

# Rules and Regulations

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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.

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Parts 401 and 457

#### General Crop Insurance Regulations; Fresh Plum Endorsement, and Common Crop Insurance Regulations; Plum 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 plums. 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 Fresh Plum Crop Insurance Endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Fresh Plum Endorsement to the 1997 and prior crop years.

**EFFECTIVE DATE:** July 23, 1997.

**FOR FURTHER INFORMATION CONTACT:** Stephen Hoy, Insurance Management Specialist, Research and Development, Product Development Division, 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 and 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

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions on information collection requirements previously approved by OMB under OMB control number 0563-0053 through September 30, 1998. 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) for State, local, and tribal governments or the private sector. Thus, the rule is not subject to the requirements of section 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

The Manager, Federal Crop Insurance Corporation, certifies that this regulation will not have a significant economic 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. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), 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. 12988

This final rule has been reviewed in accordance with Executive Order No. 12988 on civil justice reform. 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 part 11 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

On Tuesday, February 11, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 6134-6138 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.157, Plum Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring plums found at § 401.146 (Fresh Plum Crop Insurance Endorsement). FCIC also amends 7 CFR 401.146 to limit its effect to the 1997 and prior crop years.

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions. A total of 16 comments were received from an insurance service organization and reinsured companies. The comments received and FCIC's responses are as follows:

*Comment:* An insurance service organization and a reinsured company expressed concern with the definition of "Good farming practices," which makes

reference to "cultural practices generally in use in the county \* \* \* recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county." The commenters indicated there are areas or situations where good, accepted farming practices may not necessarily be recognized by the Extension Service, and "county" should be changed to "area."

**Response:** FCIC believes that the Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing plums. If a producer is following practices currently not recognized as acceptable by CSREES, there is no reason why such recognition cannot be sought by interested parties. The cultural practices recognized by CSREES pertain only to specific areas within a county. Such limitations would be considered by FCIC. Therefore, no change has been made to these provisions.

**Comment:** An insurance service organization recommended changing "production guarantee" to "insured's average yield" or "average yield" in the definitions of "good farming practice" and "irrigated practice."

**Response:** Depending on the number of years for which records are provided, the yield used to determine the production guarantee may be calculated using the insured's actual production history (APH) yields, assigned yields, or a combination thereof. FCIC believes that referencing the "yield used to determine the production guarantee" rather than "insured's average yield" or "average yield" in these definitions is more accurate and reduces the possibility that the yield determination will be misrepresented. Also, this language is consistent with other perennial crop policies. Therefore, no change has been made.

**Comment:** An insurance service organization and a reinsured company recommended deleting the words "or machine" in the definition of "harvest" since there is no machine harvest of fresh plums.

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

**Comment:** An insurance service organization recommended changing the definition of "interplanted" to require that the acreage planted to another crop, within the insured's crop planting pattern, occupy more than five percent of the total acreage in the unit.

**Response:** Planting patterns may vary when perennial crops are interplanted. FCIC believes that introducing, into the

definition, an exact percentage of interplanted acres that must be exceeded before the plums are considered interplanted is arbitrary because there is no evidence to support any particular amount. No basis was provided for this recommendation, and the definition of "interplanted" in other perennial crop policies does not specify a percentage of interplanted acres. Therefore, no change has been made.

**Comment:** A reinsured company recommended adding the words "and quality" after the word "quantity" in the definition of "irrigated practice."

**Response:** There are no clear criteria regarding the quality of water necessary to produce a crop. Further, such criteria would be difficult to develop and administer due to complex interactions of various factors. Therefore, no change has been made to the definition.

**Comment:** An insurance service organization recommended removal of the phrase in section 2(e)(3)(ii) which states "In addition to, or instead of, establishing optional units on non-contiguous land," since section 2(e)(3) states that "Each optional unit must meet one or more of the following criteria \* \* \*."

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

**Comment:** An insurance service organization expressed concern regarding removal of the provision restricting coverage on plums harvested directly by the public since there are no third-party receipts, thereby making production difficult to track.

**Response:** The producer is required to give notice at least 15 days prior to any production being marketed directly to consumers and the insurance provider is required to complete an appraisal within that 15 day period. The production may be marketed directly to consumers any time following the 15 day waiting period regardless of whether or not the insurance provider had fulfilled its responsibility to appraise the crop. FCIC believes that 15 days is appropriate to meet the needs of both the producer and the insurance provider. Therefore, no change has been made to the provisions.

**Comment:** An insurance service organization recommended deleting the phrase "an average of" in section 6(d) so the language would read "That have produced at least 200 lugs per acre \* \* \*."

**Response:** A unit may consist of two or more blocks of plums with yield variations among the blocks due to tree age, soil fertility, etc. The phrase "an average of" clarifies that the minimum yield requirement for insurance to attach is based on a per acre average for

the unit rather than being based on each acre. Removal of the phrase could cause confusion because the minimum yield requirement for insurance coverage in a number of other perennial crop policies is based on average yield per acre. Therefore, no change has been made.

**Comment:** A reinsured company stated that coverage should begin on February 1 of each crop year. The commenter indicated that the additional wording in section 8(a)(1) of the policy may provide a loop-hole for the producer whose application is received prior to January 22 and section 6(e) already specifies that the orchard, if inspected, must be acceptable by us. In addition, an insurance service organization recommended that a specific date (by which an application must be received for insurance to attach on January 1) should not be listed. Instead of a date, this section should state "if your application is received less than ten days before the sales closing date."

**Response:** Coverage does begin on February 1, unless the producer submits the application less than 10 days before that date. Perennial crops are unique in that insurance usually attaches on the day following the sales closing date. For most other crops, insurance attaches when the crop is planted. The 10 day period is intended to prevent producers from only purchasing insurance because they know an "event" will occur that will make a loss likely. The period of 10 days is believed appropriate to meet the needs of both the producer and the insurance provider. These provisions were modified to be consistent with other perennial crop provisions. FCIC does not believe that this wording adds confusion or provides a loop-hole for producers whose application is received prior to January 22. Listing the date by which an application must be received for insurance to attach on January 1 is more specific, avoids possible confusion, and is consistent with other perennial crop policies. Therefore, no change has been made.

**Comment:** An insurance service organization stated that "pitburn and sunburn," which are causes of loss listed in section 9(a)(2), are natural culls in the Crop-Hail policy and should be natural culls in the MPCI policy.

**Response:** Although pitburn and sunburn may be considered natural culls in the Crop-Hail policy, they are caused by adverse weather (excessive heat), which is an insured cause of loss. Therefore, although these causes of loss do not require separate listing, they would still be covered. FCIC has revised section 9(a)(2) accordingly.

*Comment:* An insurance service organization stated that section 11(c)(1)(iv) "Settlement of Claim" should not allow the insured to defer settlement and wait for a later, generally lower, appraisal, especially on crops that have a short "shelf life."

*Response:* A later appraisal will only be necessary if the insurance provider agrees that such an appraisal would result in a more accurate determination and if the producer continues to care for the crop. If the producer does not continue to care for the crop, the original appraisal will be used. Therefore, no change will be made to these provisions.

*Comment:* An insurance service organization and reinsured companies recommended that the requirement for a written agreement to be renewed each year be removed if no substantive changes occur from one year to the next. The commenter indicated that limiting administrative agreements to one year increases administrative costs, complexity, and opportunity for misunderstanding and error.

*Response:* Written agreements are, by design, temporary and intended to address unusual circumstances. If the conditions for which a written agreement is needed exists each crop year, the policy or Special Provisions should be amended to reflect this condition. Therefore, no change will be made to the provision.

In addition to the changes described above, FCIC has made the following editorial change to the Plum Provisions:

1. Section 1—Added a definition of "Adapted" for clarification.
2. Section 2(a)—Deleted language addressing division of basic units into optional units by written agreement, since this is addressed in section 2(e)(3).
3. Section 6(b)(4)—Added California Tree Fruit Agreement to the list of entities that regulate tree varieties.
4. Section 9(a)(6)—Clarified that wildlife is an insured cause of loss unless control measures have not been taken.
5. Section 10(d)—Changed the requirement for notification of damage or loss to state that the producer must not destroy the damaged crop until after the insurance provider has given written consent to do so. Previous wording restricted the producer from selling or disposing of the damaged crop until written consent was given; however, due to the perishable nature of the crop, FCIC believes the expanded limitation on the producer's action is reasonable for effective program management.
6. Section 11(c)(2)(i)—Changed the quality standards when determining production to count of plums packed

and sold as fresh fruit from the California Marketing Order grade requirement to the U.S. No. 1 standards as modified by the California Tree Fruit Agreement publication for plums for the applicable crop year. This terminology is more descriptive and corresponds with existing practices.

#### **List of Subjects in 7 CFR Parts 401 and 457**

Crop insurance, Fresh plums endorsement, Plums.

#### **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 401.146 introductory text is revised to read as follows:

##### **§ 401.146 Fresh plum endorsement.**

The provisions of the Fresh Plum Crop Insurance Endorsement for the 1990 through the 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. Section 457.157 is added to read as follows:

##### **§ 457.157 Plum crop insurance provisions.**

The Plum Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:  
United States Department of Agriculture  
Federal Crop Insurance Corporation  
Reinsured policies:  
(Appropriate title for insurance provider)  
Both FCIC and reinsured policies:  
Plum Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, the Special Provisions and the Catastrophic Risk Protection Endorsement, if applicable; the Special Provisions will control these Crop Provisions and the Basic Provisions; these Crop Provisions will control the Basic Provisions; and the Catastrophic Risk

Protection Endorsement, if applicable, will control all provisions.

#### **1. Definitions**

*Adapted.* Varieties of the insured crop that are recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

*Days.* Calendar days.

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

*Good farming practices.* The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, 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 picking of mature plums from the trees by hand.

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

*Irrigated practice.* A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

*Lug.* Twenty-eight (28) pounds of the insured crop.

*Non-contiguous.* 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.

*Production guarantee (per acre).* The number of lugs of plums determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

*Scion.* Twig or portion of a twig of one plant that is grafted onto a stock of another.

*Varietal group.* Different varieties of plums that are grouped according to the normal maturity dates as specified in the Special Provisions.

*Written agreement.* A written document that alters designated terms of this policy in accordance with section 12.

#### **2. Unit Division**

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8) (basic unit), may be divided into optional units if, for each optional unit, you meet all the conditions of this section.

(b) Basic units may not be divided into optional units on any basis other than as described in this section.

(c) 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.

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

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) 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

(3) Each optional unit must meet one or more of the following criteria unless otherwise specified by the written agreement, as applicable:

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

(ii) *Optional Units on Acreage by Varietal Group:* Optional units may be established by varietal group when provided for in the Special Provisions.

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

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

(a) You may select only one price election for all the plums in the county insured under this policy unless the Special Provisions provide different price elections by varietal group, in which case you may select one price election for each plum varietal group designated in the Special Provisions. The price elections you choose for each varietal group must have the same percentage relationship to the maximum price offered by us for each varietal group. For example, if you choose 100 percent of the maximum price election for one varietal group, you must also choose 100 percent of the maximum price election for all other varietal groups.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by varietal group if applicable:

(1) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

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

(3) The age of the trees and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and any time the planting pattern of such acreage is changed:

(i) The age of the interplanted crop and varietal group if applicable;

(ii) The planting pattern; and

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

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of interplanting a perennial crop, removal of trees, damage, change in practice, and any other circumstance that may effect the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

### 4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is October 31 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 January 31.

### 6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the plums in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown on tree varieties that:

(1) Were commercially available when the trees were set out;

(2) Are adapted to the area;

(3) Are grown on rootstock that is adapted to the area; and

(4) Are regulated by the California Tree Fruit Agreement, California Advisory Board Standards, a related crop advisory board, or the State;

(c) That are irrigated;

(d) That have produced an average of at least 200 lugs per acre in at least one of the three most recent actual production history crop years, unless we inspect the acreage and give our approval to insure such acreage in writing;

(e) That are grown in an orchard that, if inspected, is considered acceptable by us; and

(f) That have reached at least the fifth (5th) growing season after set out. Plums produced on scions that have not reached the fifth growing season may be insured if the provisions in section 6(a), (b), (c), and (e) are met. Such trees must have produced at least 200 lugs per acre in at least one year after being grafted.

### 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, plums interplanted with another perennial crop are 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 February 1 of each crop year. Notwithstanding the previous sentence, for the year of application, if your application is received after January 22 but prior to February 1, insurance will attach on the 10th day after your properly completed application is received in our local office unless we inspect the acreage during the 10-day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is September 30.

(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 for the crop year, and after an inspection we consider the acreage acceptable, 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 plums on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due 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 during the insurance period:

(1) Adverse weather conditions;

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

(3) Wildlife, unless control measures have not been taken;

(4) Earthquake;

(5) Volcanic eruption;

(6) An insufficient number of chilling hours to effectively break dormancy; or

(7) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(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) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available;

(2) Rejection of the crop by the packing house due to being undersized, immature, overripe, or mechanically damaged; or

(3) Inability to market the plums 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. Duties In The Event of Damage or Loss

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:

(a) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

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

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

(e) If you fail to notify us in accordance with this section, we may consider all such production to be undamaged and include it as production to count.

#### 11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide 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 from 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) Multiplying the insured acreage for each varietal group, if applicable, by its respective production guarantee;

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

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

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

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

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

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

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

(1) All appraised production as follows:

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

(A) That is abandoned;

(B) That is sold by direct marketing directly if you fail to meet the requirement contained in section 10;

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

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

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

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

(2) All harvested production from the insurable acreage:

(i) That is packed and sold as fresh fruit and meets the U.S. No. 1 standards as modified by the California Tree Fruit Agreement publication for plums for the applicable crop year;

(ii) That is packed and sold as fresh fruit but does not meet the grade requirements specified in section 11(c)(2)(i) due to insurable causes. Such production will be adjusted by:

(A) Dividing the value per lug of this production by the highest price election available for the applicable varietal group; and

(B) Multiplying the resulting factor, if less than 1.0, by the number of lugs of such plums.

(iii) That is damaged and is, or could be, marketed for any use other than fresh packed plums. Such production will be adjusted by:

(A) Multiplying the number of tons of such production by the value per ton of the damaged plums or \$50.00, whichever is greater; and

(B) Dividing that result by the highest price election available for the applicable varietal group.

#### 12. Written Agreement

Terms of this policy which are specifically designated for the use of written agreements

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 section 12(e);

(b) The application for a written agreement must contain all 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 variety, the guarantee, premium rate, and price election;

(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 written agreement submitted after the sales closing date may be approved if, after 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 June 16, 1997.

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 97-16271 Filed 6-20-97; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Parts 401 and 457

#### General Crop Insurance Regulations; Grape Endorsement and Common Crop Insurance Regulations; Grape 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 grapes. 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 grape endorsement under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current grape endorsement to the 1997 and prior crop years.

**EFFECTIVE DATE:** June 23, 1997.

**FOR FURTHER INFORMATION CONTACT:** John Meyer, Insurance Management