

# Rules and Regulations

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

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563-AB91

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

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains a correction to the final regulation which was published Wednesday, August 25, 2004 (69 FR 52157-52167). The regulation pertains to the insurance of pecans.

**EFFECTIVE DATE:** October 29, 2004.

**FOR FURTHER INFORMATION CONTACT:** Linda Williams, Risk Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 426, Kansas City, MO 64133-4676, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

##### Background

The final regulation that is the subject of this correction was intended to convert the pecan revenue pilot crop insurance program to a permanent crop insurance regulation to be used in conjunction with the Common Crop Insurance Policy Basic Provisions for ease of use and consistency of terms.

##### Need for Correction

As published, the final regulation contained errors which may prove to be misleading and need to be clarified. In section 3 of the crop provisions, paragraph (g) did not specify the percentage amount that is considered as "additional coverage."

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

Crop insurance, Pecan, Reporting and recordkeeping requirements.

#### Correction of Publication

■ Accordingly, 7 CFR part 457 is corrected by making the following correcting amendments:

#### 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) and 1506(p).

■ 2. Amend § 457.167 as follows:

■ a. Revise section 3(g) to read as set forth below;

■ b. In the Pecan Revenue Example in section 13, remove the dollar figure "\$17,000.00" from the last sentence and insert "\$17,700.00" in its place;

The revision reads as follows:

#### § 457.167 Pecan revenue crop insurance provisions.

\* \* \* \* \*

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

\* \* \* \* \*

(g) Hail and fire coverage may be excluded from the covered causes of loss for your insured crop only if you selected additional coverage of not less than 65 percent of your approved average revenue per acre, and you have purchased the same or a higher dollar amount of coverage for hail and fire from us or any other source.

\* \* \* \* \*

Signed in Washington, DC, on October 25, 2004.

**Ross J. Davidson, Jr.,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 04-24164 Filed 10-28-04; 8:45 am]

**BILLING CODE 3410-08-P**

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563-AB93

#### Common Crop Insurance Regulations; Peanut Crop Insurance Provisions

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes amendments to the Peanut Crop Insurance Provisions. The intended effects of this action are to provide policy changes and clarify existing policy provisions to better meet the needs of the insured and to restrict the effect of the current Peanut Crop Insurance Regulations to the 2004 and prior crop years.

**EFFECTIVE DATE:** November 29, 2004.

**FOR FURTHER INFORMATION CONTACT:** Gary Johnson, 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 collections of information in this rule have been approved by 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 a 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 for judicial review of any determination or action by FCIC 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 May 17, 2004, FCIC published a notice of proposed rulemaking in the **Federal Register** at 69 FR 27864–27865 to revise 7 CFR 457.134 Peanut Crop Insurance Provisions. Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. Comments were received from reinsured companies, agents, trade associations, producers, and insurance service organization and other interested parties. The comments received and FCIC's responses are as follows:

*Comment:* A total of 30 commenters recommended that FCIC should allow optional units for peanuts to be established in accordance with section 34 of the Common Crop Insurance Policy Basic Provisions (Basic Provisions).

*Response:* FCIC agrees and has made the change accordingly.

*Comment:* An insurance service organization suggested that actual production history (APH) procedures should be revised in accordance with how existing units by farm serial number (FSN) can be converted to a section or section equivalent basis, in areas where that is appropriate. The commenter asks if peanut databases that still contain the "F" classification yield from the APH conversion process will be allowed to retain the yield in the new section databases that were part of the FSN for which that classification was established.

*Response:* FCIC revised the APH procedures in the Crop Insurance Handbook (CIH) effective for the 2003 crop year when peanuts were converted to a Category B APH crop. Classification "F" yields that were used to establish approved APH yields were removed by adding an actual or assigned yield to the affected databases for the 2003 crop year. In subsequent crop years, this process will continue until all classification yields in the database have been replaced by actual or assigned yields. Databases will be updated using acceptable production

records under standard APH procedures.

*Comment:* An insurance service organization commented to the proposed rule that to allow optional units for peanuts in accordance with the Basic Provisions would not result in imposing optional units by section in parts of the country, such as some southeastern States. The southeastern States have optional units by FSN for other Category B crops. In those areas, the proposed rule would allow optional units by irrigated and non-irrigated practices as well as by FSN.

*Response:* FCIC agrees that in those states without sections, optional units will be by FSN or irrigated and non-irrigated practices.

*Comment:* An insurance service organization asked if FCIC has any estimates by State on how the number of optional units are affected so rates can be adjusted accordingly.

*Response:* An analysis of the number of potential optional units that may be generated by the proposed rule change was completed. FCIC will apply the rate surcharge for optional units as administered for other Category B crops in the applicable States. A study is being conducted regarding the premium rates for optional units to determine the appropriate rates and such rates will be applied to peanuts.

*Comment:* A total of 30 comments supported modifying the Peanut Crop Provisions to provide for a price election for peanuts based on a contract price for those peanuts that are grown under contract. However, an insurance service organization opposed insuring peanuts at a contract price election. The insurance service organization comment indicated many years ago a contract price was used to establish the price election for non-quota peanuts. Those contracts did not enforce delivery, which then resulted in some buying points being too generous. Peanuts do not have to be grown under contract to be insured. Allowing for a contract price would in effect establish two prices for peanuts similar to the quota/non-quota system. The pounds per acre grown under contract would have one price and those that are not grown under contract would default to the price established in the actuarial documents. Other insured crops such as corn, soybeans, and wheat can also be contracted at set prices without this type of price option available.

*Response:* FCIC only requested public comment regarding the feasibility and possible approaches for insuring peanuts at a contract price. FCIC will consider all the comments when it looks at the feasibility of allowing a price

election by contract price. However, until such evaluation is complete, no changes will be made to the Peanut Crop Provisions.

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

Crop insurance, Peanut, reporting and recordkeeping requirements.

#### Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457, Common Crop Insurance Regulations, for the 2005 and succeeding crop years 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) and 1506(p).

■ 2. Amend § 457.134 as follows:

■ a. Remove and reserve section 2 under the heading “Peanut Crop Insurance Provisions.”

■ b. Revise the introductory text to read as follows:

#### § 457.134 Peanut crop insurance provisions.

\* \* \* \* \*

The peanut crop insurance provisions for the 2005 and succeeding crop years are as follows:

\* \* \* \* \*

Signed in Washington, DC, on October 25, 2004.

**Ross J. Davidson, Jr.,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 04–24177 Filed 10–28–04; 8:45 am]

BILLING CODE 3410–08–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 984

[Docket No. FV04–984–2 IFR]

#### Walnuts Grown in California; Decreased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Walnut Marketing Board (Board) for the 2004–05 and subsequent marketing years from \$0.0101 to \$0.0094 per kernelweight pound of assessable walnuts. The Board locally administers

the marketing order (order) which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

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

Comments received by December 28, 2004, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail:

[moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Program Analyst, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the “order.” The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on August 1, 2004, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Board for the 2004–05 and subsequent marketing years from \$0.0101 to \$0.0094 per kernelweight pound of assessable walnuts.

The order provides authority for the Board, with the approval of the USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board’s needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2003–04 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of \$0.0101 per