

**Federal Crop Insurance Corporation****7 CFR Part 457**

RIN 0563-AB03

**Common Crop Insurance Regulations;  
Pear Crop Insurance Provisions****AGENCY:** Federal Crop Insurance Corporation.**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of pears. 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 and combine the current Pear Endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms.

**EFFECTIVE DATE:** December 9, 1996.**FOR FURTHER INFORMATION CONTACT:**

Louise Narber, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

**SUPPLEMENTARY INFORMATION:**

Executive Order No. 12866 and Departmental Regulation 1512-1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866 and Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 31, 2001.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

**Paperwork Reduction Act of 1995**

Following publication of the proposed rule, the public was afforded 60 days to submit written comments, data, and opinions on information collection requirements previously approved by OMB under OMB control number 0563-0003. No public comments were received.

**Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) of State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Executive Order No. 12612**

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

**Regulatory Flexibility Act**

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must also annually certify to the previous years production or receive an assigned yield. The producer must maintain the production records to support the certified information for at least 3 years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

**Federal Assistance Program**

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

**Executive Order No. 12372**

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

**Executive Order No. 12778**

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before action for judicial review may be brought.

**Environmental Evaluation**

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

**National Performance Review**

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

**Background**

On Thursday, April 25, 1996, FCIC published a proposed rule in the Federal Register at 61 FR 18293-18299 to add to the Common Crop Insurance Regulations (7 CFR part 457) a new section, 7 CFR 457.111, Pear Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace the current provisions for insuring pears found at 7 CFR § 401.140 (Pear Endorsement), thereby limiting the effect of the current provisions to the 1997 and prior crop years. After the final rule becomes effective, the current provisions for insuring pears will be removed from § 401.140 and that section will be reserved.

Following publication of that proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. A total of twenty-six (26) comments were received from the crop insurance industry and FCIC. The comments received, and FCIC's responses are as follows:

*Comment:* The crop insurance industry questioned whether Red Bartletts and Green Bartletts would be considered to be the same varietal group, and recommended retaining some kind of "all other" category so all varieties are addressed in some manner.

*Response:* Type I and Type II were deleted from the pear provisions to allow varietal grouping by growing region. FCIC recognizes that varietal groups are still necessary since several varieties of pears in addition to Green Bartletts are grown in the Pacific Northwest. In regions where more than one varietal group is grown, separate groupings will be provided on the Special Provisions. No change has been made.

*Comment:* The crop insurance industry recommended that the definition of "irrigated practice" should also address the quality of the water being applied.

*Response:* FCIC disagrees. There is no clear criteria regarding the quality of water necessary to produce a crop. The highly variable factors involved would make such criteria difficult to develop and administer. Good farming practices would apply. No change has been made in the definition.

*Comment:* The crop insurance industry questioned what was intended in the definition of "production guarantee (per acre)" by the phrase "and multiply the result by any applicable adjustment factor."

*Response:* Section 6(f) of the Basic Provisions states, "If the information reported by you on the acreage report for a unit results in a lower premium than the actual premium determined to be due on the basis of the share, acreage, practice, type or other material information determined to actually exist, the production guarantee or amount of insurance on the unit will be reduced proportionately.\* \* \*" The definition of "production guarantee" simply reflects the possibility of such an adjustment.

*Comment:* The crop insurance industry stated that providing insureds with optional units by section, section equivalent or farm serial number, or optional units by non-contiguous land could cause confusion and that producers may not understand their options.

*Response:* Most policies offer optional units by section, section equivalent, irrigated land, or non-contiguous land. Insurance providers have adequately explained these policy choices to producers in the past. FCIC anticipates that insurance providers will continue to be able to explain available coverage options. No changes have been made.

*Comment:* The crop insurance industry stated that optional units should be allowed by variety rather than varietal group (i.e., Red Bartlett and Green Bartlett are distinct varieties and should be allowed to be separate optional units).

*Response:* Permitting unit division by variety could lead to extremely small insurance units and an increase in the frequency of losses and overall loss adjustment experiences. In some cases a few rows of a pollinator variety could qualify as an insurance unit. These extremely small insurance units would increase paperwork, administrative expenses, and spot losses. No change has been made.

*Comment:* The crop insurance industry stated that they did not understand why all optional units must be identified on the acreage report for each crop year. They said that listing every possible combination for every crop on a policy could test the limits on the number of policy lines allowed.

*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. This provision has been clarified.

*Comment:* The crop insurance industry stated that the provisions refer to a *pro rata* refund when optional units are combined into basic units whenever the insured reported optional units but does not qualify. They questioned on what basis a *pro rata* refund would be determined.

*Response:* The reference to a *pro rata* refund has been deleted and the sentence changed to read "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."

*Comment:* The crop insurance industry questioned if the provision "You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee" could cause confusion between the APH or policy crop year.

*Response:* The last year used to determine the production guarantee refers to the most recent year included in the APH data base. Such year is always an APH crop year and may or may not be a year in which a policy was

in force. FCIC believes the provision is clearly stated and has not made changes.

*Comment:* The crop insurance industry suggested that section 3(a) begin with the phrase "You may select only one price percentage \* \* \*." It would not then be necessary to say so much about when different varieties have different maximum prices.

*Response:* The method to select price elections varies between insurance providers. While some require selection of a percentage, others require a selection of a specific dollar amount. The suggested changes will not work for all circumstances. No change has been made to the provisions.

*Comment:* The crop insurance industry suggested that the insurance provider modify the APH yield for the next crop year when damage, removal of trees or change in practices may reduce yields from previous levels. They stated that there is no procedure for reducing the guarantee at the time of loss.

*Response:* Guarantees are determined at the beginning of the crop year. These Pear Crop Provisions provide the authority to reduce the APH yield when tree damage has occurred or cultural practices have been performed that will reduce the insured crop from previous production levels at the time the guarantee is established or at any time the insurance provider discovers the damage, removal of trees or change in practice.

*Comment:* The crop insurance industry questioned whether the sales closing date for pears in California will be changed to January 31 to match the new cancellation/termination dates.

*Response:* The sales closing date for pears in California will be changed to January 31.

*Comment:* The crop insurance industry questioned what is meant by "In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8): (1) Coverage begins for each crop year on the later of the date we accept your application or: (i) In California, on February 1; or (ii) In all other states, on November 21." They asked if the intent is to allow acceptance of applications after the sales closing date.

*Response:* Section 11 of the Basic Provisions states that coverage begins on the later of the date of application, when the insured crop is planted, or the date specified in the crop provisions. This provision provides that date. FCIC has also clarified this provision to provide the date when coverage begins in the year of application when the producer's application is received by the insurance provider within 10 days of the sales

closing date. These provisions were modified so they will not be interpreted as allowing late filed applications.

*Comment:* The crop insurance industry recommended removing the requirement that a written agreement be renewed each year. If no substantive changes occur from one year to the next, the written agreement should be continuous.

*Response:* Provisions regarding written agreements require that the guarantee, premium rate, and price election be included on the agreement. Since one or more of these items typically change each year, the agreement must be renewed every year. No change is made.

*Comment:* The crop insurance industry stated that the Pear Quality Adjustment Endorsement should be removed from the crop provisions and drafted as a separate endorsement, which would only be issued to those insureds who elect the additional coverage. Otherwise CAT insureds and others may think such coverage is included as a part of their crop provisions. It was also suggested that the provisions in section 13(a) follow those contained in section 13(b).

*Response:* FCIC believes that the quality adjustment endorsement should be included in the Pear Crop Insurance Provisions so that pear producers can readily see their coverage options. However, the endorsement has been clarified to state in section 13(a) that the endorsement does not apply if the insured insures the pears under the catastrophic risk protection (CAT) endorsement or has not specifically selected such coverage. Therefore, FCIC does not believe that persons insured under the Catastrophic Risk Protection Endorsement or others who did not elect this coverage will think they have this coverage. For further clarification, provisions contained in sections 13(a) and (b) of the proposed rule have been combined.

*Comment:* The crop insurance industry is concerned that section 13(c)(1)(ii) is more complicated than necessary. Their interpretation was that the production will be reduced to zero and that the total production would be considered cull production.

*Response:* When more than sixty percent of the pears fail the grade standard the production will be reduced to zero and that production will be considered cull production. FCIC believes that the provisions are written as clearly as possible.

*Comment:* The crop insurance industry stated that section 13(c)(2) is not necessary because such pears would

be included under section 13(c)(1) whenever an appraisal is made.

*Response:* FCIC has reformatted the provisions but believes all the provisions are necessary for clarity.

*Comment:* One comment received from an FCIC office recommended that production be adjusted when it does not grade ninety percent (90%) U.S. No. 2 grade or better in accordance with applicable United States Standards for Grades of Summer and Fall Pears, United States Standards for Grades of Winter Pears, or United States Standards for Grades of Pears for Processing, as applicable when the damage is caused by hail. Proposed provisions contained in section 13(c)(1) allowed adjustment only when production did not grade eighty percent (80%) U.S. No. 2 or better. The comment stated that the majority of orchards normally produce eighty-seven percent (87%) to ninety-five percent (95%) U.S. No. 2 grade or better and eighty percent (80%) did not give adequate protection to the producers. Although, five to thirteen percent of all pears are culls, very few of these pears are damaged by a cause of loss covered under the endorsement.

*Response:* FCIC agrees that eighty percent (80%) may not provide adequate coverage and has increased the amount to ninety percent (90%).

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

1. Section 1—Clarify the definitions of “FSA,” “non-contiguous,” and “written agreement”. Delete the definition of “culls” because fruit that is considered to be cull production for the purposes of this policy is sufficiently identified in section 13.

2. Section 3(b)—Amend the provision to include any circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based. The proposed rule required an insured to report only damage, removal of trees, and changes in practices and there may be other circumstances that may affect the yield.

3. Section 8(b)(1)—Clarify that if the producer acquires an insurable share after coverage begins but on or before the acreage reporting date, insurance attaches on the calendar date for the beginning of the insurance period.

4. Section 8(b)(2)—Clarify that not only will insurance not attach but no premium will be due if the producer relinquishes an insurable interest in any insurable acreage of pears on or before the acreage reporting date of any crop year unless a transfer of coverage and right to an indemnity is completed and the insurance provider is notified in

writing on or before the acreage reporting date. Clarify that the transferee must also be eligible for crop insurance.

5. Section 10(b)—Simplify the provision to remove any ambiguity.

6. Section 10(c)—Modify the provision to specify that the producer must notify the insurance provider at least 15 days prior to the beginning of harvest if the producer previously gave notice in accordance with section 14 of the Basic Provisions (§ 457.8). Also specify that if the producer fails to meet the requirements of this section, and such failure results in the insurance providers inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

7. Section 11—Add a provision to specify that an amount of production not less than the production guarantee per acre will be counted if the producer fails to notify the insurer of acreage that is to be sold by direct marketing to conform to section 10(b). Also clarify the claim settlement calculation and the quality adjustment provisions for pears grown in California.

8. Section 13—Clarify the pear quality adjustment endorsement provisions. Also, limit the cause of loss to hail only in section 13(b)(1) to be consistent with optional coverage provided for apples in the same area.

#### List of Subjects in 7 CFR Part 457

Crop insurance, Pears, Reporting and recordkeeping requirements.

#### Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1998 and succeeding crop years, as follows:

#### PART 457—[AMENDED]

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

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

2. 7 CFR part 457 is amended by adding a new § 457.111 to read as follows:

#### § 457.111 Pear crop insurance provisions.

The Pear 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:

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

*Harvest*—The picking of mature pears from the trees or the collecting of marketable pears from the ground.

*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.

*Marketable*—Pear production acceptable for processing or other human consumption even if failing to meet any U.S. or applicable state grading standard.

*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 quantity of pears (in tons) determined by multiplying the approved APH yield per acre by the coverage level percentage you elect, and multiplying the result by any applicable adjustment factor provided in section 6(f) of the Basic Provisions (§ 457.8).

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

*Varietal group*—Types of pears 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 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), a basic unit, may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(b) 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.

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

(2) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us.

(3) Each optional unit must meet one or more of the following criteria as applicable:

(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.

(iii) *Optional Units on Acreage by Varietal Group*: In addition to, or instead of, establishing optional units by section, section equivalent, FSA Farm Serial Number, or on non-contiguous land, optional units may be established by varietal group when provided for in the Special Provisions.

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

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

(a) You may select only one price election for all the pears 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 one hundred percent (100%) of the maximum price election for one varietal group, you must also choose one hundred percent (100%) 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:

(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 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 or any other circumstance on 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 that 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 for states with a January 31 cancellation date and August 31 preceding the cancellation date for all other states.

#### 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:

States	Cancellation and termination dates
California .....	January 31.
All other states .....	November 20.

#### 6. Insured Crop

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

- (a) In which you have a share;
- (b) That are of varieties adapted to the area;
- (c) That are grown on trees that have produced an average of at least five (5) tons of pears per acre in at least one of the four previous crop years unless the Special Provisions or a written agreement establishes a lower production level; and
- (d) That are grown in an orchard that, if inspected, is considered acceptable by us.

#### 7. Insurable Acreage

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

#### 8. Insurance Period

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

- (1) Coverage begins:
  - (i) In California, 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 during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard; or
  - (ii) In all other states, on November 21 of each crop year, except that for the year of application, if your application is received after November 11 but prior to November 21, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

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

- (i) September 15 for Bartlett (green and red) and Star Crimson (Crimson Red) varietal groups; or
- (ii) October 15 for all other varietal groups.

(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 interest on any insurable acreage of pears on or before the acreage reporting date of any crop year, insurance will not be considered to have attached to, and no premium will be due, and no indemnity paid, for such acreage for that crop year unless:

- (i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;
- (ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and
- (iii) The transferee is eligible for crop insurance.

#### 9. Causes of Loss

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

- (1) 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) Earthquake;
- (4) Volcanic eruption; or
- (5) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

- (1) Disease or insect infestation, unless adverse weather:
  - (i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or
  - (ii) Causes disease or insect infestation for which no effective control mechanism is available.
- (2) Failure of the fruit to color properly; or
- (3) Inability to market the pears 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 if you previously gave notice in accordance with section 14 of the Basic Provisions (§ 457.8), so that we may inspect the damaged production. You must not sell or dispose of 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 unit, 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 results of section 11(b)(1) by the respective price election for each varietal group, if applicable;

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

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

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

(6) Subtracting this result of section 11(b)(5) from the result of section 11(b)(3); and

(7) Multiplying the result of section 11(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;

(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; 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) For all states except California, all harvested and appraised marketable pear production from the insurable acreage.

(3) For California, all harvested and appraised production that:

(i) Meets the standards for first grade canning as defined by the California Pear Advisory Board or for U.S. Number 1 as defined by the United States Standards for Grades of Summer and Fall Pears, or Pears for Processing, or for U.S. Extra Number 1 or U.S. Number 1 as defined by the United States Standards for Grades of Winter Pears;

(ii) Is accepted by a processor for canning or packing; or

(iii) Is marketable for any purpose. However, if the pears are damaged by an insured cause, the production to count will be reduced by the greater of the following amounts:

(A) The excess over ten percent (10%) of pears that are size 180 or smaller for varieties other than Forelle, Seckel or Winter Nelis; or

(B) The result of dividing the value per ton of such pears by the highest price election for the insured varietal group, subtracting this result from 1.000, and multiplying this difference (if positive) by the number of tons of such pears.

## 12. Written Agreements

Designated terms of this policy 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 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.

## 13. Pear Quality Adjustment Endorsement

(a) This endorsement applies to any crop year: *Provided*,

(1) The insured pears are located in a State other than California and the actuarial table designates a premium rate for this endorsement;

(2) You have not elected to insure your pears under the Catastrophic Risk Protection (CAT) Endorsement;

(3) You elected it on your application or other form approved by us, and did so on or before the sales closing date for the initial crop year for which you wish it to be effective. By doing so, you agreed to pay the additional premium designated in the actuarial table for this optional coverage; and

(4) You or we did not cancel it in writing on or before the cancellation date. Your election of CAT coverage for any crop year after this endorsement is effective will be considered as notice of cancellation by you.

(b) If the pear production is damaged by hail and if eleven percent (11%) or more of the harvested and appraised production does not grade at least U.S. No. 2 in accordance with applicable United States Standards for Grades of Summer and Fall Pears, United States Standards for Grades of Winter Pears, or United States Standards for Grades of Pears for Processing, as applicable, due solely to hail, the amount of production to count will be reduced as follows:

(i) By two percent (2%) for each full one percent (1%) in excess of ten percent (10%), when eleven percent (11%) through sixty percent (60%) of the pears fail the grade standard; or

(ii) By one hundred percent (100%) when more than sixty percent (60%) of the pears fail the grade standard.

The difference between the reduced production determined in section 13(b) and the total production will be considered as cull production.

(c) Pears that are knocked to the ground by wind or that are frozen and cannot be packed or marketed as fresh pears will be considered one hundred percent (100%) cull production.

(d) Marketable production that grades less than U.S. No. 2 due to causes not covered by this endorsement will not be reduced.

(e) Fifteen percent (15%) of all production considered as cull production in accordance with section 13 (b) and (c) will be production to count.

Signed in Washington, D.C., on October 31, 1996.

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

[FR Doc. 96-28607 Filed 11-6-96; 8:45 am]

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## 7 CFR Part 457

RIN 0563-AB56

### Common Crop Insurance Regulations; Texas Citrus Fruit Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

**SUMMARY:** This document contains corrections to the final regulation which was published Thursday, August 8, 1996 (61 FR 41297-41303). The regulation pertains to the insurance of Texas citrus fruit.

**EFFECTIVE DATE:** November 6, 1996.

## FOR FURTHER INFORMATION CONTACT:

Louise Narber, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

## SUPPLEMENTARY INFORMATION:

### Background

The final regulation that is the subject of this correction was intended to provide policy changes to better meet the needs of the insured and to combine the Texas Citrus Endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms.

### Need For Correction

As published, the final regulations contained an error which may prove to be misleading and is in need of clarification.

### Correction of Publication

Accordingly, the publication on August 8, 1996, of the final regulation at 61 FR 41297-41303 is corrected as follows:

## PART 457—[CORRECTED]

### § 457.119 [Corrected]

On page 41302, in the second column, in § 457.119, section 10(a)(8) is corrected to read "Failure of the irrigation water supply if caused by an insured peril or drought that occurs during the insurance period."

Signed in Washington D.C., on October 31, 1996.

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

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BILLING CODE 3410-FA-P

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 103

[INS No. 1802-96]

### Extension of Implementation Date for Use of Designated Fingerprinting Services

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

**SUMMARY:** A final rule certifying Designated Fingerprinting Services (DFS) to take fingerprints of applicants for immigration benefits was published by the Immigration and Naturalization