

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Parts 401 and 457

#### General Crop Insurance Regulations and Almond Endorsement; and Common Crop Insurance Regulations, Almond 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 almonds. 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 almond endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current almond endorsement to the 1997 and prior crop years.

**EFFECTIVE DATE:** June 9, 1997.

**FOR FURTHER INFORMATION CONTACT:** Arden Routh, Program Analyst, Research and Development Division, Product Development 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, has not been reviewed by OMB.

#### Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions 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), Pub. L. 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) of 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, a producer is required to complete an application and an acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity.

The insured must also annually certify to the previous year's production if adequate records are available to support the certification. The producer must maintain the production records to support the certified information for at least three years. 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 3015, subpart V, published at 48 FR 29115, June 24, 1983.

#### Executive Order No. 12988

This final rule has been reviewed in accordance with Executive Order 12988. 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 Friday August 9, 1996, FCIC published a proposed rule in the **Federal Register** at 61 FR 41531-41535 to add to the Common Crop Insurance Regulations (7 CFR part 457) a new section, 7 CFR 457.123, Almond Crop Insurance Provisions. The new

provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring almonds found at 7 CFR 401.110 (Almond Endorsement). FCIC also amends 7 CFR 401.110 to limit its effect to the 1997 and prior crop years.

Following publication of that proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. A total of 2 comments were received from the crop insurance industry and FCIC. The comments received, and FCIC's responses, are as follows:

*Comment:* One comment received from the crop insurance industry agreed with the definition of "Insurable rejects" and "Rejects," but did not find these terms being used in the provisions except in the definitions. The commenter believes that insurable rejects should not be included in production to count when finalizing a claim. The commenter recommended adding the following sentence to section 11(c)(2) "Harvested almonds which cannot be marketed due to an insurable cause (insurable rejects), as determined by us, will not be considered production to count."

*Response:* FCIC has amended this provision so that only harvested production which was accepted by a buyer is included as production to count, provided that production not accepted by the buyer has been rejected because it is damaged by an insurable cause of loss. This change will allow rejects to be included as production to count when the rejects are included in the weight for which the producer receives payment; however, will not include rejects as production to count when payment is not received for them.

*Comment:* One comment received from the insurance industry recommended that the requirement for a written agreement to be renewed each year be removed. If no substantive changes occur from one year to the next, the written agreement should be allowed to be effective.

*Response:* Written agreements are intended to permit insurance coverage to be available in unusual or previously unknown situations. If the situation exists from year to year, it should be incorporated into the crop provisions or Special Provisions. It is important to minimize exceptions to the policy to ensure that the insured is well aware of the specific terms of the policy.

FCIC has made the following changes to the Almond Provisions:

1. Section 2(c)—Clarified provisions regarding premium refunds when

optional units are combined into a basic unit.

2. Section 2(e)(1)—Clarified that records must be provided by the production reporting date as one of the requirements for optional units.

3. Section 8(a)(1)—Clarified the date on which coverage begins for the year the application is first signed.

4. Section 8(b)—Added a provision to clarify that acreage acquired after the acreage reporting date is not insurable. Also, added a provision to clarify that a person to whom coverage is transferred must be eligible for insurance.

5. Section 9—Added insects, disease and wildlife as insurable causes of loss, unless damage is due to insufficient or improper application of control measures to be consistent with other perennial crops. Clarified that failure of the irrigation water supply is a covered loss only if caused by a peril for which insurance is provided.

**List of Subjects in 7 CFR Parts 401 and 457**

Almond, Almond endorsement, Crop insurance.

**Final Rule**

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401 and 457 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(1), 1506(p).

2. Section 401.110 introductory paragraph is amended to read as follows:

**§ 401.110 Almond endorsement.**

The provisions of the Almond Crop Insurance Endorsement for the 1988 through the 1997 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(1), 1506(p).

4. Section 457.123 is added to read as follows:

**§ 457.123 Almond crop insurance provisions.**

The Almond Crop Insurance Provisions for the 1998 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:  
Almond 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

*Days.* Calendar days.  
*Good farming practices.* The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

*Harvest.* The removal of mature almonds from the orchard.

*Interplanted.* Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

*Irrigated practice.* A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

*Meat pounds.* The total pounds of almond meats (whole, chipped and broken, and in-shell meats) and rejects. Unshelled almonds will be converted to meat pounds in accordance with FCIC approved procedures.

*Non-contiguous land.* Any two or more tracks 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.

*Production guarantee (per acre).* The quantity of almonds (total meat pounds per acre) determined by multiplying the approved actual production history (APH) yield per acre by the coverage level percentage you elect.

*Set out.* Transplanting the tree into the orchard.

*Written agreement.* A written document that alters designated terms of this policy in accordance with section 12.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) may be divided into optional units if, for each optional unit, you meet all the conditions of this section.

(b) Basic units may not be divided into optional units on any basis other than as described in this section.

(c) 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.

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

(e) The following requirements must be met for each optional unit:

(1) You must have provided records by the production reporting date, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) 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

(3) Each optional unit must be located on non-contiguous land unless otherwise provided by a written agreement.

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

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 price election for all the almonds in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each almond type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by type if applicable:

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

(3) The age of the trees and the planting patterns;

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

such acreage is changed, the age of the crop that is interplanted with the almonds, and type if applicable, and the planting pattern; and

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

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

### 4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is August 31 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 December 31.

### 6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the almonds in the county for which a premium rate is provided by the Actuarial Table:

(a) In which you have a share unless allowed otherwise by section 8(b);

(b) That are grown for harvest as almonds;

(c) That are irrigated;

(d) That are grown in an orchard that, if inspected, is considered acceptable to us; and

(e) On acreage where at least 90 percent of the trees have reached at least the seventh growing season after set out, unless we agree in writing to insure trees not meeting this requirement.

### 7. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, almonds 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.

### 8. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on January 1 of each crop year, except that for the year of application, if your application is received after December 21, but prior to January 1, insurance will attach on the 10th day after your properly completed application is received in our local office unless we inspect the acreage during the 10 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 orchard.

(2) The calendar date for the end of the insurance period for each crop year is November 30.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(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 almonds on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due 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.

### 9. 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 the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

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

(3) Insects, 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) Earthquake;

(6) Volcanic eruption;

(7) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period; or

(8) Wildlife, unless control measures have not been taken.

(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 the inability to market the almonds for any reason other than actual physical damage to the almonds 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.

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

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), if you intend to claim an indemnity on any unit, you must notify us prior to the beginning of harvest so that we may inspect the damaged production. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section, all such production will be considered undamaged and included as production to count.

11. 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 units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

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

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election for the type;

(3) Totaling the results in section 11(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see subsection 11(c)) by the respective price election;

(5) Totaling the results in section 11(b)(4);

(6) Subtracting the result in section 11(b)(5) from the result in section 11(b)(3); and

(7) Multiplying the result in section 11(b)(6) by your share.

(c) The total production to count, specified in meat pounds, from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is damaged solely by uninsured causes; or

(C) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested meat pounds which has been accepted by a buyer and all harvested meat pounds rejected by a buyer unless the meat pounds are rejected due to an insured cause of loss.

12. 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 section 12(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 guarantee, premium rate, and price election;

(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 May 2, 1997.

**Suzette M. Dittrich,**

*Deputy Manager, Federal Crop Insurance Corporation.*

[FR Doc. 97-11959 Filed 5-7-97; 8:45 am]

BILLING CODE 3410-FA-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-ANE-11]

**Amendment to Class E Airspace; Nashua, NH, Newport, RI, Mansfield, MA, Providence, RI, and Taunton, MA**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

**SUMMARY:** This action confirms the effective date of the direct final rule which modifies the Class E airspace at Nashua, NH, Newport, RI, Mansfield, MA, Providence, RI, and Taunton, MA by removing from their descriptions references to Class E airspace areas removed by previous actions. The direct final rule is necessary to keep the descriptions of controlled airspace areas operationally current.

**EFFECTIVE DATE:** The direct final rule is effective on 0901 UTC, May 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** Raymond Duda, Operations Branch, ANE-530.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299; telephone: (617) 238-7533; fax (617) 238-7596.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on March 7, 1997 (62 FR 10425). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse

public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 22, 1997. No adverse comments were received, and thus this document confirms that this final rule will become effective on that date.

Issued in Burlington, MA, on April 28, 1997.

**John J. Boyce,**

*Assistant Manager, Air Traffic Division, New England Region.*

[FR Doc. 97-11661 Filed 5-7-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 28908; Amdt. No. 1798]

RIN 2120-AA65

**Standard Instrument Approach Procedures; Miscellaneous Amendments**

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;