

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 450 and 457

Prune Crop Insurance Regulations; and Common Crop Insurance Regulations, Prune Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of prunes. 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 Prune Crop Insurance Regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Prune Crop Insurance Regulations to the 1997 and prior crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business August 11, 1997 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, 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

The information collection requirements contained in these regulations are being reviewed by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563-0053.

Section 7 of the proposed 1998 Prune Crop Provisions adds interplanting as an insurable farming practice as long as it is interplanted with another perennial crop and does not adversely affect the insured crop. This practice was not insurable under the previous Prune Crop Insurance Policy. Consequently, interplanting information will need to be collected using the FCI-12-P Pre-Acceptance Perennial Crop Inspection Report form for approximately two percent of the insureds who interplant their prune crop. Standard interplanting language has been added to most perennial crops to make insurance available for more perennial crop producers and reduce the acreage that will need to be placed into the noninsured crop disaster assistance program (NAP).

The title of this information collection is "Multiple Peril Crop Insurance."

The information to be collected includes a crop insurance application and an acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of prunes that are eligible for Federal crop insurance.

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

The title of this information collection is "Multiple Peril Crop Insurance."

The burden associated with the written agreement is estimated at 19 minutes per response from

approximately 4,864 respondents each year for a total number of 1,571 hours.

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

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB.

Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

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 12988

This proposed rule has been reviewed under the provisions of Executive Order 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 against FCIC.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

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

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR § 457.133, Prune 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 prunes found at 7 CFR part 450 (Prune

Crop Insurance Regulations). FCIC also proposed to amend 7 CFR part 450 to limit its effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve part 450.

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

1. Section 1—Add the definition for the terms "days," "direct marketing," "FSA," "good farming practices," "interplanted," "irrigated practice," "non-contiguous land," "production guarantee," "ton," "written agreement," and change the definition of "prunes" for clarification.

2. Section 2(e)—Change provisions to allow optional units on non-contiguous land and for land located in separate sections. Previous regulations provided basic units for land located on contiguous land. This change will standardize these provisions with the provisions contained in other perennial crop policies.

3. Section 3(a)—Specify that the insured may select only one price election for all the prunes in the county insured under the policy, unless the Special Provisions provide different price elections by varietal group, in which case the insured may select one price election for each prune varietal group designated in the Special Provisions.

4. Section 3(b)—Specify that the insured must report damage, removal of trees, change in practices or any other circumstance that may reduce yields. The insured must also report, for the first year of insurance for acreage interplanted with another perennial crop and anytime the planting pattern of such acreage is changed, the age and varietal group, if applicable, of any interplanted crop, its planting pattern, and any other information that the insurer requests in order to establish the yield upon which the production guarantee is based. If the insured fails to notify the insurer of any circumstance that may reduce yields from previous levels, the insurer will reduce the production guarantee at any time the insurer becomes aware of the circumstance. Current regulations provide that production guarantees will be reduced when the number of bearing trees has been reduced by more than 10 percent from the preceding year. This change will standardize these provisions with provisions contained in other perennial crop policies.

5. Section 6(c)—Clarify that the insured crop must be grown on prune tree varieties that were commercially available when the trees were set out and on rootstock that is adapted to the area.

6. Section 7—Add provisions to make interplanted prunes insurable if planted with another perennial crop unless the insurance provider inspects the acreage and determines it does not qualify to be accepted for insurance coverage. This provision was added to provide insurance coverage to the maximum extent to all prune producers, and to reduce the number of acres that would require coverage under the Non-insured Assistance Program (NAP).

7. Section 8—Add provisions to clarify the procedure when an insurable share is acquired or relinquished on or before the acreage reporting date.

8. Section 9(a)—Remove direct Mediterranean Fruit Fly damage as an insured cause of loss. Effective control measures are now available; therefore, damage due to Mediterranean Fruit Fly is no longer needed as a separate cause of loss.

9. Section 9(b)(1)—Add disease and insect infestation to the excluded causes of loss unless adverse weather prevents the proper application of control measures, causes control measures to be ineffective when properly applied, or no effective control mechanism is available for such disease or insect infestation. These exclusions need to be added for clarification so that insurance coverage is not provided for causes of loss that could be prevented.

10. Section 9(b)(2)—Clarify that insurance is not provided against damage or loss of production due to the inability to market the prunes for any reason other than actual physical damage to the prunes from an insurable cause.

11. Section 10(a)—Require that the insured give notice of loss within 3 days of the date harvest should have started if the crop is not to be harvested. Previous regulations required written notice if during the period before harvest, any prunes would not be harvested or further cared for. This change will standardize the notice of loss requirements utilized in other perennial crops.

12. Section 10(b)—Require notice of loss be provided at least 15 days prior to harvest if production will be sold by direct marketing or sold as fresh fruit. This change will assure that a timely notice of loss is provided so that a pre-harvest inspection can be made to determine the total amount of production to count when the prunes

will be harvested for direct marketing or fresh fruit.

13. Section 10(c)—Change the notice of loss requirements when the insured intends to claim an indemnity. Require that notice of loss be provided at least 15 days prior to the beginning of harvest or immediately if damage is discovered during harvest. Previous prune regulations required notice of loss not later than 10 days after harvest or the end of the insurance period. This change will incorporate and standardize the notice of loss requirements utilized for other perennial crops.

14. Section 10(d)—Specifies that the insured cannot destroy the damaged crop until we have given written consent to do so. However, the insured may sell or dispose of the damaged crop if there is a market for it. Previous regulations required written consent before the insured destroyed any of the prunes which were not to be harvested. This change conforms with the requirements contained in other crop policies.

15. Section 11(c)(1)(i)(B)—Specify that production to count will not be less than the production guarantee per acre for any acreage that is marketed directly to consumers or sold as fresh fruit if the producer fails to meet the notification requirements contained in section 10.

16. Section 11(c)(1)(iv)—Require the insured to continue to provide sufficient care for the insured crop when the insured does not agree with the appraisal on that acreage. Production to count for such acreage will be determined using the harvested production if the crop is harvested, or our reappraisal if the crop is not harvested.

17. Section 11(d)—Clarify that the total harvested production to count will include prune production harvested for fresh fruit. Such fresh fruit production will be converted to a dried prune weight basis by dividing the total amount of fresh fruit production by 3.1.

18. Section 12—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover the procedures for, and duration of, written agreements.

19. Remove the date for submitting an acreage report. In accordance with the Common Crop Insurance Policy, Basic Provisions, the acreage reporting date instead will be contained in the Special Provisions. This change conforms the

prune crop provisions to other crop provisions.

List of Subjects in 7 CFR Parts 450 and 457

Crop insurance, Prunes.

Proposed Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 450 and 457 as follows:

PART 450—PRUNE CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 450 is revised to read as follows:

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

2. The part heading is revised to read as set forth above.

3. Subpart Heading "Subpart—Regulations for the 1986 through the 1997 Crop Years" is removed.

4. Section 450.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 450.7 The application and policy.

(d) The application for the 1986 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Prune Insurance Policy for the 1986 through 1997 crop years are as follows:

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

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

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

5. Section 457.133 is added to read as follows:

§ 457.133 Prune crop insurance provisions.

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

FCIC policies:

Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Prune 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.

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.

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 recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. Picking of mature prunes from the trees or ground either by hand or machine.

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.

Market price for standard prunes. The price per ton shown on the processor's settlement sheet for each size count of standard prunes.

Natural condition prunes. The condition of prunes in which they are normally delivered from a dehydrator or dry yard.

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

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

Prunes. Any type or variety of plums that are grown in the area for the production of prunes and that meets the requirements defined in the applicable Federal Marketing Agreement Dried Prune Order.

Standard prunes. Any natural condition prunes:

(a) That grade "C" or better in accordance with the United States Standards for grades of prunes; or

(b) That meet or exceed the grading standards in effect for the crop year, if a Federal Marketing Agreement Dried Prune Order has been established for the area in which the insured crop is grown.

Substandard prunes. Any natural condition prunes failing to meet the applicable grading specifications for standard prunes.

Ton. Two thousand (2000) pounds avoirdupois.

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 premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(d) All optional units established for a 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 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;

(2) For each crop year, 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;

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

(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; or

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

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

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

(a) You may select only one price election for all the prunes 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 prune 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 yields 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 anytime 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 the following: interplanted perennial crop; removal of trees; 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 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 prunes 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 the production of natural condition prunes;

(c) 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 irrigated (except where otherwise provided in the Special Provisions);

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

(e) That are grown on trees that have reached at least the seventh growing season after being set out.

7. Insurable Acreage

As an exception to the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, prunes interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the insurability 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 for each crop year on March 1.

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

(i) October 1 for California; or

(ii) October 15 for Oregon.

(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 prunes on or before the acreage reporting date for the crop year and if the acreage was insured by you the previous 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 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; or
 (6) 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; or

(2) Inability to market the prunes 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 or sold as fresh fruit. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing or is sold as fresh fruit production. 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 or sold as fresh fruit 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. If you fail to meet the requirements of this section and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included 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 units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

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

(1) Multiplying the insured acreage for each varietal group, if applicable, by its respective production guarantee;

(2) Multiplying the result in 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 sections 11 (c) through (e)) by the respective price election;

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

(6) Subtracting the result in section 11(b)(5) from the result 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 tons) from all insurable acreage on the unit will include all harvested and appraised production of natural condition prunes that grade substandard or better and any production that is harvested and intended for use as fresh fruit. The total production to count 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 or sold as fresh fruit if you fail to meet the requirements contained in section 10;

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

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage 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.

(d) Any prune production harvested for fresh fruit will be converted to a dried prune weight basis by dividing the total amount (in tons) of fresh fruit production by 3.1.

(e) Any production of substandard prunes resulting from damage by insurable causes will be adjusted based on the average size count as indicated on the applicable Dried Fruit Association (DFA) Inspection Report and Certification Form. Any insurable damage will be adjusted by:

(i) Dividing the value per ton of such substandard prunes by the market price per ton for standard prunes (of the same size count); and

(ii) Multiplying the result by the number of tons of such prunes.

12. Written Agreements

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 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 varietal group, 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, D.C., on July 3, 1997.

Suzette Dittrich,

Deputy Manager, Federal Crop Insurance Corporation.

[FR Doc. 97-18060 Filed 7-9-97; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA No. 166P]

21 CFR Part 1308

Schedules of Controlled Substances: Proposed Placement of Butorphanol into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Acting Deputy Administrator of the Drug Enforcement Administration (DEA) to place the substance butorphanol, including its salts and optical isomers, into Schedule IV of the Controlled Substances Act (CSA). This proposed action is based on a recommendation from the Assistant Secretary for Health of the Department of Health and Human Services (DHHS) that butorphanol be added to Schedule IV and on an evaluation of the relevant data by the DEA. If finalized, this action will impose the regulatory controls and criminal sanctions of Schedule IV on