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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

General Crop Insurance Regulations, Stonefruit Endorsement; and Common Crop Insurance Regulations, Stonefruit 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 stonefruit. 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 stonefruit endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current stonefruit endorsement to the 1998 and prior crop years.

EFFECTIVE DATE: July 2, 1998.

FOR FURTHER INFORMATION CONTACT: Richard Brayton, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been approved by the Office of Management and Budget (OMB) under control number 0563-0053 through October 31, 2000.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) 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. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 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 economic impact on a substantial number of small entities. The amount of work required of the insurance companies will not increase because the information used to determine eligibility is already maintained at their office and the other information required is already being gathered as a result of the present policy. No additional actions are required as a result of this action on the part of either the insured or the insurance companies. Additionally, the regulation does not require any action on the part of the small entities than is required on the part of 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 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. 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 against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic 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, July 22, 1997, FCIC published a notice of proposed rulemaking in the **Federal Register** at 62 FR 39189-39194 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.159, Stonefruit Crop Insurance Provisions. The new provisions will be effective for the 1999 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring stonefruit found at 7 CFR 401 (Stonefruit Endorsement). FCIC also amends § 401.122 to limit its effect to the 1998 and prior crop years.

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions.

A total of 16 comments were received from an insurance service organization and reinsured companies. The comments received and FCIC's responses are as follows:

Comment: A reinsured company expressed a concern that sales closing, production reporting, and acreage reporting all have the same date of January 31. The commenter stated it would be difficult to service these policies when all reporting requirements must be completed at the same time.

Response: FCIC disagrees with the comment. The sales closing and acreage reporting dates have been January 31 in previous years. The production reporting date is March 17, which would be 45 days after the earlier of the cancellation date or the acreage reporting date. This is consistent with other crop policies. Therefore, no change has been made.

Comment: An insurance service organization suggested in the definition of "good farming practices" the reference to "county" be changed to "area."

Response: The term "area" is less clear than the term "county" and would cause determinations to be more subjective. The actuarial documents are on a county basis. Therefore, no change has been made, except the definition of "good farming practices" has been moved to the Basic Provisions.

Comment: An insurance service organization questioned the definition of "interplanted" in the proposed rule. The commenter stated that the current stonefruit policy does not consider acreage interplanted unless more than 10% of the insured acreage is planted to another crop.

Response: Although the current stonefruit policies issued by most reinsured companies contain the 10% requirement in the definition of interplanted, the current stonefruit regulation contained in 7 CFR 401.122 does not. All reinsured MPCIs policies will be brought to conformance with this regulation. FCIC believes that introducing an exact percentage of acres that must be exceeded before stonefruit is considered interplanted is too restrictive. The definition is consistent with other perennial crop policies. Therefore, no change has been made.

Comment: An insurance service organization questioned the definition of "lug" in the proposed rule. The commenter stated the current policy refers to "average" net pounds of packed fruit and questioned if the word "average" should not be included in the proposed rule.

Response: FCIC agrees and has amended the definition to refer to "average net pounds of packed fruit."

Comment: An insurance service organization recommended rewording section 2(a) of the proposed provisions to read: "In addition to the basic units as defined in section 1 of the Basic Provisions, each stonefruit crop designated in the Special Provisions will be a basic unit."

Response: FCIC has removed section 2(a) of the proposed provisions which stated, "A unit as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each stonefruit crop designated in the Special Provisions that you elect to insure." FCIC instead has revised section 2 to conform with the new unit language in the Basic Provisions. As defined in the Basic Provisions, each stonefruit crop designated in the Special Provisions will be a basic unit.

Comment: An insurance service organization and a reinsured company expressed concerns with sections 2(f)(3)(i) and (ii) of the proposed rule. One commenter stated the proposed language restricts policyholders to optional units either by non-contiguous land or by type, or by varietal group. The commenter recommended allowing optional units for non-contiguous land and by type or varietal group by changing section 2(f)(3) to read, "each optional unit must meet at least one of the following criteria, as applicable, unless otherwise specified in the Special Provisions," and delete the "or" between subparagraphs (i) and (ii). One commenter questioned if optional units are available for non-contiguous land, even if the land is under the same ownership and possibly separated only by another crop.

Response: FCIC agrees that optional units should be offered by non-contiguous land and by type or varietal group and has deleted "or" between subparagraphs (i) and (ii) for clarification. Under these proposed provisions, optional units are not available for non-contiguous land, if the land is under the same ownership or separated by another crop.

Comment: An insurance service organization stated that the current 1988-CHIAA 796 policy includes a statement that fresh market stonefruit may be insured as processing stonefruit, with converted or appraised production. The commenter asked if this should be included in the Crop Provisions, or be covered only in the underwriting procedure.

Response: FCIC agrees that the statement on the CHIAA 796 allows any fresh market stonefruit to be insured as

processing stonefruit by converting harvested or appraised fresh market stonefruit lugs to processing stonefruit tons. The conversion procedure is covered by underwriting procedures.

Comment: An insurance service organization asked if section 8(b)(2) indicates that anyone who attempts to acquire a new orchard between the cancellation date and the acreage reporting date but is unsuccessful will be considered to have coverage and owe premium.

Response: FCIC believes that the commenter misinterpreted the provisions. Section 8(b)(2) allows a producer to avoid liability for premium in some circumstances for an orchard on which a policy was in force on the cancellation date. Under that section, the insurance can be transferred to a qualified third party under certain circumstances.

Comment: A reinsured company expressed concerns with section 10(b), stating that the direct marketing provisions contained in this section will be difficult to monitor and control.

Response: The producer is required to give notice at least 15 days prior to any production being marketed directly to consumers, and the insurance provider is required to complete the appraisal within that 15 day period. FCIC believes that 15 days is appropriate to meet the needs of both the producer and the insurance provider. Therefore, no change has been made.

Comment: An insurance service organization stated that the language in section 10(c) does not address timely notice of damage or loss if damage is discovered less than 15 days prior to harvest.

Response: The notice requirements in section 10 are in addition to the requirements of section 14 of the Basic Provisions that require notice of loss within 72 hours of initial discovery of damage. If damage is discovered during harvest, notice must be given immediately. FCIC believes that these provisions, as a whole, are adequate as stated. Therefore, no change has been made.

Comment: An insurance service organization stated that section 12 of the proposed provisions, which explains how a claim is settled, is difficult to follow.

Response: Settlement of claims is covered in section 11. Section 11 has been revised to illustrate the calculations of a claim for indemnity, and has been explicitly worded to eliminate any misunderstanding or confusion.

Comment: An insurance service organization stated that section

11(c)(1)(iv) should not allow the insured to defer settlement and wait for a later, generally lower appraisal, especially on crops that have a short "shelf life."

Response: A later appraisal will only be necessary if the producer continues to care for the crop. If the producer does not continue to care for the crop, the original appraisal will be used. If the producer does not care for the crop, the original appraisal is used. If the insurance provider believes the original appraisal is accurate, resolution of the dispute may be sought through arbitration or appeal procedures, whichever is applicable. Therefore, no change has been made.

Comment: An insurance service organization stated that section 11(c)(2)(ii) was confusing. The commenter stated the provisions seem to mean that harvested production packed and sold as California Utility grade fresh fruit was not considered production to count if the production was not damaged by an insurable cause. The commenter stated that any production that can be packed and sold as fresh fruit should be included as production to count.

Response: FCIC agrees with the comment and has amended the provisions, redesignated 11(c)(3)(i) and (ii) to clarify the provisions.

Comment: An insurance service organization suggested that sections 12 (a) and (e) be combined since both deal with deadlines to request written agreements. The commenter suggested this provision might be less misleading if the acreage reporting date "exception" be incorporated. The insurance service organization also asked that the requirement for annual renewal be removed from 12(d).

Response: Section 12 "written agreements" has been removed from the proposed provisions and placed in the Basic Provisions. FCIC believes that the annual renewal date in these provisions are clearly stated, so no change will be made in this regard. Written agreements are intended to supplement policy terms or permit insurance in unusual situations that require modification of the otherwise standard insurance provisions. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize written agreement exceptions to assure that the insured are well aware of the specific terms of the policy. Therefore, no change has been made to the requirement that written agreements be renewed each year.

In addition to the changes described above, FCIC has made minor editorial

changes and has amended the following Stonefruit Crop Provisions:

1. Amended the paragraph preceding section 1 to provide that provisions of any Catastrophic Risk Protection Endorsement take precedence over any conflicting provision in any other policy provision.

2. Section 1—Removed definitions for "days," "FSA," "good farming practices," "irrigated practice," "non-contiguous," "production guarantee (per acre)," "USDA," and "written agreement" because these definitions now appear in the Basic Provisions. Added a new definition of "grading standards" to these provisions for clarification. Added to the definition of lug the weights used for processing apricots, cling peaches, and freestone peaches are in tons.

3. Section 2—Revised the provisions regarding units to conform with new language in the Basic Provisions.

4. Section 9(a)(3) and (6)—Revised the wildlife cause of loss by deleting the language "unless proper measures to control wildlife have not been taken" because it is impossible to control wildlife. Also clarified the cause of loss "failure of the irrigation water supply" by adding "if due to a cause of loss contained in sections 9(a) (1) through (5) that occurs during the insurance period" to be consistent with other crop policies.

5. Section 10(c)—Deleted the limitation on notifying us at least 15 days prior to harvest "if you previously gave notice so we can inspect the damaged production," because notice prior to harvest is required in all cases.

6. Section 11(b)—Revised and added a settlement of claim example for clarity.

7. Section 11(c)(4)—Revised to clarify when harvested production of stonefruit is eligible for quality adjustment when packed and sold as fresh fruit and for all other fresh stonefruit. Also this section has been reformatted for clarity.

8. Section 12—Deleted the written agreement provisions since these have been placed in the Basic Provisions and added a provision that the late and prevented planting provisions of the Basic Provisions are not applicable to stonefruit since stonefruit is a perennial crop.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Stonefruit endorsement, Stonefruit.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance

Corporation amends 7 CFR parts 401 and 457 as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1988 THROUGH 1998 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 part heading is revised as set forth above.

3. Section 401.122 introductory paragraph is revised to read as follows:

§ 401.122 Stonefruit endorsement.

The provisions of the Stonefruit Crop Insurance Endorsement for the 1988 through 1998 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(l), 1506(p).

5. Section 457.159 is added to read as follows:

§ 457.159 Stonefruit Crop Insurance Provisions.

The Stonefruit Crop Insurance Provisions for the 1999 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

Stonefruit Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as 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.

Grading standards. The California Tree Fruit Agreement Marketing Order, or California State Department of Food and Agriculture Code of Regulations in effect for the appropriate crop, type, or varietal group.

Harvest. The picking of mature stonefruit either by hand or machine.

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

Lug. A container of fresh stonefruit of specified weight. Lugs of varying sizes will be converted to standard lug equivalents on the basis of the following average net pounds of packed fruit:

Crop	Pounds per lug
Fresh Apricots	24
Fresh Nectarines	25
Fresh Freestone Peaches	22

Weight for Processing Apricots, Processing Cling Peaches, and Processing Freestone Peaches are specified in tons.

Marketable. Stonefruit production acceptable for processing or other human consumption, even if it fails to meet the State Department of Food and Agriculture minimum grading standard.

Processor. A business enterprise regularly engaged in processing fruit for human consumption that possesses all licenses and permits for processing fruit required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted fruit within a reasonable amount of time after harvest.

Stonefruit. Any of the following crops grown for fresh market or processing:

- (a) Fresh Apricots,
- (b) Fresh Freestone Peaches,
- (c) Fresh Nectarines,
- (d) Processing Apricots,
- (e) Processing Cling Peaches, and
- (f) Processing Freestone Peaches.

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

Type. Class of a stonefruit crop with similar characteristics that are grouped for insurance purposes.

Varietal group. A subclass of type.

2. Unit Division

Notwithstanding the provisions of section 34 of the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices, optional units will only be allowed as stated herein or by written agreement.

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

(b) **Optional Units by Type or Varietal Group:** Optional units may be established by type or varietal group if allowed by the Special Provisions.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election and coverage level for each crop grown in the county and listed in the Special Provisions that is insured under this policy. If separate price elections are available by type or

varietal group of a crop, the price elections you choose for each type or varietal group must have the same percentage relationship to the maximum price offered by us for each type or varietal group. For example, if you choose 100 percent of the maximum price election for one type of cling peaches, you must choose 100 percent of the maximum price election for all other types of cling peaches.

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type or varietal group, if applicable, for each stonefruit crop:

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

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

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

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

(i) The age of the interplanted crop, and type 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 as necessary, based on our estimate of the effect of interplanting a perennial crop, removal of trees, damage, change in practice, and any other circumstance that could 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 as necessary at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31.

6. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all of each stonefruit crop you elect to insure, that is grown in the county, and for which premium rates are provided in the actuarial documents:

(a) In which you have a share;

(b) That is grown on trees that:

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

(2) Is adapted to the area; and

(3) Is grown on a root stock that is adapted to the area;

(c) That is irrigated;

(d) That have produced at least 200 lugs of fresh market production per acre, or at least 2.2 tons per acre for processing crops, in at least 1 of the 3 most recent actual production history crop years, unless we inspect such acreage and give our approval in writing;

(e) That are regulated by the California Tree Fruit Agreement or related crop

advisory board for the state (for applicable types);

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

(g) That have reached at least the fifth growing season after set out. However, we may agree in writing to insure acreage that has not reached this age if it meets the requirements of subsection (d) of this section.

7. Insurable Acreage

In lieu of the provisions of section 9 of the Basic Provisions that prohibit insurance attaching to a crop planted with another crop, stonefruit interplanted with another perennial crop is insurable unless we inspect the acreage and determine that it does not meet the requirements for insurability contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) Coverage begins on February 1 of each crop year, except that for the year of application, if your application is received after January 22 but prior to February 1, insurance will attach on the 10th day after your properly completed application is received in our local office unless we inspect the acreage and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

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

(i) July 31 for all apricots; and

(ii) September 30 for all nectarines and peaches.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(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 of acquisition.

(2) If you lose or relinquish your insurable share on any insurable acreage of stonefruit 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 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

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

(3) Wildlife;
 (4) Earthquake;
 (5) Volcanic eruption; or
 (6) Failure of the irrigation water supply,
 if due to a cause of loss contained in sections 9(a)(1) through (5) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

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

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

(2) Split pits regardless of cause; or

(3) Inability to market the insured crop for any reason other than actual physical damage from an insurable cause of loss 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 of the Basic Provisions, the following will apply:

(a) You must notify us within 3 days after the date harvest should have started if the insured 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) In addition to section 14 of the Basic Provisions, if you intend to claim an indemnity on any unit, you must give us notice at least 15 days prior to the beginning of harvest. You must not destroy the damaged crop until after we have given you written consent to do so. If you fail to notify us and such failure results in our inability to inspect the damaged production, 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 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 for each type or varietal group by its respective production guarantee;

(2) Multiplying each result of section 11(b)(1) by the respective price election for the type or varietal group;

(3) Totaling the results of section 11(b)(2). (If there is only one type or varietal group, the result of (3) will be the same as the result of (2));

(4) Multiplying the total production to count (see section 11(c)), for each type or varietal group, by the respective price election;

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

(6) Subtracting the result of section 11(b)(5) from the result of section 11(b)(2). (If there is only one type or varietal group, the result of (6) will be the same as the result of (5)); and

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

For example:

You have a 100 percent share in 50 acres of varietal group A stonefruit in the unit, with a guarantee of 500 lugs per acre and a price election of \$6.00 per lug. You are only able to harvest 5,000 lugs. Your indemnity would be calculated as follows:

- (1) 50.0 acres \times 500 lugs = 25,000 lugs guarantee;
- (2) and (3) 25,000 lugs \times \$6.00 price election = \$150,000.00 value of guarantee;
- (4) 5,000 lugs \times \$6.00 price election = \$30,000.00 value of production to count;
- (5) and (6) \$150,000.00—\$30,000.00 = \$120,000.00 loss; and
- (7) \$120,000.00 \times 100 percent = \$120,000 indemnity payment.

You also have a 100 percent share in 50 acres of varietal group B stonefruit in the unit, with a guarantee of 300 lugs per acre and a price election of \$3.00 per lug. You are only able to harvest 3,000 lugs. Your indemnity would be calculated as follows:

- (1) 50.0 acres \times 300 lugs varietal group A = 25,000 lugs guarantee; and 50.0 acres \times 300 lugs varietal group B = 15,000 lugs guarantee;
- (2) 25,000 lugs \times \$ 6.00 price election = \$150,000.00 value of guarantee for varietal group A; and 15,000 lugs \times \$3.00 price election = \$45,000.00 value of guarantee for varietal group B;
- (3) \$150,000.00 + \$45,000.00 = \$195,000.00 total value of guarantee;
- (4) 5,000 lugs varietal group A \times \$6.00 price election = \$30,000.00 value of production to count; and 3,000 lugs varietal group B \times \$3.00 price election = \$9,000.00 value of production to count; and
- (5) \$30,000.00 + \$9,000.00 = \$39,000.00 total value of production to count;
- (6) \$195,000.00—\$39,000.00 = \$156,000.00 loss
- (7) \$156,000.00 loss \times 1.000 = \$156,000 indemnity payment.

(c) The total production to count (in lugs or tons) from all insurable acres on a 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 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 production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production that would be marketable if harvested; 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 insured crop. We will then make another appraisal when you notify us if any further damage or that harvest is general in the area unless you harvested the crop. If you harvest the crop 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.

(3) The quantity of harvested production will be reduced if the following conditions apply:

(i) The value of the damaged production is less than 75 percent of the marketable value of undamaged production due to an insured cause of loss; and

(ii) For stonefruit insured as fresh fruit only, the stonefruit either is packed and sold as fresh fruit and meets only the utility grade requirements of the applicable grading standards, or fails to meet the applicable grading standards but is or could be sold for any use other than fresh packed stonefruit.

(4) Harvested production of stonefruit that is eligible for quality adjustment as specified in section 11(c)(3) will be reduced as follows:

(i) When packed and sold as fresh fruit or when insured as a processing crop, by dividing the marketable value per lug or ton by the highest price election (for the applicable coverage level) and multiplying the result (not to exceed 1.00) by the quantity of such production; or

(ii) For all other fresh stonefruit, multiplying the number of tons that could be marketed by the value per ton (for the applicable coverage level) and dividing that result by the highest price election available for that type.

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions (§ 457.8) are not applicable.

Signed in Washington, D.C., on May 20, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

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