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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AD73

[FNS–2007–0009]

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Implementation of Nondiscretionary WIC Certification and General Administrative Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: This is an affirmation by the Department of a final rule, without change, of an interim rule that amended the regulations for the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) by implementing most of the nondiscretionary provisions of the Child Nutrition and WIC Reauthorization Act of 2004 that address participant certification and general program administration in the WIC Program. The rule implements the exclusions from income eligibility determinations set forth in the National Defense Authorization Act for Fiscal Year (FY) 2006 and in the National Flood Insurance Act of 1968, as amended, and clarifies an inconsistency related to fair hearings and notices of adverse actions that was inadvertently omitted in the publication of the Final WIC Miscellaneous Rule. Finally, this rulemaking includes technical amendments to correct the address and telephone numbers to which complaints alleging discrimination in the WIC Program should be directed, and to correct the address of the Western Regional Office of the Food and Nutrition Service (FNS). The interim rule was necessary to implement the non-discretionary provisions of this law.

DATES: Effective on July 7, 2009, the Department is adopting as a final rule the interim rule published at 73 FR 11305 on March 3, 2008.

FOR FURTHER INFORMATION CONTACT: Debra R. Whitford, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, VA 22302, (703) 305–2746, or *Debbie.Whitford@fns.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

On, March 3, 2008, the Department published an interim rule implementing most of the nondiscretionary provisions of the Child Nutrition and WIC Reauthorization Act of 2004, in addition to provisions from the National Defense and Authorization Act of 2004 and the National Flood Insurance Act of 1968. The revisions address participant certification and general program administration in the WIC Program. While most of the provisions in the interim rule were implemented exactly as written in the law, the Department believed the provision related to State-paid EBT costs might be somewhat confusing to State agencies. Comments were invited on that provision in an effort to explain its implementation more fully.

The comment period ended on June 2, 2008. Only one comment letter was submitted during the comment period. The regulatory provisions addressed in that letter pertained only to the nondiscretionary provisions set forth in the interim rule. Because the nondiscretionary provisions have been implemented as set forth in the law, they are retained as written in this final rule.

For reasons given in the interim rule, the Department is adopting the interim rule as a final rule without change.

This action also affirms information contained in the interim rule concerning Executive Order 12866, the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act. Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Infants and children, Maternal and child health, Nondiscrimination, Nutrition education, Public assistance programs, WIC, Women.

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

■ Accordingly, the Department is adopting as a final rule, without change, the interim rule that amended 7 CFR part 246 and was published at 73 FR 11305 on March 3, 2008.

Dated: June 29, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9–15968 Filed 7–6–09; 8:45 am]

BILLING CODE 3410–30–P

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: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes amendments to 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: *Effective Date:* This rule is effective August 6, 2009.

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, P.O. 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 March 31, 2012.

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.

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 1,000 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 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

On February 29, 2008, FCIC published a notice of proposed rulemaking in the **Federal Register** at 73 FR 11054–11060 to revise 7 CFR 457.138 Grape crop insurance provisions and 7 CFR 457.149 Table grape crop insurance provisions. Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions.

A total of 29 comments were received from 8 commenters. The commenters were reinsured companies, trade associations and an insurance service organization. The comments received and FCIC's responses are as follows:

Grape Crop Provisions

Some of the comments received pertained to both the Grape Crop Provisions and Table Grape Crop Provisions. In those cases, the responses will be provided under the Grape Crop Provisions with a note indicating when the Table Grape Crop Provisions are also impacted.

Comment: A few commenters expressed concern regarding insurable grape and table grape varieties in Arizona and California and the possible impact of changing the term ''varietal group'' to ''type'' throughout the policy. In California, there is a type for ''Other Varieties''. This type is for all varieties not listed individually in the Special Provisions. The provisions allow the insured the option to insure one or more varieties under this type. The varieties insured under this type qualify for a separate basic unit. All varieties under this type must have the same coverage level and price election percentage, but would qualify for one single administrative fee as type, ''Other Varieties'', are not recognized as a separate crop in regards to administrative fees. The commenters further stated that in light of the increasing number of varieties being insured under this type, a separate administrative fee should be charged for ''Other Varieties''. In addition, changing ''variety'' to ''type'' could impact varieties currently being insured under this type. Any change in terminology needs to take into consideration the impacts involved in insuring different varieties under type 095 in California.

Response: Provisions that allow insurance to be selected by variety have been retained for Arizona and California. Producers will still be able to select insurance coverage levels by variety except for those varieties that fall under type 095 (other varieties). All varieties listed under type 095 must have the same price election and coverage level percentage. For example,

if a producer selects to insure three varieties under type 095, and selected 80 percent of the maximum price election and 75 percent of the coverage level for the first variety under type 095, the remaining two varieties under type 095 must have the same price election and coverage level percentage as the first. RMA reviewed the California 2007 crop year to determine the number of policies that included multiple varieties under type 095 and found approximately 53 grape policies with multiple varieties under type 095. This is only 1 percent of the total grape policies (4,439). Because such a small percentage of policies are impacted and there is only an average of 15 acres of each variety under type 095 in each policy, RMA determined it is not cost effective to make all the computer system changes necessary to charge a separate administrative fee for each grape variety that falls under type 095. In addition, a definition of ''variety'' has been included in both the Crop Provisions to clarify the term.

Comment: A few commenters stated that in states other than Arizona and California, it is common for different varieties/types of grapes to be grouped into different varietal groups, which are now being eliminated and being referred to as different types. Since there are many different new varieties/types that are always being developed, the commenter would like to recommend that the Special Provisions be clear and specific in defining the different types so that it is easy to determine the proper category for these new varieties.

Response: The Special Provisions will be clear and specific in defining the types. The Special Provisions will clearly indicate that for California and Arizona a ''type'' will consist of a variety, with the exception of type 095 (other varieties). For all other states, a ''type'' will consist of one or more varieties identified as a type on the Special Provisions, (*i.e.*, type 083 may include the Merlot variety and all other varieties not specifically named on the Special Provisions).

Comment: A few commenters questioned whether the replacement of ''varietal group'' with ''type'' was one of terminology or whether there other differences as well. There are no references to what a ''type'' will consist of within a given state or region. The new term ''type'' is used to identify the varieties grouped together in the actuarial documents for all states except Arizona and California for rating and optional unit purposes. The commenters ask if it is similar to the current varietal group in these states/regions. The terminology for Arizona and California throughout the Crop Provisions is ''variety'' or ''grape variety'', however, section 1(g) if the Proposed Rule Background on page 11055 states that ''* * * (each variety in California constitutes a type) * * *'' and the 2008 actuarial documents for California use the term ''type''. The commenters ask if it would be possible to use the term ''type'' for all states rather than having to distinguish between ''variety'' (Arizona and California) and ''type'' (all other states) throughout. This also would help avoid confusion with the use ''variety'' instead of ''type'' along with ''practice'' in the actuarial documents. If Arizona and California continue to use ''variety'' instead of ''type'', presumably the terminology in the actuarial documents for Arizona and California will be changed from ''types'' to ''varieties'', while terminology in other states will be changed from ''varietal group'' to ''type''.

Response: The actuarial document will still use the term ''type''. Type is defined in the Crop Provisions as, ''A category of grapes (one or more varieties) identified as a type in the Special Provisions''. In California and Arizona each variety is a separate type except for type 095 as explained above. In these two states the term ''variety'' must still be used to allow producers to select the varieties they wish to insure within type 095. For all other states covered under the Grape Crop Provisions, the term ''type'' is simply a replacement for the term ''varietal group''. The Table Grape Crop Provisions will now also include the term ''type''.

Comment: A few commenters asked that FCIC consider including a definition of ''variety'' to clarify the difference between ''types'' and ''varieties''. Otherwise, the reference to ''each variety'' in section 2(a)(1) [for Arizona and California] could lead to confusion as to whether or not it is the same as ''type'' as defined.

Response: FCIC has included in both Grape Crop Provisions and Table Grape Crop Provisions a definition of ''variety.''

Comment: A few comments were received regarding unit division. In the states of Arizona and California, basic units are divided into additional basic units by each variety insured. The commenters state that since section 7 states the insured crop will be any insurable variety that the producer elects to insure in these states, section 2(a)(1) may not be necessary. If each variety is insured as a separate crop, it is already a separate basic unit even before establishing any basic units for different share arrangements. However, it may be helpful to include some reference in section 2 to the different basic unit qualifications in Arizona and California. The following is suggested language, ''Basic units are established for each variety that you choose to insure, and also defined in section 1 of the Basic Provisions.''

Response: Unit structure and insurability are two different things and should be treated separately. Therefore, while section 2(a)(1) may not be strictly necessary, it is provided to clarify that while each variety is treated as a separate crop to allow producers to elect which variety they want to insure, all insured varieties are still covered under one grape policy with separate basic units provided. No change has been made.

Comment: A few commenters stated there is no mention of acreage insured under organic farming practices in provisions dealing with unit division. Clarification is needed to determine whether optional units are allowed for organic practices.

Response: In Arizona and California, optional units may be established if each optional unit is located on non-contiguous land. In addition, optional units may be provided for acreage grown and insured under an organic farming practice. In all other states, optional units may be established in accordance with section 34 of the Basic Provisions, which includes optional units for organic acreage, and as provided for in the Grape Crop Provisions. Both the Grape Crop Provisions and the Table Grape Crop Provisions have been clarified accordingly.

Comment: A few comments were received regarding the phrase in section 2(b)(2) ''* * * when separate types are specified in the Special Provisions''. The commenters ask if ''separate type'' is different from a ''type'' and does it need to be defined in section 1.

Response: ''Separate type'' does not to be defined. In this case, ''separate'' is given its common meaning, which means that optional units can be established by each different (or individual) type listed in the Special Provisions.

Comment: A few comments were received regarding clarification of sections 3(a) and (b). In Arizona and California, addition of the phrase ''* * * you elect to insure'' in 3(a) would clarify that each variety is considered a separate crop, and it may not be necessary to mention ''in the county'', though it is for 3(b), which is further clarified as having the same level and price percentage for all grapes in the county, regardless of variety.

Response: The phrase ''you elect to insure'' should be added in section 3(a). The language regarding ''in the county'' should be consistent in both 3(a) and (b) and therefore, will be added to section 3. These same changes have also been made in the Table Grape Crop Provisions to maintain consistency between the policies.

Comment: A few commenters expressed concern with the removal of the language currently in section 3(c) that would allow insureds in all states (not just Arizona and California) to select different price election percentages by type, though this was not identified as a change in the Proposed Rule.

Response: The proposed provision in section 3(b) allows insureds in all states to choose a different price election percentage for each type. This proposal was described in the Proposed Rule on page 11055. In addition, FCIC has also removed section 3(c) (in the current policy), which required the same percentage relationship to the maximum price offered for each varietal group, so that different price election percentage could be selected by type.

Comment: A few commenters questioned the removal of section 3(c), stating it would result in a significant change, allowing grape insureds in all states (not just Arizona and California) to choose different price election percentages by type. They further stated this would be problematic in the other states since different types are not treated as separate crops, but are potentially separate optional units that could end up being combined if the optional unit requirements are not met. Also, new types could be added on the acreage report (because all grapes in the county must be insured), when it is after the sales closing date deadline to select a price percentage. If this is the intent, the language needs clarification. The commenters also stated they do not agree with the intended effect of the revised provision. They suggested that the policyholder continue to be allowed to choose a single price election percentage and coverage level on a county basis and all insurable types in the county would be insured on this basis.

Response: It should not be a problem if there are different coverage levels and price election percentages for separate types provided the application contains the selected coverage levels and price election percentages. Further, clarification has been added to section 3(b) of the Grape Crop Provisions and Table Grape Crop Provisions regarding percentage relationship to the maximum price election. Additionally, FCIC has added a new section 3(c) to both Grape Crop Provisions and Table Grape Crop Provisions (and redesignated the following sections) to account for cases where a new type is added after the application is received. This provision states that if the producer acquires a share in any grape acreage after the application is submitted, provided such acreage is insurable under the terms of the policy and the producer did not include the grape type on the application, the insurance provider will assign a coverage level and price election percentage. The assigned coverage level will be the lowest coverage level selected for any other grape type along with the corresponding price election percentage.

Comment: A few of the commenters expressed concerns regarding the possible use of a contract price. This is already allowed by the Special Provisions in California, but would be new in the Crop Provisions, which would allow for the possibility for this to be extended to other states as well. Care must be taken to make sure that all necessary information is included in the Crop Provisions, while not over-complicating it.

Response: Provisions regarding the use of a contract price when allowed by Special Provisions will include information on how to determine the contract price if more than one contract exists, and a maximum price which the contract price cannot exceed.

Comment: A few comments were submitted regarding the use of a price election based on a contract price if allowed by the Special Provisions. The commenters asked that FCIC consider the ramifications of contract prices coexisting with non-contract prices. In addition, the commenters asked that FCIC consider including a definition under section 1 so that other references to ''price election'' would include the possibility of a contract price basis. ''Price election'' should be defined, and some type of limit should be placed on the price election for grapes under contract. The commenter asked what would the price election be (for a grape type in the county in states other than Arizona and California) if there is a contract price on some grapes types but not others or if there are multiple contract prices within a unit. It is quite possible that one variety is insured under contract while another is not. In such cases, there is a need to specify what price election is used. Clarification is needed to specify that the price election will be based on the contact price but the actual price election will be limited to the terms stated in the Special Provisions. Additionally, determination of an indemnity in section 12 needs to be clearly illustrated in such situations.

Response: It is not necessary to redefine ''price election'' in section 1 because the provision in redesignated section 3(d) indicates a contract price election may be used instead of the published price election. It is not necessary to add an example in section 12 because the provisions already address situations in which multiple price elections are applicable. The provisions regarding use of a contract price, when allowed by Special Provisions, will include information regarding calculation of a weighted average price if more than one price election exists, and a maximum price which the contract price cannot exceed. All of the necessary information will be included in the Special Provisions statement.

Comment: A few commenters noted the reference to adjusting the approved yield in redesignated section 3(d) is not relevant without adding the reason for which production will be reduced. The preamble of the Proposed Rule states that this was added as some contracts require the use of cultural practices to produce fewer tons of grapes. The commenters recommend revising the last sentence of 3(d) to clarify that the reduction to the approved yield will be based on redesignated 3(f): ''* * * In the event any contract requires the use of a cultural practice that will reduce the amount of production from any insured acreage, your approved yield will be adjusted in accordance with section 3(f).''

Response: FCIC has added the reason the yield will be reduced. Redesignated section 3(d) will also reference redesignated section 3(g) because these sections state yields will be reduced to reflect changes in practices or other circumstances.

Comment: A few commenters stated that proposed section 3(f) (redesignated 3(g)), repeats what was stated in proposed sections 3(e)(1) and (4) (redesignated 3(f)(1) and (4)), and that it may ease in reading if those sections were referenced instead of duplicating.

Response: The provisions are duplicative and FCIC has revised the provisions in the Grapes Crop Provisions and Table Grape Crop Provisions accordingly.

Comment: A few commenters suggested a revision to the last sentence in section 3(f) (redesignated section 3(g)), to include: ''* * * If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your guarantee or assess uninsured cause of loss against your

claim at any time we become aware of the circumstance.'' Growers have a responsibility to report to the insurance provider damage, removal of vines, etc. If they report it timely, the insurance provider can adjust the guarantee and premium. There should be a penalty if they do not report this information timely and it is discovered by the adjuster at claim time. Currently there is no penalty, so there is little incentive to report the information timely.

Response: Assessing an uninsured cause of loss against the claim was not in the proposed rule, the public was not provided an opportunity to comment on the recommended change, and therefore, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A few commenters questioned the proposed language used in section 3(g) (redesignated section 3(h)). The commenters were not sure if any other Crop Provisions use the phrase ''the ratio of your price election to the maximum price election we offer'' rather than the phrasing that has been dropped from the current Grape Crop Provisions section 3(c) that states ''the same percentage relationship to the maximum price offered by us''. The commenters also questioned the reference to ''the maximum price election we offer'' since ''we'' refers to the insurance provider while the price elections are determined and offered by RMA [though it can be understood that the insurance provider is offering the coverage, including the price election, to the insured]. In addition, the commenters requested clarification on what is meant by ''* * * if a cause of loss * * * is evident prior to the time that you request the increase.'' A cause of loss that occurred the previous crop year would be ''prior to the time that you request the increase.'' The commenter asked FCIC consider rewriting the provision similar to the following: ''Your request to increase the coverage level or price election percentage will not be accepted if a cause of loss that could or would reduce the yield of the insured crop is evident when your request is made.''

Response: FCIC has changed language in redesignated 3(h). The phrase ''the ratio of your price election to the maximum price election we offer'' has been deleted. The provision will now include the recommended language. This same change has been made in the Table Grape Crop Provisions.

Comment: A few commenters questioned the language under section 6. They commented that the phrase, ''In all other states, by each grape type you insure,'' sounds as though insureds in the other states can choose to insure some but not all types as in California, which is not the case. The commenters recommended ending section (b) after the word ''type'' or to consider whether this requires a distinction between states. Perhaps section 6 could read simply: ''* * * you must report your acreage by grape type or variety, as applicable.''

Response: Section 6(b) needs to be clarified so FCIC changed the provisions to state reporting is required ''by each grape type''. The Table Grape Crop Provisions have also been revised so the provisions will be consistent.

Comment: A few comments were received regarding Settlement of Claim and the quality adjustment for mature marketable grapes. Due to the increasing amount of wine grape acreage in production, wineries have increased the sugar percent thresholds in their contracts. This has allowed buyers to be very selective in the grapes they will purchase. The effect of this on grape crop insurance is in determining market prices and the values for the quality adjustment procedure in 12(e). For example, if the market price of the wine grapes in the area is based primarily on sugar content that the producer's wine grape production does not normally meet, the commenters asks how is the market price and value to be determined. In many cases, there is no means of determining if the damage caused a drop in the sugar percentage. If the sugar content were higher, the value of the grape would be greater and the producer may not even feel compelled to file a claim. In years where production is low, the buyers do not place such emphasis on the sugar content and this is a non-issue. This fluctuation in market demand causes many issues in determining values and adjusting for quality for wine grapes, though it may also be an issue for juice grapes.

The commenters recommend that a standard minimum sugar percentage be included in the determination of the market price and value. Doing so sets a limit to the amount of quality adjustment that can be made when market prices and values are based on sugar content, and if market prices are not based on sugar content, the quality adjustment is not affected. Crop insurance should pay for damaged production but caution is needed when determining values based on marketability and market demand. Failure to add a limit can result in quality adjustments that are not related to the insured cause of damage. The Grape Crop Provisions must include language to control the potential for abuse. The commenters suggested revising the section to include the following: ''Grapes produced for the production of wine or juice will only be eligible for quality adjustment due to an insured cause of loss that results in the grapes having a sugar level below 17 percent. Grapes with an insurable damage that fail to meet or exceed 17 percent sugar will be adjusted for quality based on the market value for a sugar content of not less than 17 percent for undamaged grapes.''

Response: Quality adjustment is applicable only if the reduction in value is due to an insurable cause of loss, such as adverse weather. If low brix levels or other damage are due to an insurable cause of loss, the grapes may be eligible for quality adjustment provided that they qualify under section 12(e) of the Grape Provisions. According to AMS standards, brix level is an indication of maturity in some table and juice grapes, however, there are no such published standards for wine grapes. Therefore, FCIC does not have information necessary to establish standard brix levels for the various wine grape varieties and growing areas. No change has been made.

Comment: A few commenters stated that language in the preamble regarding quality adjustment (page 11056) did not match language in the proposed Crop Provisions section 12(e)(2)(i). The preamble stated, ''* * * 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.'' The Crop Provisions state, ''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) * * *''

Response: The language in the preamble was not consistent with the policy provision. The preamble was incorrect and it should have referred to the lesser of the average market price or the maximum price election for such grapes. This ensures the grapes are not overinsured.

Comment: A commenter stated that while in favor of the proposed changes, the following provisions should also be added: (1) Grape crop insurance should be available in all Texas counties covered by an American Viticulture Area; (2) crop insurance by variety should also be provided in Texas.

Response: Grape insurance is currently available in several Texas

counties, and coverage in counties without the grape insurance program can be requested by written agreement. If the commenter has specific counties where they would like grape insurance, the commenter may make a request to RMA's Oklahoma City Regional Office. If there are sufficient acres and producers in a requested county, and other expansion criteria are met, the Regional Office can recommend implementation of a program for the requested county. Since providing 'insurance by variety'' in Texas was not proposed and the public was not provided opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. Insurance by type is available in Texas as it is in all states other than California and Arizona. No other change has been made.

Comment: A commenter stated that several vitis vinifera varieties (Riesling, Chardonnay, and Cabernet Franc for example) have a long history in New York and warrant having separate premium rates for these varieties. At current time, these varieties need a written agreement annually, which is cumbersome for the growers as well as the insurer.

Response: The vinifera varieties in New York are insured by written agreement to take into consideration the location, block by block, susceptibility to frost, and each producers yield history by variety. Due to the climatic conditions in the region, premium rates are individually set by use of the written agreement.

Comment: A commenter inquired about new plantings in New York being insurable at an earlier age than is currently available since they are such a long term investment. Recent ''disaster'' payments have had provisions to pay partial payments on 3 and 4 year old plantings based on a percentage of the county average yield for the particular variety. It would seem that some sort of plan like this could help relieve some of the financial burden of having several thousand dollars per acre invested in a new planting, with no eligibility for insurance for the first 6 years.

Response: When establishing a new vineyard, a significant risk is production loss due to freeze. New vines run a higher risk of production loss due to freeze than older established vines. Insuring production on younger vines would require additional rating analysis to determine if it would be cost prohibitive to provide such coverage. In addition, further procedures would be involved to determine appropriate production guarantees for such young vines. FCIC can consider the recommended changes in the future and is willing to work with any interested parties to determine if insurance can be provided for production from younger vines. However, no insurance is currently available for damage to vines.

Table Grape Crop Provisions

Several comments received were the same as those received for the Grape Crop Provisions; since the provisions are substantially similar, those comments were addressed in the Grape Crop Provisions and noted for Table Grape Provisions as applicable. Therefore, they will not be repeated in the comments below.

Comment: A few comments were received regarding the definition of ''Lug''. The commenters stated that as written in the Proposed Rule, the added phrase ''* * * or as otherwise specified in the Special Provisions'' would allow the 21-lb lug to be changed only in ''all other California districts'' but not to Coachella County, California, or any other states (with a 20-lb lug). If it is intended to allow the Special Provisions to revise the number of pounds in a lug in any state/county, the definition needs to be rearranged, perhaps something like: (a) 20 pounds; (b) 21 pounds; or (c) as otherwise specified.

Response: FCIC will revise the definition to read: Lug—(a) Twenty (20) pounds of table grapes in the Coachella Valley, California district, and all other states, (b) Twenty-one (21) pounds in all other California districts, or (c) as otherwise specified in the Special Provisions.

Comment: A few commenters questioned section 3(b) stating that this subsection is being added to allow for possible expansion of the Table Grape program beyond Arizona and California. It matches the equivalent subsection of the proposed Grape Crop Provisions but also needs to include the additional information that was dropped in the Proposed Rule for Grapes so it does not allow insureds to choose different levels/price percentages for different types.

Response: The proposed change was intended to also allow insureds in all states to select a coverage level and price election percentage by type. FCIC proposed the changes in coverage level and price election percentages to allow the producer greater flexibility in managing their production and risk. No change has been made.

Comment; A few commenters noted that while there is general consistency in many of the provisions of the Grape Crop Provisions and Table Grape Crop Provisions, section 7(f) is written differently from the equivalent section 7(e) of the Grape Crop Provisions. Among the differences:

- The phrase ''* * * unless otherwise provided in the Special Provisions,'' is not being added for Table Grapes. The commenter asks whether this possible flexibility is not needed as much for Table Grapes, especially since some flexibility is being added to the definition of ''lug.''
- The last sentence states that the insurance provider ''* * * may agree in writing to insure acreage that has not produced this amount'' [dropping the reference in the current crop provisions to ''inspect'' as well as ''agree''], while the Grape Crop Provisions ends with ''* * * inspect and allow insurance on such acreage.'' The commenter asks whether there is a valid reason Grapes still would require an inspection but Table Grapes would not.

Response: FCIC has made the changes to be consistent with language contained in the Grape Crop Provisions.

Comment: A few comments were received regarding the proposed changes in the calendar date for the end of insurance period. The commenters stated that:

- The proposed language no longer includes the date when ''* * * the grapes are normally harvested * * *''. This revision broadens coverage and potentially increases exposure. The commenter recommends retaining the reference to the date when the grapes are normally harvested.
- By comparison, note that the actual calendar dates are spelled out in the Grape Crop Provisions, instead of just referring to the Special Provisions for Table Grapes (which currently are insured only in Arizona and California). Consider if those dates could be in the Table Grape Crop Provisions as well.

Response: The phrase when the grapes are normally harvested is not specific with respect to the time insurance ends. Therefore, this language was removed. However, the date that appears on the Special Provisions is clear and defines the end of insurance.

At this time, FCIC is not considering including the end of insurance dates for table grapes to be in the Crop Provisions because the dates vary by variety and geographic area and the Special Provisions are generally used for information that varies by county. Also as new states enter the program; it is beneficial to include this date on the Special Provisions so regulations do not have to be revised to add new counties or types of grapes.

Comment: A comment was received regarding section 9(b)(1). The commenter indicated the sentence,

''* * * Acreage acquired after the acreage reporting date will not be insured'', is not contained in the Table Grape Crop Provisions, as it is in the Grape Crop Provisions and questioned if this implies that acreage acquired after the acreage reporting date can be insured based upon an acceptable inspection. If so, the commenter recommend adding a statement to allow insurance providers the opportunity to inspect and insure (or deny) acreage added after the acreage reporting date if they wish to do so. This would be similar to what is currently allowed for acreage that is not reported in section 6(f) of the Basic Provisions.

Response: It is intended these provisions be the same for grapes and table grapes. Therefore, the provisions indicating insurance will not be provided for acreage obtained after the acreage reporting date have been added to the Table Grape Crop Provisions.

Comment: Commenters asked why the phrase, ''* * * and you previously gave notice in accordance with section 14 of the Basic Provisions * * *'' in section 11(b) is in the Grape Crop Provisions but not in the equivalent section of the Table Grape Crop Provisions. Consider either removing it from the Grape Crop Provisions or adding it for Table Grapes.

Response: The intent of both provisions is to require a notice in addition to a notice given previously. The provisions should be the same. Therefore, the phrase indicating, ''notice was previously given'', has been added to section 11(c) of the Table Grape Crop Provisions.

Comment: A few comments were received regarding section 12(c)(1)(iii) referring to ''Unharvested production that meets, or would meet if properly handled, the state quality standards or the appropriate USDA grade standards (if no state standard is applicable).'' ''USDA Grade Standard'' has been added to the definitions in section 1, but there is no definition of the ''state quality standards'' that take precedence over the USDA standards according to this. Recommend one of the following actions:

- Adding a definition of ''state quality standards'' to the Crop Provisions or Special Provisions;
- Removing the reference in 12(c)(1)(iii) to avoid the possibility of arbitrary determinations; or
- Revising 12(c)(1)(iii) to read something like ''* * * the state quality standards, if specified in the Special Provisions or the appropriate USDA grade standard (if no state standard is applicable) * * *''

Response: FCIC has revised the provisions to clarify the state quality standards as specified in the Special Provisions will be used or the appropriate USDA grade standard will be used if no state standard is specified.

List of Subjects in 7 CFR Part 457

Crop insurance, Grapes, Reporting and recordkeeping requirements.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2010 and succeeding crop years for the Grape Crop Insurance Provisions and Table Grape Crop Insurance Provisions.

PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

■ 2. Amend § 457.138 as follows:
■ a. In the introductory text, remove ''2000'' and add ''2010'' in its place and remove the phrase ''FCIC Policies'';
■ b. Remove the paragraph immediately preceding section 1;
■ c. Amend section 1 by revising the definitions of ''harvest'' and ''set out'', adding definitions of ''type'' and ''variety'', and removing the definition of ''varietal group'';
■ d. Revise sections 2 through 8;
■ e. Amend section 9 by revising paragraph (a) and the introductory text in paragraph (b);
■ f. Amend section 10 by revising the introductory text in paragraph (a);
■ g. Amend section 11 by revising the introductory text; and
■ h. Amend section 12 by revising paragraphs (b)(2) and (4), and (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.

Variety. A kind of grape that is distinguished from any other by unique characteristics such as, but not limited to, size, color, skin thickness, acidity, flavors and aromas. In Arizona and California each variety is identified as a separate type in the Special Provisions except for type 095 (other varieties). Type 095 is used to designate varieties not listed as a separate type.

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. Unless otherwise allowed by written agreement, optional units may only be established if each optional unit is located on non-contiguous land or grown and insured under an organic farming practice.

(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 and for acreage grown and insured under an organic farming practice 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 coverage level and price election for each grape variety you elect to insure in the county.

(b) In all states except Arizona and California, you may select only one coverage level and price election for each grape type in the county as specified in the Special Provisions. The coverage level you choose for each grape type is not required to have the same percentage relationship. The price election you choose for each type is not required to have the same percentage relationship to the maximum price election offered by us for each type. For example, if you choose 75 percent coverage level and 100 percent of the maximum price election for one type, you may choose 65 percent coverage level and 75 percent of the maximum price election for another type. If you elect the Catastrophic Risk Protection (CAT) level of insurance for any grape type, the CAT level of coverage will be

applicable to all insured grape acreage in the county.

(c) In all states except Arizona and California, if you acquire a share in any grape acreage after you submit your application, such acreage is insurable under the terms of the policy and you did not include the grape type on your application, we will assign the following:

(1) A coverage level equal to the lowest coverage level you selected for any other grape type: and

(2) A price election percentage equal to the type with the lowest coverage level you selected, if you elected additional coverage; or 55 percent of the maximum price election, if you elected CAT.

(d) 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 the use of a cultural practice that will reduce the amount of production from any insured acreage, your approved yield will be adjusted in accordance with section 3(f) and (g) to reflect the reduced production potential.

(e) 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.

(f) 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 any time 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.

(g) We will reduce the yield used to establish your production guarantee, based on our estimate of the effect on yield potential of any of the items listed in section 3(f)(1) through (4). 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.

(h) Your request to increase the coverage level or price election percentage will not be accepted if a cause of loss that could or would reduce the yield of the insured crop is evident when your request is made.

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.

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 (*i.e.* table grapes), the production to count will be 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 at least two tons of grapes per acre (or as otherwise provided in the Special Provisions) in at least one of the three crop years immediately preceding the insured crop year, unless we inspect and allow insurance on 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, 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 in accordance with the terms of the policy, your grape policy is cancelled or terminated for any crop year 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. Causes of Loss.

(a) In accordance with the provisions of section 12 of the Basic Provisions,

insurance is provided only against the following causes of loss that occur during the insurance period:

* * * * *

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 each result in section 12(b)(1) by the respective price election you selected for each type or variety;

* * * * *

(4) Multiplying the total production to count of each type or variety, if applicable, (see section 12 (c) through (e)) by the respective price election you selected;

* * * * *

(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. 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 as follows:

■ a. In the introductory text, remove ''2001'' and add ''2010'' in its place and remove the phrase ''FCIC Policies'';

■ b. Remove the paragraph immediately preceding section 1;

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

■ d. Revise sections 2 through 10;

■ e. Amend section 11 by revising the introductory text and paragraph (c); and

■ f. 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.

(1) Twenty (20) pounds of table grapes in the Coachella Valley, California district, and all other States.

(2) Twenty-one (21) pounds in all other California districts.

(3) 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. (1) United States standard used to determine the minimum quality grade will be:

(i) The United States Standards for Grades of Table Grapes (European or Vinifera Type);

(ii) The United States Standards for Grades of American (Eastern Type Bunch Grapes; and

(iii) 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.

Variety. A kind of grape that is distinguished from any other by unique characteristics such as, but not limited to, size, color, skin thickness, acidity, flavors and aromas. In Arizona and California each variety is identified as a separate type in the Special Provisions except for type 095 (other varieties). Type 095 is used to designate varieties not listed as a separate type.

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. Unless otherwise allowed by written agreement, optional units may only be established if each optional unit is located on non-contiguous land or grown and insured under an organic farming practice.

(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 and for acreage grown and insured under an organic farming practice 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 coverage level and price election for each table grape variety you elect to insure in the county.

(b) In all states except Arizona and California, you may select only one coverage level and price election for each table grape type in the county as specified in the Special Provisions. The coverage level you choose for each table grape type is not required to have same percentage relationship. The price election you choose for each type is not required to have the same percentage relationship to the maximum price election offered by us for each type. For example, if you choose 75 percent coverage level and 100 percent of the maximum price election for one type, you may choose 65 percent coverage level and 75 percent of the maximum price election for another type. If you elect the Catastrophic Risk Protection (CAT) level of insurance for any grape type, the CAT level of coverage will be applicable to all insured grape acreage in the county.

(c) In all states except Arizona and California, if you acquire a share in any grape acreage after you submit your application, such acreage is insurable under the terms of the policy and you did not include the grape type on your application, we will assign the following:

(1) A coverage level equal to the lowest coverage level you selected for any other grape type: and

(2) A price election percentage equal to the type with the lowest coverage level you selected, if you elected additional coverage; or 55 percent of the maximum price election, if you elected CAT.

(d) 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 any time 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.

(e) We will reduce the yield used to establish your production guarantee, based on our estimate of the effect on yield potential of any of the items listed in section 3(d)(1) through (4). 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.

(f) Your request to increase the coverage level or price election percentage will not be accepted if a cause of loss that could or would reduce the yield of the insured crop is evident when your request is made.

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 table grape type.

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 (or as otherwise provided in the Special Provisions) in at least one of the three crop years immediately preceding the insured crop year, unless we inspect and allow insurance on 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 in accordance with the terms of the policy, your table grape policy is cancelled or terminated for any crop year 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. Acreage acquired after the acreage reporting date will not be insured.

(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. Causes of Loss.

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

(1) Adverse weather conditions;

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

* * * * *

(c) If the crop has been damaged during the growing season and you previously gave notice in accordance with section 14 of the Basic Provisions, you must also provide notice at least 15 days prior to the beginning of harvest if you intend to claim an indemnity as a result of the damage previously reported. You must not destroy the damaged crop until the earlier of 15 days from the date you gave notice of loss, or our written consent to do so. If you fail to meet requirements of this section all such production will be considered undamaged and included as production to count.

* * * * *

12. Settlement of Claim.

* * * * *

(b) * * *

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

* * * * *

(4) Multiplying the total production to count of each type or variety, if applicable, (see section 12(c)) by the respective price election you selected;

* * * * *

(c) * * *

(1) * * *

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

* * * * *

Signed in Washington, DC, on June 24, 2009.

William J. Murphy,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. E9–15498 Filed 7–6–09; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2008–BT–TP–0008]

RIN 1904–AB71

Energy Conservation Program: Test Procedures for Small Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is prescribing test procedures for measuring the energy efficiency of single-phase and polyphase small electric motors. The final rule incorporates by reference industry test procedures already in use when measuring the energy efficiency of these types of motors. Additionally, the final rule clarifies definitions applying to small electric motors and identifies issues that will be further addressed later in a related supplemental notice.

DATES: This rule is effective August 6, 2009. The incorporation by reference of certain publications listed in this rule was approved by the Director of the Federal Register on August 6, 2009.

ADDRESSES: You may review copies of all materials related to this rulemaking at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room. Please note that the DOE's Freedom of Information Reading Room no longer houses rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–8654. E-mail: *Jim.Raba@ee.doe.gov.* In the Office of the General Counsel, contact Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–9507. E-mail: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Today's final rule incorporates by reference, into subpart X of Title 10, Code of Federal Regulations, part 431 (10 CFR part 431),[1] the following industry standards from the Canadian Standards Association and the Institute of Electrical and Electronics Engineers:

- CAN/CSA–C747–94 (Reaffirmed 2005), (''CAN/CSA–C747''), Energy Efficiency Test Methods for Single- and Three-Phase Small Motors.
- IEEE Std 114–2001™ (Revision of IEEE Std 114–1982™), (''IEEE Std 114''), ''IEEE Standard Test Procedure for Single-Phase Induction Motors,'' approved December 6, 2001.
- IEEE Std 112™–2004 (Revision of IEEE Std 112–1996), (''IEEE Std 112''), ''IEEE Standard Test Procedure for Polyphase Induction Motors and Generators,'' approved February 9, 2004.

Copies of CAN/CSA–C747 can be obtained from the Canadian Standards Association, Sales Department, 5060 Spectrum Way, Suite 100, Mississauga, Ontario, L4W 5N6, Canada, 1–800–463–6727, or *http://www.shopcsa.ca/onlinestore/welcome.asp.*

Copies of IEEE Std 112 and 114 can be obtained from the Institute of Electrical and Electronics Engineers, Inc., 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, 1–800–678–IEEE (4333), or *http://www.ieee.org/web/publications/home/index.html.*

You can also view copies of these standards at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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[1] The December 22, 2008, notice of proposed rulemaking that addressed test procedures for measuring the energy efficiency of small electric motors proposed in section III.A of the preamble a new ''Subpart T—Small Electric Motors,'' under 10 CFR part 431. 73 FR 78220, 78237. Subsequent to that notice, DOE became aware that ''Subpart T'' had been used in an earlier rulemaking for certification, compliance, and enforcement requirements for consumer products and commercial equipment. 71 FR 42178, 42214 (July 25, 2006). Consequently, today's final rule reformats ''Subpart T'' to read ''Subpart X'' and renumbers the ''431.340'' series to read ''431.440.'' Notwithstanding, certain passages, comments, and references that follow make reference to ''Subpart T'' because that language was used in the NOPR. This is addressed further in section III.E of the preamble that follows.