Rules and Regulations

Federal Register
Vol. 62, No. 50
Friday, March 14, 1997

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

General Crop Insurance Regulations; Raisin Endorsement and Common Crop Insurance Regulations; Raisin Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of raisins. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current raisin endorsement under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current raisin endorsement to the 1996 and prior crop years.

EFFECTIVE DATE: March 14, 1997.

FOR FURTHER INFORMATION CONTACT: John Meyer, Insurance Management Specialist, Product Development Division, Policy Development and Standards Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO, 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

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

Paperwork Reduction Act of 1995

Following publication of the proposed rule, 61 Federal Register, 55928, the public was afforded 60 days to submit written comments on information collection requirements previously approved by OMB under OMB control number 0563–0003 through September 30, 1998. No public comments were received.

Unfunded Mandates Reform Act of 1995

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

Executive Order No. 12612

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

Regulatory Flexibility Act

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

Federal Assistance Program

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

Executive Order No. 12372

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

Executive Order No. 12778

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

Environmental Evaluation

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

National Performance Review

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

Background

On Wednesday, October 30, 1996, FCIC published a proposed rule in the Federal Register at 61 FR 55928–55932 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.124, (Raisin Crop Insurance Provisions). The new provisions will replace and supersede the current provisions for insuring raisins found at 7 CFR section 401.142 and will be effective for the 1997 and succeeding crop years. Section 401.142

will also be amended to restrict its effect to the 1996 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments. A total of 20 comments were received from the crop insurance industry, Office of Inspector General (OIG), and FCIC Regional Service Offices (RSO). The comments received, and FCIC's responses, follow:

Comment: One comment from the insurance industry suggested definitions be added for ''insured tonnage,'' ''uninsured tonnage,'' and ''guaranteed tonnage.''

Response: Insured tonnage is throughly described and thereby ''defined'' in section 3 of the crop provisions. Several policy provisions are involved in determining tonnage that may not be insurable. Adding a definition to describe uninsured tonnage would be duplicative of these provisions. These provisions do not use the term ''guaranteed tonnage.'' Instead, a dollar guarantee is based on the number of insured tons. This allows damaged raisins to be valued and subtracted from the amount of insurance when determining the amount of an indemnity. No change has been made to the provisions.

Comment: One comment from the insurance industry questioned whether the definition of ''non-contiguous land'' should state ''that it is land ownership that does not touch at any point.''

Response: Land ownership is not a factor used to determine non-contiguous land. Rather, it is the boundaries of the land in which a producer has or will have an insurable interest in the crop. If the boundaries of such land do not touch, the land is considered to be non-contiguous. FCIC believes the provision is clearly stated. Therefore, no change will be made.

Comment: One comment from the insurance industry suggested changing the language in section 2(a) from ''may be divided'' to ''will be divided.''

Response: FCIC agrees with the comment and has amended the provisions accordingly.

Comments: Five comments, one from an RSO, one from OIG, and three from the crop insurance industry requested that ''optional'' be removed from the language in section 2(e). The comments indicated that this provision should apply to all units, both basic and optional.

Response: FCIC agrees with the comments and has amended the provision accordingly.

Comment: One comment from the insurance industry concerned the reference to ''your share'' in subsection 3(b). The commenter wanted to know if the reference applied to your share at time of loss, at the time the raisins were laid down for drying, or at some other time.

Response: Share is defined in the Basic Provisions. For the purpose of determining the premium amount, it is the share at the time insurance attaches. For the purpose of determining the amount of an indemnity, it is the lesser of the share at the time of loss or the share at the time insurance attaches.

Comment: One comment from the insurance industry concerned the determination of ''Insured tonnage for units damaged by rain'' in section 3(c)(2). The commenter suggested that adjusters should be allowed to determine which procedure to use to determine the total amount lost in the vineyard: tray count (which has been dropped), vine count, or both methods.

Response: Tray counts may not be reliable for determining production amounts. In some cases, it has been found that the number of trays cannot accurately be determined. However, the number of vines in a vineyard normally remains constant, and once production per vine is determined, vine count provides a more accurate method of determining total production in the vineyard. No change has been made to these provisions.

Comment: One comment from the insurance industry questioned how the following situation would be treated. An adjuster takes a sample to measure moisture content, finds that it exceeds 24.3% and releases the crop. The insured delays delivering the production and the moisture content decreases. The insured then delivers the raisins. What would happen in this situation and how could it be prevented?

Response: FCIC approved procedure prohibits an adjustor from releasing raisins before it is determined whether or not the crop can be reconditioned. However, the provision has been clarified to state that if any production is delivered, the moisture content will be determined at the time of delivery. Improper claim handling can be avoided with proper supervisory controls and by following established claims procedures as outlined in FCIC approved procedure.

Comment: Two comments, one from the insurance industry and one from OIG suggested adding language in section 3(c) indicating that an approved method be used to determine the number of tons lost in the vineyard in the event no production is removed from the vineyard. The Proposed Rule deleted the use of tray weights to establish insured tons when production is not removed from the vineyard and stated that when appraisal is required, the amount of raisin tonnage lost will be determined in sample areas. The commenters stated that the policy, as drafted, does not address these situations. Also, when these situations occur, the comparison to other acreage from which raisins were removed is not possible. Loss adjustment procedures should contain a method for handling these situations and state or define how the production will be determined from such sample areas or give a sampling methodology as cited in the ''Background'' section. Determinations for these situations would then be used as necessary in valuing damaged raisins under the provisions of section 13(f).

Response: FCIC agrees with the comment and has added a provision to state that when no raisins have been removed from the vineyard, an appraisal will be used to determine the insured tonnage. FCIC approved procedures provide the methods to be used to determine tonnage lost in the vineyard when no raisins are removed.

Comment: Six comments, one from OIG, one from an RSO, and four from the crop insurance industry suggested the following language be added in section 6(b) to address situations in which the insured either adds or deletes acreage after providing the required report of intentions at sales closing date: ''Acreage on which you intend to produce raisins may be added to your location report until the time you first place raisins from the additional acreage on trays for drying and it is agreed to by us. Failure to report any insurable acreage will result in under-reporting penalties being applied in accordance with the provisions contained in section 6 (Report of Acreage) of the Basic Provisions (457.8). If you elect not to produce raisins on any acreage included on your location report, you must notify us in writing on or before September 21 and provide any records we may require to verify that raisins were not produced on that acreage.'' The comments indicated this language is necessary to address vulnerabilities associated with reporting tonnage, and that the current language is vague and will result in unnecessary exposure.

Response: FCIC agrees with the comments and has amended the provisions to clarify the conditions under which additional acreage may be added to the acreage report.

Comments: Two comments from the insurance industry indicated that statements in item 6 of the summary of changes section in the preamble and in section 6(a) of the provisions appeared to be in conflict. The background

summary section refers to ''reporting raisin acreage prior to the time insurance attaches'' whereas section 6(a) requires this report to be submitted on or before the sales closing date.

Response: FCIC agrees with the comments. The background section should have stated that raisin acreage must be reported on or before the sales closing date.

Comment: One comment from the insurance industry favored having the insured report the acreage and location more timely but questioned: (1) Why the guarantee can not be determined at this time; (2) would a growing season inspection be required if an insured leases ground after insurance attaches; and (3) what happens when there is a forecast of rain and the insured notifies the company that additional acreage has been leased?

Response: The amount of insurance cannot be calculated until the insured tonnage can be determined. Insured tonnage is not known until after the crop is laid down to dry and the production is delivered or determined in the event of damage. Additional acreage cannot be added after the raisins have been laid down on the additional acreage; so no new acreage can be added after insurance has attached. If raisins are leased after they have been laid down, such raisins are only insurable if the lessor had insurance and properly executed a transfer of coverage and right to indemnity. Further additional acreage may only be added to the acreage report after the sales closing date if the insurer agrees. In the event rain is forecast, the insurance provider may deny coverage on the acreage.

Comment: One comment from the insurance industry questioned why the term ''Location and Unit Report'' was used for what appears to be a preliminary acreage report. The commenter stated that, if there were significant differences between the two terms such that a different form is required, the industry would like to help develop such a form before the Raisin Crop Insurance Provisions are published as a Final Rule.

Response: ''Location and unit report'' was thought to be a more descriptive term than ''acreage report.'' However, after additional consideration, FCIC believes that the current acreage report form may be used to obtain all information required by these Crop Provisions. Therefore, the term ''Location and unit report'' has been replaced with ''acreage report.''

Comments: Six comments, one from OIG, one from an RSO, and four from the crop insurance industry suggested that section 8(b) which states ''For the purpose of determining the amount of indemnity, your share will not exceed the lower of your share at either the time the raisins are first placed on trays for drying or are removed from the vineyards.'' be revised to read ''For the purpose of determining the amount of indemnity, your share will not exceed your share at the time the insurance attaches.'' The comment also stated that the insurance period for raisins lasts only two or three weeks and changes in share are uncommon once the crop is on trays. Also, it was stated that if this section is not revised, that consideration be given to using ''lesser of'' in lieu of ''lower of''.

Response: FCIC understands that it is uncommon for the share to change within the insurance period. However, in those cases where it does change, the insurance provider should not pay for a share in excess of the insured's share at the time of loss. FCIC has revised this provision to indicate that the share will not exceed the lesser of the share at the time insurance attaches or at the time of loss. For clarification, this provision was moved to section 13(c) (Settlement of Claim).

Comments: Seven comments, one from OIG, one from an RSO, and five from the crop insurance industry, suggested the following be added to the last sentence of section 11(a) ''or determine the number of tons meeting RAC standards that could be obtained if the production were reconditioned.'' It was indicated that this language is necessary to be equitable to producers who intend to sell rain-damaged raisins through alternative market outlets.

Response: FCIC agrees with the comments and has amended the provision to indicate that the insurance provider may determine the tons meeting RAC standards that could be obtained if the raisins were reconditioned. Language has also been added to clarify the circumstances under which this action can be taken.

Comment: One comment questioned whether all items of sub-section 11(c)(1)(2)&(3) must occur to get a reconditioning payment, or, are different combinations possible? If all three are required, the ''or'' at the end of (2) should be changed to ''and'', or delete it and the ''and'' at the end of (1). If all three occurrences are not required, which combinations are acceptable?

Response: Two possible combinations are acceptable. Either 11(c) (1) and (2) are required, or 11(c) (1) and (3).

Comment: One comment from the insurance industry expressed concern that, since insured's with catastrophic risk protection (CAT) insurance are not eligible for a reconditioning payment, they may ''drag their feet'' in hopes of collecting a regular production loss. Is the reconditioning requirement language in sub-section 11(a) strong enough to discourage or prevent possible abuse?

Response: FCIC believes that policy provisions dealing with poor farming practices and the valuation of damaged production if the insured fails to recondition the raisins should prevent cases in which insureds may try to inflate losses.

Comments: Five comments, one from an RSO, and four from the insurance industry suggested replacing the term ''micro-contamination'' in section 11(c)(2) with ''other rain-caused contamination determined by micro-analysis * * *'' The comment stated this language would be more accurate since insects infest rain damaged raisins, and micro-analysis is used to identify insects and insect parts that will not be removed during normal processing.

Response: FCIC agrees with the comments and has amended the provision accordingly.

Comment: One comment concerned item 8 in the background section of the preamble (substantive change summary). This provision states that ''raisins discarded or lost from trays as part of normal handling will not be considered production to count.'' The comment stated this would not be a problem until it rains and the handlers throw off moldy raisins and what remains on the trays. Question is, would this production not be used to determine the guarantee and production to count?

Response: Normal field handling does not include raisins which are discarded after a loss. If such raisins are discarded, they should not be included in the insured tonnage or the value of the damaged production.

Comments: Two comments from the crop insurance industry suggested combining the provisions contained in section 14(e) with the provisions in section 14(a).

Response: The provisions are clearly stated and have not been combined.

Comments: Two comments received from the insurance industry suggested the provision in section 14(d) stating ''that written agreements are valid for only one year'' be removed. Terms of the agreement should be stated in the agreement to fit the particular situation for the policy, or if no substantive changes occur from one year to the next, allow the written agreement to be continuous.

Response: Written agreements are intended to change policy terms or

permit insurance in unusual situations where such changes will not increase risk. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to keep non-uniform exceptions to the minimum to ensure that the insured is well aware of the specific terms of the policy. Therefore, no change will be made.

Good cause is shown to make this rule effective upon publication in the Federal Register. This rule improves the raisin crop insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The contract change date required for new policies is April 30, 1997. It is therefore imperative that these provisions be made final before that date so that the reinsured companies and insureds may have sufficient time to implement the new provisions.

Therefore, public interest requires the agency to act immediately to make these provisions available for the 1997 crop year.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Raisin endorsement.

Final Rule

Accordingly, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401 and 457 effective for the 1997 and succeeding crop years, as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 401 continues to read as follows:

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

§ 401.142 [Revised]

2. The introductory text of § 401.142 is revised to read as follows:

The provisions of the Raisin Endorsement for the 1990 through 1996 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

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

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

4. Section 457.124 is added to read as follows:

§ 457.124 Raisin crop insurance provisions.

The Raisin Crop Insurance Provisions for the 1997 and succeeding crop years are as follows:

FCIC Policies

Department of Agriculture

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and Reinsured Policies:

Raisin Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, and the Special Provisions; the Special Provisions will control these Crop Provisions and the Basic Provisions; and these Crop Provisions will control the Basic Provisions.

1. Definitions.

Crop year—In lieu of the definition of ''Crop year'' contained in section 1 of the Basic Provisions (§ 457.8), the calendar year in which the raisins are placed on trays for drying.

Days—Calendar days.

Delivered ton—A ton of raisins delivered to a packer, processor, buyer or a reconditioner, before any adjustment for U. S. Grade B and better maturity standards, and after adjustments for moisture over 16 percent and substandard raisins over 5 percent.

Non-contiguous land—Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

RAC—The Raisin Administrative Committee, which operates under an order of the United States Department of Agriculture (USDA).

Raisins—The sun-dried fruit of varieties of grapes designated insurable by the Actuarial Table. These grapes will be considered raisins for the purpose of this policy when laid on trays in the vineyard to dry.

Substandard—Raisins that fail to meet the requirements of U.S. Grade C, or layer (cluster) raisins with seeds that fail to meet the requirements of U.S. Grade B.

Reference maximum dollar amount—The value per ton established by FCIC and shown in the Actuarial Table.

Table grapes—Grapes grown for commercial sale as fresh fruit on acreage where appropriate cultural practices were followed.

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

Tonnage report—A report used to annually report, by unit, all the tons of raisins produced in the county in which you have a share.

Written agreement—A written document that alters designated terms of this policy in accordance with section 14.

2. Unit Division.

(a) In addition to the requirements of a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), a basic unit will consist of each grape variety you insure.

(b) Unless limited by the Special Provisions, a basic unit may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(c) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you for the units combined.

(e) All units you selected for the crop year must be identified on the acreage report for that crop year.

(f) The following requirements must be met to qualify for separate optional units.

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

(2) Separate optional units must be located on non-contiguous land.

3. Amounts of Insurance and Production Reporting .

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

(a) You may select only one coverage level percentage for all the raisins in the county insured under this policy.

(b) The amount of insurance for the unit will be determined by multiplying the insured tonnage by the reference

maximum dollar amount, by the coverage level percentage you elect, and by your share.

(c) Insured tonnage is determined as follows:

(1) For units not damaged by rain—The delivered tons; or

(2) For units damaged by rain—By adding the delivered tons to any verified loss of production due to rain damage. When production from a portion of the acreage within a unit is removed from the vineyard and production from the remaining acreage is lost in the vineyard, the amount of production lost in the vineyard will be determined based on the number of tons of raisins produced on the acreage from which production was removed. When no production has been removed from the vineyard, the amount of production lost in the vineyard will be determined based on an appraisal.

(3) Insured tonnage will be adjusted as follows:

(i) The insured tonnage will be reduced 0.12 percent for each 0.10 percent of moisture in excess of 16.0 percent. For example, 10.0 tons of raisins containing 18.0 percent moisture will be reduced to 9.760 tons of raisins;

(ii) Insured tonnage used for dry edible fruit will be reduced by 0.10 percent for each 0.10 percent of substandard raisins in excess of 5.0 percent; and

(iii) When raisins contain moisture in excess of 24.3 percent at the time of delivery and are released for a use other than dry edible fruit (e.g. distillery material), they will be considered to contain 24.3 percent moisture.

(4) If any raisins are delivered, the moisture content will be determined at the time of delivery.

(d) Section 3(c) of the Basic Provisions is not applicable to this crop.

4. Contract Changes.

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is April 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 (Life of Policy, Cancellation and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are July 31.

6. Acreage Report and Tonnage Report.

In lieu of the provisions contained in section 6 of the Basic Provisions (§ 457.8):

(a) You must report by unit, and on our form, the acreage on which you intend to produce raisins for the crop year. This acreage report must be submitted to us on or before the sales closing date, and contain the following information:

(1) All acreage of the crop (insurable and not insurable) in which you will have a share;

(2) Your anticipated share at the time coverage will begin;

(3) The variety; and

(4) The location of each vineyard.

(b) Acreage of the crop acquired after the acreage was reported, may be included on the acreage report if we agree to accept the additional acreage. Such additional acreage will not be added to the acreage report after you first place raisins from the additional acreage on trays for drying. Failure to report any acreage in which you have a share will result in denial of liability. If you elect not to produce raisins on any part of the acreage included on your acreage report, you must notify us in writing on or before September 21, and provide any records we may require to verify that raisins were not produced on that acreage.

(c) If you fail to file an acreage report in a timely manner, or if the information reported is incorrect, we may deny liability on any unit.

(d) In addition to the acreage report, you must annually submit a tonnage report, on our form, which includes by unit the number of delivered tons of raisins, and, if damage has occurred, the amount of any tonnage we determined was lost due to rain damage in the vineyard for each unit designated in the acreage report.

(e) The tonnage report must be submitted to us as soon as the information is available, but not later than March 1 of the year following the crop year. Indemnities may be determined on the basis of information you submitted on this report. If you do not submit this report by the reporting date, we may, at our option, either determine the insured tonnage and share by unit or we may deny liability on any unit. This report may be revised only upon our approval. Errors in reporting units may be corrected by us at any time we discover the error.

7. Annual Premium.

In lieu of the premium computation method contained in section 7 (Annual Premium) of the Basic Provisions (§ 457.8), the annual premium amount is determined by multiplying the amount of insurance for the unit at the time insurance attaches by the premium rate and then multiplying that result by any applicable premium adjustment factors that may apply.

8. Insured Crop.

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the raisins in the county of grape varieties for which a premium rate is provided by the Actuarial Table and in which you have a share.

(b) In addition to the raisins not insurable under section 8 (Insured Crop) of the Basic Provisions (§ 457.8), we do not insure any raisins:

(1) Laid on trays after September 8 in vineyards with north-south rows in Merced or Stanislaus Counties, or after September 20 in all other counties;

(2) From table grape strippings; or

(3) From vines that received manual, mechanical, or chemical treatment to produce table grape sizing.

9. Insurance Period.

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), insurance attaches on each unit at the time the raisins are placed on trays for drying and ends the earlier of:

(a) October 20;

(b) The date the raisins are removed from the trays;

(c) The date the raisins are removed from the vineyard;

(d) Total destruction of all raisins on a unit;

(e) Final adjustment of a loss on a unit; or

(f) Abandonment of the raisins.

10. Causes of Loss.

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against unavoidable loss of production resulting from rain that occurs during the insurance period and while the raisins are on trays or in rolls in the vineyard for drying.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to inability to market the raisins for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of a person to accept production.

11. Reconditioning Requirements and Payment.

(a) We may require you to recondition a representative sample of not more than 10 tons of damaged raisins to determine if they meet standards established by the RAC once reconditioned. If such standards are met, we may require you to recondition all the damaged production. If we determine that it is possible to recondition any damaged production and, if you do not do so, we will value the damaged production at the reference

maximum dollar amount, except if your damaged production undergoes a USDA inspection and is stored by your packer with other producer's production to be reconditioned at a later date. If we agree, in writing, that it is not practical to recondition the damaged production, we will determine the number of tons meeting RAC standards that could be obtained if the production were reconditioned.

(b) If the representative sample of raisins that we require you to recondition does not meet RAC standards for marketable raisins after reconditioning, the reconditioning payment will be the actual cost you incur to recondition the sample, not to exceed an amount that is reasonable and customary for such reconditioning, regardless of the coverage level selected.

(c) A reconditioning payment, based on the actual (unadjusted) weight of the raisins, will be made if:

(1) Insured raisin production:

(i) Is damaged by rain within the insurance period;

(ii) Is reconditioned by washing with water and then drying;

(iii) Is insured at a coverage level greater than that applicable to the catastrophic risk protection plan of insurance; and either

(2) The damaged production undergoes an inspection by USDA and is found to contain mold, embedded sand, or other rain-caused contamination determined by micro-analysis in excess of standards established by the RAC, or is found to contain moisture in excess of 18 percent; or

(3) We give you consent to recondition the damaged production.

(d) Your request for consent to any wash-and-dry reconditioning must identify the acreage on which the production to be reconditioned was damaged in order to be eligible for a reconditioning payment.

(e) The reconditioning payment for raisins that meet RAC standards for marketable raisins after reconditioning will be the lesser of your actual cost for reconditioning or the amount determined by:

(1) Multiplying the greater of $125.00 or the reconditioning dollar amount per ton contained in the Special Provisions by your coverage level;

(2) Multiplying the result of section 11(e)(1) by the actual number of tons of raisins (unadjusted weight) that are wash-and-dry reconditioned; and

(3) Multiplying the result of section 11(e)(2) by your share.

(f) Only one reconditioning payment will be made for any lot of raisins damaged during the crop year. Multiple reconditioning payments for the same production will not be made.

12. Duties In The Event of Damage or Loss.

(a) In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the following will apply:

(1) If you intend to claim an indemnity on any unit, you must give us notice within 72 hours of the time the rain fell on the raisins. We may reject any claim for indemnity if such notice is later. You must provide us the following information when you give us this notice:

(i) The grape variety;

(ii) The location of the vineyard and number of acres; and

(iii) The number of vines from which the raisins were harvested.

(2) We will not pay any indemnity unless you:

(i) Authorize us in writing to obtain all relevant records from any raisin packer, raisin reconditioner, the RAC, or any other person who may have such records. If you fail to meet the requirements of this subsection, all insured production will be considered undamaged and valued at the reference maximum dollar value.

(ii) Upon our request, provide us with records of previous years'' production and acreage. This information may be used to establish the amount of insured tonnage when insurable damage results in discarded production.

(b) In lieu of the provisions in section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8) that require you to submit a claim for indemnity not later than 60 days after the end of the insurance period, any claim for indemnity must be submitted to us not later than March 31 following the date for the end of the insurance period.

13. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the acreage from which raisins were removed for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured tonnage of raisins by the reference maximum dollar amount and your coverage level percentage;

(2) Subtracting from the total in section 13(b)(1) the total value of all insured damaged and undamaged raisins; and

(3) Multiplying the result of section 13(b)(2) by your share.

(c) For the purpose of determining the amount of indemnity, your share will not exceed the lesser of your share at the time insurance attaches or at the time of loss.

(d) Undamaged raisins or raisins damaged solely by uninsured causes will be valued at the reference maximum dollar amount.

(e) Raisins damaged partially by rain and partially by uninsured causes will be valued at the highest prices obtainable, adjusted for any reduction in value due to uninsured causes.

(f) Raisins that are damaged by rain, but that are reconditioned and meet RAC standards for raisins, will be valued at the reference maximum dollar amount.

(g) The value to count for any raisins produced on the unit that are damaged by rain and not removed from the vineyard will be the larger of the appraised salvage value or $35.00 per ton, except that any raisins that are damaged and discarded from trays or are lost from trays scattered in the vineyard as part of normal handling will not be considered to have any value. You must box and deliver any raisins that can be removed from the vineyard.

(h) At our sole option, we may acquire all the rights and title to your share of any raisins damaged by rain. In such event, the raisins will be valued at zero in determining the amount of loss and we will have the right of ingress and egress to the extent necessary to take possession, care for, and remove such raisins.

(i) Raisins destroyed, put to another use without our consent, or abandoned will be valued at the reference maximum dollar amount.

14. Written Agreements.

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in 14(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the amount of insurance per ton, and premium rate;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, DC, on March 6, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–6520 Filed 3–13–97; 8:45 am]

BILLING CODE 3410–08–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 97–18]

Advances to Nonmembers

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Board of Directors of the Federal Housing Finance Board (Finance Board) is amending its regulation on Federal Home Loan Bank (FHLBank) advances to nonmembers. The rule establishes uniform eligibility requirements and review criteria for determining whether an entity may be certified as a nonmember mortgagee eligible to receive FHLBank advances and devolves responsibility for making that determination from the Finance Board to the FHLBanks. The Finance Board also is revising the definition of the term ''state housing finance agency'' (SHFA) to include all tribally designated housing entities (TDHEs). The rule is part of the Finance Board's continuing effort to devolve management and governance responsibilities to the FHLBanks and is consistent with the goals of the National Homeownership Strategy and the Regulatory Reinvention Initiative of the National Performance Review.

EFFECTIVE DATE: The final rule will become effective April 14, 1997.

FOR FURTHER INFORMATION CONTACT: Christine M. Freidel, Associate Director, Financial Management Division, Office of Policy, 202/408–2976; Laura K. St. Claire, Financial Analyst, Financial Management Division, Office of Policy, 202/408–2811; or, Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408–2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10b of the Federal Home Loan Bank Act (Bank Act) establishes the requirements for access by nonmember mortgagees to FHLBank advances. *See* 12 U.S.C. 1430b. In order to be certified as a nonmember mortgagee, an entity must: (1) Be approved by the Department of Housing and Urban Development (HUD) as a ''mortgagee'' under title II of the National Housing Act; (2) be chartered under law and have succession; (3) be subject to the inspection and supervision of a governmental agency; and (4) lend its own funds as its principal activity in the mortgage field. *Id.* 1430b(a).

Under section 10b(a) of the Bank Act, advances to nonmember mortgagees are not subject to the general collateral requirements of section 10(a) of the Bank Act. *Id.* Instead, a FHLBank may make advances to nonmember mortgagees only upon the security of mortgages insured by the Federal Housing Administration (FHA) of HUD under title II of the National Housing Act. *Id.* The amount of any advance may not exceed 90 percent of the unpaid principal of the collateral pledged as security for the advance. *Id.*

The Bank Act imposes less restrictive collateral requirements on certain advances to nonmember mortgagees that are SHFAs. *Id.* 1430b(b). Under section 10b(b) of the Bank Act, advances to SHFA nonmember mortgagees that facilitate mortgage lending to low- or moderate-income individuals and families (meeting the income requirements in section 142(d) or 143(f) of the Internal Revenue Code, generally up to 115 percent of the area median income) need not be secured by FHA-insured mortgage loans if the advances otherwise meet the requirements of section 10(a) of the Bank Act and any real estate collateral pledged to secure the advances is comprised of single- or multi-family residential mortgages. *Id.* 1430b(b), 1430(a); 26 U.S.C. 142(d), 143(f). Under section 10(a), the four categories of collateral are eligible to secure advances to members are: (1) Fully disbursed whole first mortgage loans on improved residential real property that are not more than 90 days delinquent or securities representing a whole interest in such mortgages; (2) securities issued, insured, or guaranteed by the United States government or any agency thereof; (3) deposits of a FHLBank; and (4) other real estate related collateral if such collateral has a readily ascertainable value and the FHLBank can perfect its interest therein.[1]

In October 1996, the Finance Board published for comment a proposed rule that would transfer the authority to certify an entity as a nonmember mortgagee eligible to receive FHLBank advances from the Finance Board to the FHLBanks subject to uniform review criteria for determining compliance with statutory and regulatory eligibility requirements. *See* 61 FR 52727 (Oct. 8, 1996). The 60-day public comment period closed on December 9, 1996. *See id.* The Finance Board received a total of 12 comments in response to the proposed rule, 6 from FHLBanks, 4 from trade associations, and 1 each from a certified SHFA nonmember mortgagee and a federal agency. All of the commenters generally supported the Finance Board's proposal. Specific comments are discussed in Part II of the **SUPPLEMENTARY INFORMATION**.

II. Analysis of Public Comments and the Final Rule

A. Definitions

The final rule amends the definition of the term ''state housing finance agency'' that appears in § 935.1 to include TDHEs[2] established under both tribal and state law as SHFAs. This will permit every TDHE nonmember mortgagee that makes mortgage loans to low- and moderate-income members of the Indian community to take advantage of the more flexible collateral requirements for securing advances to SHFA nonmember mortgagees. *See supra* part I; 12 U.S.C. 1430b(b). Each of the eight commenters addressing this issue expressly supported inclusion of all TDHEs in the definition and it is being adopted as proposed. A trade association commenter suggested that entities other than SHFAs should not be

[1] *See* 12 U.S.C. 1430(a)(1)–(4). Other acceptable real estate related collateral includes, but is not limited to: privately issued mortgage-backed securities other than those eligible under category 1; second mortgage loans, including home equity loans; commercial real estate loans; and mortgage loan participations. *See* 12 CFR 935.9(a)(4)(ii). The aggregate amount of outstanding advances secured by such collateral may not exceed 30 percent of a FHLBank member's GAAP capital. *See* 12 U.S.C. 1430(a)(4); 12 CFR 935.9(a)(4)(iii).

[2] Congress enacted the Native American Housing Assistance and Self Determination Act of 1996 in October 1996. *See* Pub. L. 104–330, 101 Stat. 4016 (Oct. 26, 1996). The Act authorizes Indian tribes to establish TDHEs to run their housing programs. *See id.* sec. 102(c)(4)(K), 110 Stat. 4025. TDHEs include all existing Indian Housing Authorities as well as other entities created by Indian tribes to provide assistance for affordable housing for tribal members. *See id.* sec. 4(21), 110 Stat 4021.