

substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601).

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the cost of maintaining the program.

Since the costs of the grading program are covered entirely by user fees, it is essential that fees be increased when necessary to cover the cost of maintaining a financially self-supporting program. The last fee increase under this program became effective on October 1, 1995. Since that time, Congress increased the salaries of Federal employees by 2.9 percent as of January 7, 1996, which included locality pay. Also, there have been normal increases in other nonpay operating costs that include utilities, office space, and reimbursable travel. In addition, recent congressional action may result in additional salary increases of 3.0 percent in 1997. Although the program's operating reserves were adequate to cover the January 7, 1996, salary increase, this will not be the case for 1997 salary increases, and a fee increase is needed.

The grading program fees need to be increased to cover the costs associated with maintaining adequate levels of service during shifting production patterns within the dairy industry. The industry changes include plant consolidations, geographical shifts of dairy production areas, and changes in the types of dairy products being manufactured and offered for inspection and grading services. To minimize the necessary fee increase, the Department has initiated cost-reduction efforts which include the reduction of staff and program overhead.

On November 14, 1996, the Agricultural Marketing Service published in the Federal Register (61 FR 58345) for public comment a document proposing a \$4.00 increase in the hourly fee for both resident and nonresident programs. No comments were received.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not delaying the effective date of this action until 30 days after publication of this final rule in the Federal Register. A revenue shortfall warrants putting the higher rates into effect as quickly as possible. The increase in fees is essential for effective management and

operation of the program and to satisfy the intent of the Agricultural Marketing Act of 1946. A proposed rule setting forth proposed fee increases was published in the Federal Register on November 14, 1996 (61 FR 58345). Therefore, the provisions of this final rule are known to interested parties.

Accordingly, the program fees are being increased as set forth below.

Program Changes Adopted in the Final Rule

This rule document makes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increases the hourly fee for nonresident services from \$48.00 to \$52.00 for services performed between 6:00 a.m. and 6:00 p.m. The nonresident hourly rate is charged to users who request an inspector or grader for particular dates and amounts of time to perform specific grading and inspection activities. These users of nonresident services are charged for the amount of time required to perform the task and undertake related travel plus travel costs.

2. Increases the hourly fee for continuous resident services from \$43.00 to \$47.00. The resident hourly rate is charged to those who are using grading and inspection services performed by an inspector or grader assigned to a plant on a continuous, year-round resident basis.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 58 is amended as follows:

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

1. The authority citation for Part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in §§ 58.38 through 58.46, charges shall be made for inspection, grading, and sampling service at the hourly rate of \$52.00 for service performed between 6:00 a.m. and 6:00 p.m. and \$57.20 for service performed between 6:00 p.m. and 6:00 a.m., for the time required to

perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector or grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

3. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident services.

Irrespective of the fees and charges provided in §§ 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of \$47.00 per hour for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

Dated: December 24, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–33267 Filed 12–30–96; 8:45 am]

BILLING CODE 3410–02–P

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

RIN 0563–AB03

Common Crop Insurance Regulations; Florida Citrus Fruit Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of Florida citrus. 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, include the current Florida Citrus Endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Florida Citrus Endorsement to the 1997 and prior crop years.

EFFECTIVE DATE: January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Bill Klein, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, United States

Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by 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 at the proposed rule stage.

The amendments set forth in this final rule contains information collections that have been cleared by OMB under the provisions of 44 U.S.C. chapter 35.

No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) of 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 implications 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. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, all producers are required to complete an application and acreage report. If the crop is damaged or destroyed, insureds are required to give notice of loss and provide the necessary information to complete a claim for

indemnity. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. 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 not have a retroactive effect prior to the effective date. 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 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

On Friday, March 15, 1996, FCIC published a proposed rule in the Federal Register at 61 FR 10699-10703 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.107 (Florida Citrus Fruit Crop Insurance Provisions). The new provisions will replace and

supersede the current provisions for insuring Florida citrus found at 7 CFR 401.143 and will be effective for the 1998 and succeeding crop years. Section 401.143 will also be amended to restrict its effect to the 1997 and prior crop years. By separate rule, § 401.143 will be removed and that section will be reserved.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. A total of 32 comments were received from the crop insurance industry. The comments received and FCIC's response are as follows:

Comment: The crop insurance industry expressed concern that the proposed changes shown in the Federal Register were to be effective for the 1997 crop year.

Response: FCIC originally intended that the proposed rule be made final prior to the contract change date and in sufficient time to provide the industry and insureds time to be made aware of the changes and make adjustments as needed. When the proposed rule was not published until March 15, 1996, it was no longer possible to publish a final rule prior to the April 15, 1996, contract change date. The relevant sections have been amended to specify that the changes will not be implemented until the 1998 crop year.

Comment: One comment from the crop insurance industry questioned why optional units were allowed by both (or either) legal description and non-contiguous land for Florida citrus fruit, whereas in other citrus policies, optional units are offered by one or the other or by non-contiguous land only. They questioned whether regional differences are significant enough to preclude standardization.

Response: The unit structure in the proposed rule was intended to be the same as that contained in the current policy. The current policy allows optional units by legal description or by non-contiguous acreage. The provision has been amended to clarify the apparent ambiguity created in the proposed rule.

Comment: The crop insurance industry stated that the proposed varying levels of deductibles ranging from 25 percent to 50 percent of damage represents a substantial change from the current 10 percent of damage deductible and "will create an insurance product that is substantially deficient in providing desired protection for growers." They requested that the 10 percent deductible level be reinstated in the final rule.

Response: FCIC does not have the authority to offer a 10 percent

deductible for any crop. Section 508(b)(6) and 508(c)(6) of the Federal Crop Insurance Act, as amended, only allows coverage up to 85 percent of the individual yield, which requires more than 15 percent damage before an indemnity would be due. FCIC does not currently offer 85 percent coverage for any actual production history based policy. Implementation of an 85 percent coverage for Florida citrus fruit is being considered for the 1998 crop year. If approved, this coverage level will be shown on the County Actuarial Table. Therefore, no change has been made in the provisions.

Comment: The crop insurance industry expressed concern that the only justification for changing the 10 percent deductible was to make the provisions more compatible with the Common Crop Insurance Policy. The current program participation is high with the implementation of crop insurance reform and the loss ratio is low, in short the program works. It appears that change is only for change's sake.

Response: Although the timing of this change coincides with the Florida Citrus Fruit Crop Insurance Provisions being brought under the Common Crop Insurance Policy, the change is mandated by the above stated limitation contained in the Federal Crop Insurance Act, as amended.

Comment: The crop insurance industry expressed concern that the 10 percent deductible change would undermine their attempts to encourage "buy-up" sales. Producers buy CAT because they believe that the current program (limited and full coverage) is overpriced.

Response: FCIC has no choice but to increase the deductible to be in compliance with the Federal Crop Insurance Act, as amended. With the new coverage levels, "buy up" coverage should provide a level of coverage that will meet the insured's risk management needs.

Comment: One comment from the crop insurance industry criticized FCIC for not taking into account the needs of producers in making rules. While the proposed changes may favorably impact premium, the coverage will no longer be reasonable.

Response: FCIC met with producers and with the Florida Citrus Association, who both provided input and suggestions for the draft Florida Citrus Fruit Crop Provisions. Although FCIC is aware of the industry's opposition to replacing the 10 percent deductible with a proportional deductible, the Federal Crop Insurance Act, as amended, does not allow a 10 percent deductible.

Comment: One comment from the crop insurance industry suggested that a large majority of producers take CAT coverage because they feel the premium for limited and additional coverage is too high based on their assessment of the risk. The program is working with the current deductibles and does not need to be changed.

Response: FCIC has no choice but to change the current coverage levels. Under the new program, a series of different level deductibles will have separate rates and will allow producers to choose more appropriate levels of coverage, which should result in increased participation in limited and buy-up insurance.

Comment: One comment from the crop insurance industry was a request that the language in section 3(a), "You may select only one percent of the maximum dollar amount of insurance * * *", be clarified. They understand the language to mean that only one level of coverage may be selected for each type of citrus fruit insured.

Response: FCIC has added language to clarify the intent of section 3(a). If more than one kind of citrus fruit is included within a type and each citrus fruit has a different maximum amount of insurance, the insured must select the same coverage level for each kind of citrus fruit. For example, if an insured chooses the 75 percent coverage level for Naval Oranges, then the insured must also choose the 75 percent coverage level for Tangerines since both are included as Type IV citrus fruit.

Comment: One comment from the crop insurance industry suggests that neither ineligibility nor a reduction of benefits should be based on the age of the citrus tree. They contend that trees planted at a higher density can produce a marketable crop in as little as three years. They propose that eligibility be based on production of 100 boxes per acre on a unit basis.

Response: The proposed rule for Florida Citrus Fruit Crop Insurance Provisions authorized insuring trees that have not reached the fifth growing season after being set out either in the Special Provisions or by written agreement. Thus, if the 100 box requirement proves reasonable after review of the grove's production potential, coverage can be provided. Therefore, no change will be made in the provisions.

Comment: One comment from the crop insurance industry maintained that adding the proportional deductible to limited and additional insurance would serve to push producers to CAT.

Response: Currently more than 90 percent of the Florida citrus fruit producers have opted for CAT coverage, even with the availability of a 10 percent deductible. With a properly rated proportional deductible, insureds should find the limited and additional levels of insurance to be more affordable and a better risk management tool.

Comment: The crop insurance industry recommended establishing a contract change date earlier than March 15. Recommendations ranged from December 31 to February 28.

Response: FCIC would be willing to move the contract change date earlier if sufficient price and yield data were available to accurately estimate amounts of insurance. Currently, the data available is incomplete before February and the Actuarial Division believes that moving the date earlier than March 15 will not allow sufficient time to utilize the most recent information. For example, a major January freeze will have a significant effect on citrus fruit production and prices. Therefore, no change will be made to the provisions.

Comment: The crop insurance industry recommended that two amounts of insurance be offered. One amount would apply to trees 5 to 7 years and the other for trees more than 7 years. The five year limit could be waived if after inspection it was determined that the acreage could produce 100 boxes per acre.

Response: The current actuarial basis for insuring three age groups was based on National Agricultural Statistics Service (NASS) data and extensive research. If further study indicates that insuring based on two age groups would be more equitable, this change can be made in the actuarial table and need not be specified in the policy. Therefore, no change will be made to the provisions.

Comment: One comment from the crop insurance industry recommended that reclaimed land be made insurable. Insurability would be based on an inspection for both buy-up and CAT, with no written agreement required.

Response: There is reclaimed land that has been rated and, therefore, it is insurable. Other reclaimed land has not been rated and is not insurable except by written agreement. The insurability of reclaimed lands is provided in the Special Provisions. The rating of unrated reclaimed land is an underwriting issue which will be considered for possible future implementation.

Comment: The crop insurance industry recommended that Type II (Late Oranges) be covered as fresh fruit if records demonstrate the crop has been sold as fresh. Either designate Type II as

“fresh fruit” or add varieties to Type II such as 024 Late Orange Juice, and 025 Late Orange Fresh.

Response: FCIC agrees with the concept of insuring certain late oranges as fresh fruit. After studying the recommendation it was determined that these late oranges should be added to Type VII, as Late Oranges “Fresh”.

Comment: The crop insurance industry recommended that insurance attach at fruit set so that there would be no gap in coverage.

Response: FCIC does not have sufficient underwriting information to change the date insurance attaches at this time. FCIC is currently researching other methods for insuring Florida citrus and one area of study is the date insurance should attach.

Comment: One comment from the crop insurance industry recommended that FCIC cover excessive rain and excessive wind damage that did not occur in conjunction with a hurricane or tornado. Fresh fruit blown from the tree and fresh fruit that is scarred or adulterated and cannot be marketed as fresh fruit due to excessive rain or wind would be adjusted on a fresh fruit basis.

Response: Insuring damage resulting from excess wind or rain not associated with a hurricane or tornado would greatly increase risk and the associated premium. This change could not be made without a notice and comment period. Therefore, no change will be made to the provisions.

Comment: One comment from the crop insurance industry stated that some flexibility may be needed for obtaining signatures and for mail time if a transfer takes place shortly before the acreage reporting date, but the transfer form does not reach the company office until after the acreage reporting date.

Response: If the transferor or the transferee signs the properly completed transfer form and gives the form to the crop insurance agent on or before the acreage reporting date, this requirement will be met. Therefore, no change will be made to the provisions.

Comment: One comment from the crop insurance industry recommended revising the language in section 10(b)(2)(ii), “Citrus fruit will be considered undamaged potential production if it is: (i) Or could be marketed as fresh fruit;” to “Citrus fruit will be considered undamaged potential production if it is: (i) Marketed or could be marketed as fresh fruit;”.

Response: FCIC agrees and has revised the provision accordingly.

Comment: One comment from the crop insurance industry recommended that section 10(c)(2)(ii) be amended to delete pink and red grapefruit because

proposed changes make it a “juice only” fruit.

Response: FCIC agrees with the comment and has deleted the words “pink and red grapefruit of Type III” from section 10(c)(2)(ii).

Comment: One comment from the crop insurance industry recommended that pink and red grapefruit of citrus Type III needs to be omitted from the fruit that are considered a total loss as a result of hail damage in section 10(h).

Response: FCIC agrees with the comment and has deleted the words “pink and red grapefruit of citrus Type III” from section 10(h).

Comment: One comment from the crop insurance industry recommended that the crop provisions be expanded to allow insureds to insure one crop of grapefruit as fresh fruit and a separate crop as juice.

Response: FCIC agrees to implement the recommendation and has removed the language in section 6 which required producers to insure all their grapefruit under a single type. Acreage of fresh and processing grapefruit will be identified separately on the acreage report.

Comment: The crop insurance industry recommended that the levels of juice content for types I, II, and III used to determine damage whenever a producer’s records are deemed unacceptable be amended as follows:
Type I—52 pounds of juice per box
Type II—54 pounds of juice per box
Type III—45 pounds of juice per box

These recommendations are based on improvements in processing technologies and processing equipment implemented during the past few years and documented weighted averages for the last three seasons.

Response: FCIC agrees and has made the changes in section 10.

Comment: One comment from the crop insurance industry recommended that the written agreement language be more flexible and allow continuous coverage from year to year if no substantive changes occur.

Response: Written agreements are intended to provide a deviation from the terms of the policy or to extend coverage. If it is appropriate to continue the practice, the policy or Special Provisions should be amended to include the change or new coverage. Therefore, no change will be made to the provisions.

In addition to the changes described above, and minor reformatting and word changes for clarity, FCIC has made the following changes:

1. Section 1—Added the definition of “amount of insurance (acre)” “FSA”

and changed the definition of “citrus fruit type” to add Late Oranges Fresh to Type VII, and changed the definition of “good farming practices,” “non-contiguous,” and “written agreement,” for clarification.

2. Section 6—Removed language that provided that we could exclude from insurance, or limit the amount of insurance on, any acreage that was not insured the previous crop year. This language was not deemed to be necessary because we currently inspect new acreage or acreage added to an existing unit.

3. Section 8(a)(1)—Clarified that if the application is submitted less than 10 days before the date insurance attaches, insurance will not attach until 10 days after receipt of the application. This provision is designed to prevent producers from applying for insurance only when they believe a loss is probable.

4. Section (8)(b)—Clarify that no premium will be due if the producer relinquishes an insurable interest in any insurable acreage of Florida citrus on or before the acreage reporting date of any crop year, unless a transfer of coverage and right to an indemnity is completed and the insurance provider is notified in writing on or before the acreage reporting date. The transferee must meet the eligibility requirements contained in this policy and the form must be subsequently approved by the insurance provider.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Florida citrus endorsement, Florida citrus fruit.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401 and 457 as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 401 continues to read as follows:

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

2. Section 401.143 introductory paragraph is revised to read as follows:

§ 401.143 Florida citrus endorsement.

The provisions of the Florida Citrus Endorsement, for the 1990 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

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

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

4. 7 CFR part 457 is amended by adding a new § 457.107 to read as follows:

§ 457.107 Florida Citrus Fruit Crop Insurance Provisions.

The Florida Citrus Fruit Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

Department of Agriculture

Federal Crop Insurance Corporation

Florida Citrus Fruit 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

Amount of insurance (acre)—The dollar amount determined by multiplying the Reference Maximum Dollar Amount shown on the Actuarial Table for the citrus fruit times the coverage level you elect, times your share.

Box—A standard field box as prescribed in the State of Florida Citrus Fruit Laws.

Citrus fruit type—Any of the following:

- (1) Type I—Early and mid-season oranges;
- (2) Type II—Late oranges juice;
- (3) Type III—Grapefruit for which freeze damage will be adjusted on a juice basis;
- (4) Type IV—Navel Oranges, Tangelos and Tangerines;
- (5) Type V—Murcott Honey Oranges (also known as Honey Tangerines) and Temple Oranges;
- (6) Type VI—Lemons and Limes; and
- (7) Type VII—Grapefruit for which freeze damage will be adjusted on a fresh fruit basis, and late oranges fresh.

Days—Calendar days.

FSA—Farm Service Agency, an agency of the United States Department of Agriculture or a successor agency.

Freeze—The formation of ice in the cells of the fruit caused by low air temperatures.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce the expected yield for the type and age of citrus fruit, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—The severance of mature citrus fruit from the tree by pulling, picking, or any other means, or collecting the marketable fruit from the ground.

Hurricane—A windstorm classified by the U.S. Weather Service as a hurricane.

Interplanted—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

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.

Potential production—Citrus fruit that would have been produced had damage not occurred, including citrus fruit that:

- (1) Was harvested before damage occurred;
- (2) Remained on the tree after damage occurred; and
- (3) Was lost from either an insured or uninsured cause;

But not including citrus fruit that:

- (1) Was lost before insurance attached for any crop year;
- (2) Was lost by normal dropping; or
- (3) Any tangerines that normally would not meet the 210 pack size (2 and 4/16 inch minimum diameter) under United States Standards by the end of the insurance period for tangerines.

Written agreement—A written document that alters designated terms of this policy in accordance with section 11.

2. Unit Division

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) will be divided into basic units by each citrus fruit type shown in section 1 of these crop provisions or designated in the Special Provisions.

(b) Unless limited by the Special Provisions, these basic units 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 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 additional premium paid for the optional units that have been combined will be refunded to you for the units combined.

(e) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(f) Each optional unit must meet one of the following criteria, as applicable:

(1) *Optional Units by Section, Section Equivalent, or Farm Service Agency (FSA) Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system

approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number; or

(2) *Optional Units on Acreage Located on Non-Contiguous Land:* Optional units may be established if each optional unit is located on non-contiguous land.

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

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 for each Florida citrus fruit type shown in section 1 of these crop provisions or designated in the Special Provisions, that you elect to insure. If different amounts of insurance are available for citrus fruit within a type, you must select the same coverage level for each citrus fruit. For example, if you choose the 75 percent coverage level for a specific citrus fruit within a type, you must also choose the 75 percent coverage level for all other citrus fruit within that type.

(b) In lieu of the production reporting date contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), potential production for each unit will be determined during loss adjustment.

(c) By the sales closing date contained in the Special Provisions, for the first year of insurance for acreage interplanted with another citrus fruit crop, and anytime the planting pattern of such acreage is changed, you must report the following:

- (1) The age of the interplanted trees and type if applicable;
- (2) The planting pattern; and
- (3) Any other information we request in order to establish your amount of insurance.

(d) We will reduce acreage or the amount of insurance or both, as necessary, based on our estimate of the effect of the interplanted citrus fruit trees on the insured citrus fruit crop. If you fail to notify us of any circumstance that may reduce the acreage or amount of insurance, we will reduce the acreage or amount of insurance or both as necessary any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is March 15 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 date is April 30 preceding the crop year. The termination date is April 30 of the crop year.

6. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all acreage of each citrus fruit type that you elect to insure, in which you have a share, that is grown in the county shown on the application, and for which a premium rate is quoted in the actuarial table.

(b) In addition to the citrus fruit not insurable in section 8 (Insured Crop) of the Basic Provisions (§ 457.8), we do not insure any citrus fruit:

(1) That cannot be expected to mature each crop year within the normal maturity period for the type;

(2) Produced by trees that have not reached the fifth growing season after being set out, unless otherwise provided in the Special Provisions or by a written agreement to insure such citrus fruit;

(3) Of "Meyer Lemons" and oranges commonly known as "Sour Oranges" or "Clementines"; or

(4) Of the Robinson tangerine variety, for any crop year in which you have elected to exclude such tangerines from insurance. (You must elect this exclusion prior to the crop year for which the exclusion is to be effective, except that for the first crop year you must elect this exclusion by the later of April 30 or the time you submit the application for insurance.)

(c) Upon our approval, prior to the date insurance attaches, you may elect to insure or exclude from insurance any insurable acreage that has a potential production of less than 100 boxes per acre. If you:

(1) Elect to insure such acreage, we will consider the potential production to be 100 boxes per acre when determining the amount of loss; or

(2) Elect to exclude such acreage, we will disregard the acreage for all purposes related to this contract.

(d) In addition to the provisions in Section 6(f) (Report of Acreage) of the Basic Provisions (§ 457.8), if you fail to notify us of your election to insure or exclude acreage, and the potential production from such acreage is 100 or more boxes per acre, we will determine the percent of damage on all of the insurable acreage for the unit, but will not allow the percent of damage for the unit to be increased by including such acreage.

7. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, citrus fruit interplanted with another citrus fruit crop is insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on May 1 of each crop year, except that for the year of application if your application is received by us after April 21, but prior to May 1, insurance will attach on the 10th day after your properly completed application, acreage, and production reports are received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet the requirements for insurability contained in your policy. You must provide any information that we require for the crop to determine the condition of the grove to be insured.

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

(i) January 31 for tangerines and navel oranges;

(ii) April 30 for lemons, limes, tangelos, early and mid-season oranges; and

(iii) June 30 for late oranges, grapefruit, Temple, and Murcott Honey Oranges.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

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

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

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

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

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur within the insurance period:

(1) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the grove;

(2) Freeze;

(3) Hail;

(4) Hurricane; or

(5) Tornado.

(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:

(1) Any damage to the blossoms or trees; or

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

10. 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 units, we will combine all optional units for which such production records were not provided; or

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

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

(1) Calculating the amount of insurance for the unit by multiplying the number of acres by the respective dollar amount of insurance

per acre for the citrus fruit and multiplying that result by your share;

(2) Calculating the average percent of damage to the respective citrus fruit, rounded to the nearest tenth of a percent (0.1%). The percent of damage will be the ratio of the number of boxes of citrus fruit considered damaged from an insured cause divided by the undamaged potential production. Citrus fruit will be considered undamaged potential production if it is:

(i) Marketed or could be marketed as fresh fruit;

(ii) Harvested prior to inspection by us; or

(iii) Harvested within 7 days after a freeze;

(3) Subtracting the coverage level percentage from 100 percent;

(i) Subtracting this result from the result of section (10)(b)(2); and

(ii) If the result section (10)(b)(3)(i) is positive, dividing this result by the coverage level percentage;

(4) Multiplying the result of section (10)(b)(3)(ii) by the amount of insurance for the unit for the respective citrus fruit.

(For example, if the average percent of damage is 70 percent and the coverage level is 75 percent (the deductible is 25 percent), the amount payable is 60 percent times the amount of insurance (70% damage - 25 % level deductible)=45% (45% ÷ 75%) 60% adjusted damage times the amount of insurance); and

(5) Totaling all such results of section (10)(b)(4) to determine the amount payable for the unit.

(c) Citrus fruit of Types IV, V, and VII that are seriously damaged by freeze, as determined by a fresh-fruit cut of a representative sample of fruit in the unit in accordance with the applicable provisions of the State of Florida Citrus Fruit laws, and that are not or could not be marketed as fresh fruit, will be considered damaged to the following extent:

(1) If less than 16 percent of the fruit in a sample shows serious freeze damage, the fruit will be considered undamaged; or

(2) If 16 percent or more of the fruit in a sample shows serious freeze damage, the fruit will be considered 50 percent damaged, except that:

(i) For tangerines of Type IV, damage in excess of 50 percent will be the actual percent of damaged fruit; and

(ii) Citrus of Types IV (except tangerines), V, and VII, if it is determined that the juice loss in the fruit exceeds 50 percent, such percent will be considered the percent of damage.

(d) Notwithstanding the provisions of section 10(c) of these crop provisions as to citrus fruit of Types IV, V, and VII, in any unit that is mechanically separated using the specific-gravity (floatation) method into undamaged and freeze-damaged fruit, the amount of damage will be the actual percent of freeze-damaged fruit not to exceed 50 percent and will not be affected by subsequent fresh-fruit marketing. However, the 50 percent limitation on mechanically-separated, freeze-damaged fruit will not apply to tangerines of citrus fruit Type IV.

(e) Any citrus fruit of Types I, II, III, and VI damaged by freeze, but that can be processed into products for human

consumption, will be considered as marketable for juice. The percent of damage will be determined by relating the juice content of the damaged fruit to:

(1) The average juice content of the fruit produced on the unit for the three previous crop years based on your records, if they are acceptable to us; or

(2) The following juice content, if acceptable records are not furnished:

- (i) Type I—52 pounds of juice per box
- (ii) Type II—54 pounds of juice per box
- (iii) Type III—45 pounds of juice per box
- (iv) Type VI—43 pounds of juice per box

(f) Any citrus fruit on the ground that is not collected and marketed will be considered as 100 percent damaged if the damage was due to an insured cause.

(g) Any citrus fruit that is unmarketable either as fresh fruit or as juice because it is immature, unwholesome, decomposed, adulterated, or otherwise unfit for human consumption due to an insured cause will be considered as 100 percent damaged.

(h) Citrus fruit of Types IV, V, and VII that are unmarketable as fresh fruit due to serious damage from hail as defined in the applicable United States Standards for Grades of Florida fruit will be considered totally lost.

11. Written Agreements

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

(a) You must apply to us in writing for each written agreement no later than the sales closing date, except as provided in section 11(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 by us, the written agreement will include all variable terms of the contract, including, but not limited to, crop type and variety, the guarantee, premium rate, and price election;

(d) Each written agreement will 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 December 20, 1996.

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

[FR Doc. 96-33068 Filed 12-30-96; 8:45 am]

BILLING CODE 3410-FA-P

Federal Crop Insurance Corporation

7 CFR Part 404

Commodity Credit Corporation

7 CFR Part 1437

RIN 0560-AE85

Implementation of the Noninsured Crop Disaster Assistance Program Provisions of the Federal Agriculture Improvement and Reform Act of 1996

AGENCIES: Commodity Credit Corporation, Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule moves the noninsured crop disaster assistance program (NAP) provisions currently in 7 CFR part 404 to 7 CFR part 1437, and implements the amendments to NAP made in Title I of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act). The 1996 Act changes the administration of the program from the Federal Crop Insurance Corporation (FCIC) to the Secretary through the Commodity Credit Corporation. The NAP program will continue to be operated through the Farm Service Agency (FSA). Other amendments include the addition of seed crops and aquaculture (including ornamental fish) as crops eligible for benefits under this part, and relaxes the acreage and production reporting requirements.

EFFECTIVE DATE: December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Leona Dittus, Director, Emergency and Noninsured Assistance Program Division, FSA, USDA, AG Box 0526, P. O. Box 2415, Washington, D.C. 20013-2415. Telephone (202) 720-3168.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because neither FSA nor the CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this

action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

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).

Unfunded Mandates

The provisions of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because neither FSA nor CCC is required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Small Business Regulatory Enforcement Fairness Act of 1996

The Agency gave notice of the proposed rule and accepted comments from the public prior to the publication of the final rule. After the publication of the final rule, Congress passed both the 1996 Act and the Small Business Regulatory Enforcement Fairness Act of 1996. Due to fact that this rule makes slight changes to a rule that was already final when Congress passed these two Acts, it has been determined in accordance with section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, that it is impracticable, unnecessary and contrary to the public interest to require this rule to conform to the requirements of section 801 of that Act. Accordingly, this rule is effective upon publication in the Federal Register.

Paperwork Reduction Act

The amendments to 7 CFR 1437 set forth in this final rule involve a change in the existing information collection requirements. In accordance with the Paperwork Reduction Act of 1995, CCC received approval from OMB for the