

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

#### RIN 0563-AC09

### Common Crop Insurance Regulations; Grape Crop Insurance Provisions and Table Grape Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Grape Crop Insurance Provisions and Table Grape Crop Insurance Provisions. The intended effect of this action is to provide policy changes and clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to fraud, waste, or abuse.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business April 29, 2008 and will be considered when the rule is to be made final.

**ADDRESSES:** Interested persons are invited to submit comments, titled "Grape Crop Insurance Provisions", by any of the following methods:

- By Mail to: 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.
- By Express Mail to: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, 9240 Troost Avenue, Kansas City, MO 64131-3055.
- E-mail: [DirectorPDD@rma.usda.gov](mailto:DirectorPDD@rma.usda.gov).
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133-4676.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Lopez, Risk Management Specialist, Product Management, 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

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by 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 through June 30, 2008.

#### 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.

## Federal Register

Vol. 73, No. 41

Friday, February 29, 2008

## 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.

## 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 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 amending § 457.138 Grape Crop Insurance Provisions and § 457.149 Table Grape Crop Insurance Provisions effective for the 2010 and succeeding crop years.

The Grape Crop Insurance Provisions were last updated effective for the 2000 crop year and the Table Grape Crop Insurance Provisions were last updated for the 2001 crop year. Since then, several requests have been made for changes to enhance the coverage offered, address quality adjustment procedures, and improve clarity of the policy provisions.

The proposed changes are as follows:

1. FCIC proposes to amend § 457.138 Grape Crop Insurance Provisions as follows:

a. FCIC is proposing 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;

b. Section 1—FCIC is proposing to revise the definitions of “harvest” and “set out” so the definitions are consistent in both grape policies. FCIC is proposing to add a definition of “type” because optional units by type are being proposed. FCIC also proposes to remove the definition of “varietal group” because insurance is not being

provided by varietal group. The term “varietal group” will be replaced with the term “type” wherever it appears in the Crop Provisions.

Section 2—Current provisions regarding unit structure in California allow basic units by variety, and optional units when insured acreage is located on non-contiguous land or is grown using an organic practice. In all other states, basic units are allowed by share, and optional units are provided by: (1) By section or section equivalent or FSA farm serial number; (2) irrigated and non-irrigated acreage; (3) for grapes grown using an organic farming practice; and (4) by separate varietal group when such groups are specified in the Special Provisions. These unit structures accommodate various production practices, growing conditions, varieties, and availability of data in the different states. Since the last revisions, availability of production data has improved and can now serve as a basis for change in the unit structure. Therefore, FCIC is proposing to change the unit structure for all states except California. The proposal will allow producers in all states other than California and Arizona to obtain optional units by grape type (a category of grapes (one or more varieties) identified as a type in the Special Provisions). In these states, all insurable grape acreage in the county must still be insured. The proposed change will offer expanded coverage and allow producers greater flexibility in unit structure when separate types are specified in the Special Provisions. In addition, since FCIC is also proposing to add grape crop insurance coverage in the state of Arizona, FCIC is proposing that producers in Arizona have the same unit structure as is available to producers in California. The varieties, production practices, and risks in Arizona are most similar to California. Previously, Arizona grape crop insurance coverage was only available by written agreement.

d. Section 3—FCIC is proposing to reorganize subsections (a), (b) and (c) into subsection (a), which will be applicable to California and Arizona, and subsection (b), which will be applicable to all other states. FCIC is proposing that the price and coverage level be specified by variety in California and Arizona and by type in all other states as specified in the Special Provisions.

A new subsection (c) is being proposed that offers an alternative to the published price election. This alternative price will be based on a contract price, provided specific requirements are met, and use of the

contract price is allowed by the Special Provisions of Insurance. Grape growers in some regions are entering into contracts that require them to use cultural practices to produce fewer tons of grapes than they have historically produced. In return, they receive a higher price per ton to compensate for the reduced tonnage. In these cases, the published price election, which is usually based on historical average prices, does not provide adequate insurance coverage for these producers. This proposal will consider the contract price and reduced tonnage to provide an appropriate level of insurance protection for the producer.

In subsection (d), FCIC is proposing to allow a producer in Arizona to apply for a written agreement to establish a price election if the Special Provisions do not provide a published price election for a specific variety the producer wishes to insure. This is currently allowed only in California.

In subsection (g), FCIC is proposing to revise the provision to specify that no producer in any state will be allowed to increase the coverage level or the ratio of the price election to the maximum price election if a cause of loss that could reduce yield is evident prior to the time of the requested increase. These revisions will not only clarify the provisions, they will also increase the flexibility to add insurance coverage in other states, if appropriate.

e. Section 4—FCIC is proposing to add Arizona to the states with a contract change date of October 31.

f. Section 5—FCIC is proposing to add Arizona to the states with a cancellation and termination date of January 31.

g. Section 6—FCIC is proposing that producers in Arizona also report grape acreage by variety as producers in California currently do (each variety in California constitutes a type) and producers in all other states report grape acreage by type.

h. Section 7—FCIC is proposing that producers in Arizona be able to elect which varieties they wish to insure as is currently applicable in California. In all states except Arizona and California, producers will be required to insure all grape types specified in the Special Provisions.

In subsection (b), FCIC proposes to clarify only grapes grown for wine, juice, raisins, or canning are insurable under this policy. However, if any grapes initially intended for these uses are ultimately put to another use (i.e. table grapes), the production to count will be on a tonnage basis and no additional quality adjustment other than that specified in the Grape Crop Provisions will be available.

In subsection (e), FCIC proposes to allow insurance for acreage that has not produced a two-ton average in at least one of the three prior crop years if provided for in the Special Provisions. This proposal will allow insurability requirements to be tailored to specific situations. For example, there may be certain varieties or contracts with reduced tonnage requirements where normal production levels are below 2 tons per acre. Instead of requiring an inspection, such varieties can be specified in the Special Provisions.

i. Section 9—FCIC is proposing to revise the number of days coverage begins from 10 to 20 days when an application is taken after a specified date. This change is being proposed to be more consistent with other perennial crop policies where it may be possible to forecast loss events. A delay of coverage until 20 days after application is made should greatly reduce the ability to predict losses. FCIC also proposes to add a provision allowing termination for the current crop year when insurance attaches prior to the termination date but the premium for the previous year is not paid.

In subsection (a)(2), FCIC is proposing to remove the seven listed states of California, Arizona, Idaho, Mississippi, Oregon, Texas and Washington, to allow the continuous coverage provision to apply to all states. In subsection (a)(3), FCIC is proposing to change the end of the insurance period date for Idaho, Oregon and Washington from November 1 to November 10 and add Arizona to the states using this same date. FCIC has been informed that acreage is still normally being harvested in these states until November 10.

j. Section 12—FCIC is proposing to clarify that even if the grapes are put to a use other than wine, juice, raisins, or canning, they will count as production to count on a tonnage basis, and quality adjustment is limited to those specified in the Crop Provisions. In subsection (e)(2)(i), FCIC is proposing to clarify the quality adjustment procedure. FCIC is proposing that the value per ton of the damaged grapes will be divided by the value per ton for undamaged grapes. The value of undamaged grapes will not exceed the maximum price election for such grapes. This will ensure that the undamaged grapes are not over-valued.

2. FCIC proposes to amend § 457.149 Table Grape Crop Insurance Provisions as follows:

a. FCIC is proposing 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;

b. Section 1—FCIC is proposing to revise the definitions of “harvest” and “set out” to be consistent in both grape policies. FCIC is proposing to add definitions of “type” and “USDA grade standard”. The term “type” is added because it is proposed to be used in the structure of optional units. The term “USDA grade standard” is added to establish an objective standard by which the table grapes will be graded for the purposes of quality adjustment when there is no applicable state standard. FCIC is proposing to revise the definition of “lug” to add standards for states other than Arizona and California. FCIC also proposes to add language indicating the Special Provisions may specify a different number of pounds per lug. This will allow flexibility in the event standards change from year to year. FCIC also proposes to remove the definition of “cluster thinning and removal” as it is no longer referenced in the policy;

c. Section 2—To be consistent with the Grape Crop Provisions, FCIC is proposing to add a new subsection (c) to provide unit division by type for all states, except Arizona and California, when separate types are specified in the Special Provisions;

d. Section 3—FCIC is proposing to specify that in the states of Arizona and California the producer may select only one price election and coverage level for each table grape variety in the county. FCIC is proposing to add a new subsection (b) to allow producers in all states except Arizona and California to select only one price election and coverage level for each grape type specified in the Special Provisions;

e. Section 4—FCIC is proposing to add a contract change date of August 31 for all states, except Arizona and California. This will allow the insurance coverage to be modified to more accurately reflect the desired coverage period and allow approved insurance providers sufficient time to train agents on the changes so they can properly inform their insureds;

f. Section 5—FCIC is proposing to add cancellation and termination dates of November 20, in all states, except Arizona and California. This provides insurance coverage that more accurately reflects the production period;

g. Section 6—FCIC is proposing to add provisions for states other than Arizona and California that require the producer to report acreage by each type insured;

h. Section 7—FCIC is proposing to revise the introductory text of section 7 to specify the crop insured will be any

insurable variety the producer elects to insure in Arizona and California or all insurable types in the county for which a premium rate is provided by the actuarial documents in all states, except Arizona and California. This change is necessary because California and Arizona offer insurance by variety but as stated above, all other states will now offer insurance by type. The remaining subsections have been revised to ease in reading and to provide consistency between the Table Grape and Grape Crop Provisions;

i. Section 9—FCIC is proposing to revise the number of days before coverage begins from 10 days to 20 days when an application is taken after a specified date. This change is being proposed to be more consistent with other perennial crop policies where it may be possible to forecast loss events. A delay of coverage until 20 days after application is made should greatly reduce the ability to predict losses. Subsections have been redesignated to provide consistency between the Table Grape and Grape Crop Provisions;

j. Section 10—FCIC is proposing to revise the causes of loss to be consistent with the Grape Crop Provisions. This means that insects and plant disease are now covered causes of loss except for losses caused by the insufficient or improper application of pest control or disease control measures; and

k. Section 12—FCIC proposes to revise section 12(c)(1)(iii) to include the appropriate state or USDA standards, if state standards are not available for table grapes.

## List of Subjects in 7 CFR Part 547

Crop insurance, Grapes, 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 2010 and succeeding crop years to read 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(p).

2. Amend § 457.138, Grape crop insurance provisions as follows:

a. In the first line of the introductory text remove “2000” and add “2010” in its place;

b. Remove the paragraph immediately preceding section 1;

c. Amend section 1 by revising the definitions of “harvest” and “set out”,

adding a definition of "type", and removing the definition of "varietal group";

- d. Revise section 2;
- e. Revise section 3;
- f. Revise section 4;
- g. Revise section 5;
- h. Revise section 6;
- i. Revise section 7;
- j. Revise section 8;
- k. Amend section 9 by revising paragraph (a) and the introductory text in paragraph (b);

I. Amend section 10 by revising paragraph (a) introductory text;

m. Amend section 11 by revising the introductory text; and

n. Amend section 12 by adding the word "type" after the phrase "varietal group" in both places in paragraphs (b)(2) and (4), revising paragraphs (c)(2) and (e)(2)(i).

The added and revised text reads as follows:

#### **§ 457.138 Grape crop insurance provisions**

\* \* \* \* \*

##### 1. Definitions.

\* \* \* \* \*

*Harvest.* Removing the mature grapes from the vines either by hand or machine.

\* \* \* \* \*

*Set out.* Physically planting the grape plants in the vineyard.

\* \* \* \* \*

*Type.* A category of grapes (one or more varieties) identified as a type in the Special Provisions.

##### 2. Unit Division.

(a) In Arizona and California only:

(1) A basic unit as defined in section 1 of the Basic Provisions will be divided into additional basic units by each variety that you insure; and

(2) Provisions in the Basic Provisions that provide for optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

(b) In all states except Arizona and California, in addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions, a separate optional unit may be established if each optional unit:

- (1) Is located on non-contiguous land; or
- (2) Consists of a separate type when separate types are specified in the Special Provisions.

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

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

- (a) In Arizona and California, you may select only one price election and coverage level for each grape variety in the county.
- (b) In all states except Arizona and California, you may select only one price election and coverage level for each grape type specified in the Special Provisions.

(c) In addition to the definition of "price election" contained in section 1 of the Basic Provisions, a price election based on the price contained in your grape contract is allowed if provided by the Special Provisions. In the event any contract requires a reduction in the amount of production from any insured acreage, your approved yield will be adjusted in accordance with section 3(e).

(d) In Arizona and California only, if the Special Provisions do not provide a price election for a specific variety you wish to insure, you may apply for a written agreement to establish a price election. Your application for the written agreement must include:

- (1) The number of tons sold for at least the two most recent crop years; and
- (2) The price received for all production of the grape variety in the years for which production records are provided.

(e) You must report by the production reporting date designated in section 3 of the Basic Provisions, by type or variety, if applicable:

(1) Any damage, removal of bearing vines, 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 vines on insurable and uninsurable acreage;

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

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

(i) The age of the interplanted crop, and the grape type or variety, if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

(f) We will reduce the yield used to establish your production guarantee, based on our estimate of the effect of the following: interplanted perennial crop;

removal of vines; damage; change in practices and any other circumstance that may affect the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee at any time we become aware of the circumstance.

(g) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

#### 4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 preceding the cancellation date for Arizona and California and August 31 preceding the cancellation date for all other states.

#### 5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31 in Arizona and California, and November 20 for all other states.

#### 6. Report of Acreage.

In addition to the requirements of section 6 of the Basic Provisions, you must report your acreage:

- (a) In Arizona and California, by each grape variety you insure; or
- (b) In all other states, by each grape type you insure.

#### 7. Insured Crop.

In accordance with section 8 of the Basic Provisions, the crop insured will be any insurable variety that you elect to insure in Arizona and California, or in all other states all insurable types, in the county for which a premium rate is provided by the actuarial documents:

- (a) In which you have a share;
- (b) That are grown for wine, juice, raisins, or canning (if such grapes are put to another use, they will still be insured and they will count as production to count in accordance with section 12(c)(2)(ii));

(c) That are grown in a vineyard that, if inspected, is considered acceptable by us;

(d) That, after being set out or grafted, have reached the number of growing seasons designated by the Special Provisions; and

(e) That have produced an average of two tons of grapes per acre unless otherwise provided in the Special Provisions, in at least one of the three crop years immediately preceding the insured crop year, or we inspect and allow insurance on such acreage.

#### 8. Insurable Acreage.

In lieu of the provisions in section 9 of the Basic Provisions that prohibit

insurance attaching to a crop planted with another crop, grapes 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.

#### 9. Insurance Period.

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

(1) For the year of application, coverage begins on February 1 in Arizona and California, and November 21 in all other states of each crop year. Notwithstanding the previous sentence, if your application is received by us after January 12 but prior to February 1 in Arizona or California, or after November 1 but prior to November 21 in all other states, insurance will attach on the 20th day after your properly completed application is received in our local office, unless we inspect the acreage during the 20-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 vineyard.

(2) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) If your grape policy is cancelled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

(4) The calendar date for the end of the insurance period for each crop year is as follows, unless otherwise specified in the Special Provisions:

(i) October 10 in Mississippi and Texas;

(ii) November 10 in Arizona, California, Idaho, Oregon and Washington; and

(iii) November 20 in all other states.

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

\* \* \* \* \*

#### 10. Cause of Loss.

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following cause of loss that occur during the insurance period:

\* \* \* \* \*

#### 11. Duties in the Event of Damage or Loss.

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

\* \* \* \* \*

#### 12. Settlement of Claim.

\* \* \* \* \*

(c) \* \* \*

(2) All harvested production from the insurable acreage:

(i) Grape production that is harvested and dried for raisins will be converted to a fresh weight basis by multiplying the number of tons of raisin production by 4.5.

(ii) Grapes grown for wine, juice, raisins or canning and put to another use, will be counted as production to count on a tonnage basis and no quality adjustment other than that specifically provided for in your policy is available.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(i) Dividing the value per ton of the damaged grapes by the value per ton for undamaged grapes (the value of undamaged grapes will be the lesser of the average market price or the maximum price election for such grapes); and

\* \* \* \* \*

#### 3. Amend § 457.149 Table grape crop insurance provisions as follows:

a. In the first line of the introductory text, remove "2001" and add "2010" in its place;

b. Remove the paragraph immediately preceding section 1;

c. Amend section 1 by revising the definitions of "harvest", "lug", and "set out", adding a definition of "type and USDA grade standard", and removing the definition of "cluster thinning and removal";

d. Revise section 2;

e. Revise section 3;

f. Revise section 4;

g. Revise section 5;

h. Revise section 6;

i. Revise section 7;

j. Revise section 8;

k. Revise section 9;

l. Revise section 10;

m. Amend section 11 by revising the introductory text; and

n. Amend section 12 by revising paragraphs (b)(2) and (4) and (c)(1)(iii).

The added and revised text reads as follows:

#### **§ 457.149 Table grape crop insurance provisions.**

\* \* \* \* \*

##### 1. Definitions.

\* \* \* \* \*

*Harvest.* Removing the mature grapes from the vines either by hand or machine.

\* \* \* \* \*

*Lug.* Twenty (20) pounds of table grapes in the Coachella Valley, California district, and all other states. Twenty-one (21) pounds in all other California districts, or as otherwise specified in the Special Provisions.

*Set out.* Physically planting the grape plants in the vineyard.

\* \* \* \* \*

*Type.* A category of grapes (one or more varieties) identified as a type in the Special Provisions.

*USDA grade standard.* United States standard used to determine the minimum quality grade will be: (1) The United States Standards for Grades of Table Grapes (European or Vinifera Type); (2) the United States Standard for Grades of American (Eastern Type) Bunch Grapes; and (3) the United States Standards for Grades of Muscadine (*Vitis rotundifolia*) Grapes. The quantity and number of samples required will be determined in accordance with procedure issued by FCIC or as provided on the Special Provisions of Insurance.

#### 2. Unit Division.

(a) In Arizona and California only:

(1) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each table grape variety that you insure; and

(2) Provisions in the Basic Provisions that provide for optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

(b) In all states except Arizona and California, in addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions, a separate optional unit may be established if each optional unit:

(1) Is located on non-contiguous land; or

(2) Consists of a separate type when separate types are specified in the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Price for Determining Indemnities. In addition to the requirements of section 3 of the Basic Provisions:

(a) In Arizona and California, you may select only one price election and

coverage level for each table grape variety in the county.

(b) In all states except Arizona and California, you may select only one price election and coverage level for each table grape type specified in the Special Provisions.

(c) You must report by the production reporting date designated in section 3 of the Basic Provisions, by type or variety if applicable:

(1) Any damage, removal of bearing vines, 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 vines on insurable and uninsurable acreage;

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

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

(i) The age of the interplanted crop, and the table grape type or variety, if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

(d) We will reduce the yield used to establish your production guarantee, based on our estimate of the effect of the following: Interplanted perennial crop; removal of vines; damage; change in practices and any other circumstance that may affect the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee at any time we become aware of the circumstance.

(e) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

#### 4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 preceding the cancellation date for Arizona and California and August 31 preceding the cancellation date for all other states.

#### 5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31 in Arizona and California, and November 20 for all other states.

#### 6. Report of Acreage.

In addition to the requirements of section 6 of the Basic Provisions, you must report your acreage:

(a) In Arizona and California, by each table grape variety you insure; or

(b) In all other states, by each type you insure.

#### 7. Insured Crop.

In accordance with section 8 of the Basic Provisions, the crop insured will be any insurable variety of table grapes that you elect to insure in Arizona and California, or in all other states all insurable types, in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are grown for harvest as table grapes;

(c) That are adapted to the area;

(d) That are grown in a vineyard that, if inspected, is considered acceptable by us;

(e) That, after being set out or grafted, have reached the number of growing seasons designated by the Special Provisions; or

(f) That have produced an average of at least 150 lugs of table grapes per acre in at least one of the most recent three crop years in your actual production history base period. However, we may agree in writing to insure acreage that has not produced this amount.

#### 8. Insurable Acreage.

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance attaching to a crop planted with another crop, table grapes 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.

#### 9. Insurance Period.

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

(1) For the year of application, coverage begins on February 1 in Arizona and California, and November 21 in all other states. Notwithstanding the previous sentence, if your application is received by us after January 12 but prior to February 1 in Arizona or California, or after November 1 but prior to November 21 in all other states, insurance will attach on the 20th day after your properly completed application is received in our local office, unless we inspect the acreage during the 20-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 vineyard.

(2) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day

immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) If your table grape policy is cancelled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates, whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

(4) The calendar date for the end of insurance period for each crop year is the date specified in the Special Provisions.

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

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of table grapes on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium will be due or 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.

#### 10. Cause of Loss.

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

(1) Adverse weather conditions;

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

(3) Insects, except as excluded in 10(b)(1), but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;  
 (7) Volcanic eruption; or  
 (8) Failure of 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 of the Basic Provisions, we will not insure against damage or loss of production due to:

- (1) Phylloxera, regardless of cause; or
- (2) Inability to market the table grapes for any reason other than the 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.

#### 11. Duties in the Event of Damage or Loss.

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

\* \* \* \* \*

#### 12. Settlement of Claim.

\* \* \* \* \*

(b) \* \* \*

(2) Multiplying the result in section 12(b)(1) by the respective price election for the variety or type;

\* \* \* \* \*

(4) Multiplying the total production to be counted of the variety or type (see section 12(c)) by the respective price election;

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iii) Unharvested production that meets, or would meet if properly handled, the state quality standards or the appropriate USDA grade standard (if no state standard is applicable); and

\* \* \* \* \*

Signed in Washington, DC, on February 21, 2008.

**Eldon Gould,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. E8-3850 Filed 2-28-08; 8:45 am]

**BILLING CODE 3410-08-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 959

**[Docket No. AMS-FV-07-0151; FV08-959-1 PR]**

### Onions Grown in South Texas; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the South Texas Onion Committee (Committee) for the 2007–08 and subsequent fiscal periods from \$0.02 to \$0.03 per 50-pound equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Assessments upon onion handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by March 17, 2008.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA; Telephone: (956) 682–2833, Fax: (956) 682–5942, or E-mail: [Belinda.Garza@usda.gov](mailto:Belinda.Garza@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable onions beginning on August 1, 2007, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2007–08 and subsequent fiscal periods from \$0.02 to \$0.03 per 50-pound equivalent of onions.

The South Texas onion marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee’s needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2004–05 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA