

# Rules and Regulations

Federal Register

Vol. 69, No. 164

Wednesday, August 25, 2004

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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563-AB76

#### Common Crop Insurance Regulations; Blueberry Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Blueberry Crop Insurance Provisions to convert the blueberry pilot program to a permanent crop insurance program. The changes will apply for the 2005 and succeeding crop years.

**DATES:** Effective August 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact William Klein, Risk Management Specialist, Research and Development, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133-4676, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

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

##### Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the collections of information in this rule have been approved by the OMB under control number 0563-0053 through February 28, 2005.

#### Unfunded Mandates Reform Act of 1995

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

#### Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, or notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities and therefore, this regulation is exempt from the provisions

of the Regulatory Flexibility Act (5 U.S.C. 605).

#### Federal Assistance Program

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

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

#### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J for the informal administrative review process of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

#### Environmental Evaluation

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

#### Background

On July 30, 2003, FCIC published a notice of proposed rulemaking in the **Federal Register** at 68 FR 44668-44672 to amend the Common Crop Insurance Regulations; Blueberry Crop Insurance Provisions, to convert the blueberry pilot program to a permanent program, effective for the 2005 and succeeding crop years for all states and counties with blueberry crop insurance.

Following publication of the proposed rule on July 30, 2003, the public was afforded 60 days to submit written comments and opinions. FCIC received 61 comments from reinsured companies, a trade organization, a producer, and FCIC Regional Offices. The comments received from the

proposed rule are addressed in this final rule and FCIC's responses are as follows:

*Comment:* Two commenters asked about FCIC's plans for expansion of the blueberry program due to the change in status from a pilot to a permanent program. One commenter specifically noted that pilot program coverage is generally limited with respect to the areas where insurance is offered.

*Response:* Pilot programs are eligible for expansion when they are converted to a permanent program. FCIC expanded the blueberry program to additional states and counties for the 2004 crop year based on expansion requests and supporting data. FCIC will continue to review county expansion requests and such expansion may be approved if sufficient actuarial data exists.

*Comment:* One commenter expressed concern that the formula used to establish coverage under this plan allows and even stimulates cheating by farmers and will not be subject to close enough scrutiny to keep farmers honest. They further maintain the program design may allow insureds to cheat and that FCIC's saying there is a "guarantee" in farming is ridiculous.

*Response:* FCIC disagrees with the commenter. A producer's blueberry production guarantee is based on a producer's individual yields and is established in a manner consistent with other actual production history crop programs. While there is always opportunity to falsify production records, commit fraud, *etc.*, the risk is no greater than with these other crop programs. The Risk Management Agency's (RMA) underwriting and loss adjustment standards are designed to mitigate waste, fraud, and abuse. Further, insurance providers are supposed to monitor their policies and report to RMA any suspected fraud, waste, or abuse. RMA's Compliance Division is also responsible for investigating waste, fraud, and abuse. When waste, fraud, or abuse is found, individuals are prosecuted to the maximum extent under the law.

*Comment:* One commenter recommended modifying a current Special Provisions statement that attaches to section 10(d) (previously section 10(c)(3)) of the Blueberry Crop Insurance Provisions. These provisions address the quality adjustment of mature blueberries, harvested or unharvested, that are damaged by an insurable cause of loss to the extent they can not be sold as fresh or processed blueberries. The Special Provisions statement specifies the percent of damage required before the value of blueberries is reduced through a

formula. The commenter took exception with the percent of damage threshold currently shown on the Special Provisions for their area. They believe it is too low, and should be increased for the next crop year.

*Response:* The percent of damage threshold for mature damaged blueberries is contained in the Special Provisions rather than the Crop Provisions to address different blueberry types and variable marketability of damaged blueberries in different parts of the country. RMA's Regional Offices (RO) establish the threshold percentage for their region based on marketability and type of mature damaged blueberries. If data is available demonstrating the percentage threshold needs to be changed for a county or group of counties, the applicable RO has the authority to change it.

*Comment:* One commenter expressed concern with the adequacy of the definition "unsound blueberries." They believe the determinations of undersized, immature, mechanically damaged blueberries, *etc.* may be left up solely to the buyer or processor. What may be unsound berries due to size at one processor may be acceptable at another processor. The definition does not establish a minimum standard by which all production is measured, such as U.S. No. 1 or U.S. No. 1 processing. Furthermore, they believe a change in the definition of "unsound blueberries" could also affect the definitions of "blueberry production" and "dry line."

*Response:* FCIC agrees with the commenter and has removed the definitions "blueberry production," "dry line," "mechanical damage," and "unsound blueberries." FCIC has added the definitions of "damaged blueberries" and "mature blueberry production" and has incorporated part of the definition of "unsound blueberries" into the definition of "damaged blueberries." The definitions of both "mature blueberry production" and "damaged blueberries" incorporate the United States Standards for Grades of Blueberries, U.S. No.1, or such other grading standards contained in the Special Provisions. This permits FCIC to distinguish between the handling of the blueberries appraised and harvested in section 10(c) from those appraised and harvested in section 10(d). The modification also makes it no longer necessary to define "dry-line." The additional provisions provide uniform guidelines for determining quality adjustment.

*Comment:* One commenter took exception with defects listed in the definition of "unsound blueberries" that specifically include "undersized" and

"mechanically damaged." The commenter pointed out other perennial policies such as apples and plums do not insure against damage due solely to the fruit being undersized. They also questioned what criteria would be used in determining acceptable size when appraising the field. Furthermore, they noted no other policy provisions cover man-made damage due to a cause such as mechanical damage. The stated intent of the Federal Crop Insurance Act is to compensate producers for natural disasters.

*Response:* FCIC agrees with the commenter and has removed the definitions "unsound blueberries" and "mechanical damage", and removed the related definition "blueberry production." FCIC has also addressed the commenter's concerns by adding definitions of "damaged blueberries" and "mature blueberry production." As stated above, the definitions incorporate the United States Standards for Grades of Blueberries, U.S. No. 1, or other appropriate grading standards used in determining blueberry production. Further, the definition of "damaged blueberries" makes it clear that such damage must be due to an insurable cause of loss.

*Comment:* One commenter suggested RMA define the terms "marketable" and "damage."

*Response:* FCIC agrees with the commenter and has addressed the commenter's concern by adding new definitions for "damaged blueberries." However, FCIC has removed the term "marketable" from the policy and replaced it with the term "mature" and has defined that term. As stated above, this was necessary to distinguish between the treatment of blueberries appraised and harvested under section 10(c) from those damaged blueberries appraised and harvested under section 10(d).

*Comment:* One commenter asked for clarification that section 3(d) meant one coverage level per county when, for example, a producer has blueberry insurance in two counties.

*Response:* The Basic Provisions make it clear that coverage levels are selected on a county basis and that different coverage levels can be selected for different counties.

*Comment:* Two commenters recommended that section 3(d), which requires the producer or agent to provide notification when it is evident a cause of loss that could or would reduce the yield of the insured crop is known prior to the request to increase coverage, be removed from these Crop Provisions until this issue is addressed

in the Basic Provisions, because of the applicability to all crops.

*Response:* FCIC agrees with the commenter. If FCIC is to adopt this change, the most appropriate place would be the Basic Provisions, because it would apply to all crops.

*Comment:* Two commenters recommended the burden in section 3(d) be on FCIC, not on the producer, agent, or company as to when a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time the increase is requested.

*Response:* As stated above, FCIC has decided not to adopt this change in this rule.

*Comment:* Three commenters recommended changes in section 7(a)(1) that specify the number of days the company has to inspect the acreage and notify the insured they are denying coverage before the coverage automatically attaches. The previous time frame was 10 days and the proposed rule calls for 20 days. Two commenters stated their preference is for 30 days, pointing out this would allow sufficient time for inspections and would be consistent with the nursery policy and other perennial crop policies such as Florida Fruit Trees. The third commenter suggested going back to 10 days because this is consistent with other perennial fruit crop policies with a similar insurance attachment such as apples, cranberries, etc. They further noted extending the available time period upon which an insurance provider may inspect acreage to deny coverage on new applications without making the same changes in similar perennial fruit policies creates administrative conflicts for delivery and service systems.

*Response:* FCIC disagrees with the commenters and believes a 20-day time frame is the most appropriate deadline to allow for inspection and possible denial of coverage. Prior to publishing the proposed rule, producers and company personnel agreed 10 days was not an adequate amount of time to conduct an inspection. Further, producers believed 30 days was too long to wait for confirmation of coverage. They agreed 20 days was an acceptable compromise. As the other perennial fruit policies such as apples, cranberries etc., are revised, FCIC will evaluate whether a change to a 20-day time frame for inspection and possible denial of insurance is appropriate. Therefore, no change has been made.

*Comment:* One commenter suggested rearranging the language in section 7(a)(2) from "For each crop year subsequent to the year of application, that the policy \* \* \*" to "For each

subsequent crop year that \* \* \*" They believe this would make the language clearer.

*Response:* FCIC agrees and has revised the provision.

*Comment:* Two commenters recommended revising section 8(a)(2) to clarify fire is an insured cause of loss only when due to natural causes, consistent with the Federal Crop Insurance Act and the Crop Insurance Handbook. The language in the Proposed Rule reads, "Fire, unless weeds and other forms of undergrowth have not been controlled \* \* \* etc."

*Response:* The suggested change is not required and could lead to confusion regarding whether the other causes of loss must also be due to natural causes. FCIC clarified this issue in the Basic Provisions, which now require causes of loss be due to naturally occurring events.

*Comment:* One commenter recommended removing the text after "mechanical damage" in section 8(b)(4). The text reads "Mechanical damage in excess of that normally experienced for mechanically harvested blueberries for the current crop year."

*Response:* FCIC agrees with the commenter and has removed the text after the words "mechanical damage," which remains as an excluded cause of loss in section 8(b)(4). FCIC does not have the authority to pay losses due to mechanical damage.

*Comment:* One commenter questioned why sections 9(a)(1) through (3) require notification "within" the specified time period, while the provisions in sections 9(a)(4) and (5) require notification "at least 15 days" before the specified action.

*Response:* The difference between sections 9(a)(1) through (3) and 9(a)(4) and (5) is that sections 9(a)(1) through (3) deal with notice after a potential loss has occurred and immediate notice is required. Sections 9(a)(4) and (5) are intended to provide greater flexibility by providing the last day that such notice must be provided to allow sufficient time for an inspection. To make the provisions clearer, FCIC has modified the provisions under both section 9(a)(2) and 9(a)(3). The 24-hour notification provisions are now contained in sections 9(a)(2)(i) through (iv). Sections 9(a)(4) and (5), are renumbered as sections 9(a)(3) and (4), and contain reporting requirements of "at least" 15 days notice.

*Comment:* One commenter questioned the meaning of the provisions in section 9(a)(1), which provide the insured must notify us "Within 3 days of the date harvest should have started if the crop will not be harvested." They asked if

this meant 3 days before or three days after the date harvest should have started.

*Response:* The provisions were intended to provide a window for the producer to report, either three days before, or not later than three days after harvest should have begun. The window gives the producer time to make a decision as to whether or not to harvest the crop and the company sufficient time to conduct needed appraisals.

*Comment:* One commenter asserted that the "within 24 hours" of "any cause of loss" notification requirement contained in section 9(a)(2) and (3) may be difficult for an insured to meet. They noted some causes of loss might not be so time-specific that the insured can identify the surrounding 24-hour period.

*Response:* The 24-hour time frame is required so the company can inspect the crop and is due, in part, to the perishable nature of the crop. FCIC agrees that producers may have difficulty identifying the 24-hour period after some causes of loss such as drought. However, FCIC believes in most cases the insured knows when a cause of loss occurred and should be able to meet the deadline. In those cases, such as drought, establishing a different time frame would not eliminate the problem and reasonableness of the notice must be taken into consideration.

*Comment:* One commenter suggested section 9(a)(2) is unclear, and even misleading. They believe it could be read in such a way that the 24-hour notification could relate to both the occurrence of a cause of loss and to when the blueberries are mature and ready for harvest. They noted maturity does not occur for all blueberries at the same time, and questioned why notification would be necessary to the company, so they could inspect the acreage, if there is no damage.

*Response:* FCIC has revised the provision to require 24-hour notice if a cause of loss occurs when blueberries are mature and ready for harvest. If no cause of loss has occurred, notice is not required.

*Comment:* One commenter questioned whether section 9(a)(2) should also contain the language "\*\*\* and you do not intend to complete harvest on the crop \* \* \*" that is contained in section 9(a)(3).

*Response:* FCIC determined that the 24-hour notice is required if a cause of loss occurs during harvest regardless of whether the producer intends to harvest the crop. Therefore, FCIC has removed the language regarding the intent to

complete harvest from the new combined section 9(a)(2).

*Comment:* One commenter noted that in looking at section 9(a)(1) through (5), all but one ends with the phrase "so we can inspect the insured acreage," or "so we can inspect the insured production." They suggested that FCIC consider incorporating a phrase of this nature in 9(a) rather than repeating the concept in 9(a)(1) through (5).

*Response:* After FCIC has combined and redrafted this section to remove ambiguity, it determined that the reference to the ability to inspect the acreage is no longer necessary. The provision now clearly and cleanly states when notice is required.

*Comment:* One commenter questioned what the premium rate impact would be, in order to cover the additional amount of indemnities that will be incurred for allowances for quality adjustment. They noted quality adjustment would be for all causes of loss. Since the blueberries will be codified as a permanent program, quality adjustment will apply to all currently insured areas and to any expansion counties.

*Response:* When quality adjustment provisions were added to the program for the 2001 crop year, they applied to mature blueberries damaged by hail and freeze, and premium rates were increased to cover those perils. This rule adds quality provisions for all insured causes of loss and for all States and counties where the blueberry program is offered. To the extent that the risk of loss is increased by this change, premium rates will be adjusted to reflect this additional risk.

*Comment:* One commenter noted the 2004 crop year Special Provisions specify a threshold of 20 percent damage due to hail or freeze to mature blueberries as the basis for determining whether quality adjustment applies. The commenter believes this percentage needs to be increased because quality adjustment may now result from additional perils, including (as proposed) "mechanical damage."

*Response:* FCIC agrees with the commenter that the percentage shown on the Special Provisions needs to be reviewed. For crop year 2005, FCIC will examine the effect of adding these additional causes of loss for quality adjustment to determine the new thresholds. In any case, if additional risk results from these added perils, premium will be adjusted to cover these risks. In addition, as stated above, FCIC has clarified that mechanical damage is an uninsured cause of loss. FCIC has also clarified the criteria for determining

damage or loss by providing grade standards.

*Comment:* One commenter expressed concern that as written in the proposed rule, section 10(c)(3) appears to give the insured wiggle room to argue that because they are a fresh blueberry producer who could not sell their production as fresh, no production should be counted, even though the production might have been sold for processing.

*Response:* FCIC agrees the proposed rule language contained in section 10(c)(3) could have been misinterpreted and perhaps allowed for not counting fresh production sold as processing. Consequently, the provisions have been modified and renumbered as sections 10(d)(1) and (2). The revised provisions now set two standards, one for damaged blueberries where the percent of damaged blueberries exceeds the amount stated on the Special Provisions and one where the percent of damaged blueberries does not exceed the amount stated on the Special Provisions. Where the percent of damaged blueberries exceeds the amount stated on the Special Provisions, no blueberries from the acreage will count as production to count unless sold. If sold, production to count will be determined by dividing the price received for the damaged blueberries by the applicable price election and multiply the resulting factor by the pounds sold. Typically there is little or no juice market, or other processing market, for damaged blueberries that would normally be sold as fresh blueberries. However, if a processing market is found and damaged blueberries are harvested and sold, production to count will be based on value as determined above. Where the percent of damaged blueberries does not exceed the amount stated on the Special Provisions, all mature (undamaged) blueberries will be counted as production to count.

*Comment:* One commenter noted a discrepancy between the provisions contained in section 10(c)(3) and 10(c)(3)(ii). Language contained in 10(c)(3) states in part " \* \* \* damaged by an insurable cause of loss \* \* \* to the extent the blueberries cannot be sold as fresh or processed blueberries \* \* \*," while section 10(c)(3)(ii) references damaged blueberries that are sold. The commenter maintains it could be argued that section 10(c)(3)(ii) would never apply because of provisions contained in section 10(c)(3) regarding blueberries that cannot be sold as fresh or processing due to the percent of damage.

*Response:* FCIC has revised the proposed provisions contained in

section 10(c)(3) and renumbered them as section 10(d) and 10(d)(1) and (2). As stated above, the revised provisions now clearly differentiate between the treatments of damaged blueberries where the percent of damaged blueberries does not exceed the amount stated on the Special Provisions and where the percent of damaged blueberries does exceed the amount stated on the Special Provisions. Further, the provisions are clarified to include the effect if damaged blueberries are sold.

*Comment:* One commenter expressed concern about the addition of quality adjustment for all causes of loss shown in section 8 of these Crop Provisions. They noted some crops such as apples provide for a quality feature for limited perils such as hail and freeze, which are readily identifiable. They questioned, for instance, whether an adjuster could readily identify damage due to adverse weather such as excessive heat and sunburn that may cause the blueberries to color poorly or cause other forms of damage that might be difficult for the adjuster to determine, yet would not be accepted, based on quality, by the processor or buyer.

*Response:* FCIC has examined this issue and consulted with producers and their trade associations. To provide adequate protection, FCIC has decided to cover all perils. However, to assist loss adjusters, FCIC has incorporated grading standards that are used to determine whether production has been damaged.

In addition to the changes described above, FCIC has made the following changes:

1. Modified the provisions in section 2 by making it clear that the enterprise, whole-farm, and optional unit provisions in the Basic Provisions are not applicable. This does not eliminate the applicability of other optional units.

2. Added the word "percentage" after price election in the first line of section 3, to allow producers to select different price elections, if different price elections were offered for different types. Clarifies that it is the percentage of the price election that must be the same.

3. Added provisions to section 6(a)(2)(i), to allow insurance of cultivars which were initially experimental, but have since become commercially acceptable and available.

4. Added provisions to section 6(b) that allow the flexibility to specify other types of blueberries that need pruning every other year, if necessary, in the Special Provisions.

5. Added provisions to section 7(a)(3) " \* \* \* unless specified otherwise in

the Special Provisions.” This allows the calendar date for the end of the insurance period to be tailored through a Special Provisions statement for areas where a statewide date may be inappropriate for a specific type or county.

6. Modified the provisions in section 7(a)(4) to clarify that coverage may not begin for a crop year if we cancel or terminate a policy after insurance has attached but on or before the cancellation and termination dates, and no premium, administrative fee, or indemnity will be due.

7. Deleted in provisions in section 7(b)(2) “\* \* \* and the acreage was insured by you the previous year. \* \* \*” These provisions created confusion and could have the effect of obligating a new insured who relinquishes interest in an acreage shortly after insurance attaches (cancelled lease beginning the new calendar year) to pay premium but not be able to claim an indemnity on the acreage since an insurable interest no longer exists.

8. Added a new provision, 7(b)(3), to clarify the effect of relinquishing an insurable share after the acreage reporting date. Since this issue is not clearly addressed in section 7 of the Basic Provisions, these provisions are added to clarify that premium is still owed if an insurable share is relinquished after the acreage reporting date.

9. Deleted section 12 because blueberries are no longer a pilot program, so written agreements are available if permitted by the policy.

Good cause is shown to make this rule effective less than 30 days after publication in the **Federal Register**. Good cause to make a rule effective less than 30 days after publication in the **Federal Register** exists when the 30-day delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

With respect to the provisions of this rule, it would be contrary to public interest to delay implementation because public interest is served by improving the insurance product as follows: (1) Added provisions to eliminate any lapse in insurance coverage between crop years, therefore, providing continuous coverage for insureds and providing an improved risk management product that prevents the need for ad hoc disaster payments; (2) added provisions to specify that if the insured policy is canceled or terminated for any crop year after insurance attached for that crop year, but on or before the cancellation and termination dates, whichever is later,

then insurance will not be considered to have attached. This modifies the cancellation and termination provisions to coincide with continuous coverage, providing the greatest flexibility to insured producers to make insurance decisions prior to the next crop year, and providing an improved risk management product; (3) added provisions to clarify that an insurance provider may not cancel an insured's policy when an insured cause of loss has occurred after insurance attached, but prior to the cancellation and termination date, to protect insureds against companies canceling policies simply because a loss has occurred; (4) added quality adjustment provisions for determining production to count for mature blueberries, harvested or unharvested, that have been damaged to the extent the blueberries cannot be sold for fresh or processing, which provides improved risk management protection for insured producers; (5) provided simplification and clarity to the blueberry crop insurance program.

If FCIC is required to delay the implementation of this rule 30 days after the date it is published, the provisions of this rule could not be implemented until the 2006 crop year. This would mean the affected producers would be without the benefits described above for an additional year.

For the reasons stated above, good cause exists to make these policy changes effective less than 30 days after publication in the **Federal Register**.

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

Crop insurance, Blueberry, Reporting and recordkeeping requirements.

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 as follows:

#### PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

■ 2. Section 457.166 is added to read as follows:

#### § 457.166 Blueberry crop insurance provisions.

The Blueberry Crop Insurance Provisions for the 2005 and succeeding crop years are as follows:

FCIC policies:

#### UNITED STATES DEPARTMENT OF AGRICULTURE

#### Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

#### Blueberry Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

#### 1. Definitions.

**Damaged blueberries.** Blueberries ready to harvest that due to an insurable cause of loss as shown in section 8 of these Crop Provisions do not meet the United States Standards for Grades of Blueberries, U.S. No. 1, or such other applicable grading standards specified in the Special Provisions.

**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, farmer's market, or permitting the general public to enter the field for the purpose of picking the crop.

**Harvest.** Picking mature blueberries from the bushes either by hand or machine.

**Mature blueberry production.** Blueberries ready to harvest that meet or exceed the United States Standards for Grades of Blueberries, U.S. No. 1, or such other applicable grading standards contained in the Special Provisions.

**Pound.** Sixteen ounces avoirdupois.

**Production guarantee (per acre).** The number of pounds determined by multiplying the approved yield per acre by the coverage level percentage you elect.

**Prune.** A cultural practice performed to increase blueberry production as follows:

(a) For lowbush blueberries, a process by which the acreage is either burned or mowed; and

(b) For all other blueberries, a process by which parts of the bush are cut off or the bush is cut back.

#### 2. Unit Division.

The enterprise, whole-farm, and optional unit provisions in the Basic Provisions are not applicable, and blueberry acreage is limited to basic units as defined in section 1 of the Basic Provisions, unless otherwise specified in the Special Provisions.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election percentage for each blueberry 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 type, if applicable) by the production reporting date designated in section 3 of the Basic Provisions:

(1) For all types of blueberries: any damage; removal of bushes; 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; and

(2) For highbush and rabbiteye blueberry types:

(i) The number of bearing bushes on insurable and uninsurable acreage; and

(ii) The age of the bushes and the planting pattern.

(c) We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: Removal of bushes; damage to bushes; changes in practices; and any other circumstance that may affect 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.

(d) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer for the next year if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time you request the increase.

#### 4. *Contract Changes.*

In accordance with section 4 of the Basic Provisions, the contract change date is August 31 preceding the cancellation date.

#### 5. *Cancellation and Termination Dates.*

(a) In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are November 20.

(b) If your blueberry policy is canceled or terminated by us for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will be considered to have not attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

(c) We may not cancel your policy when an insured cause of loss has occurred after insurance attached, but prior to the cancellation date. However, your policy can be terminated if a cause for termination contained in sections 2 or 27 of the Basic Provisions exists.

#### 6. *Insured Crop.*

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the blueberries in the county for which a premium rate is provided in the actuarial documents:

(1) In which you have a share;

(2) That are grown on bush varieties that:

(i) Were commercially available when the bushes were set out or have subsequently become commercially available; and

(ii) Are varieties adapted to the area of the following types:

(A) Highbush blueberries;

(B) Lowbush blueberries;

(C) Rabbiteye blueberries; or

(D) Other blueberry types listed on the Special Provisions.

(3) That are produced on bushes that have reached the minimum insurable age or have produced the minimum yield per acre designated in the Special Provisions; and

(4) That, if inspected, are considered acceptable by us.

(b) Lowbush blueberry plants (or other types as specified in the Special Provisions)

must be pruned every other year to be eligible for insurance.

#### 7. *Insurance Period.*

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) For the year of application, coverage begins on November 21 of the calendar year prior to the year the insured crop normally blooms, except that, if your application is received by us after November 1, insurance will attach on the twentieth day after your properly completed application is received in our local office unless we inspect the acreage during the 20-day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the blueberry acreage.

(2) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring an existing policy to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) The calendar date for the end of insurance period for each crop year is September 30 for Michigan and September 15 for all other states, unless specified otherwise in the Special Provisions.

(4) Notwithstanding the provisions in this section, coverage may not begin for a crop year if the policy is cancelled or terminated in accordance with section 5(b).

(b) In addition to the provisions of section 11 of the Basic Provisions:

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period. There will be no coverage of any insurable interest acquired after the acreage reporting date.

(2) If you relinquish your insurable share on any insurable acreage of blueberries 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.

(3) If you relinquish your insurable share on any insurable acreage of blueberries after the acreage reporting date for the crop year, insurance coverage will be provided for any loss due to an insurable cause of loss that occurred prior to the date that you relinquished your insurable share and the whole premium will be due for such acreage for that crop.

#### 8. *Causes of Loss.*

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes

of loss that occur during the insurance period:

(1) Adverse weather conditions;

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

(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) An insufficient number of chilling hours to effectively break dormancy;

(8) Wildlife, unless appropriate control measures have not been taken; and

(9) Failure of the irrigation water supply, if caused by a cause of loss specified in this section that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) Failure to install and maintain a proper drainage system;

(2) Failure to harvest in a timely manner;

(3) Inability to market the blueberries for any reason other than actual physical damage to the blueberries 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); or

(4) Mechanical damage.

#### 9. *Duties In The Event of Damage or Loss.*

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(a) You must notify us:

(1) Within 3 days of the date harvest should have started if the crop will not be harvested.

(2) Within 24 hours if any cause of loss occurs:

(i) Within 15 days of harvest;

(ii) When the blueberries are mature and ready for harvest; or

(iii) During harvest.

(3) At least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals and acceptable records provided by you will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count that is not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(4) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit as a result of previously reported damage, so that we may inspect the damaged production.

(b) 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, and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

(c) You may be required to harvest a sample, selected by us, to be used for appraisal purposes.

#### 10. *Settlement of Claim.*

(a) We will determine your loss on a unit basis. In the event you are unable to provide acceptable production records 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 for each type, if applicable, by its respective production guarantee;

(2) Multiplying each result in section 10(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results in section 10(b)(2) if there is more than one type;

(4) Multiplying the total production to count for each blueberry type, if applicable, by the respective price election;

(5) Totaling the results in section 10(b)(4), if there is more than one type;

(6) Subtracting the result in section 10(b)(5) from the result in section 10(b)(3); and

(7) Multiplying the result in section 10(b)(6) by your share.

#### *Example For Section 10(b).*

You have 100 percent share in 25 acres of highbush blueberries with a production guarantee of 4,000 pounds per acre and a price election of \$.45 per pound. You are only able to harvest 62,500 total pounds because adverse weather reduced the yield. Your indemnity would be calculated as follows:

- A. 25 acres  $\times$  4,000 pound production guarantee/acre = 100,000 pound total production guarantee;
- B. 100,000 pounds  $\times$  \$.45 price election = \$45,000 guarantee;
- C. One type only, so same as (2) above, \$45,000;
- D. 62,500 pounds production to count  $\times$  \$.45 price election = \$28,125 value of production to count;
- E. One type only, so same as (4) above, \$28,125;
- F. \$45,000 – \$28,125 = \$16,875 loss; and
- G. \$16,875  $\times$  100 percent share = \$16,875 indemnity payment.

End of Example

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

(1) All appraised blueberry production as follows:

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

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements contained in section 9;

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

(D) For which you fail to provide production records;

(ii) Production lost due to uninsured causes; and

(iii) 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 harvest 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.

(2) All harvested mature blueberry production from the insurable acreage.

(d) If you have harvested or unharvested damaged blueberries and the percent of damaged blueberries exceeds that shown in the Special Provisions for that type, production to count for the damaged unit or portion of a unit will be determined as follows:

(1) The blueberries from the specific acreage will not be considered production to count if no blueberries are harvested and sold from such acreage;

(2) For damaged blueberries that are harvested and sold, the production to count for such damaged blueberries will be determined by:

(i) Subtracting the harvest costs contained in the Special Provisions from the price received for the damaged blueberries;

(ii) Dividing the result in section 10(d)(2)(i) by the price election; and

(iii) Multiplying the resulting factor from section 10(d)(2)(ii), not less than zero, by the pounds of damaged blueberries;

(e) If you have harvested or unharvested damaged blueberries and the percent of damaged blueberries does not exceed that shown in the Special Provisions for that type, the production to count for the damaged unit or portion of a unit will be the appraised or harvested production of blueberries.

(f) If we determine that frost protection equipment, as shown on your accepted application, was not properly utilized, the indemnity for the affected acreage in the unit will be reduced by the percentage reduction allowed for frost protection equipment as specified in the Special Provisions. You must, at our request, provide us records by date for each period the frost protection equipment was used.

#### 11. *Late and Prevented Planting.*

The late and prevented planting provisions in the Basic Provisions are not applicable.

Signed in Washington, DC, on August 19, 2004.

**David C. Hatch,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 04–19447 Filed 8–23–04; 9:05 am]

**BILLING CODE 3410–08–U**

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

**RIN 0563–AB91**

### Common Crop Insurance Regulations, Pecan Revenue Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes the proposal to add to 7 CFR part 457 a new § 457.167 that provides insurance for pecans. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions. The intended effect of this action is to convert the pecan revenue pilot crop insurance program to a permanent insurance program for the 2005 and succeeding crop years.

**DATES:** Effective August 30, 2004.

#### **FOR FURTHER INFORMATION CONTACT:**

Linda Williams, Risk Management Specialist, Research and Development, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676, telephone (816) 926–7730.

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Order 12866**

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

##### **Paperwork Reduction Act of 1995**

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collection of information in this rule have been approved by the OMB under control number 0563–0053 through February 28, 2005.

##### **Government Paperwork Elimination Act (GPEA) Compliance**

In an effort to comply with GPEA, FCIC requires all insurance companies delivering the crop insurance program to make available all insurance documents electronically and to transact business with insureds electronically. Further, to the maximum extent practicable, FCIC transacts its business with the insurance companies electronically.