

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563-AB03

#### Common Crop Insurance Regulations; Pear Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of Pears. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions which contains 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 and to include the current pear endorsement with the Common Crop Insurance Policy for ease of use and consistency of policy terms.

**DATES:** Written comments, data, and opinions on this proposed rule will be accepted until close of business May 28, 1996 and will be considered when the rule is to be made final. The comment period for information collection under the Paperwork Reduction Act of 1995 continues through June 24, 1996.

**ADDRESSES:** Interested persons are invited to submit written comments to the Chief, Program Development Branch, Federal Crop Insurance Corporation (FCIC), Farm Service Agency (FSA), United States Department of Agriculture (USDA), 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, USDA, 14th and Independence Avenue SW., Washington, D.C., 8:15 a.m.-4:45 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Louise Narber, Program Analyst, Research and Development Division, Product Development Branch, FCIC,

FSA, USDA, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

Executive Order 12866 and  
Departmental Regulation 1512-1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order 12866 and Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is February 1, 2001.

This rule has been determined to be exempt for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

#### Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under OMB control number 0563-0003 through September 30, 1998.

The amendments set forth in this proposed rule do not contain additional information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35.

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Pear Crop Insurance Provisions." The information to be collected includes: a crop insurance acreage report, an insurance application and a continuous contract. Information collected from the acreage report and application is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are growers of pears that are eligible for Federal crop insurance.

The information requested is necessary for the insurance company and FCIC to provide insurance, provide reinsurance, determine eligibility, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection

of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

The comment period for information collections under the Paperwork Reduction Act of 1995 continues through June 24, 1996, for the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Bonnie Hart, Advisory and Corporate Operations Staff, Regulatory Review Group, Farm Service Agency, P.O. Box 2415, Ag Box 0572, U.S. Department of Agriculture, Washington, D.C. 20013-2415, telephone (202) 690-2857. Copies of the information collection may be obtained from Bonnie Hart at the above address.

#### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate 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. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory

alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

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 12612

It has been determined under section 6(a) of Executive Order 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. Under the current regulations, a producer is required to complete an application and 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. If the insured elects to use actual records of acreage and production as the basis for the production guarantee, the insured may elect to report this information on a yearly basis. This regulation does not alter those requirements. Therefore, the amount of work required of the insurance companies and FSA offices 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 insured. 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 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 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 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 of the National Appeals Division published in 7 CFR part 11 must be exhausted before 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

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457) a new section, 7 CFR part 457.111, Pear Crop Insurance Provisions. The provisions will be effective for the 1997 and succeeding crop years. The proposed Pear Crop Insurance provisions will replace the provisions found at 7 CFR part 401.140 (Pear Endorsement). Upon publication of 7 CFR part 457.111 as a final rule, the provisions for insuring pears contained herein will supersede the current provisions contained in 7 CFR part 401.140. By separate rule, FCIC will revise 7 CFR part 401.140 to limit its effect to the 1996 crop year and later remove that section.

This rule makes minor editorial and format changes to improve the Pear Crop Insurance Endorsement's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring pears as follows:

1. The Pacific Northwest grows several varieties of pears in addition to Green Bartletts; however, other areas primarily grow Green Bartletts. Therefore, varietal groups will be identified in the Special Provisions and all references to type I and type II have been deleted.

2. Section 1—Add definitions for "culls," "days," "direct marketing," "good farming practices,"

"interplanted," "irrigated practice," "marketable," "production guarantee (per acre)," "varietal group," and "written agreement" for clarification purposes.

3. Section 2—Specify that optional units may be established by section, section equivalent, or FSA Farm Serial Number; or by acreage located on non-contiguous land, but not by both. This policy is consistent with some other perennial crop provisions. Optional units also may be established by varietal group when authorized by the Special Provisions. The provision in section 7 of the Pear Endorsement that prevented interplanted acreage of type I and type II from being divided into separate units has been deleted because two or more varieties which are interplanted may now be separate units. Production records from each variety are kept separate and many varieties do not mature at the same time. It is not realistic or necessary to allow units by blocks of different varieties but not allow units when different varieties are interplanted within a block.

4. Section 3(a)—Clarify that an insured may select only one price election for all the pears in the county insured under this policy, unless the Special Provisions provide different price elections by varietal group in which case the insured may select one price election for each varietal group designated in the Special Provisions. Each price election chosen for each varietal group must have the same percentage relationship to the maximum price offered by the insurer.

5. Section 3(b)—Add provisions for reporting the age and type, if applicable, of any interplanted perennial crop, its planting pattern, and any other information needed to establish the yield upon which the production guarantee is based. If the insured fails to notify the insurer of factors that may reduce yields from previous levels, the insurer will reduce the production guarantee at any time the insurer becomes aware of damage, removal of trees, or changes in practices. Interplanting is not allowed under the current Pear Endorsement.

6. Section 4—Change the contract change date in California from August 31 to October 31 to be consistent with other perennial crops in California.

7. Section 5—Change the cancellation and termination dates in California from November 20 to January 31 to be consistent with other perennial crops in California.

8. Section 6—Specify that to be insurable, the pears must be grown on trees that have produced an average of at least 5 tons per acre, in at least 1 of

the 4 previous crop years unless the Special Provisions or a written agreement set a lower threshold. Previous provisions required that the type must produce an average of 4 tons of pears per acre of first grade canning or U.S. Number 1 in at least 1 of the 4 previous crop years to be insurable. The change to 5 tons per acre is being proposed as more characteristic of an orchard reaching a level of production which should continue on an up trend. Four tons per acre is not an adequate indicator that the orchard has passed problems typical of a new orchard. The "of first grade canning or U.S. Number 1" requirement will be eliminated because it does not include U.S. No. 2 grade pears that are included in the production to count. The provision that required acceptable production records for insurance to attach also will be eliminated because if the insured does not provide acceptable records of production the guarantee may be based on a transitional yield in accordance with Actual Production History regulations published at 7 CFR part 400, subpart G.

9. Section 7—Add a provision to make interplanted pears insurable if planted with another perennial crop unless the insurance provider inspects the acreage and determines it does not qualify to be accepted for insurance coverage. This provision was added to provide insurance coverage to the maximum extent to all pear producers, and to reduce the number of acres that would require coverage under the Non-insured Assistance Program (NAP).

10. Section 8—Modify the insurance period in California so coverage will begin the later of the date the application is accepted or February 1, instead of November 21, since the cancellation and termination dates were changed to January 31 and the contract change date was changed to October 31. Provisions also were added for insuring acreage when an insurable share is acquired or relinquished on or before the acreage reporting date. Under the current Pear Endorsement for acreage acquired (for which an application is in place) on or before the acreage reporting date, coverage would attach at the time the insurer considers the crop inspection as being acceptable provided it was on or after November 21. In the same situation under these new provisions (in all States except California), coverage will have started on November 21 even if the insurer considers the inspection as being acceptable on January 14. Under the current Pear Endorsement for acreage relinquished on or before the acreage reporting date but after coverage had

attached, the premium would still be due from the insured even if the insured no longer had an insurable interest. In the same situation under these new provisions, insurance will not be considered to have attached so the premium will not be due unless a transfer of right to an indemnity was completed.

11. Section 9(a)—Add adverse weather conditions as a cause of loss and delete drought, excess wind, freeze, frost, fruit-set failure and hail because they are included by the term adverse weather. Also add a clause to the insurable cause of loss "failure of the irrigation water supply" to limit it to a cause of loss covered by this policy.

12. Section 9(b)—Add disease and insect infestation to the excluded causes of loss unless adverse weather prevents the proper application of control measures, causes control measures to be ineffective when properly applied, or no effective control mechanism is available for such disease or insect infestation. These exclusions need to be added for clarification so that insurance coverage is not provided for causes of loss that could be prevented.

13. Section 10—Require the producer to give notice within 3 days of the date harvest should have started if the crop will not be harvested. It also requires the producer to give notice at least 15 days prior to harvest so a preharvest inspection can be made if the insured intends to sell fruit directly to retail customers in any manner. This appraisal may be used to determine the amount of production to count in a loss situation.

14. Section 11—Add a provision explaining when potential production on abandoned acreage will be included in total production to count. If the insured and the insurer agree on potential production on acreage the insured wishes to abandon or no longer care for, the insurance period for that acreage will end. If agreement is not reached, the claim may be deferred if the insured agrees to continue to care for the crop. The insurance provider will make another appraisal when the insured notifies them of further damage or that harvest is generally occurring in the area unless the crop is harvested in which case the harvested production will be used to determine the production to count. If the insured does not continue to care for the crop, the appraisal made prior to deferring the claim will be used to determine the production to count. Also for purposes of settling a claim in all States except California, the production to count is all the harvested and appraised marketable production. There is no adjustment for

quality unless the "Quality Adjustment Endorsement" is elected. For California, references to the California Tree Fruit Agreement Standards, which is obsolete, have been changed to the California Pear Advisory Board.

15. Section 12—Add provisions for providing insurance coverage by written agreement. FCIC has a long-standing policy of permitting modification of insurance contracts by written agreement. This provision is not documented in the current Pear Endorsement. Section 12 will discuss application for, and duration of, written agreements.

16. Section 13—Provide for a quality adjustment endorsement for all States, except California, if the insured meets the following: has limited or additional coverage, pays the additional premium, the pears are damaged by volcano eruption, frost, freeze, wind or hail, and the endorsement is timely elected. The current pear provisions, without a quality adjustment endorsement, are appropriate in California because the primary marketing intent for pears grown in California is for fresh pack and then to market the pears that do not make U.S. No. 1 as processing or as juice. Also the California pear growers generally have records available for the most recent crop year in the base period. In the Pacific Northwest records for the most recent crop year in the base period are not available as winter pears go into controlled atmospheric storage and may not sell or be graded until well into the next calendar year. Also, the Pacific Northwest has widespread fire blight problems, and the quality adjustment endorsement will allow a more reflective yield of the orchards.

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

Crop insurance, Pears.

#### Proposed Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations (7 CFR 457), effective for the 1997 and succeeding crop years, as follows:

#### PART 457—[AMENDED]

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

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

2. 7 CFR 457 is amended by adding a new § 457.111 to read as follows:

**§ 457.111 Pear Crop Insurance Provisions.**

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

United States Department of  
Agriculture

*Federal Crop Insurance Corporation*

Pear 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

**Culls**—Pears that do not meet the requirements of U.S. No. 2 grade or better.

**Days**—Calendar days.

**Direct Marketing**—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper, or buyer. Examples of direct marketing include selling through an on-farm or roadside stand or a farmer's market, and permitting the general public to enter the field(s) for the purpose of picking all or a portion of the crop.

**FSA**—Farm Service Agency of the United States Department of Agriculture.

**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 generally recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the county.

**Harvest**—The picking of mature pears from the trees or the collecting of marketable pears from the ground.

**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.

**Marketable**—Pear production acceptable for processing or other human consumptive use even if it does not meet any U.S. or applicable state grading standard.

**Non-contiguous land**—Any land owned by you or rented by you for any consideration other than a share in the insured crop, whose boundaries do not touch at any point. Land that is separated only by a public or private right-of-way, waterway or irrigation canal will be considered to be touching.

**Production guarantee (per acre)**—The quantity of pears (in tons) determined by multiplying the approved yield per acre by the coverage level percentage you elect, and multiplying the result by any applicable adjustment factor provided for in section 6(b)(f) of the Basic Provisions (§ 457.8).

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

**Varietal Group**—Types of pears with similar characteristics that are grouped for insurance purposes as specified in the Special Provisions.

**Written agreement**—A written document that alters designated terms of a policy.

### 2. Unit Division

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 or if a written agreement to such division exists. 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. 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, that portion of the premium paid for the purpose of electing optional units will be refunded to you pro rata for the units combined. All optional units must be identified on the acreage report for each crop year.

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

(1) You must have records, 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; and

(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.

(b) Each optional unit must meet one or more of the following criteria as applicable:

(1) **Optional Units by Section, Section Equivalent, or Farm Service Agency (FSA) Farm Serial Number:** Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number; or

(2) **Optional Units on Acreage Located on Non-Contiguous Land:** Instead of establishing optional units by section, section equivalent or FSA Farm Serial Number, optional units may be established if each optional unit is located on non-contiguous land.

(3) **Optional Units on Acreage by Varietal Group:** In addition to, or instead of, establishing optional units by section, section equivalent, FSA Farm Serial Number, or on non-contiguous land, optional units may be established by varietal Group when provided for in the Special Provisions.

### 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 pears in the county insured under this policy unless the Special Provisions provide different price elections by varietal group, in which case you may select one price election for each varietal group designated in the Special Provisions. The price election you choose for each varietal group must have the same percentage relationship to the maximum price offered by us for each varietal group. For example, if you choose one hundred percent (100%) of the maximum price election for a specific varietal group, you must also choose one hundred percent (100%) of the

maximum price election for all other varietal groups.

(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 varietal group:

(1) Any damage, removal of trees, or change in practices that may reduce yields from previous levels, and the number of affected acres;

(2) The number of trees on insurable and uninsurable acreage;

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

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

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

(ii) The planting pattern; and

(iii) 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 the effect of the interplanted perennial crop, removal of trees, damage, or change in practices on the yield potential of the insured crop. If you fail to notify us of factors that may reduce yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the interplanted crop, removal of trees, damage, or change in practices.

#### 4. Contract Changes

The contract change date is October 31 preceding the cancellation date for states with a January 31 cancellation date and August 31 preceding the cancellation date for all other states (see the provisions of section 4 (Contract Changes) of the Basic Provisions (§ 457.8)).

#### 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:

States	Cancellation and termination dates
California .....	January 31.
All other states .....	November 20.

#### 6. Insured Crop

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

(a) In which you have a share;

(b) That are of varieties adapted to the area;

(c) That are grown on trees that have produced an average of at least five (5) tons of pears per acre in at least one of the four previous crop years unless the Special Provisions or a written agreement authorizes lesser production; and

(d) That are grown in an orchard that, if inspected, is considered acceptable by us.

#### 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, pears interplanted with another perennial crop are insurable unless we inspect the acreage and determine it does not meet insurability requirements.

#### 8. Insurance Period

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

(1) Coverage begins for each crop year on the later of the date we accept your application or:

(i) In California, on February 1; or

(ii) In all other states, on November

21.

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

(i) September 15 for Bartlett (green and red) and Star Crimson (Crimson Red) varietal groups; or

(ii) October 15 for all other varietal groups.

(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 on or before the acreage reporting date of any crop year and if we inspect, and consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable interest on any acreage of pears on or before the acreage reporting date of any crop year insurance will not be considered to have attached to such acreage for that crop year unless:

(i) A transfer of right to an indemnity or a similar form approved by us is completed by all affected parties; and

(ii) The insurance provider is notified by you or the transferee in writing of such transfer on or before the acreage reporting date.

#### 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 within 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 orchard;

(3) Earthquake;

(4) Volcanic eruption; or

(5) Failure of the 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 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available.

(2) Failure of the fruit to color properly; or

(3) Inability to market the pears 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 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), the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(b) You must notify us at least 15 days before harvest begins if any production from any unit will be marketed directly to consumers. We will conduct a preharvest appraisal that will be used to determine your production. If damage occurs after the preharvest appraisal, and you can provide acceptable records to us that account for all production removed from the unit after our appraisal, we will conduct an additional appraisal that will be used to determine your production. Failure to give timely notice that production will be marketed directly to consumers will result in an appraised amount of production to count of not less than the production guarantee per acre.

(c) 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 subsection, 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 production records:

(1) For any optional unit, we will combine all optional units for which acceptable records of production 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 harvested acreage 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 acreage by its respective production guarantee;

(2) Multiplying each product by the respective price election;

(3) Summing all such products;

(4) Multiplying the total production to be counted of each varietal group (see subsection 11(c)) by the respective price election;

(5) Summing all such products;

(6) Subtracting this total from the total in (3); and

(7) Multiplying the result by your share.

(c) The total production to count (in tons) 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) Damaged solely by uninsured causes; or

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

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on 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 generally occurring 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) For all states except California, all harvested and appraised marketable pear production from the insurable acreage.

(3) For California, all harvested and appraised production that:

(i) Meets the standards for first grade canning as defined by the California Pear Advisory Board or for U.S. Number 1 as defined by the United States Standards for Grades of Summer and Fall Pears, or Pears for Processing, or for U.S. Extra Number 1 or U.S. Number 1 as defined by the United States Standards for Grades of Winter Pears; or

(ii) Is accepted by a processor for canning or packing; or

(iii) Is marketable for any purpose.

(4) For California, notwithstanding the terms of 11(c)(3), if the cause of loss was due to an insurable cause, the quantity of production that otherwise would be considered as production to count will be reduced by whichever of the following methods results in the least production to count:

(i) By the excess over ten percent (10%) of the total production from the unit of varieties other than Forelle, Seckel or Winter Nelis that is size 180 or smaller as defined in the United States Standards for Summer and Fall Pears or for Winter Pears; or

(ii) By dividing the value per ton by the highest price election available for the insured varietal group that does not meet the specifications of section 11(c)(3)(i), subtracting this result from 1,000, multiplying this difference by the number of tons of such pears and subtracting this result from the production to count.

#### 12. Written Agreements

Designated terms of this policy may be altered by written agreement. The following conditions will apply:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in subsection (e) of this section.

(b) The application for written agreement must contain all 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 1 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.

(e) An application for 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 provisions.

#### 13. Pear Quality Adjustment Endorsement

(a) The provisions of this endorsement apply if:

(1) You elect the Pear Quality Adjustment Endorsement on your application or on a form approved by us, on or before the sales closing date for the initial crop year in which you wish to insure your pears under this endorsement. By doing so, you agree to pay the additional premium designated in the actuarial table for this optional coverage; and

(2) This endorsement is not excluded by your policy.

(b) This endorsement is available in all counties for which the actuarial table designates pear premium rates, except for counties in California. This endorsement does not cover acreage insured under the Catastrophic Risk Production Endorsement in any counties.

(c) Pears damaged by volcano eruption; frost; freeze; wind; or hail are eligible for quality adjustment, subject to the following:

(1) If the harvested and appraised production does not grade eighty percent (80%) U. S. No. 2 or better in accordance with applicable United States Standards for Grades of Summer and Fall Pears, United States Standards for Grades of Winter Pears, or United States Standards for Grades of Pears for Processing, as applicable, production will be reduced as follows:

(i) By two percent (2%) for each full one percent (1%) in excess of twenty percent (20%), when twenty-one percent (21%) through sixty percent (60%) of the pears fail the grade standard; and

(ii) By one hundred percent (100%) when more than sixty percent (60%) of the pears fail the grade standard. The difference between the reduced production and the total production will be considered cull production.

(2) Pears that are knocked to the ground by wind or frozen and cannot be packed or marketed as fresh pears will be considered one hundred percent (100%) cull production.

(3) Fifteen percent (15%) of all production that is considered cull production will be production to count.

(4) No reduction in grade will be recognized for any pears that fail the grade standard due to uninsurable causes of loss.

(d) This endorsement may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding the crop year for which the cancellation of this endorsement is to be effective.

Signed in Washington, D.C., on April 18, 1996.

Kenneth D. Ackerman,  
Manager, Federal Crop Insurance  
Corporation.

[FR Doc. 96-10145 Filed 4-24-96; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 96-CE-09-AD]

RIN 2120-AA64

#### **Airworthiness Directives; The New Piper Aircraft, Inc. PA24, PA28R, PA30, PA32R, PA34, and PA39 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to supersede AD 95-20-07, which currently requires repetitively inspecting the main gear side brace studs for cracks on certain The New Piper Aircraft, Inc. (Piper) PA24, PA28R, PA30, PA32R, PA34, and PA39 series airplanes, and replacing any cracked main gear side brace stud. The proposed action would retain the repetitive inspection and possible replacement requirements of AD 95-20-07, would remove airplanes with a certain main gear side brace assembly configuration from the "Applicability" section of the current AD, and would incorporate additional modification and replacement options. Additional information on the design and service history of the affected airplanes concerning this subject received by the Federal Aviation Administration (FAA) after issuance of AD 95-20-07 prompted the proposed action. The actions specified by the proposed AD are intended to prevent a main landing gear collapse caused by main gear side brace stud cracks, which, if not detected and corrected, could result in loss of

control of the airplane during landing operations.

**DATES:** Comments must be received on or before June 25, 1996.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-CE-09-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information that applies to the proposed AD may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748; telephone (404) 305-7362; facsimile (404) 305-7348.

#### **SUPPLEMENTARY INFORMATION:**

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96-CE-09-AD." The postcard will be date stamped and returned to the commenter.

#### **Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-CE-09-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

#### **Discussion**

AD 95-20-07, Amendment 39-9386 (60 FR 52073, October 5, 1995), currently requires repetitively inspecting (using liquid penetrant or magnetic particle methods) the main gear side brace studs for cracks on certain Piper PA24, PA28R, PA30, PA32R, PA34, and PA39 series airplanes, and replacing any cracked main gear side brace stud. A minor correction on this action that specified who could accomplish the inspection was published in the Federal Register on November 15, 1995 (60 FR 57333).

The FAA has re-examined all available information related to AD 95-20-07, including additional information received from The New Piper Aircraft, Inc., and owners/operators of the affected airplanes. From this examination, the FAA has determined the following:

- That a third main gear side brace assembly containing the  $\frac{5}{8}$ -inch stud, part number (P/N) 78717-02, with a two-piece bushing, P/N 67026-09, was installed (at manufacture) on Piper Model PA34-200T, serial numbers 34-7670325 through 34-7770372. AD 95-20-07 should not apply to these airplanes with this main gear side brace assembly configuration; and
- That Piper PA28R, PA32R, and PA34 series airplane owners/operators should have the option of incorporating a modification that would eliminate the repetitive inspection requirement of AD 95-20-07. This modification consists of reaming the existing two-piece bushings, P/N 67026-6, to an inside diameter of .624-inch to .625-inch, rechamfering the bushings, and installing the  $\frac{5}{8}$ -inch stud, P/N 78717-02. The owner/operator would have the choice of incorporating this modification, installing a P/N 95643-06/-07/-08/-09 main gear side brace bracket assembly, or continuing to reinspect the main gear side brace assembly.

Based upon the information described above, the FAA has determined that AD action should be taken to prevent a main landing gear collapse caused by main gear side brace stud cracks, which, if not detected and corrected, could result in loss of control of the airplane during landing operations.

Since an unsafe condition has been identified that is likely to exist or