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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR part 457

Docket No. FCIC- 15-0002

RIN 0563-AC48

Common Crop Insurance Regulations; Texas Citrus Fruit 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, Texas Citrus Fruit Crop Insurance Provisions.

The intended effect of this action is to provide policy changes to better meet the needs of policyholders, to clarify existing policy provisions, and to reduce vulnerability to program fraud, waste, and abuse. Specifically, this proposed rule intends to modify or clarify certain definitions, clarify unit establishment, clarify substantive provisions for consistency with terminology changes, modify the insured causes of loss, clarify required timing for loss notices, modify portions of loss calculation formulas, and address potential misinterpretations or ambiguity related to these issues. The proposed changes will be effective for the 2018 and succeeding crop years.

DATES: FCIC will accept written comments on this proposed rule until close of business (insert date 60 days after publication in the Federal Register). FCIC will consider these comments when FCIC finalizes this rule.

ADDRESSES: FCIC prefers that interested persons submit comments electronically

through the Federal eRulemaking Portal. Interested persons may submit comments, identified by Docket ID No. FCIC-15-0002, 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. Once these comments are posted to this website, the public can access all comments at its convenience from this website. 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 interested persons are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, FCIC requests use of a text-based format. If interested persons wish 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 the submissions. 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](mailto: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 person submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Interested

persons may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/#!privacyNotice>.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, 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 not-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the OMB.

##### Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), 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 a significant impact on a substantial number of 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 requires intergovernmental consultation with State and local officials. See 2 CFR part 415, subpart C.

#### 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. With respect to any direct action taken by FCIC or action by FCIC directing 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 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 7 CFR 457.119 Texas Citrus Fruit Crop Insurance Provisions, to be effective for the 2018 and succeeding crop years. Changes are intended to improve the insurance coverage offered, address program integrity issues, simplify program administration, and improve clarity of the policy provisions. Specifically, this proposed rule intends to modify or clarify certain definitions, clarify unit establishment, clarify substantive provisions for consistency with terminology changes, modify the insured causes of loss, clarify required timing for loss notices, modify portions of loss calculation formulas, and address potential misinterpretations or ambiguity related to these issues.

Some of the proposed changes result from the United States Department of Agriculture (USDA) Acreage Crop Reporting Streamlining Initiative (ACRSI), which has an objective of using common standardized data and terminology to consolidate and simplify reporting requirements for producers. Specifically, ACRSI is an initiative to reengineer the procedures, processes, and standards to simplify commodity, acreage, and production reporting by producers, eliminate or minimize duplication of information collection by multiple agencies, and reduce the burden on producers, allowing the producers to report this information through FSA county office service centers, insurance agents or through precision agriculture technology capabilities. USDA has made a concerted effort to standardize terms across USDA agencies as much as possible to allow

the sharing of data, thereby reducing the burden on producers in reporting their information. Many of the changes proposed in this rule are a part of that effort. For example, as part of ACRSI, FCIC is proposing to change the term “crop” to “citrus fruit commodity” and to rename the “citrus fruit commodities” to be consistent with the crop names used by other USDA agencies. FCIC has been working with other USDA agencies to agree on appropriate terminology for crop reporting. These terms are part of a Commodity Validation Table that is updated as these terms are agreed upon. This change will help facilitate information sharing among agencies, a step that is necessary to achieve an ACRSI goal of relieving producers of the burden of reporting the same information multiple times to different USDA agencies. The addition of the term “citrus fruit group” is intended to negate the impact of changes to “citrus fruit commodity” names on coverage levels, unit structure, and administrative fees. The “citrus fruit groups” for each “citrus fruit commodity” will be listed in the Special Provisions. The “citrus fruit groups” will be the basis for determining coverage levels and identifying the insured crop. These proposed changes are not expected to change the current basis by which coverage levels are selected, basic units are established, and administrative fees are assessed.

For consistency with ACRSI objectives, FCIC proposes to expand the category of “type” in the actuarial documents to include four subcategories named “commodity type,” “class,” “subclass,” and “intended use.” FCIC is also planning to expand the category of “practice” in the actuarial documents to include four subcategories named “cropping practice,” “organic practice,” “irrigation practice,” and “interval.” Proposed changes to the Texas Citrus Fruit Crop Insurance Provisions, such as replacing references

to the term “type” with the term “commodity type” will provide a method for this transition.

The proposed changes are as follows:

1. FCIC proposes to remove the paragraph immediately preceding section 1, which refers to the order of priority if a conflict exists among the policy provisions. This same provision is contained in the Basic Provisions. Therefore, the appearance here is duplicative and should be removed from the Texas Citrus Fruit Crop Insurance Provisions.

FCIC proposes to remove all references to section titles of the Basic Provisions used in the Texas Citrus Fruit Crop Insurance Provisions, while retaining the section numbers. The section titles are not necessary to reference the section and removing these titles will prevent FCIC from having to revise the Crop Provisions should these section titles change in the Basic Provisions. This information proposed to be removed is currently contained in parenthesis following references to section numbers of the Basic Provisions throughout the Texas Citrus Fruit Crop Insurance Provisions.

2. Section 1 (“Definitions”) – FCIC proposes to remove the definition of “crop” and replace it with a definition of “citrus fruit commodity” because the actuarial documents refer to commodities rather than crops. FCIC proposes to replace the term “crop” with the term “insured crop” where appropriate throughout the Crop Provisions. The insured crop will be based on the “citrus fruit group” in accordance with the proposed revisions to section 7. FCIC proposes to include the “citrus fruit commodity” names in the definition to enable the insured to more easily determine the citrus fruit commodities that are insurable under the Texas Citrus Fruit Crop Insurance Provisions. The new “citrus

fruit commodity” names will combine several current “crops” into a single “citrus fruit commodity.” For example, the current crops “Early & Midseason Oranges” and “Late Oranges” will become insurable types under the new “citrus fruit commodity” of “oranges.” FCIC proposes this change because of ACRSI. FCIC has been working with other USDA agencies to agree on appropriate terminology for crop reporting. These terms are part of a Commodity Validation Table that is updated as these terms are agreed upon. This proposed change in terminology does not change the varieties of citrus that are insurable.

FCIC proposes to add the definition of “citrus fruit group.” The term “citrus fruit group” refers to a method of grouping combinations of commodity types and intended uses within the citrus fruit commodity through the Special Provisions for the purposes of electing coverage levels and determining the insured crop, which is the basis for establishing basic units, guarantees, and assessing administrative fees. FCIC proposes this change because of ACRSI. Because producers will be reporting using the terminology contained in the Commodity Validation Table, FCIC has changed the commodity names to match this agreed upon terminology. However, the citrus fruit group concept is being implemented to prevent changes to how the crop can be insured. For example, this change will allow producers who report Valencia oranges with an intended use of juice and Navel oranges with an intended use of fresh to continue to insure these as separate crops even though they will both be categorized for reporting under the commodity of oranges.

FCIC proposes to add the definition of “commodity type” because this is a new category that will be added to the actuarial documents for citrus fruit commodities for the

2018 crop year. Commodity type will initially be displayed in the actuarial documents as a subcategory of type. The expected combinations of commodity types and intended uses will be grouped into citrus fruit groups as shown in the table below.

<b>Citrus Fruit Commodity</b>	<b>Commodity Type</b>	<b>Intended Use</b>	<b>Citrus Fruit Group</b>
Grapefruit	Rio Red & Star Ruby	Fresh	A
Grapefruit	Rio Red & Star Ruby	Juice	A
Grapefruit	Ruby Red	Fresh	B
Grapefruit	Ruby Red	Juice	B
Grapefruit	All Other	Fresh	C
Grapefruit	All Other	Juice	C
Oranges	Early & Midseason	Fresh	D
Oranges	Early & Midseason	Juice	D
Oranges	Late	Fresh	E
Oranges	Late	Juice	E

FCIC proposes to revise the definition of “excess wind” by: specifying the equivalent wind speed in knots; clarifying wind speed reporting at U.S. National Weather Service (NWS) reporting stations; and adding a clause to allow additional acceptable wind reporting stations to be identified in the Special Provisions. FCIC proposes these changes to provide clarity and add flexibility to use other weather reporting stations if additional data points are needed in the future.

FCIC proposes to add a definition of “intended use.” Currently, insureds can select

between the two types of fresh and juice. For the 2018 crop year, the type category in the actuarial documents will be expanded to include subcategories for “commodity type,” “class,” “subclass,” and “intended use.” Insureds will continue to be able to select types for fresh and juice, but the intended use will be specified in both the type category and the new intended use category. This change only affects how they types are presented in the actuarial documents and will not affect available coverage or reporting requirements. The proposed definition is consistent with the definition contained in the Florida Citrus Fruit Crop Insurance Provisions.

FCIC proposes to revise the definition of “interplanted” to specify that the Crop Provisions definition is used in lieu of the Basic Provisions definition. In the revised definition, FCIC proposes to change the term “crop” to “agricultural commodity.” Agricultural commodity is currently defined in the Basic Provisions as any crop or other commodity produced, regardless of whether or not it is insurable. As stated previously, FCIC is changing the term “crop” to “insured crop” as appropriate throughout the Crop Provisions. However, for the definition of interplanted acreage, changing “crop” to “insured crop” would change the meaning of the provision by preventing interplanted from applying to insurable crops interplanted with agricultural commodities not insured under the Texas Citrus Fruit Crop Provisions. Therefore, FCIC proposes to change the term “crop” to “agricultural commodity” in the definition of interplanted acreage. This proposed change will allow “interplanted” to apply to acreage in which an insured crop is interplanted with another insured crop or uninsured agricultural commodity, regardless of whether or not the additional insured crop or uninsured agricultural commodity is insurable under the Texas Citrus Fruit Crop Insurance Provisions or any other Crop

Provisions.

FCIC proposes to remove the definition of “local market price.” FCIC proposes to remove this definition because FCIC proposes to remove the only reference to local market price in the Texas Citrus Fruit Crop Provisions, contained in paragraph 12(e).

FCIC proposes to revise the definition of “production guarantee (per acre)” to clarify that the Crop Provisions definition is used in lieu of the Basic Provisions definition. The Basic Provisions contains a different definition of “production guarantee (per acre)” and the Crop Provisions definition has already replaced that definition, but this additional language confirms that interpretation. FCIC also proposes to clarify this “production guarantee (per acre)” definition in the Crop Provisions by specifying that requirements of section 3(e) determine the yield used for calculating the production guarantee.

FCIC proposes to remove the definition of “varieties” because all references to the term are proposed for removal and replacement with the term “commodity type” in the Crop Provisions.

3. Section 2 (“Unit Division”) – FCIC proposes to revise paragraph 2(a) to state that basic units will be established for each insured crop in accordance with section 1 of the Basic Provisions. The definition of basic unit in section 1 of the Basic Provisions states that basic units include all insurable acreage of the insured crop in the county on the date coverage begins for the crop year: (1) in which you have 100 percent crop share; or (2) which is owned by one person and operated by another person on a share basis. Separate basic units will be established for each citrus fruit group because FCIC proposes to treat each citrus fruit group as a separate insured crop. For example, under the new citrus fruit commodity of oranges, all early and midseason oranges will be further classified under

one citrus fruit group and all late oranges will be further classified under another citrus fruit group. These designations mean all of the insured's early and midseason orange acreage can be insured as one basic unit and all of the insured late orange acreage can be insured as a separate basic unit. This proposed change in terminology will allow insureds to keep their current unit structure under the new classification system.

FCIC proposes to revise paragraph 2(c) to state that optional units may be established by either of the following options, but not both options: (1) in accordance with Section 34(c) of the Basic Provisions, except as provided in section 2(b) of these Crop Provisions; or (2) non-contiguous land. FCIC proposes this revision to clarify that the insured has a choice of optional units as allowed by the Basic Provisions (except irrigated or non-irrigated practices) or by non-contiguous land. As currently worded, the provision could be misinterpreted to mean that optional units as allowed in the Basic Provisions are not allowed under the Texas Citrus Fruit Crop Insurance Provisions. In addition, the official Code of Federal Regulations publication appears to have inadvertently omitted the following language from the existing version that appeared in the applicable Federal Register Notice establishing this language: the words “. . . optional units may be established if each . . .” should have previously appeared immediately following the word “number,” and immediately before the provision ending phrase, “. . . optional unit is located on non-contiguous land.” See 62 Fed. Reg. 65,130, 65,169 (Dec. 10, 1997). This omission by the official Code of Federal Regulations could contribute to this potential misinterpretation that FCIC proposes to correct.

4. Section 3 (“Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities”) – FCIC proposes to revise paragraph 3(a) by adding language to allow the

insured to continue selecting separate coverage levels and price elections by insured crop (i.e., citrus fruit group) under the new definitions. For example, under the new designation of citrus fruit commodity oranges, all early and midseason oranges will be further classified together as one citrus fruit group which requires the insured to select the same coverage level and percent of price election for all fruit insured under this citrus fruit group. Under the new designation of citrus fruit commodity oranges, late oranges will be further classified under a separate citrus fruit group, which will allow the insured to continue selection of a different coverage level and percent of price election than selected for its early and midseason orange acreage. These terminology revisions will allow the insured to continue electing coverage levels and price elections on the same basis as they currently elect coverage levels and price elections, while continuing to further ACRSI goals. FCIC also proposes to update the example in paragraph 3(a) for consistency with these proposed changes.

FCIC proposes to revise paragraph 3(b) by removing the instructions for calculating the production guarantee per acre from paragraphs 3(b)(1) and 3(b)(2). FCIC proposes this change because the same information is already contained in the definition of “production guarantee (per acre).” Removing these instructions from 3(b)(1) and 3(b)(2) will prevent perceived conflict between these provisions and that definition because the information contained in paragraphs 3(b)(1) and 3(b)(2) for calculating the production guarantee was intended as duplicative, yet is stated differently than the information contained in the definition of “production guarantee (per acre).” FCIC also proposes to revise paragraph 3(b) to state that the production guarantee is progressive and increases from the first stage to the second stage guarantee. FCIC also proposes to remove the

term “final,” and leave only the term “second,” in paragraph 3(b)(2). Both final stage and second stage have the same meaning in the Texas Citrus Fruit Crop Insurance Provisions because there are only two stages and the terms are used interchangeably. Therefore, FCIC proposes to remove the term “final” to prevent potential confusion if the terms “second” and “final” are erroneously perceived to have different meanings.

FCIC proposes to revise paragraph 3(d) by removing the term “type” and replacing the term “type” with the phrase “commodity type and intended use.” This change will provide consistency with the terminology revisions implemented to further ACRSI goals. FCIC proposes to revise paragraphs 3(d)(4) and 3(d)(4)(i) by removing references to “perennial crop” and “crop” and replacing these terms with the term “agricultural commodity.” This change will provide consistency with the proposed changes to the definition of “interplanted.” The proposed change will allow the term “interplanted” to apply to acreage in which an insured crop under these Crop Provisions (e.g. citrus fruit group) is interplanted with another insured crop or uninsured agricultural commodity, regardless of whether or not the other agricultural commodity is insurable under the Texas Citrus Fruit Crop Insurance Provisions or any other Crop Provisions.

FCIC proposes to designate the undesignated paragraph following paragraph 3(d)(4)(iii) as paragraph 3(e) and redesignate paragraphs 3(e) and 3(f) as paragraphs 3(f) and 3(g). FCIC proposes to revise newly designated paragraph 3(e) to specify the yield adjustment timing and method used, if circumstances occur that may reduce the yield potential, based on when the circumstance occurred. The current provision states that the Approved Insurance Provider will reduce the yield used to establish the production guarantee, but does not explicitly provide additional explanation for timing and method

of certain specific circumstances. The proposed paragraph 3(e)(1) addresses circumstances that occurred before the beginning of the insurance period and requires reduction of the yield used to establish the production guarantee for the current crop year regardless of whether the circumstance was due to an insured or uninsured cause of loss and requires the Insured to report these circumstances that occurred prior to the insurance period no later than the production reporting date. The proposed paragraph 3(e)(2) addresses circumstances that occurred after the beginning of the insurance period and the insured notifies the Approved Insurance Provider of these circumstances by the production reporting date. The proposed paragraph 3(e)(2) will require the yield used to establish the production guarantee to be reduced for the current crop year only if the potential reduction in the yield used to establish the production guarantee is due to an uninsured cause of loss. The proposed paragraph 3(e)(3) addresses circumstances that may reduce the yield that occurred after the beginning of the insurance period and the insured fails to notify the Approved Insurance Provider of these circumstances by the production reporting date. The proposed paragraph 3(e)(3) requires an amount equal to the reduction in the yield to be added to the production to count calculated in paragraph 12(c) of these Crop Provisions due to uninsured causes. Additionally, the proposed paragraph 3(e)(3) requires reduction of the yield used to establish the production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees or the yield potential of the insured acreage. These provisions are similar to provisions that FCIC has recently added to other perennial crop policies, such as the Arizona-California Citrus Crop Insurance Provisions. Adding these provisions is intended to remove potential ambiguity regarding the consequences when circumstances

occur that will reduce the yield potential and to promote consistency with administration of similar policies such as the Arizona-California Citrus Crop Insurance Provisions.

FCIC proposes to revise newly designated paragraph 3(g) by removing the reference to “one-year lag period.” The phrase is not necessary to describe when production must be reported. Therefore, FCIC proposes to delete this reference to prevent confusion regarding production reporting. FCIC also proposes to update the example in this paragraph with contemporary dates. This proposed change is intended to prevent the policy from appearing outdated. FCIC also proposes to revise the sentence structure of this provision to provide clarity and consistency with similar provisions in these Crop Provisions that are used in lieu of the Basic Provisions.

5. Section 7 (“Insured Crop”) – FCIC proposes to redesignate the introductory paragraph of section 7 as paragraph (a) and redesignate paragraphs 7(a) through 7(f) as 7(a)(1) through 7(a)(6). FCIC proposes to revise the newly designated paragraph (a) by revising language to designate the insured crop as each “citrus fruit group” the insured elects to insure. This change in section 7 is necessary to prevent changes to assessment of administrative fees because of revisions to commodity names. This change will also allow the insured to continue to elect to insure some citrus acreage and not insure other citrus acreage on the same basis as is currently allowed.

FCIC proposes to revise the newly designated paragraph 7(a)(2) to clarify that the insured crop must be grown on trees adapted to the area. The current provision states the acreage must be adapted to the area. However, the trees on which the insured crop is grown must be adapted to the area.

FCIC proposes to revise the newly designated paragraph 7(a)(3) by removing the

term “are” and adding the term “is” in its place. FCIC proposes this change to maintain verb usage consistent with the language in newly redesignated paragraph 7(a).

FCIC proposes to add a new paragraph 7(b) to clarify assessment of administrative fees. FCIC has received requests to clarify how administrative fees are assessed in the Crop Provisions. Because each citrus fruit group will be designated as a separate insured crop, each citrus fruit group will be assessed a separate administrative fee in accordance with section 7 of the Basic Provisions and section 6 of the Catastrophic Risk Protection Endorsement.

6. Section 8 (“Insurable Acreage”) - FCIC proposes to revise section 8 by adding the words “fruit group” immediately following the word “citrus” and removing references to the term “crop” and replacing them with the term “agricultural commodity,” except FCIC will replace the first instance of “crop” appearing in section 8 with “insured crop.” These changes will provide consistency with the proposed changes to the definition of “interplanted.” FCIC also proposes to add language to clarify interplanted acreage is not insurable unless a citrus fruit group is interplanted with another perennial agricultural commodity.

7. Section 10 (“Causes of Loss”) – FCIC proposes to add provisions in paragraph 10(a) that allow insects and disease as insurable causes of loss unless excluded or otherwise restricted through the Special Provisions, provided production losses are not due to damage resulting from insufficient or improper application of control measures recommended by agricultural experts. FCIC proposes to remove the provisions in paragraph 10(b)(1) that only provide coverage against damage or loss of production due to insects and disease if an insurable cause of loss prevents the proper application of

control measures, causes properly applied control measures to be ineffective, or causes disease or insect infestation for which no effective control mechanism is available. For Texas citrus fruit, the language contained in paragraph 10(b)(1) requires a determination that can be difficult to make with regard to whether an underlying cause of loss prevented the proper application of control measures, caused properly applied control measures to be ineffective, or caused a disease or insect infestation for which no effective control mechanism is available. The proposed change removes this language and provides more comprehensive coverage for citrus growers. This proposed change is similar to changes FCIC has made to other perennial APH policies, such as the Arizona-California Citrus Crop Insurance Provisions, as they have been revised.

The proposed language provides FCIC with greater flexibility to exclude or restrict coverage through the Special Provisions. This greater flexibility is intended to protect program integrity and insured interests by allowing FCIC to exclude or restrict coverage for certain diseases for which limited controls or mitigation practices are available. For example, FCIC plans to exclude citrus greening (Huanglongbing) from coverage through the Special Provisions. However, FCIC seeks input from interested persons regarding exclusion of coverage for this disease through the Special Provisions.

Citrus greening is a deadly bacterial disease that can infect nearly all citrus species (Chung, K-R., and R. H. Brlansky. "Citrus diseases exotic to Florida: Huanglongbing (citrus greening)." (2009).). The bacteria disrupts the vascular system of the trees and eventually leads to tree death (Jagoueix, Sandrine, Joseph Marie Bové, and Monique Garnier. "PCR detection of the two «Candidatus» liberobacter species associated with greening disease of citrus." Molecular and cellular probes 10.1 (1996): 43-50.).

Currently, no known adequate cure exists for citrus greening (Kobori, Youichi, et al. "Dispersal of adult Asian citrus psyllid, Diaphorina citri Kuwayama (Homoptera: Psyllidae), the vector of citrus greening disease, in artificial release experiments." Applied entomology and zoology 46.1 (2011): 27-30.). Trees infected with citrus greening exhibit symptoms that include blotchy yellow leaves and misshapen, poorly developed green fruit with aborted seeds and bitter taste (Graca, JV da. "Citrus greening disease." Annual Review of Phytopathology 29.1 (1991): 109-136.). However, identification of the disease can be difficult because symptoms resemble nutrient deficiencies (Li, Wenbin, John S. Hartung, and Laurene Levy. "Quantitative real-time PCR for detection and identification of Candidatus Liberibacter species associated with citrus huanglongbing." Journal of microbiological methods 66.1 (2006): 104-115.).

Citrus greening is vectored by the Asian citrus psyllid (Diaphorina citri) (French, J. V., C. J. Kahlke, and J. V. Da Graça. "First record of the Asian citrus psylla, Diaphorina citri Kuwayama (Homoptera: Psyllidae) in Texas." Subtropical Plant Science 53 (2001): 14-15.). There are pesticides available that, if applied correctly, can help minimize the spread of the disease by controlling the psyllid (Grafton-Cardwell, Elizabeth E., Lukasz L. Stelinski, and Philip A. Stansly. "Biology and management of Asian citrus psyllid, vector of the huanglongbing pathogens." Annual review of entomology 58 (2013): 413-432.). Properly applied pesticides may be the best current option growers have to help minimize the spread of the disease. However, even if pesticides are applied properly and infected trees are removed from commercial orchards, there are other factors that make control and eradication of the disease problematic. Disease control is complicated by delay of disease symptom appearance in infected trees (Stokstad, Erik. "Dread citrus

disease turns up in California, Texas." Science 336.6079 (2012): 283-284.). Therefore, a tree may be infected and the disease may spread to other trees before disease presence is identified. Disease eradication can be challenging due to adjacent or nearby abandoned or improperly managed groves, and yard trees in residential areas (Tiwari, Siddharth, et al. "Incidence of Candidatus Liberibacter asiaticus infection in abandoned citrus occurring in proximity to commercially managed groves." Journal of economic entomology 103.6 (2010): 1972-1978.). Trees in these areas can serve as reservoirs for the disease inoculum. Although the Asian citrus psyllid can only fly relatively short distances, it can be carried greater distances by wind (Hall, D. G., and M. G. Hentz. "Seasonal flight activity by the Asian citrus psyllid in east central Florida." Entomologia experimentalis et applicata 139.1 (2011): 75-85.). Therefore, extreme wind events such as hurricanes and tornados may also exacerbate the spread of citrus greening.

Citrus greening was first discovered in Florida in August 2015 and since spread to nearly all counties in Florida with citrus (Brlansky, R. H., et al. "2006 Florida citrus pest management guide: Huanglongbing (citrus greening)." UF/IFAS Extension (2012).).. The Asian citrus psyllid was first detected in Texas in 2001 (French, J. V., C. J. Kahlke, and J. V. Da Graça. "First record of the Asian citrus psylla, Diaphorina citri Kuwayama (Homoptera: Psyllidae) in Texas." Subtropical Plant Science 53 (2001): 14-15.). The presence of the psyllid in Texas has resulted in quarantines restricting movement of citrus plant material and citrus nursery stock. Citrus greening research is currently occurring, including 2014 Farm Bill funding which authorized approximately \$125 million of the USDA Specialty Crop Research Initiative toward citrus health research over the next five years. USDA Farm Service Agency (FSA) does currently provide assistance to cover the

replacement and establishment of infected trees through its Tree Assistance Program.

The current Texas Citrus Fruit Crop Insurance Provisions may appear to provide some level of protection against production loss from citrus greening, but the current policy is unlikely to allow loss payment for citrus greening. The current policy language requires linkage of production loss from insects and disease to another underlying covered cause of loss. For example, a hurricane may occur that could prevent or otherwise negatively impact control measures by spreading the disease to outbreak levels. However, it is unlikely that citrus greening would trigger an indemnity under this scenario because citrus greening symptom latency is unlikely to satisfy the policy provision in section 9 of the Crop Provisions allowing an indemnity payment only for losses occurring within the insurance period. Therefore, if a hurricane spreads the disease into a grove and symptoms do not appear until the next crop year, the current policy would not cover production loss because the insured cause of loss (i.e. hurricane) that prevented or impacted control measures occurred outside the insurance period in which production loss occurred.

Specifically, under circumstances that prevented the proper application of control measures or caused properly applied control measures to be ineffective, it is unlikely that losses in a given year would exceed the deductible under the current policy due to slow disease progression. For example, if excess precipitation prevented or rendered ineffective proper pesticide application, the production loss from trees infected by this event are unlikely to exceed the deductible for the current crop year, even if the highest coverage level was selected. In addition, even if events happened in successive years, the Crop Provisions also authorize underwriting controls that require acreage adjustment

when trees are removed or the guarantee to be reduced for existing damage. These underwriting controls would likely prevent or reduce losses due to citrus greening from exceeding the deductible in most situations. Although it may be possible, under some circumstances, that indemnities due to citrus greening could be triggered, the current policy provides subjective or little assurance of protection against citrus greening for the reasons stated above.

When changes to the Texas Citrus Fruit Crop Provisions are finalized, FCIC intends to conduct a full rate review to examine the impact of all policy changes combined with past loss experience, which could increase or decrease premium rates. However, if the proposed language covered citrus greening, FCIC would likely have to increase premium rates to account for this risk, with additional rate increases possible based on loss experience to maintain actuarial soundness under section 506(n)(2) (7 U.S.C. 1506(n)(2)) of the Federal Crop Insurance Act (FCIA or the Act). The benefit of the coverage may not be perceived by growers to be worth the additional premium cost because underwriting controls necessary to protect program integrity are unlikely to allow citrus greening indemnities in most scenarios. Consequently, allowing such coverage may require Approved Insurance Providers to explain underwriting controls precluding indemnity payment when the insured believed it had coverage against citrus greening. In addition, if citrus greening indemnities became widespread and underwriting controls were insufficient to limit indemnities, premium rates could increase rapidly. Texas citrus producers have expressed concern to FCIC about citrus greening coverage contributing to increasing premium rates. FCIC plans to exclude citrus greening as an insurable cause of loss through the Special Provisions to protect program integrity and prevent adverse

impacts on the crop insurance delivery system for Texas citrus fruit policies.

7. Section 11 (“Duties in the Event of Damage or Loss”) – FCIC proposes to revise section 11 by adding a new paragraph (a), designating the introductory paragraph as (b), and redesignating paragraphs (a) and (b) as (b)(1) and (b)(2) respectively. FCIC proposes the new paragraph (a) to clarify that, in accordance with section 14 of the Basic Provisions, the insured must leave representative samples for appraisal purposes. The Basic Provisions stipulate representative samples must be left if required by the Crop Provisions or the Special Provisions. Representative samples are necessary to appraise damaged production for indemnity claim purposes. FCIC also proposes new paragraph (a) will state that in lieu of the requirements of section 14(c)(3) of the Basic Provisions, the Approved Insurance Provider will determine which trees must remain unharvested so that the Approved Insurance Provider may inspect these trees in accordance with FCIC procedures. Section 14(c)(3) of the Basic Provisions states that unless otherwise specified in the Crop Provisions or Special Provisions, the samples of the crop in each field in the unit must be 10 feet wide and extend the entire length of the rows, if the crop is planted in rows, or if the crop is not planted in rows, the longest dimension of the field. These requirements in the Basic Provisions are not appropriate for crops insured under these Crop Provisions. Therefore, FCIC intends the proposed revision to allow FCIC to issue crop specific guidance for the insurance provider to use to instruct the insured on which trees must remain unharvested.

FCIC proposes to revise the newly designated paragraph 11(b)(2) to clarify that if the insured intends to claim an indemnity on any unit, the insured must notify the Approved Insurance Provider at least 15 days prior to the beginning of harvest, or within 24 hours if

damage is discovered during harvest, so the Approved Insurance Provider may have an opportunity to inspect the unit. This change provides a required timeframe for reporting damage and is consistent with revisions to other perennial crop policies, such as the Arizona-California Citrus Crop Insurance Provisions.

8. Section 12 (“Settlement of Claim”) – FCIC proposes to revise paragraph 12(b) by removing the phrase “crop, or variety if applicable” and inserting the phrase “combination of commodity type and intended use” in its place. FCIC proposes this change because “commodity type” listed in the actuarial documents will coincide with the current crop names and the price elections for each combination of commodity type and intended use will determine insurance elections for the unit.

FCIC proposes to revise paragraph 12(d) to clarify the provision applies only to citrus fruit insured with an intended use of juice. FCIC proposes this change to clarify the applicable citrus fruit type subcategory for applying this adjustment. Fresh and juice are currently type designations in the actuarial documents. However, for the 2018 crop year for citrus fruit groups insured under the Texas Citrus Fruit Crop Insurance Provisions, FCIC plans to expand the type category in the actuarial documents to include additional subcategories such as commodity type and intended use. Fresh and juice designations will be contained in the intended use category.

FCIC proposes to revise paragraph 12(e) by removing the fresh fruit terminology and replacing it with the intended use of fresh terminology. FCIC proposes this change because the fresh fruit option will be identified in the actuarial documents under the intended use category. The fresh fruit option will be elected by reporting the intended use of fresh. Therefore, to provide consistency with terms used in actuarial documents,

FCIC proposes to remove the fresh fruit terminology and replace this terminology with intended use of fresh.

FCIC also proposes to revise paragraph 12(e) by revising the calculation for adjusting production to count for fruit insured as fresh that is not marketable as fresh due to insured causes of loss. The current provision states to use the local market price for the week before damage occurred, but does not specify procedures if a local market price is not available. FCIC publishes an annual bulletin that provides prices for settling claims because local market prices are not available for a portion of the year when processing plants are idle. FCIC proposes to revise the calculation to require the number of tons of damaged citrus to be multiplied by a Fresh Fruit Factor contained in the Special Provisions. The Fresh Fruit Factor will represent the ratio of the value of damaged fruit to the value of undamaged fresh fruit. The Fresh Fruit Factor will be determined using historical prices and other available data as applicable. This proposed change will provide consistency in the loss adjustment process, prevent delays in claims, and lessen the burden on the Approved Insurance Providers and FCIC.

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

Crop insurance, Texas citrus fruit, 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 2018 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(l), 1506(o).

2. Amend 7 CFR 457.119 as follows:

- a. In the introductory text by removing “2000” and adding “2018” in its place;
- b. By removing the undesignated paragraph immediately preceding section 1;
- c. In section 1:
  - i. By adding in alphabetical order the definitions of “citrus fruit commodity,” “citrus fruit group,” “commodity type,” and “intended use”;
  - ii. By removing the definitions of “crop,” “local market price,” and “varieties”;
  - iii. In the definition of “crop year” by removing the term “citrus” and adding the term “insured” in its place;
  - iv. In the definition of “direct marketing” by adding the term “insured” directly preceding the term “crop” in the second sentence;
  - v. In the definition of “excess rain” by adding the term “insured” directly preceding the term “crop”;
  - vi. By revising the definitions of “excess wind,” “interplanted,” and “production guarantee (per acre)”;
- d. In section 2 by revising paragraphs (a) and (c);
- e. In section 3:
  - i. In the introductory paragraph by removing the phrase “(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)” immediately following the words “section 3”;
  - ii. By revising paragraphs (a) and (b);
  - iii. In paragraph (d) introductory text by removing the term “type” and adding the

phrase “commodity type and intended use” in its place;

iv. In paragraph (d)(4) by removing the phrase “perennial crop, and anytime” and replacing it with the phrase “agricultural commodity and any time”;

v. In paragraph (d)(4)(i) by removing the phrase “crop, and type” and adding the phrase “agricultural commodity and commodity type,” in its place;

vi. By redesignating paragraphs (e) and (f) as (f) and (g) respectively;

vii. By designating the undesignated paragraph following paragraph (d)(4)(iii) as paragraph (e);

viii. By revising the newly designated paragraph (e);

ix. In the newly designated paragraph (f) add a comma following the term “provisions” and remove the comma following the term “trees”; and

x. By revising the newly designated paragraph (g);

f. In section 4 by removing the phrase “(Contract Changes)” immediately following the words “section 4”;

g. In section 5 by removing the phrase “(Life of Policy, Cancellation, and Termination)” immediately following the words “section 2”;

h. In section 6 by removing the phrase “(Annual Premium)” immediately following the words “section 7”;

i. In section 7 by:

i. Designating the undesignated introductory paragraph as paragraph (a) and redesignating paragraphs (a) through (f) as (a)(1) through (6) respectively;

ii. Revising the newly designated paragraph (a);

iii. In the newly designated paragraph (a)(2) by removing the term “are” and adding

the phrase “is grown on trees” in its place;

iv. In the newly designated paragraph (a)(3) by removing the term “are” and adding the term “is” in its place;

v. Adding a new paragraph (b);

j. Revise section 8;

k. In section 9:

i. In paragraph (a) by removing the phrase “(Insurance Period)” immediately following the words “section 11”;

ii. In paragraph (a)(1) by adding a hyphen between the terms “10” and “day” and by adding the term “insured” immediately preceding the phrase “crop or to determine the condition of the grove.”; and

iii. In paragraph (b) by removing the phrase “(Insurance Period)” immediately following the words “section 11”;

l. In section 10:

i. In paragraph (a) by removing the phrase “(Causes of Loss)” immediately following the words “section 12”;

ii. In paragraph (a)(7) by removing the word “or”;

iii. In paragraph (a)(8) by removing the period and adding “; or” in its place;

iv. By adding a new paragraph (a)(9); and

v. By revising paragraph (b);

m. In section 11:

i. By redesignating paragraph (a) as (b)(1); and

ii. By redesignating paragraph (b) as (b)(2) and revising the newly designated

paragraph (b)(2);

iii. By designating the undesignated introductory paragraph as paragraph (b) introductory text;

iv. By adding a new paragraph (a);

v. In the newly designated paragraph (b) by removing the phrase “(Duties in the Event of Damage or Loss)” immediately following the words “section 14”;

n. In section 12:

i. By revising paragraph (b)(1);

ii. In paragraph (b)(2) by removing the phrase “crop, or variety, if applicable” and adding the phrase “combination of commodity type and intended use” in its place;

iii. In paragraph (b)(4) by removing the phrase “variety, if applicable,” and adding the phrase “combination of commodity type and intended use” in its place;

iv. In paragraph (c)(1)(iv) by removing the term “crop” in all three places it appears and adding the term “insured crop” in its place; and

v. In paragraph (d) by adding the phrase “insured with an intended use of juice” after the phrase “Any citrus fruit”;

vi. By revising paragraph (e).

The revisions and additions read as follows:

§ 457.119 Texas citrus fruit crop insurance provisions.

\* \* \* \* \*

1. Definitions

Citrus fruit commodity. Includes the following:

(a) Oranges;

(b) Grapefruit; and

(c) Any other citrus fruit designated as a “citrus fruit commodity” in the actuarial documents.

Citrus fruit group. A designation in the Special Provisions used to identify combinations of citrus fruit commodity types and intended uses within a citrus fruit commodity that may be grouped together for the purposes of electing coverage levels and identifying the insured crop.

Commodity type. A specific subcategory of a citrus fruit commodity having a characteristic or set of characteristics distinguishable from other subcategories of the same citrus fruit commodity.

\* \* \* \* \*

Excess wind. A natural movement of air that has sustained speeds exceeding 58 miles per hour (50 knots) recorded at the U.S. National Weather Service reporting station or any other weather reporting station identified in the Special Provisions operating nearest to the insured acreage at the time of damage.

\* \* \* \* \*

Intended use. The insured’s expected end use or disposition of the commodity at the time the commodity is reported. Insurable intended uses will be specified in the Special Provisions.

Interplanted. In lieu of the definition contained in section 1 of the Basic Provisions, acreage on which two or more agricultural commodities are planted in any form of alternating or mixed pattern and at least one of these agricultural commodities constitutes an insured crop under these Crop Provisions.

Production guarantee (per acre). In lieu of the definition contained in section 1 of the Basic Provisions, the production guarantee will be determined by stage as follows:

\* \* \*

(b) Second stage production guarantee. The quantity of citrus (in tons) determined by multiplying the yield determined in accordance with section 3(e) of these Crop Provisions by the coverage level percentage you elect.

\* \* \* \* \*

## 2. Unit Division

(a) Basic units will be established for each insured crop in accordance with section 1 of the Basic Provisions.

\* \* \* \* \*

(c) Optional units may be established by either of the following, but not both:

(1) In accordance with section 34(c) of the Basic Provisions, except as provided in section 2(b) of these Crop Provisions; or

(2) Non-contiguous land.

## 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 insured crop.

(1) The price election you choose for each insured crop need not bear the same percentage relationship to the maximum price offered by us for each insured crop. For example, if you choose one hundred percent (100%) of the maximum price election for one insured crop (e.g., the citrus fruit group for early and midseason oranges), you may choose seventy-five percent (75%) of the maximum price election for another insured

crop (e.g., the citrus fruit group for late oranges).

(2) If separate price elections are available by commodity type or intended use within an insured crop, the price elections you choose within the insured crop must have the same percentage relationship to the maximum price offered by us for each other commodity type or intended use within the insured crop. For example, if separate price elections are available for commodity type ruby red grapefruit with an intended use of fresh, and commodity type ruby red grapefruit with an intended use of juice, and you choose one hundred percent (100%) of the price election for commodity type ruby red grapefruit with an intended use of fresh, you must also choose one hundred percent (100%) of the price election for commodity type ruby red grapefruit with an intended use of juice.

(b) The production guarantee per acre is progressive by stage and increases from the first stage production guarantee to the second stage production guarantee. The stages are as follows:

(1) The first stage extends from the date insurance attaches through April 30 of the calendar year of normal bloom.

(2) The second stage extends from May 1 of the calendar year of normal bloom until the end of the insurance period.

\* \* \* \* \*

(e) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any circumstance that may reduce your yields from previous levels. Examples of these circumstances that may reduce yield may include, but are not necessarily limited to, interplanted agricultural commodities; tree

removal, topping, hedging, or pruning of trees; damage; and change in practices. If the circumstance occurred:

(1) Before the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the circumstance was due to an insured or uninsured cause of loss;

(2) After the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) Before or after the beginning of the insurance period and you fail to notify us by the production reporting date, an amount equal to the reduction in the yield will be added to the production to count calculated in section 12(c) of these Crop Provisions due to uninsured causes. We will reduce the yield used to establish your production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees or in the yield potential of the insured acreage.

\* \* \* \* \*

(g) In lieu of the provisions in section 3 of the Basic Provisions that require reporting your production for the previous crop year, for each crop year you must report your production from two crop years ago (e.g., on the 2018 crop year production report, you will provide your 2016 crop year production).

\* \* \* \* \*

## 7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the insured crop will be each citrus fruit group you elect to insure and for which a premium rate is provided by the actuarial documents:

\* \* \* \* \*

(b) For each insured crop, administrative fees will be assessed in accordance with section 6 of the Catastrophic Risk Protection Endorsement and section 7 of the Basic Provisions.

#### 8. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance attaching to an insured crop interplanted with another agricultural commodity, interplanted acreage is uninsurable, except that a citrus fruit group interplanted with another perennial agricultural commodity is insurable unless we inspect the acreage and determine it does not meet the requirements contained in your policy.

\* \* \* \* \*

#### 10. Causes of Loss

\* \* \* \* \*

(a) \* \* \*

(9) Insects and plant disease, unless excluded or otherwise restricted through the Special Provisions, provided the loss of production is not due to damage resulting from insufficient or improper application of control measures as recommended by agricultural experts.

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

citrus 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.

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 lieu of the requirements of section 14(c)(3) of the Basic Provisions, we will determine which trees must remain unharvested so that we may inspect them in accordance with FCIC procedures.

(b) \* \* \*

(2) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest, or within 24 hours if damage is discovered during harvest, so we may have an opportunity to inspect the unit. 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, all such production will be considered undamaged and included as production to count.

12. Settlement of Claim

\* \* \* \* \*

(b) \* \* \*

(1) Multiplying the insured acreage for each combination of commodity type and intended use by its respective production guarantee;

\* \* \* \* \*

(e) Any citrus fruit insured with an intended use of fresh that is not marketable as

fresh fruit due to insurable causes will be adjusted by multiplying the number of tons of such citrus fruit by the applicable Fresh Fruit Factor contained in the Special Provisions.

\* \* \* \* \*

Signed in Washington, D.C., on December 24, 2015..

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Brandon Willis  
Manager  
Federal Crop Insurance Corporation  
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