

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 400

RIN 0563-AB05

General Administrative Regulations; Nonstandard Underwriting Classification System

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: Federal Crop Insurance Corporation (FCIC) proposes to amend subpart O of the General Administrative Regulations, effective with the 1998 (1999 for Texas and Arizona/California Citrus) and succeeding crop years. This proposed amendment is intended to clarify the effect of the Nonstandard Underwriting Classification System (NCS) and to ensure that NCS is applied to all producers in a fair and consistent manner.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business January 6, 1997, 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 January 6, 1997.

ADDRESSES: Written comments, data, and opinions on this proposed rule should be sent to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 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, DC, 8:15 a.m.-4:45 p.m., est, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: For further information, contact Bill Smith, Supervisory Insurance Management Specialist, Research and Development

Division, Product Development Branch, FCIC, at the Kansas City, MO address listed above, telephone (816) 926-7743.

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 No. 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 June 1, 2000.

This rule has been determined to be not significant 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

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate 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. 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 policies and procedures 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

NCS program determinations are applied equally on a county basis and affect only a small number to insureds (approximately 1 percent of all insureds). This regulation will not have a significant impact on a substantial number of small entities. 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 preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before judicial action may be brought.

Environmental Evaluation

This action is not expected to have any 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

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

Background

FCIC proposes to amend the General Administrative Regulations (7 CFR part 400, subpart O) effective for the 1998 (1999 for Texas and Arizona/California Citrus) and succeeding crop years. The principal changes to the provisions are as follows:

1. Section 400.302—Clarify the definitions of “actively engaged in farming” and “insurance experience;” rename the term “base period,” as “NCS base period” and clarify the definition; and add definitions for “earned premium” and “indemnified loss”.

2. Section 400.303—In paragraph (a), expand the nonstandard classification selection criteria by adding several new criteria to assist efforts to identify those producers whose potential adverse impact on insurance program performance is greatest. Specify that the minimum standards provided in this subsection may be different in a specific county if that county’s insurance experience is substantially different from the insurance experience for which the criteria were determined. Add paragraph (c) to describe adjustments which may be made to insurance experience due to widespread adverse weather conditions and other causes.

3. Section 400.305, paragraph (c)—Permit nonstandard classifications for persons, land, and any combination thereof to be assigned on a crop or crop practice, type, varietal, or crop option basis.

4. Section 400.307—Clarify that nonstandard classifications for persons, or persons on identified land will be discontinued in the case of the person’s death or if the person has discontinued farming. In such cases, insurance experience will not change, so there is no administrative reason to continue to annually review these listings. FCIC will determine whether the person has “discontinued farming” by determining that all present and future potential for farming has ceased, e.g., sold all cropland and means of crop production. If the person begins farming again, or acquires a substantial beneficial interest in any farming operation, the nonstandard classification will be reinstated.

5. Section 400.309, paragraph (a) is revised to change the deadline for submitting reconsiderations from 45 days to 30 days to be consistent with appeal regulations a 7 CFR parts 11 and 780. Paragraphs (e) and (f) are deleted because regulations for filing an appeal are provided in 7 CFR parts 11 and 780.

List of Subjects in 7 CFR Part 400

Crop insurance; Nonstandard Underwriting Classification System.

Accordingly, 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 proposes to amend 7 CFR part 400, subpart O, effective for the 1998 (1999 for Texas and Arizona/California Citrus) and succeeding crop years, as follows:

PART 400—[AMENDED]

Subpart O—Nonstandard Underwriting Classification System

1. The authority citation for 7 CFR part 400, subpart O, is revised to read as follows:

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

2. In § 400.302, remove all paragraph designations and the definition of “base period;” the definition of “actively engaged in farming” and “insurance experience” are revised; and definitions of “earned premium,” “indemnified loss,” and “NCS base period” are added to read as follows:

§ 400.302 Definitions.

Actively engaged in farming—means a person who, in return for a share of profits and losses, makes a significant contribution to the production of an insurable crop in the form of capital, equipment, land, personal labor, or personal management.

Earned premium—means premium earned (both the amount subsidized and the amount paid by the producer, but excluding any amount of the subsidy attributed to the operating and administrative expenses of the insurance provider) for a crop under a policy insured or reinsured by the Corporation.

Indemnified loss—means a loss applicable for the policy for any year during the NCS base period for which the total adjusted indemnity exceeds the total earned premium. If the person has insurance for the crop in more than one county for any crop year, indemnities and premiums will be accumulated for all counties for each crop year to determine an indemnified loss.

Insurance experience—means earned premiums, indemnities paid (after

applicable adjustments), and other data for the crop (but not including replant payments), resulting from all of the insured’s crop insurance policies insured or reinsured by the Corporation for one or more crop years and will include all information from all counties in which the person was insured.

NCS base period—means the 10 consecutive crop years (as defined in the crop policy) ending 1 crop year prior to the crop year in which the NCS classification becomes effective for all crops except Arizona, California and Texas citrus (production) and sugarcane. For these excepted crops, the NCS base period means the 10 consecutive crop years ending 2 crop years prior to the crop year in which the NCS classification becomes effective. For example: An NCS classification effective for the 1996 crop year against a producer of citrus production in Arizona, California, and Texas, and sugarcane would have a NCS base period that includes the 1984 through 1993 crop years. An NCS classification effective for the 1996 crop year against a producer of all other crops would have a NCS base period that includes the 1985 through 1994 crop years.

3. Section 400.303 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 400.303 Initial selection criteria.

(a) Nonstandard Classification procedures in this subpart initially apply when all of the following insurance experience criteria (see paragraph (c) of this section) for the crop have been met:

(1) Three or more indemnified losses during the NCS base period;

(2) Cumulative indemnities in the NCS base period that exceed cumulative premiums during the same period by at least \$500.00;

(3) A premium has been earned in at least 1 of the most recent 4 crop years in the NCS base period;

(4) The result of dividing the number of indemnified losses during the NCS base period by the number of years premium is earned for that period equals .30 or greater; and

(5) Either of the following apply:

(i) The natural logarithm of the cumulative earned premium rate multiplied by the square root of the cumulative loss ratio equals 2.00 or greater; or

(ii) Five (5) or more indemnified losses have occurred during the NCS base period and the cumulative loss ratio equals or exceeds 1.50. The minimum standards provided in paragraphs (a)(2), (3), (4), and (5) of this

section may be increased in a specific county if that county's overall insurance experience for the crop is substantially different from the insurance experience for which the criteria was determined. The increased standard will apply until the conditions requiring the increase no longer apply. Any change in the standards will be contained in the Special Provisions for the crop.

* * * * *

(c) Insurance experience for the crop may be adjusted, by county and crop year, to discount the effect of indemnities caused by widespread adverse growing conditions. Adjustments are determined as follows:

(1) Determine the average yield for the county using the annual county crop yields for the previous 20 crop years, unless such data is not available;

(2) Determine the normal variability in the average yield for the county, expressed as the standard deviation;

(3) Subtract the result of paragraph (c)(2) from paragraph (c)(1);

(4) Divide the annual crop yield for the county for each crop year in the NCS base period by the result of paragraph (c)(3), the result of which may not exceed 1.0;

(5) Subtract the result of paragraph (c)(4) for each crop year from 1.0;

(6) Multiply the result of paragraph (c)(5) by the liability for the crop year; and

(7) Subtract the result of paragraph (c)(6) from any indemnity for that crop year. FCIC may substitute the crop yields of a comparable crop in determining paragraphs (c) (1) and (2), or may adjust the average yield or the measurement of normal variability for the county crop, or any combination thereof, to account for trends or unusual variations in production of the county crop or if the availability of yield and loss data for the county crop is limited. Alternate methods of determining the effects of adverse growing conditions on insurance experience may be implemented by FCIC if allowed in the Special Provisions.

4. Section 400.305 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 400.305 Assignment of Nonstandard Classification.

* * * * *

(c) A Nonstandard Classification may be assigned to identified insurable acreage; a person; or to a combination of person and identified acreage for a crop or crop practice, type, variety, or crop option or amendment whereby:

* * * * *

5. Section 400.307 is amended by adding two sentences at the end thereof to read as follows:

§ 400.307 Discontinuance of participation.

* * * * *

A Nonstandard Classification will no longer be applicable to the person or the person on identified acreage if the Corporation determines the person is deceased or has discontinued all farming operations for all crops, such as the legitimate sale of the farming operation to a disinterested person. If the person who discontinues all crop farming operations later returns to farming or obtains a substantial beneficial interest in a farming operation, the nonstandard classification will be reinstated.

6. In § 400.309, paragraph (a) is amended by revising the phrase "45 days" to read "30 days" and paragraphs (e) and (f) are removed.

Signed in Washington, D.C., on October 31, 1996.

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

[FR Doc. 96-28608 Filed 11-6-96; 8:45 am]

BILLING CODE 3410-FA-P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5 and 7

[Notice No. 844]

RIN 1512-AB50

Use of Distilled Spirits Terms in Labeling and Advertising of Malt Beverages; Use of the Term "Margarita" in Labeling Distilled Spirits

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of petition.

SUMMARY: Heublein, Inc. (Heublein), a distilled spirits producer, has petitioned ATF to issue new rules relating to the labeling and advertising of distilled spirits and malt beverage products. ATF administers the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. §§ 205(e) and (f), which prohibits false and misleading statements on labels and in advertising of beverage alcohol. Specifically, Heublein has petitioned ATF to issue new rules to prohibit (1) the use of terms in the labeling of malt beverages which are the names of products customarily made

with a distilled spirits base, (2) the labeling and advertising of a malt beverage in such a manner as to create the impression that it contains or is comparable to a distilled spirits product, and (3) the use of the term "Margarita," or any other word commonly associated with tequila and Mexico, as a designation of any distilled spirits product which does not contain tequila.

ATF has approved labels for malt-based alcohol beverages that use cocktail names such as "Margarita" provided the label clearly identifies the product as a malt beverage. The purpose of this notice is to provide the public with an opportunity to comment on the additional safeguards that Heublein believes are necessary in order to prevent consumers from being misled about the composition of these malt-based alcohol beverage products.

DATES: Written comments must be received by February 5, 1997.

ADDRESSES: Send written comments to: Chief, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221; Notice No. 844. Comments not exceeding three pages may be submitted by facsimile transmission to (202) 927-8602. Copies of written comments to this notice will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 6300, 650 Massachusetts Avenue, NW, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226; telephone (202) 927-8230.

SUPPLEMENTARY INFORMATION:

Background

Under existing law, ATF is charged with the enforcement responsibility of sections 105(e) and 105(f) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e) and (f), which vest in ATF the authority to regulate the labeling and advertising of alcohol beverages, including distilled spirits and malt beverages. These sections authorize the issuance of regulations that will, among other things, prohibit deception of the consumer with respect to the product, and which will provide the consumer with adequate information as to the identity and quality of the product.

More specifically, section 205 makes it unlawful for any person engaged in