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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Docket No. FCIC-11-0011

RIN 0563-AC34

Common Crop Insurance Regulations; Peach Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Peach Crop Insurance Provisions. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The proposed changes will be effective for the 2013 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business [insert date 60 days after publication in the Federal Register] and will be considered when the rule is to be made final.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No.

FCIC-11-0011, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205.

All comments received, including those received by mail, will be posted without change to <http://www.regulations.gov>, including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submission. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816)823-4694 or by email at: rmaweb.content@rma.usda.gov.

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/#!privacyNotice>.

FOR FURTHER INFORMATION CONTACT: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141-6205,

telephone (816) 926– 7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563-0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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 UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that

this rule does not have sufficient implications to warrant consultation with the States.

The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss.

Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this

regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

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 proposed 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. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 CFR part 400, subpart J, for the informal administrative review process of good farming practices as applicable, 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, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background:

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising § 457.153, Peach Crop Insurance Provisions, to be effective for the 2013 and succeeding crop years. Several requests have been made for changes to improve the coverage offered, address program integrity issues, simplify program administration, and improve clarity of the policy provisions.

The proposed changes are as follows:

1. FCIC proposes to remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of a conflict. This same information is contained in the Basic Provisions. Therefore, it is duplicative and should be removed in the Crop Provisions.

2. Section 1 - FCIC proposes to remove the definition of “actual price per bushel for” because the Free on Board (FOB) prices are no longer consistently reported by the Agriculture Market News Service. Therefore, FCIC’s peach price elections for fresh U.S. Extra No. 1 (applicable size as specified in the Special Provisions) and processing peaches will apply to these Crop Provisions.

FCIC proposes to add a definition of “fresh” and “processing” to be consistent with the other perennial crops. In the definition of “fresh,” FCIC proposes to include provisions to require insureds to certify and, if requested by their insurance provider, provide verifiable records to prove at least 50 percent of their fresh peach acreage from each unit was sold as U.S. Extra No. 1 fresh peach production in one or more of the four most recent crop years for the unit to be eligible for fresh peach coverage. FCIC also proposes to include provisions to require insureds to follow the recommended cultural

practices for fresh peach acreage in the county as determined by agricultural experts. FCIC proposes to include provisions to specify acreage not meeting all requirements for “fresh peach acreage must be designated on the acreage report as processing peach acreage. These revisions will help ensure that only fresh peach production is insured as fresh peach production. In the definition of “processing,” FCIC proposes to include provisions that qualify peaches as processing if they are sold, or could be sold for the purpose of undergoing a change in their basic structure, such as juicing or peeling.

FCIC proposes to add a definition of “post production costs” to define the costs associated with activities that occur during harvesting, packing, transportation, and marketing, as determined by FCIC. Insurance is limited to those perils and costs that occur while the crop is in the field. Therefore, “post production costs” will be deducted from the price data of peaches sold in determining an “on tree” price which is the basis for FCIC’s price election.

3. Section 2 – FCIC proposes to add a new section 2 to allow optional units by fresh and processing as specified in the Special Provisions. Fresh and processing peaches may have significantly different management practices, production risks and uses. Therefore, allowing optional units by fresh and processing will allow insureds to manage their risks more effectively. Also, FCIC proposes to add provisions to allow optional units for non-contiguous land. These changes are consistent with other perennial crops.

4. Redesignated section 3 – FCIC proposes to add a new paragraph (a) to allow the insured to select different coverage levels for all insurable fresh peach acreage in the county and processing peach acreage in the county. As stated above, since the risks may be different for fresh and processing peaches, different coverage levels will allow the

insured to better tailor their insurance to their risks. FCIC also proposes to revise redesignated section 3(b) to allow different price elections for fresh and processing peaches. Again, this will allow insureds to better manage their risks. These changes are also consistent with other perennial crops.

FCIC proposes to revise redesignated section 3(c)(2) and section 3(4)(ii) to remove the word “type” because it is no longer applicable.

FCIC proposes to designate the undesignated paragraph after redesignated paragraph (c) as paragraph (d) and revise it to add provisions to specify the effect if the insured fails to notify the insurance provider by the start of the insurance period or before the production reporting date of any situation that occurs during the crop year that may reduce the yield potential. If the insured failed to report such a situation by the production reporting date, any loss of production from such acreage will result in an appraisal for uninsured causes, and the yield used to establish the insured’s production guarantee will be reduced for the subsequent crop year. FCIC also proposes to revise section 3(d) to remove the list of possible effects on yield potential and to add language to redesignated section 3(c). This will put all the effects in one place and eliminate redundancy. These changes are also consistent with other perennial crops.

5. Section 6 - FCIC proposes to add a new section 6 to require the insured to report and designate all insurable peach acreage, as fresh and processing peaches, by the acreage reporting date. These revisions will help ensure that only fresh peach acreage is insured as fresh peach acreage. It also allows the insured to establish optional units by fresh and processing as specified in the Special Provisions.

6. Redesignated section 7 - FCIC proposes to add a new paragraph (f) to clarify the

insured crop is peaches grown for either fresh peach production or processing peach production as defined in section 1. FCIC also proposes to revise paragraph (c) to remove the phrase, “of the types or” and “(except Processing Peaches excluded in California)” because peaches are now insurable by use that being fresh or processing. Peaches are no longer insured by type. Processing peaches are no longer excluded in California.

7. Redesignated section 11 - FCIC proposes to add a new paragraph (a) to clarify the insured must leave representative samples for appraisal purposes if required by the insurance provider in accordance with the Basic Provisions.

8. Redesignated section 12 - FCIC proposes to add a new loss example to provide clarity.

FCIC proposes to revise paragraph (c)(1) to remove the redundant phrase, “will be determined”.

FCIC proposes to revise paragraph (c)(1)(i)(B) to reference redesignated section 11.

FCIC proposes to revise paragraph (c)(1)(iii) to clarify the total production to count (in bushels) from all insurable acreage on the unit will include all appraised production from unharvested peach acreage that would be marketable, if harvested.

FCIC proposes to revise paragraph (c)(2) to clarify the total production to count (in bushels) from all insurable acreage on the unit will include all harvested marketable production. These changes are consistent with other perennial crops to clarify production to count used in determining indemnities will include all production from insured acreage for appraised unharvested or harvested production that is “marketable”, as defined in these Crop Provisions.

FCIC proposes to revise paragraphs (c)(3)(i) and (c)(3)(ii) to clarify and provide

consistency in how quality loss adjustment will be determined by adjusting the price received by peach growers to an on tree price, since FCIC's price election is an on tree price. Quality loss adjustment will be determined for peaches grown for fresh by dividing the value of the damaged fresh peach production minus the post production cost specified in the Special Provisions, by the fresh peach price election. The result (not to exceed 1.00) will be multiplied the number of bushels of the damaged fresh peach production for quality adjustment. Quality adjustment will be determined for peaches grown for processing by dividing the value of the damaged processing peach production minus the post production costs specified in the Special Provisions, by the processing peach price election. The result (not to exceed 1.00) will be multiplied by the number of bushels of the damaged processing peach production for quality adjustment.

List of Subjects in 7 CFR Part 457

Crop insurance, Peach, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2013 and succeeding crop years as follows:

PART 457 - COMMON CROP INSURANCE REGULATIONS

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

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

2. Amend § 457.153 as follows:

a. Amend the introductory text by removing the "2001" and adding "2013" in its place;

- b. Remove the undesignated paragraph immediately preceding section 1.
- c. Amend section 1 as follows:
 - i. Add definitions of “fresh”, “post production cost”, “processing” and;
 - ii. Remove the definition of “actual price per bushel for”.
- d. Redesignate sections 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 as 3, 4, 5, 7, 8, 9,10,11,12, and 13, respectively.
- e. Add a new section 2.
- f. Amend redesignated section 3 as follows:
 - i. Remove the phrase “(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)” in the introductory text;
 - ii. Redesignate paragraphs (a), (b), and (c) as (b), (c), and (e), respectively, and adding a new paragraph (a);
 - iii. Revise redesignated paragraphs (b) and (c);
 - iv. Designate the undesignated paragraph following redesignated paragraph (c) as paragraph (d); and
 - v. Revise designated paragraph (d).
- g. Amend redesignated section 4 by removing the phrase “(Contract Changes)”.
- h. Amend redesignated section 5 by removing the phrase “(Life of Policy, Cancellation and Termination)”.
- i. Add a new section 6.
- j. Amend redesignated section 7 as follows:
 - i. Remove the phrase “(Insured Crop)”;
 - ii. Revise paragraph (b)(3) by removing the period at the end and adding a

semicolon in its place;

iii. Revise paragraph (c) by removing phrases “of the types or” and “except Processing Peaches excluded in California”;

iv. Revise paragraph (d) by removing the word “and” at the end;

v. Revise paragraph (e) by removing the period at the end and adding the phrase “; and” in its place; and

vi. Add a new paragraph (f).

k. Amend redesignated section 8 by removing the phrase “(Insurable Acreage)”.

l. Amend redesignated section 9 as follows:

i. Remove the phrase “(Insurance Period)” in paragraphs (a) and (b); and

ii. Revise paragraph (c) by removing the phrase “(a)(1)” and adding the phrase “9(a)(1)” in its place.

m. Amend redesignated section 10 by removing the phrase “(Causes of Loss)” in paragraphs (a) and (b).

n. Amend redesignated section 11 as follows:

i. Redesignate the introductory text as paragraph (b);

ii. Redesignate paragraphs (a), (b), (c), and (d) as (1), (2), (3), and (4),

respectively;

iii. Add a new paragraph (a); and

iv. Remove the phrase “(Duties in the Event of Damage or Loss)” in redesignated paragraph (b).

o. Amend redesignated section 12 as follows:

i. Revise paragraph (b);

- ii. Add a loss example after paragraph (b)(7);
- iii. Revise paragraph (c)(1):
- iv. Revise paragraph (c)(1)(i)(B);
- v. Revise paragraph (c)(1)(iii);
- vi. Revise paragraph (c)(2); and
- vii. Revise paragraphs (c)(3)(i) and (c)(3)(ii).

The revised and added text reads as follows:

§ 457.153 Peach crop insurance provisions.

* * * * *

1. Definitions.

* * * * *

Fresh.

(1) Peach production from insurable acreage that:

- (i) Are sold, or could be sold, for human consumption without undergoing any change in its basic form, such as peeling, juicing, crushing, etc.;
- (ii) Grade at least U.S. Extra No. 1 or better consisting of the minimum diameter as specified in the Special Provisions;
- (iii) Are from acreage that is designated as fresh peaches on the acreage report;
- (iv) Follow the recommended cultural practices generally in use for fresh peach in the area in a manner generally recognized by agricultural experts; and
- (v) Are from acreage that you certify, and, if requested by us provide verifiable records to support, that at least 50 percent of the production from acreage reported as fresh peach acreage from each unit, was sold as fresh peaches in one or more of the four

most recent crop years.

(2) Acreage with production not meeting all the requirements above must be designated on the acreage report as processing peach production.

* * * * *

Post production costs. The costs, as specified in the Special Provisions associated with activities that occur during harvesting, packing, transportation, and marketing, as determined by FCIC.

Processing. Peach production from insurable acreage failing to meet the insurability requirements for fresh peach production that are:

(1) Sold, or could be sold, for the purpose of undergoing a change to its basic structure such as peeling, juicing, crushing, etc.; or

(2) From acreage designated as processing peaches on the acreage report.

* * * * *

2. Unit Division.

In addition to the requirements contained in section 34(b) of the Basic Provisions, optional units may be established if each optional unit is:

(a) Located on non-contiguous land; or

(b) By fresh and processing as specified in the Special Provisions.

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

* * * * *

(a) You may select a separate coverage level for all fresh peach acreage and for all processing peach acreage. For example, if you choose the 55 percent coverage level for all fresh peach acreage, you may choose the 75 percent coverage level for all processing

peach acreage.

(1) Notwithstanding paragraph (a), if you elect the Catastrophic Risk Protection (CAT) level of coverage for fresh peach acreage or processing peach acreage, the CAT level of coverage will be applicable to all insured peach acreage in the county of both fresh and processing peaches.

(2) If you only have fresh peach acreage designated on your acreage report and processing peach acreage is added after the sales closing date, we will assign a coverage level equal to the coverage level you selected for your fresh peach acreage.

(3) If you only have processing peach acreage designated on your acreage report and fresh peach acreage is added after the sales closing date, we will assign a coverage level equal to the coverage level you selected for your processing peach acreage.

(b) You may select only one price election for all the peaches in the county insured under this policy unless the Special Provisions provide different price elections by fresh and processing peaches. If the Special Provisions allow different price elections, you may select a separate price election for all your fresh peaches and for all your processing peaches. If the Special Provisions do not allow for different price elections, the price elections you choose for fresh and processing must have the same percentage relationship to the maximum price offered by us for fresh and processing peaches. For example, if you choose 100 percent of the maximum price election for fresh peaches, you must choose 100 percent of the maximum price election for all processing peaches.

(c) You must report, not later than the production reporting date designated in section 3 of the Basic Provisions, separately by fresh and processing acreage, as applicable:

(1) Any event or action that could impact the yield potential of the insured crop

including, interplanted of a perennial crop, removal of trees, any tree damage, change in practices, or any other circumstance that may reduce the expected yield upon which the insurance guarantee is based, and the number of affected acres;

(2) * * *

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

(4) * * *

(i) * * *

(ii) The variety;

(iii) * * *

(iv) * * *

(d) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any situation listed in section 3(c). If the situation occurred:

(1) Before the beginning of the insurance period, we will reduce the yield used to establish your production guarantee for the current crop year as necessary. 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;

(2) Or may occur after the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) Or may occur after the beginning of the insurance period and you fail to notify us by the production reporting date, production lost due to uninsured causes equal to the amount of the reduction in yield used to establish your production guarantee will be

applied in determining any indemnity (see section 12(c)(1)(ii). We will reduce the yield used to establish your production guarantee for the subsequent crop year.

(e) * * * * *

* * * * *

6. Report of Acreage.

In addition to the requirements contained in section 6 of the Basic Provisions, you must report and designate all acreage of peaches as fresh or processing peaches by the acreage reporting date.

7. Insured Crop.

* * * * *

(c) That the crop insured will be any varieties of peaches that are grown for the production of fresh or processing peaches on insured acreage and for which a guarantee and premium rate are provided by the actuarial documents.

* * *

(f) That are grown for:

(1) Fresh peach production; or

(2) Processing peach production.

* * * * *

11. Duties In the Event of Damage or Loss.

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples in accordance with our procedures.

(b) * * *

(1) * * *

(2) * * *

(3) * * *

(4) * * *

12. Settlement of Claim.

* * * * *

(b) * * *

(1) Multiplying the insured acreage for fresh and processing peaches, as applicable, by its respective production guarantee;

(2) Multiplying each result in section 12(b)(1) by the respective price election;

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

(4) Multiplying the total production to be counted of fresh and processing peaches, as applicable (see subsection 12(c)) by the respective price election;

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

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

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

Example:

You have a 100 percent share in one basic unit with 10 acres of fresh peaches and 5 acres of processing peaches designated on your acreage report, with a 300 bushel per acre production guarantee for both fresh and processing peaches, and you select 100 percent of the price election of \$15.50 per bushel for fresh peaches and \$6.50 per bushel for processing peaches. You harvest 2,500 bushels of fresh peaches and 500 bushels of processing peaches. Your indemnity will be calculated as follows:

(A) 10 acres x 300 bushels = 3,000 bushel production guarantee of fresh peaches;

5 acres x 300 bushels = 1,500 bushel production guarantee of processing peaches;

(B) 3,000 bushel production guarantee x \$15.50 price election = \$46,500 value of the production guarantee for fresh peaches;

1,500 bushel production guarantee x \$6.50 price election = \$9,750 value of the production guarantee for processing peaches;

(C) \$46,500 value of the production guarantee for fresh peaches + \$9,750 value of the production guarantee for processing peaches = \$56,250 total value of the production guarantee;

(D) 2,500 bushels of fresh peach production to count x \$15.50 price election = \$38,750 value of the fresh peach production to count;

500 bushels of processing peach production to count x \$6.50 price election = \$3,250 value of the processing peach production to count;

(E) \$38,750 value of the fresh peach production to count + \$3,250 value of the processing peach production to count = \$42,000 total value of the production to count;

(F) \$56,250 total value of the production guarantee - \$42,000 total value of the production to count = \$ 14,250 value of loss; and

(G) \$14,250 value of loss x 100 percent share = \$14,250 indemnity payment.

[End of Example]

(c) * * *

(1) All appraised production as follows:

* * * *

(i) * * *

(B) From which production is sold by direct marketing if you fail to meet the

requirements contained in section 11.

* * *

(iii) Unharvested peach production that would be marketable if harvested; and

* * *

2. All harvested marketable peach production from the insurable acreage.

(3) * * *

(i) For fresh peaches by:

(A) Dividing the value of the damaged peaches minus the post production cost specified in the Special Provisions, by the fresh peach price election; and

(B) Multiplying the result of section 12(c)(3)(i)(A) (not to exceed 1.00) by the number of bushels of the damaged fresh peaches.

(ii) For processing peaches by:

(A) Dividing the value of the damaged peaches minus the post production cost specified in the Special Provisions, by the processing peach price election; and

(B) Multiplying the result of section 12(c)(3)(ii)(A) (not to exceed 1.00) by the number of bushels of the damaged processing peaches.

* * * * *

Signed in Washington, D.C., on January 13, 2012.

William J. Murphy
Manager
Federal Crop Insurance Corporation

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