a notice of damage. Previous provisions did not specify what information was needed.

8. Section 13(f)—Add provisions indicating that raisins discarded from trays or that are lost from trays scattered in the vineyard as part of normal handling will not have a value to count against the amount of insurance. These raisins cannot be salvaged and should not be considered as production to count.

9. Section 14—Add provisions for providing insurance coverage by written agreement. FCIC has a long-standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover the procedures for, and duration of, written agreements.

List of Subjects in 7 CFR Part 457

Crop insurance, Raisins, Reporting and recordkeeping requirements.

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1997 and succeeding crop years, as follows:

PART 457—[AMENDED]

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

Authority: 7 U.S.C. 1506(l), 1506(p).

2. 7 CFR part 457 is amended by adding a new § 457.124 to read as follows:

§ 457.124 Raisin crop insurance provisions.

The Raisin Crop Insurance Provisions for the 1997 and succeeding crop years are as follows:

United States Department of Agriculture
Federal Crop Insurance Corporation
Raisin Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Crop year—In lieu of the definition of "Crop year" contained in section 1 of the Basic Provisions (§ 457.8), the calendar year in which the raisins are placed on trays for drying.

Days—Calendar days.

Delivered ton—A ton of raisins delivered to a packer, processor, buyer or a reconditioner, before any adjustment for U. S. Grade B and better maturity standards, and after adjustments for moisture over 16 percent and substandard raisins over 5 percent.

Location and Unit Report—A report that contains information regarding the acreage in each unit on which you intend to produce raisins for the crop year and your share.

Non-contiguous land—Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

RAC—The Raisin Administrative Committee, which operates under an order of the United States Department of Agriculture (USDA).

Raisins—The sun-dried fruit of varieties of grapes designated insurable by the Actuarial Table. These grapes will be considered raisins for the purpose of this policy when laid on trays in the vineyard to dry.

Substandard—Raisins that fail to meet the requirements of U.S. Grade C, or layer (cluster) raisins with seeds that fail to meet the requirements of U.S. Grade B.

Reference maximum dollar amount—The value per ton established by FCIC and shown in the Actuarial Table.

Table grapes—Grapes grown for commercial sale as fresh fruit on acreage where appropriate cultural practices were followed.

Ton—Two thousand pounds avoirdupois.

Tonnage report—A report used to annually report, by unit, all the tons of raisins produced in the county in which you have a share.

Written agreement—A written document that alters designated terms of this policy in accordance with section 14.

2. Unit Division

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8),

may be divided into additional basic units by each grape variety you insure.

(b) Unless limited by the Special Provisions, a basic unit may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(c) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(e) All optional units established for a crop year must be identified on the location and unit report for that crop year.

(f) The following requirements must be met to qualify for separate optional units:

- (1) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and
- (2) Separate optional units must be located on non-contiguous land.

3. Amounts of Insurance and Production Reporting

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one coverage level percentage for all the raisins in the county insured under this policy.

(b) The amount of insurance for the unit will be determined by multiplying the insured tonnage by the reference maximum dollar amount, times the coverage level percentage you elect, and times your share.

(c) Insured tonnage is determined as follows:

- (1) For units not damaged by rain—The delivered tons; or
- (2) For units damaged by rain—By adding the delivered tons to any verified loss of production due to rain damage. When production from a portion of the acreage within a unit is removed from the vineyard and production from the remaining acreage is lost in the vineyard, the amount of production lost in the vineyard will be determined based on the number of tons of raisin produced on the acreage from which production was removed; and
- (3) Insured tonnage will be reduced 0.12 percent for each 0.10 percent of moisture in excess of 16.0 percent. When raisins contain moisture in excess of 24.3 percent at the time of delivery and are released for a use other than dry edible fruit (e.g. distillery material), they will be considered to contain 24.3

percent moisture. For example, 10.0 tons of raisins containing 18.0 percent moisture will be reduced to 9.760 tons of raisins. In addition, raisin tonnage used for dry edible fruit will be reduced by 0.10 percent for each 0.10 percent of substandard raisins in excess of 5.0 percent.

(d) Section 3(c) of the Basic Provisions is not applicable to this crop.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is April 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are July 31.

6. Location and Unit Report and Tonnage Report

(a) In lieu of the provisions contained in section 6(a) of the Basic Provisions (§ 457.8) you must report by unit, and on our form, the acreage on which you intend to produce raisins for the crop year. This location and unit report must be submitted to us on or before the sales closing date, unless otherwise agreed to in writing, and contain the following information:

- (1) All acreage of the crop (insurable and not insurable) in which you will have a share by unit;
 - (2) Your anticipated share at the time coverage will begin;
 - (3) The variety; and
 - (4) The location of each vineyard;
- (b) If you fail to file a location and unit report in a timely manner, or if the information reported is incorrect, we may elect to deny liability on any unit.

(c) In addition to the location and unit report, you must annually report by unit, and on our form, the number of delivered tons of raisins, and if damage has occurred, the amount of any tonnage we determined was lost due to rain damage in the vineyard for each unit designated in the location and unit report.

(d) The report of tonnage must be submitted to us as soon as the information is available, but no later than March 1 of the year following the crop year. Indemnities may be determined on the basis of information you submitted on this report. If you do not submit this report by the reporting date, we may, at our option, either determine the insured tonnage and share by unit or we may deny liability on any unit. This report may be revised only upon our approval. Errors in reporting units may be corrected by us at any time we discover the error.

7. Annual Premium

In lieu of the premium computation method contained in section 7 (Annual Premium) of the Basic Provisions (§ 457.8), the annual premium amount is determined by multiplying the amount of insurance for the unit at the time insurance attaches by the premium rate and then multiplying that result by any applicable premium adjustment factors that may apply.

8. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the raisins in the county of grape varieties for which a premium rate is provided by the Actuarial Table and in which you have a share.

(b) For the purpose of determining the amount of indemnity, your share will not exceed the lower of your share at either the time that the raisins are first placed on trays for drying or are removed from the vineyard.

(c) In addition to the raisins not insurable under section 8 (Insured Crop) of the Basic Provisions (§ 457.8), we do not insure any raisins:

(1) Laid on trays after September 8 in vineyards with north-south rows in Merced or Stanislaus Counties, or after September 20 in all other instances;

(2) From table grape strippings; or

(3) From vines that have had manual, mechanical, or chemical treatment to produce table grape sizing.

9. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), insurance attaches at the time the raisins are placed on trays for drying and ends the earlier of:

(a) October 20;

(b) The date the raisins are removed from the trays;

(c) The date the raisins are removed from the vineyard;

(d) Total destruction of all raisins on a unit;

(e) Final adjustment of a loss on a unit; or

(f) Abandonment of the raisins.

10. Causes of Loss.

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against unavoidable loss of production resulting from rain that occurs during the insurance period and while the raisins are on trays or in rolls in the vineyard for drying.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to inability to market the raisins 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 a person to accept production.

11. Reconditioning Requirements and Payment

(a) We may require you to recondition a representative sample of not more than 10 tons of damaged raisins to determine if they meet standards established by the RAC once reconditioned. If such standards are met, we may require you to recondition all the damaged production. If we require you to recondition any damaged production and if you do not do so, we will value the damaged production at the reference maximum dollar amount.

(b) If the representative sample of raisins that we require you to recondition does not meet RAC standards for marketable raisins

after reconditioning, the reconditioning payment will be the actual cost you incur to recondition the sample, not to exceed an amount that is reasonable and customary for such reconditioning, regardless of the coverage level selected.

(c) A reconditioning payment, based on the actual (unadjusted) weight of the raisins, will be made if:

(i) Insured raisin production:

(i) Is damaged by rain within the insurance period;

(ii) Is reconditioned by washing with water and then drying;

(iii) Is insured at a coverage level greater than that applicable to the Catastrophic Risk Protection Plan of Insurance; and

(2) The damaged production undergoes an inspection by USDA and is found to contain mold, embedded sand, or micro-contamination in excess of standards established by the RAC, or is found to contain moisture in excess of 18 percent; or

(3) We give you consent to recondition the damaged production.

(d) Your request for consent to any wash-and-dry reconditioning must identify the acreage on which the production to be reconditioned was damaged in order to be eligible for a reconditioning payment.

(e) The reconditioning payment for raisins that meet RAC standards for marketable raisins after reconditioning will be the lesser of your actual cost for reconditioning or the amount determined by:

(1) Multiplying the greater of \$125.00 or the reconditioning dollar amount per ton contained in the Special Provisions by your coverage level;

(2) Multiplying the result of 11(e)(1) by the actual number of tons of raisins (unadjusted weight) that are wash-and-dry reconditioned; and

(3) Multiplying the result of 11(e)(2) by your share.

(f) Only one reconditioning payment will be made for any lot of raisins damaged during the crop year. Multiple reconditioning payments for the same production will not be made.

12. Duties In The Event of Damage or Loss

(a) In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the following will apply:

(1) If you intend to claim an indemnity on any unit, you must give us notice within 72 hours of the time the rain fell on the raisins. We may reject any claim for indemnity if such notice is later. You must provide us the following information when you give us this notice:

(i) The grape variety;

(ii) The location of the vineyard and number of acres; and

(iii) The number of trays upon which the raisins have been placed for drying.

(2) We will not pay any indemnity unless you:

(i) Authorize us in writing to obtain all relevant records from any raisin packer, raisin reconditioner, the RAC, or any other person who may have such records. If you fail to meet the requirements of this subsection, all insured production will be

considered undamaged and included as production to count; and

(ii) Upon our request, provide us with records of previous years' production and acreage. This information may be used to establish the amount of insured tonnage when insurable damage results in discarded production.

(b) In lieu of the provisions in section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), that require you to submit a claim for indemnity not later than 60 days after the end of the insurance period, any claim for indemnity must be submitted to us not later than March 31 following the date for the end of the insurance period.

13. Settlement of Claim

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

(1) For any optional unit, we will combine all optional units for which such 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 acreage from which raisins were removed 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 tonnage of raisins by the reference maximum dollar amount and your coverage level percentage;

(2) Subtracting from the total in paragraph (1) the total value of all insured damaged and undamaged raisins; and

(3) Multiplying the result of paragraph (2) by your share.

(c) Undamaged raisins or raisins damaged solely by uninsured causes will be valued at the reference maximum dollar amount.

(d) Raisins damaged partially by rain and partially by uninsured causes will be valued at the highest prices obtainable, adjusted for any reduction in value due to uninsured causes.

(e) Raisins that are damaged by rain, but that are reconditioned and meet RAC standards for raisins, will be valued at the reference maximum dollar amount.

(f) The value to count for any raisins produced on the unit that are damaged by rain and not removed from the vineyard will be the larger of the appraised salvage value or \$35.00 per ton, except that any raisins that are damaged and discarded from trays or are lost from trays scattered in the vineyard as part of normal handling will not be considered to have any value. You must box and deliver any raisins that can be removed from the vineyard.

(g) At our sole option, we may acquire all the rights and title to your share of any raisins damaged by rain. In such event, the raisins will be valued at zero in determining the amount of loss and we will have the right of ingress and egress to the extent necessary to take possession, care for, and remove such raisins.

(h) Raisins destroyed or put to another use without our consent will be valued at the reference maximum dollar amount.

14. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in 14(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the amount of insurance per ton, and premium rate;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, DC, on October 21, 1996.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance
Corporation.

[FR Doc. 96-27769 Filed 10-29-96; 8:45 am]

BILLING CODE 3410-FA-P

DEPARTMENT OF ENERGY

10 CFR Parts 703 and 1023

RIN 1901-AA30

Board of Contract Appeals; Contract Appeals

AGENCY: Board of Contract Appeals, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy is proposing to amend its regulations concerning proceedings and functions of the Board of Contract Appeals. This action is necessary to update the rules and to reorganize and supplement the existing rules to provide the public with a better understanding of the Board and its functions. The proposed rules would add an overview of the Board's organization, authorities, and various functions, enunciate longstanding policies favoring the use of Alternative Dispute Resolution (ADR) and confirm the Board's authority to engage in ADR and to provide an array of ADR neutral services, modify the Rules of Practice for Contract Disputes Act (CDA) appeals to implement changes made to the CDA by the Federal Acquisition Streamlining Act (FASA), and remove unnecessary and obsolete rules related to the Board's non-CDA appeals and Contract Adjustment Board functions.

DATES: Comments must be received by December 30, 1996.

ADDRESSES: Interested persons may submit written comments to: E. Barclay Van Doren, Chair, Department of Energy, Board of Contract Appeals, Room 1006, Webb Building, 4040 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: E. Barclay Van Doren, Chair, Department of Energy, Board of Contract Appeals, (703) 235-2700.

SUPPLEMENTARY INFORMATION:

I. Background

A. Discussion

B. Section-by-Section Analysis

II. Procedural Requirements

A. Review under Executive Order 12866

B. Review under Executive Order 12778

C. Review under the Regulatory Flexibility Act

D. Review under the Paperwork Reduction Act

E. Review under the National Environmental Policy Act

F. Review under Executive Order 12612

III. Public Comments

I. Background

A. Discussion

This Rulemaking has several purposes. First, it would set out a statement of the organization, functions, and authorities of the Board of Contract Appeals (Board or EBCA) of the Department of Energy (DOE). The Board has functions other than the resolution of disputes brought under the Contract Disputes Act (CDA), yet the current rules do not list and describe these functions and their associated authorities in any single place. This has proven confusing to some who were unfamiliar with the Board. The proposed rules, in one place, describe and cross-reference all of the standing functions and rules of the Board. This proposed change should help those unfamiliar with the Board to understand its several functions and the limits of its authority, and to assist potential appellants to determine whether the Board is the proper forum for the resolution of a dispute. Moreover, the rule will provide, for informational purposes, the Board's delegated general authorities, which are set forth in a delegation order from the Secretary of Energy.

Second, this Rulemaking would enunciate the Board's and DOE's policy favoring the use of ADR. The current rules are outdated and neither recognize ADR nor summarize the Board and its members' authority to employ and participate in ADR procedures. The Board has a longstanding policy to encourage the consensual resolution of

disputes and, thus, decrease the instances where parties must resort to litigation. The proposed rules contain an explicit statement of the Board's and DOE's policy regarding ADR.

Third, the Federal Acquisition Streamlining Act (FASA) modified the CDA with respect to matters involving claim certification and availability of certain appeal procedures. This Rulemaking would update the Board's rules of procedure to implement these changes. The Streamlining Act increased the threshold for CDA claim certification to \$100,000, from \$50,000. The Act also increased the amounts under which a claim is eligible for either accelerated procedures or small claims procedures. Claims under \$100,000 (previously \$50,000) will be eligible for accelerated procedures and claims under \$50,000 (previously \$10,000) will be, at the contractor's election, resolved under the small claims procedures.

Fourth, this Rulemaking proposes to remove the rules of practice for contract and subcontract appeals which are not governed by the CDA (10 CFR Part 703) (non-CDA appeals) and the rules of the Contract Adjustment Board (10 CFR Part 1023, subpart B). No pre-CDA appeals have been filed with the Board for more than eight years and separate rules no longer appear to be necessary. The Board proposes that the existing rules of practice for CDA appeals, with modifications (such as disregarding inapplicable rules related solely to CDA claim certification) determined by the Board to be appropriate, be made applicable to both CDA appeals and non-CDA appeals from contracting officer decisions and to any subcontractor disputes over which the Board has jurisdiction. Regulatory authority for appeals to the Contract Adjustment Board no longer exists and the rules of the Contract Adjustment Board would be removed.

Finally, the proposed Rulemaking would renumber the rules of practice for contract appeals to the Board to allow for the inclusion of the Statement of Organization, Functions, and Authorities and minor conforming changes would be made to the Rules of Practice.

B. Section-By-Section Analysis

The following analysis provides additional explanatory information regarding the intended effect of these rules if adopted as proposed. The proposed rules add an Overview which consists of sections 1023.1-1023.9. This Overview would reorganize and supplement the information contained in the current sections 1023.2-1023.6.