

(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]

BILLING CODE 3410-08-P

## 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

Specialist, 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, 61 FR 49982, the public was afforded 60 days to submit written comments 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, 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. 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. 12988

This rule has been reviewed in accordance with Executive Order No. 12988. 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, September 24, 1996, FCIC published a proposed rule in the **Federal Register** at 61 FR 49982-49987 to add to the Common Crop Insurance Regulations (7 CFR part 457) a new section, 7 CFR 457.138, Grape 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 grapes found at 7 CFR 401.130. FCIC also amends 7 CFR 401.130 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. A total of 26 comments were received from reinsured companies, an insurance service organization, a grower group, and FCIC Regional Service Offices (RSO). The comments received, and FCIC's responses, follow:

*Comment:* A grower group suggested that the definition of "irrigated

practice" should read "irrigation practice" for grammatical correctness and inclusion of the term commonly used to refer to the practice of introducing water by artificial means to agricultural lands.

*Response:* FCIC agrees with the comment and has amended the defined term accordingly.

*Comment:* An insurance service organization recommended that in the definition of "production guarantee (per acre)" rephrasing "The number of grape (tons) \* \* \* ." to read "The number of tons of grapes" \* \* \* .

*Response:* FCIC has clarified this provision by deleting the crop reference. The provision now states, "The number of tons \* \* \* \*".

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

*Response:* FCIC agrees that water quality is an important issue. However, since no standards or procedures have been developed to measure water quality for insurance purposes, FCIC has elected not to include quality in the definition. No changes have been made.

*Comment:* A reinsured company questioned whether the definition of "non-contiguous land" should state "that it is land ownership that does not touch at any point."

*Response:* Land ownership is not a factor to determine non-contiguous land. Rather, non-contiguous is only determined based on whether the boundaries of the land touch at any point. FCIC believes the provision is clearly stated. Therefore, no change will be made.

*Comment:* An FCIC RSO recommended adding "Risk Management Agency" to the list of definitions.

*Response:* These regulations are published under the authority of the Federal Crop Insurance Act, which created FCIC and gave it the authority to offer this crop insurance program. As a result, the term FCIC rather than Risk Management Agency is used appropriately throughout these regulations. Therefore, no change will be made.

*Comment:* A reinsured company and an insurance service organization stated the provisions in section 2(e), "All optional units established for a crop year must be identified on the acreage report for that crop year" is ambiguous and could lead to misunderstanding concerning when optional units may be established. One of the comments also suggested adding language to section 2(f)(1) to clarify that the units must be based on production reports that were

reported timely since unit breakdown cannot occur without timely reported production.

*Response:* Only those optional units determined under the selected method for the crop year for which the acreage report is completed must be listed. Optional unit designations from past years, or that could have been established for the current year but were not, should not be listed on the current crop years' acreage report. FCIC has clarified this provision accordingly. Section 2(f)(1) has also been clarified to indicate that records of production for the optional units must be provided by the production reporting date.

*Comment:* An insurance service organization suggested deleting "one or more of" from section 2(g) since item (1) applies to California only, and item (2) applies to all other states and it would not be possible for both to be applicable on one policy.

*Response:* FCIC agrees and has amended the provisions accordingly.

*Comment:* An insurance service organization suggested that in section 2(g)(2) (ii), (iii), and (iv) it was not necessary to begin each of the paragraphs with "In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number," and suggested beginning each paragraph with "Optional units may be based on (ii) irrigated \* \* \*, (iii) non-contiguous \* \* \*, or (iv) varietal group \* \* \*". Section 2(g)(2) states "that each optional unit must meet one or more of the following criteria".

*Response:* To remain consistent with most crop provisions, and to clearly indicate that any combination of applicable unit division methods may be utilized, section 2(g)(2) (ii), (iii), and (iv) have not been changed.

*Comment:* An FCIC RSO recommended that subsection 3(a) (re-designated as subsection 3(b)) be amended for Idaho, Oregon and Washington, to read: "The price elections you choose for each varietal group may have a different percentage relationship as compared to the maximum price offered by us for each varietal group." It was further recommended that producers be allowed to select coverage levels by varietal group. This would give producers the flexibility to insure different varietal groups at different price and coverage levels.

*Response:* FCIC agrees that allowing variation in price election percentages will provide additional flexibility for producers in these states and has amended the provisions to allow this except in cases in which the producer

has elected the Catastrophic Risk Protection (CAT) level of insurance. Some FCIC programs currently allow the coverage level percentage to vary by variety or type. However, for these programs it has been determined that adequate actuarial information is available to allow varieties or types to be insured separately, and separate administrative fees are charged for each variety or type that is insured. Further research must be completed before it is known whether or not adequate information is available to allow separate insurance by varietal groups in Oregon, Washington, and Idaho. Therefore, the provisions have not been changed to allow different coverage level percentages by varietal group.

*Comment:* An insurance service organization suggested subsection 3(a) (re-designated as subsection 3(c)) begin with the phrase, "You may select only one price percentage \* \* \*". It would not then be necessary to include complex provisions regarding different varieties with different maximum prices.

*Response:* The methods used to select price elections vary between insurance providers. While some require selection of a percentage, others require selection of a specific dollar amount. The suggested change will not work in all circumstances. Therefore, no change has been made to the provisions.

*Comment:* An insurance service organization commented that allowing different coverage levels as well as price percentages by grape variety in California (section 3(a)) is a change from the current policy, which requires the same coverage level and price percentage of the maximum price for all grapes insured under the policy. The comment recommended this be identified as a policy change.

*Response:* FCIC agrees with the comment. Provisions were added to allow different coverage levels and price percentages by variety in California. This should have been identified as a policy change.

*Comment:* A grower group took exception to allowing written agreements only in California (section 3(b)), (re-designated as section 3(d)) to establish a price election for a variety that does not have a separate price election on the Special Provisions. The comment stated that other states should also be allowed this opportunity.

*Response:* Price elections are established by variety in California and by varietal group in all other states. Varietal groups may be composed of several different varieties based on final use of the varieties in the group or their expected value. The varietal groups

should encompass all varieties grown in an area; so there is no need to use a written agreement. Therefore, no changes have been made.

*Comment:* A reinsured company expressed concern about the language in section 3(c)(1) (re-designated as 3(e)(1)) that states the insured must report, "any damage, removal of bearing vines, 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." Procedural requirements state that when a producer reports these items, a field inspection must occur and be forwarded to the RSO. The commenter expressed concern because the guarantee or insurability can not be determined at point of sale, and inspection costs and the number of cases the RSO must handle could increase dramatically.

*Response:* Insurance providers must be made aware of circumstances that may reduce yields below historical levels. Removing these provisions would allow the yield guarantee to exceed the potential yield in some cases. This would result in a program that is not actuarially sound. Further, these requirements have been only clarified and are not new provisions. Therefore, FCIC does not expect an increased workload.

*Comment:* An insurance service organization questioned whether the language in section 7(a) "crop insured will be all grapes in which you have a share" is affected by the new language in section 9(b) (1) and (2) which deals with insurable shares acquired or relinquished on or before the acreage reporting date, and whether there should be a reference in section 7(a) to the exception in section 9(b).

*Response:* There is no exception to the share requirement in section 9(b). Section 9(b) simply specifies how a share can be acquired or relinquished. If the share is relinquished by the insured, the insured will not receive any benefits under the policy, nor have to pay any premium. Therefore, no change is required.

*Comment:* A reinsured company, an insurance service organization, and an FCIC RSO recommended changing the "or" used at the end of section 7(d) to "and" since both section 7(d) and section 7(e) are pre-requisite for grapes to be insurable.

*Response:* FCIC agrees with the comment and has amended the provisions accordingly.

*Comment:* A reinsured company suggested that section 7 (d) and (e) be revised to state, "mature grapes "grafted over" to another variety after being set

out" will be insurable one year earlier than the number of growing seasons designated in the Special Provisions, or, as soon as they have produced at least 2 tons per acre after being grafted over, whichever occurs first.

*Response:* FCIC agrees that mature grapes "grafted over" to produce a variety other than originally grown tend to produce faster than normal rootstock that is set out; however, occasionally grafts do not "take" and the vines may never produce two tons. The Special Provisions will be revised to specify the number of growing seasons necessary for mature grapes grafted to another variety although the provisions in section 7(e) must still be met. Therefore, no change will be made.

*Comment:* An FCIC RSO and a reinsured company recommended a section 7(f) be added to the policy to read as follows: "produced by vines where there is at least a 90 percent stand of bearing vines based on the current planting pattern." This language is in the current grape policy.

*Response:* The provisions of section 3(c)(1) are intended to provide the opportunity to adjust the insurance yield when there is less than a full stand of vines. The 90 percent requirement is unduly restrictive. Therefore, no changes have been made.

*Comment:* An insurance service organization asked whether the "or" in the last sentence of section 9(a)(1) should be deleted, and if not, what other information is required "for the crop" other than what is needed "to determine the condition of the vineyard"?

*Response:* A variety of information concerning the crop may be needed, including past production records, acreage records, etc. In addition, information regarding the current condition of the vineyard is necessary. This may include records of vine removal, grafting, changes in cultural practices, etc. This provision must include all these various types of information. Therefore, no changes have been made.

*Comment:* An FCIC RSO recommended the end of the insurance period for Idaho, Oregon, and Washington section (9)(a)(2)(ii) be changed from November 10 to November 1 to maintain program integrity and actuarial soundness.

*Response:* FCIC agrees that all production in these states should be harvested by November 1 and has amended the provisions accordingly.

*Comment:* A reinsured company recommended adding a statement to section 9(b)(1) stating what happens if acreage is acquired after the acreage reporting date.

*Response:* Acreage acquired after the acreage reporting date will not be insured. Section 9(b)(1) has been amended accordingly.

*Comment:* A reinsured company requested the provision in section 10(b)(2) "Phylloxera, regardless of cause" be deleted since phylloxera is an insect infestation for which there is no effective control mechanism and no effective way to separate the amount of damage caused by phylloxera from the amount of damage caused from an insurable cause of loss. According to another source, phylloxera is a fungus, and loss of production resulting from it cannot be separated from losses from other causes, at least for the first year. Also there was a question as to whether the provision as written allows for a loss due to phylloxera to be paid the first year, but not in subsequent years when the cause can be determined. If not, it was felt that this provision would be difficult (if not impossible) to enforce.

*Response:* It is widely accepted that Type B phylloxera will ultimately destroy nearly all vineyards that were planted on non-resistant root stock. The wine industry has done extensive research and worked with producers to develop plans to destroy and replace non-resistant vineyards and some vineyards have been destroyed immediately after finding infestations. Providing coverage for phylloxera related losses may inhibit the efforts being made to stop the spread of this pest and may be considered to promote poor pest management practices. The provision does not allow payment for phylloxera related losses in any year. This provision will not be difficult to enforce since phylloxera must still be identified in the crop year in order for it to be considered an uninsurable cause of loss. Therefore, no changes have been made.

*Comment:* A reinsured company suggested adding the following language to section 11(b), "notice must be given immediately if damage occurs less than 15 days prior to, or during, harvest." However, they did not feel it advisable for an insured to have to discontinue harvest or delivery of production until after the insurance provider inspected the damaged production or provided written consent. It was thought that as long as proper notice is received, damage could be determined at the winery, cannery, etc.

*Response:* FCIC agrees that an insured should not have to discontinue harvest or delivery of production while waiting for the insurance provider's inspection of the damaged production. Policy provisions requiring the insured to not sell or dispose of the damaged crop

until after the insurance provider gives written consent, have been deleted. However, the insured may not destroy the damaged crop until the insurance provider gives written consent. This will allow the producer to sell any damaged production if there is a market for it. Failure of the insured to notify the insurance provider could result in all damaged production being considered as undamaged and production to count.

*Comment:* A reinsured company questioned whether in section 12(b)(2) and (4) "respective price election" referred to the price election selected by the insured or the high price for the variety or varietal group, and suggested that clarification may be advisable.

*Response:* The respective price election used in sections 12(b)(2) and (4) refers to the price election selected by the insured for the specific variety or varietal group insured prior to the sales closing date. The provisions have been clarified accordingly.

*Comment:* A reinsured company questioned the reference in section 12(e)(1) to "usual marketing outlets for the area." These marketing outlets are used to determine the price of undamaged production. They stated that the "area" in California is the Crush District where the grapes are grown, and that price information can be difficult to obtain from wineries and other buyers. It was suggested the market price be determined by a single source such as the FCIC Regional Service Office or the producer's contract with the winery or other buyers.

*Response:* FCIC agrees it does takes time to contact buyers and establish an average market price. However, a single source such as an RSO does not have the resources to establish this price since it may vary considerably by year and according to growing conditions. In a heavy loss year, price determinations must be made without delay during the week in which the damaged grapes are valued. Transferring this function to the RSO could result in unacceptable delays. Therefore, no changes have been made.

*Comment:* An insurance service organization suggested combining the provisions contained in section 13(e) with the provisions in section 13(a).

*Response:* The requirement that requests for written agreement be executed by the sales closing date is intended to be the rule and the application submitted after the sales closing date will only be an exception to this rule in limited circumstances. Therefore, no change will be made.

*Comment:* An insurance service organization and a reinsured company suggested the provision in section 13(d)

stating "Each written agreement will only be valid for one year" be removed. Terms of the agreement should be stated in the agreement to fit the particular situation for the policy, or if no substantive changes occur from one year to the next, allow the written agreement to be continuous.

**Response:** Written agreements are intended to change policy terms or permit insurance in unusual situations where such changes will not increase risk. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to keep non-uniform exceptions to the minimum and to insure that the insured is well aware of the specific terms of the policy. Therefore, no change will be made.

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

1. Sections 5 and 9—In California, the Cancellation and Termination Date was moved from February 28 to January 31, and the coverage inception date was moved from March 1 to February 1. These dates correspond to the current Grape Endorsement. Further research indicated that some vines "bud out" in late February in some areas and it was preferred that coverage be in effect at the earlier date.

2. Section 10—Added provisions to provide coverage against loss due to disease and insect infestation unless proper control measures are not utilized. This change was made to conform to the coverage provided for most other crops.

3. Section 11(b)—Clarify that damaged crop which is not marketed in normal commercial channels must not be destroyed until after the insurance provider gives written consent. Failure to meet this requirement will result in all such production to be considered undamaged and included as production to count.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the raisin crop insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The contract change date required for new policies is August 31 preceding the cancellation date for all states except California, and October 31 preceding the cancellation date for California. It is, therefore, imperative that these provisions be made final before that date so that the reinsured companies and insureds may have sufficient time to implement the new provisions. Therefore, public interest requires the agency to act immediately to make these

provisions available for the 1998 crop year.

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

Crop insurance, Grape endorsement.

### **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. The introductory text of § 401.130 is revised to read as follows:

#### **§ 401.130 Grape endorsement.**

The provisions of the Grape Endorsement for the 1991 through 1997 (1990 through 1997 in California) 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 457.138 is added to read as follows:

#### **§ 457.138 Grape crop insurance provisions.**

The Grape 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:

Grape 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**

**Days.** Calendar days.

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

**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.

**Graft.** To unite a shoot or bud (scion) with a rootstock or an existing vine in accordance with recommended practices to form a living union.

**Harvest.** Picking the clusters of grapes from the vines either by hand or machine.

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

**Irrigation 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.

**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 tons determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

**Set out.** Physically planting the desired variety of grape plant in the ground in a desired planting pattern.

**Ton.** Two thousand (2,000) pounds avoirdupois.

**USDA.** United States Department of Agriculture.

**Varietal group.** Grapes with similar characteristics that are grouped for insurance purposes as specified in the Special Provisions.

**Written agreement.** A written document that alters designated terms of this policy in accordance with section 13.

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

(a) In California only, in addition to the requirements of section 1 (Definitions) of the Basic Provisions (§ 457.8) (basic unit), a basic unit will also be established for each variety that you insure.

(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.

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

(1) You must have provided records by the production reporting date, that 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; and

(2) For each crop year, records of marketed production or measurement of stored production from each optional unit must be 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.

(g) Each optional unit must also meet the following criteria, as applicable:

(1) In California only, unless otherwise allowed by a written agreement, optional units may only be established if each optional unit is located on non-contiguous land.

(2) In all states except California, each optional unit must meet one or more of the following criteria:

(i) *Optional Units by Section, Section Equivalent, or 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.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage and non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based and you may not continue into non-irrigated acreage in the same rows or planting pattern.

(iii) *Optional Units on Acreage Located on Non-contiguous Land:* In addition to, or instead of, establishing optional units by section, section equivalent, FSA Farm Serial Number, or irrigated/non-irrigated land, optional units may be established if each optional unit is located on non-contiguous land.

(iv) *Optional Units on Acreage by Varietal Group:* In addition to, or instead of, establishing optional units by section, section equivalent, FSA Farm Serial Number, irrigated/non-irrigated land or on non-contiguous land, optional units may be established by varietal group when separate

varietal groups are specified 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) In California, you may select only one price election and coverage level for each grape variety in the county specified in the Special Provisions.

(b) In Idaho, Oregon, and Washington, you may select only one coverage level and only one price election for all the grapes 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 varietal group designated in the Special Provisions. The price elections you choose for each varietal group are not required to 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 may choose 80 percent of the maximum price election for all other varietal groups. However, if you elect the Catastrophic Risk Protection level of insurance for any varietal group, that level of coverage will be applicable to all insured grapes in the county.

(c) In all other states, you may select only one coverage level and only one price election for all the grapes 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 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.

(d) In California only, if the Special Provisions do not provide a price election for a specific variety you wish to insure, you may apply for a written agreement to establish a price election. Your application for the written agreement must include:

(1) The number of tons sold for at least the two most recent crop years; and

(2) The price received for all production of the variety in the years for which production records are provided.

(e) 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 variety or varietal group, if applicable:

(1) Any damage, removal of bearing vines, 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 vines on insurable and uninsurable acreage;

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

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

(i) The age of the interplanted crop, and the type or variety or 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, based on our estimate of the effect of the following: Interplanted perennial crop; removal of vines; damage; change in practices and any other circumstance that may affect 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 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 August 31 preceding the cancellation date for all states except California, and October 31 preceding the cancellation date for California.

### 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 in California and November 20 in all other states.

### 6. Report of Acreage

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report your acreage by each grape variety you insure in California, or by varietal group in all other states.

### 7. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be any insurable variety that you elect to insure in California or all insurable varieties in all other states 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 for wine, juice, raisins, or canning;

(c) That are grown in a vineyard that, if inspected, is considered acceptable by us;

(d) That, after being set out or grafted, have reached the number of growing seasons designated by the Special Provisions; and

(e) That have produced an average of two tons of grapes per acre during at least one of the three crop years immediately preceding the insured crop year, unless we inspect and allow insurance on such acreage.

### 8. 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, grapes 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.

## 9. 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 in California and November 21 in all other states 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 in California, or after November 11 but prior to November 21 in all other states, 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 vineyard.

(2) The calendar date for the end of the insurance period for each crop year is the date during the calendar year in which the grapes are normally harvested, as follows:

(i) October 10 in Mississippi and Texas;  
(ii) November 1 in Idaho, Oregon, and Washington;

(iii) November 10 in California; and  
(iv) November 20 in all other states.

(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. Acreage acquired after the acreage reporting date will not be insured.

(2) If you relinquish your insurable share on any insurable acreage of grapes 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.

## 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 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 vineyard;

(3) Insects, except as excluded in 10(b)(1), but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of 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) Phylloxera, regardless of cause; or

(2) Inability to market the grapes 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.

## 11. 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) If the crop has been damaged during the growing season and you previously gave notice in accordance with section 14 of the Basic Provisions (§ 457.8), you must also provide notice at least 15 days prior to the beginning of harvest if you intend to claim an indemnity as a result of the damage previously reported. You must not destroy the damaged crop that is marketed in normal commercial channels, until after we have given you written consent to do so. If you fail to meet the requirements of this section, all such production will be considered undamaged and included as production to count.

## 12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide 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) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result in section 12(b)(1) by the respective price election you selected for each variety or varietal group;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production to count of each variety or varietal group, if applicable, (see section 12 (c) through (e)) by the respective price election you selected;

(5) Totaling the results in section 12(b)(4);

(6) Subtracting the result in section 12(b)(3) from the result in section 12(b)(5); and

(7) Multiplying the result in section 12(b)(6) by your share.

(c) The total production to count (in tons) 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 or destroyed by you without our consent;

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

(C) For which you fail to provide production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies in accordance with subsection 12 (e)); 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. Grape production that is harvested and dried for raisins will be converted to a fresh weight basis by multiplying the number of tons of raisin production by 4.5.

(d) If any grapes are harvested before normal maturity or for a special use (such as Champagne or Botrytis-affected grapes), the production of such grapes will be increased by the factor obtained by dividing the price per ton received for such grapes by the price per ton for fully matured grapes of the type for which the claim is being made.

(e) Mature marketable grape production may be adjusted for quality deficiencies as follows:

(1) Production will be eligible for quality adjustment if, due to insurable causes, it has a value of less than 75 percent of the average market price of undamaged grapes of the same or similar variety. The value per ton of the qualifying damaged production and the average market price of undamaged grapes will be determined on the earlier of the date the damaged production is sold or the date of final inspection for the unit. The average market price of undamaged production will be calculated by averaging the prices being paid by usual marketing outlets for the area during the week in which the damaged grapes were valued.

(2) Grape production that is eligible for quality adjustment, as specified in subsection 12(e)(1) will be reduced by:

(i) Dividing the value per ton of the damaged grapes by the maximum price election available for such grapes to determine the quality adjustment factor; and

(ii) Multiplying this result (not to exceed 1.000) by the number of tons of the eligible damaged grapes.

## 13. Written Agreement

Terms of this policy which are specifically designated for the use of written agreement 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 13(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 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 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 June 16, 1997.

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

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## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR 318 and 381

[Docket No. 96-010DF]

RIN 0583-AC11

#### Use of Sodium Acetate and Sodium Diacetate as Flavoring Agents in Meat and Poultry Products

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to permit the use of sodium acetate at the level of 0.12 percent of the product formulation and sodium diacetate at the level of 0.1 percent of the product formulation as flavoring agents in meat and poultry products. Sodium acetate and sodium diacetate are listed in the Food and Drug Administration's (FDA) regulations as substances generally recognized as safe for several uses in accordance with good manufacturing practice. This direct final rule is in response to a petition.

**DATES:** This rule will be effective on August 22, 1997 unless the Agency receives written adverse comments

within the scope of the rulemaking or written notice of intent to submit adverse comments within the scope of the rulemaking on or before July 23, 1997.

**ADDRESSES:** Please send an original and two copies of written adverse comments or notice of intent to submit written adverse comments to the FSIS Docket Clerk, Docket #96-010DF, Room 102 Cotton Annex, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Charles R. Edwards, Director, Facilities, Equipment, Labeling, and Compound Review Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 48-8900.

#### SUPPLEMENTARY INFORMATION:

##### Background

FSIS was petitioned by Armour Swift-Eckrich to allow the use of sodium acetate and sodium diacetate as flavoring agents in meat and poultry products to improve the overall flavor and consumer acceptance. Sodium acetate is the sodium salt of vinegar and sodium diacetate is a blend of vinegar and salt of vinegar. Both ingredients are used as flavoring agents and adjuvants, and as pH control agents. The petitioner requested that FSIS amend the regulations to permit sodium acetate at the level of 0.12 percent of the product formulation and sodium diacetate at the level of 0.1 percent of the product formulation as flavoring agents in meat and poultry products. Data and information submitted by the petitioner showed that after products are prepared in sauces, spices, and seasoning blends that are made using these ingredients, the overall flavor is improved and the products are more acceptable to the consumer. Levels of sodium acetate and sodium diacetate higher than those indicated were not shown to be effective. Therefore, the levels in the direct final rule represent the lowest necessary to achieve the intended effect.

After reviewing the petitioner's data and information, FSIS determined that the charts of approved substances in the meat and poultry regulations should be amended to allow the use of sodium acetate at the level of 0.12 percent and sodium diacetate at the level of 0.1 percent of formulation weight as flavoring agents in meat and poultry products. The technical data demonstrate the efficacy of sodium acetate and sodium diacetate for these uses.

FDA lists sodium acetate (21 CFR 184.1721) and sodium diacetate (21 CFR 184.1754) as generally recognized as safe for several uses when used in accordance with good manufacturing practice at maximum levels of 0.12 percent for sodium acetate and 0.1 percent for sodium diacetate. Therefore, FSIS is amending the charts of approved substances in 9 CFR 318.7(c)(4) and 381.147(f)(4) to allow the use of sodium acetate at the level of 0.12 percent of the formulation by weight and sodium diacetate at a level of 0.1 percent of the formulation by weight as flavoring agents in meat and poultry products.

FSIS expects no adverse public reaction resulting from the changes in regulatory language, because the compounds have received FDA approval for various other uses, as here, in small amounts for flavoring only. Therefore, unless the Agency receives written adverse comments within the scope of this rulemaking or a written notice of intent to submit adverse comments within the scope of the rulemaking within 30 days, the action will become final 60 days after publication in the **Federal Register**. If written adverse comments within the scope of the rulemaking are received, the final rulemaking notice will be withdrawn and a proposed rulemaking notice will establish a comment period.

#### Executive Order 12988

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Executive Order 12866 and Regulatory Flexibility Act

This direct final rule has been determined to be not significant and, therefore, has not been reviewed by the Office of Management and Budget.

The Administrator has made an initial determination that this direct final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The direct final rule will permit the use of sodium acetate at a level of 0.12 percent of the product formulation and sodium diacetate at a level of 0.1 percent of the product formulation as flavoring agents in meat and poultry products. This direct final rule will impose no new requirements on small entities.