

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.

**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 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 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 March 10, 2004, FCIC published a notice of proposed rulemaking in the **Federal Register** at 69 FR 11342–11346 to add to the Common Crop Insurance Regulations (7 CFR part 457) a new section, 7 CFR 457.167, Pecan Revenue Crop Insurance Provisions. FCIC intends to convert the pecan revenue pilot crop insurance program to a permanent crop insurance program beginning with the 2005 crop year. These provisions will replace and supersede the current unpublished provisions that insure pecans under a pilot program. The Pecan Revenue Crop Provisions will be effective for those insured whose first year of the two-year coverage module is 2005. If an insured's first year of the two-year coverage module is 2004 under the pilot program, the pilot policy will still be effective for the 2005 crop year. As with any policy changes, the new Crop Provisions would be applicable for the 2006 crop year if the policy remains in force and coverage will begin the day immediately following the end of the insurance period for the previous two-year coverage module.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data and opinions. The comments received from

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

*Comment:* A commenter questioned why the definition of "acreage" had been removed from the Crop Provisions and wondered if the definition would be in the Basic Provisions and would it provide the clarification that only "the area occupied by the insured crop \* \* \*" is counted for perennial crop purposes.

*Response:* Acreage for pecans are determined the same as all other crops, so a separate definition is not required.

*Comment:* A commenter suggested revising the definition of "average gross sales per acre" as the phrase "during a crop year" was not clear. It was also suggested the term "gross sales" be added in the definition as it is the basis for the average gross sales per acre.

*Response:* The definition of "average gross sales per acre" has been revised to add an example to clarify the crop year referred to and a separate definition of gross sales has been added for further clarification.

*Comment:* One comment suggested removing the phrase "(in-shell basis)" from the definition of "approved average revenue per acre" as it is already contained in another definition. It was also suggested to remove the last phrase "\* \* \* will be used to determine your total average gross sales per acre" and the word "have" contained in the last sentence be replaced to "provide" as it is in the current Crop Provisions.

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

*Comment:* A commenter questioned if the change in the beginning and end dates for the definition of "crop year" means it is not necessary to refer to when the trees "normally" bloom.

*Response:* Since blooming normally occurs between April and August, it is no longer necessary to refer to the crop year in which the tree "normally" blooms.

*Comment:* A comment asked if the term "mature" should be added back to the definition of "harvest" as it is not considered harvested if the pecans are collected before they are ready.

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

*Comment:* A commenter had questions regarding the definition of "market price." The commenter asked who determines whether the actual price received and the average price per pound are inconsistent with AMS prices, and how much difference is to be considered. The commenter also asked if the AMS price is representative of the area and what date is used for appraisals

and how is the value calculated when there might be two appraisals when pecan acreage is harvested more than once.

*Response:* In an effort to avoid the difficulty in determining whether prices are inconsistent, FCIC has revised the definition to specify the market price is the greater of: (1) The average price per pound offered by buyers in the area; (2) the actual price received for any sold production; or (3) the average of the AMS prices published during that week for similar quality pecans. The AMS prices may be obtained daily and a weekly report is also available. The AMS prices are identified by area and also contain the quality by pecan variety for specific areas. The AMS prices may be found at [www.ams.usda.gov/marketnews.htm](http://www.ams.usda.gov/marketnews.htm). If multiple appraisals occur in the same week, the same average AMS price would be applicable. However, if appraisals occur in different weeks, different AMS prices would be used to value the production. Section 13(d) has been revised to take into consideration the different prices that may be applicable.

*Comment:* One commenter asked why the reference to “pecans (in-shell basis)” was removed from the definition of “pound” and whether references to pounds of pecans always mean in-shell or not shelled nuts.

*Response:* FCIC has revised the definition of “pound” to include that it is specifically on an “in-shell” basis.

*Comment:* A commenter suggested in the definition of “scion” to change “plant” to “pecan variety” and to remove the word “stock” and replace it with “tree or branch” as in the “top work” definition.

*Response:* There is duplication within the definitions of “scion” and “top work” so FCIC has revised the definition of “scion” to remove the duplication.

*Comment:* A commenter asked if removing the phrase “terms and conditions” (which is understood to refer to the policy provisions) from the definition of “two-year coverage module” means it is the insured who must meet all requirements in order for coverage to remain the same both years of the coverage module.

*Response:* Like other FCIC crop insurance programs, the insured must meet all terms and conditions of the insurance policy in order for coverage to remain in effect. However, FCIC has replaced the removed phrase to avoid any ambiguity with respect to when the terms of the policy can be revised in the second year of a two-year module.

*Comment:* Two commenters asked if the final rule is effective for the 2005

crop year, will the changes apply to insureds whose first year of coverage is 2004 and the second year of coverage is 2005 or will the changes be effective for the 2006 crop year for these insureds.

*Response:* If the Pecan Revenue Crop Provisions is effective for the 2005 crop year, it will be applicable for those insureds whose first year of a two-year coverage module is 2005. If an insured’s first year of the two-year coverage module is 2004 (under the pilot program phase), then the pilot policy will still be effective for the 2005 crop year. Like any other amendment to the policy, the new Crop Provisions would be applicable for the 2006 crop year if the policy remained in force.

*Comment:* Section 2—Eighteen commenters requested consideration in allowing additional basic units by share or lease agreement. The commenters stated in many cases growers may have several different lease agreements and the orchards could be located in several different areas. Each orchard has different soil characteristics, age of the pecan trees, or access to water and is subject to different perils. As growers are required to market these blocks separately and maintain separate records, no additional burden would be placed on the grower. Some of the commenters suggested for program consistency of the crop insurance program, optional unit division should be allowed on a noncontiguous land basis as provided in other tree crops such as apples, almonds, and walnuts.

*Response:* FCIC has revised section 2 to allow coverage by enterprise unit or basic unit. An enterprise unit will consist of all insurable acreage in the county. A basic unit as defined in the Basic Provisions will allow units by share. The insured can only select one unit structure and it will be effective for both years of the two-year coverage module. Pecan insurance is a history-based individual program where both price and yield come from the producer. Currently there are only two other history-based individual programs available (adjusted gross revenue and avocado), one of which does not offer any unit division. At this time, too little data is available to fully assess the impact of smaller units on history-based revenue products. Given the uncertain risk, the optional unit provisions contained in the Basic Provisions are not applicable.

*Comment:* Two comments suggested the percent of coverage under the Catastrophic Risk Protection Endorsement (CAT) be contained in the Crop Provisions rather than shown in the Special Provisions.

*Response:* It would not be practical to put the percent of coverage for CAT in the Crop Provisions. Should legislation revise the CAT level of coverage, the Special Provisions could be quickly and easily updated. If the percentage amount were contained in these Crop Provisions, FCIC would have to make changes through a regulatory process causing unnecessary time delays in implementation. No change has been made.

*Comment:* A commenter questioned if the provisions contained in the Basic Provisions (section 3(g)(2)) regarding the High-Risk Land Exclusion Option was applicable to pecans. As section 3 of the Crop Provision replaces all of section 3 of the Basic Provisions the commenter asked if the provision should be reinstated in the Crop Provisions.

*Response:* FCIC agrees with the comments and has amended section 3 of the Pecan Revenue Crop Provisions to include the high-risk land provisions like those contained in the Basic Provisions.

*Comment:* Sixteen commenters noted the sequential thinning limitation of 12.5 percent contained in section 3(d)(1) is not appropriate for most pecan growers. Thinning trees in a pecan orchard increases sunlight penetration, which improves crop quality, quantity, and size as well as reducing disease pressure. The commenters stated no other tree crop is subjected to such a reduction in the insurance guarantee, and the sequential thinning reduction of 30 percent the first year after thinning and a 15 percent reduction the second year after thinning is penalizing pecan growers for following proven extension recommendations. The commenters stated the penalty is arbitrary and capricious because there is no published data to support the provisions regarding sequential thinning. All of the commenters stated the provision should be eliminated.

*Response:* FCIC recognizes thinning trees in a pecan orchard is beneficial for future production. However, amounts of insurance are based on the production capability of the acreage in the current crop year, not future crop years. A review of publications from Agricultural Research Service and Cooperative Extension Service indicates thinning does result in reduced pecan production for some period of time. Therefore, provisions must be included to adjust production to the expected capability of the acreage. However, FCIC has amended section 3(d)(1) to state if more than 12.5 percent of the total acres are sequentially thinned, the average gross sales for those acres thinned will be multiplied by a factor of .80 for only the

first year after thinning unless specified otherwise in the Special Provisions.

*Comment:* Nine comments received stated the 12.5 percent threshold for adding acreage contained in section 3(d)(2) is not practical. Some of the commenters indicated growers would only add acreage when it is significant enough to justify expansion. All of the commenters thought the pecan pilot program had exemplary experience throughout the pilot phase and should have the same considerations as other California tree programs that allow a 70 percent increase in added acreage. A few of the commenters stated very few pecan orchards would ever have a historical dollar amount as low as the dollar span contained in the actuarial documents. The 12.5 percent threshold for added land then becomes a greater penalty if the sales records for the added acreage are not provided and a growers' own production history would be diluted when their approved average revenue combined with the history from the added acreage. Some of the commenters suggested growers be allowed to add up to 500 acres per county at the same approved average revenue as the existing units, and for acreage greater than the 500 acre limit, the lowest available dollar span provided in the actuarial documents should apply to such acreage over 500 acres.

*Response:* FCIC disagrees with the commenters. Pecans cannot be compared to programs that are available in California because they are a different plan of insurance. Most California perennial crop programs are actual production history (APH) plans of insurance while the pecan revenue program is a revenue plan of insurance. A review of FCIC's acreage data for the three states providing pecan revenue coverage show that pecan insured's annual average was approximately 201 acres of pecans for the years 1999 through 2003. For the 2003 crop year, approximately one third of the orchards insured in Georgia consisted of approximately 30 acres. Allowing an insured the ability to add 500 acres with no change in the average gross revenue is not reasonable and would cause excessive risk to the program. FCIC has determined that given the risks, recalculation of the approved average revenue when acreage is increased by more than 12.5 percent is appropriate. No change has been made.

*Comment:* One comment asked if, according to section 3(e), can the reduction in insurable acreage due to removal of a contiguous block of trees be done at any time during the two-year

coverage module, or only if reported by the annual acreage reporting date.

*Response:* Section 3(e) has been revised to clarify that removal of a continuous block of trees must be reported at any time including within the two-year coverage module. Further, section 6 has been revised to clarify that failure to report removal of trees will result in a reduction in the insured acreage any time the circumstances become known.

*Comment:* For section 3(f), a commenter thought the provision should be written to make it clear that if gross sales for any year were not reported that both years would be assigned an amount if either year were missing. It should be clear or an insured could report gross sales for the year with high yields and not report the year with lower yields if it fell below the assigned amount of 75 percent of the approved average revenue.

*Response:* FCIC agrees assigning 75 percent of the approved average revenue for the year gross sales amounts are not reported may encourage an insured to not report the low yields. FCIC has revised section 3(f) to state if gross sales amounts are not reported, an amount would be assigned for the missing year. The assigned amount will be the lowest dollar span provided in the actuarial documents.

*Comment:* Two commenters stated section 3(g) indicates hail and fire coverage may be excluded if additional coverage is selected. Additional coverage could include the 50 percent, 55 percent, and 60 percent coverage levels that do not qualify the insured to exclude these perils. The provision needs to be amended to indicate these perils can only be excluded at 65 percent coverage level and at 100 percent price or an equivalent coverage.

*Response:* FCIC disagrees with the commenters. The Basic Provisions define additional coverage as a level of coverage greater than 65 percent coverage level.

*Comment:* Two commenters thought there seemed to be a conflict between sections 4(a), (d), and 5(e) where the cancellation date is listed as January 31 of the second crop year of each two-year coverage module. Section 4(a) states that coverage terms may change between any two-year coverage module and section 4(d) states that any policy changes will be provided not later than 30 days prior to the cancellation date. One of the commenters suggested changing the word "between" in section 4(a) to "for."

*Response:* FCIC has made the revision as suggested for section 4(a). FCIC agrees there may be some ambiguity regarding when changes can be made to

the policy and when they will be provided to the insured. As stated above, FCIC has replaced language in the definition of "two-year coverage module" stating that the same terms and conditions will apply to each year of the module unless Congress or the producer do something to require a policy change. If the producer does something under the policy to affect coverage, sections 4(a), (d), and 5(a) would not be applicable. Further, producers cannot change their coverage in the middle of the module. However, if Congress makes a change prior to the second year of the module, the producer will need to receive notice of such changes prior to the cancellation date. FCIC has revised the provisions to specify that such changes will be provided 30 days prior to the termination date.

*Comment:* Two comments received expressed concern with section 4(b) in which RMA's Web site is provided. The commenters thought it might lead to policyholders contacting RMA rather than their agents. In addition, the language states any policy changes will be available on RMA's Web site not later than the contract change date but there are instances where the policy changes may not be available on the contract change date, for instance, if a final rule is published on the actual contract change date, the new documents may not be on the Web site for a few days.

*Response:* Policy changes posted on RMA's Web site are intended to provide alternative methods for producers to access policy changes by the contract change date. Should any producers contact RMA with questions regarding their insurance coverage, they generally are advised to contact their crop insurance agent for assistance. If policy changes are not available by the contract change date, they are not effective for the crop year. Rules are filed and available for public inspection with the **Federal Register** several days prior to the date of publication. Therefore, there is no reason why the policy changes would not be posted on RMA's Web site by the contract change date. No changes will be made to section 4(b).

*Comment:* One commenter suggested revising section 5(a) to include language contained in the Basic Provisions section 2(a) to clarify it is a continuous policy "until canceled by you in accordance with the terms of the policy or terminated by operation of the terms of the policy or by us."

*Response:* FCIC agrees and section 5(a) has been revised accordingly.

*Comment:* One comment stated the language contained in section 6(b) seemed to indicate that the acreage would no longer be reduced as it was in

the pilot phase, only the insurance guarantee would be reduced. If that is the intent, the commenter asked why refer to reducing the insurance guarantee rather than one of the defined terms for the basis of the insurance.

*Response:* Section 6(a)(1) requires the insured to report the number of acres that are affected by the specified circumstances. Some of those circumstances may result in a reduction in insured acreage, others may only affect the gross sales. Therefore, section 6 has been revised to separate out those that affect acreage from those that affect gross sales and require the applicable adjustment to the insured acreage or amount of insurance per acre. Further, section 6(c) now makes it clear that either the insured acreage or amount of insurance per acre may be adjusted if the applicable circumstances are not reported.

*Comment:* Five commenters stated the requirement of a written agreement to insure pecan trees that have been hedged is improper. Hedging is a common recommended practice in the southwest region and is used to increase sunlight penetration, increase yields, and can aid in control of alternate bearing years.

*Response:* Section 8(f) of the Crop Provisions states hedging may be insurable if allowed by the Special Provisions or by written agreement. Some southwestern county actuarial documents have incorporated statements to insure hedged trees and in those counties a written agreement will not be required. However, the practice is not common everywhere and FCIC has not determined the effect of hedging trees in all areas where pecans are produced. As additional data is collected and FCIC regional offices review the data, more counties may include a Special Provision statement to allow insurance on hedged trees. No change has been made.

*Comment:* Three commenters expressed concern in the omission of a provision in the pilot policy that was not in the proposed rule and questioned if the intent was to insure pecans that are direct marketed to consumers. The commenter stated loss adjusters must appraise each grove before harvest and provide a price from three buyers. Appraisals could be inaccurate due to the lack of grading and pricing standards used in the industry, and insuring direct marketed pecans will increase administrative expenses since multiple appraisals will have to be made each time the trees are shook in order for there to be acceptable records of production to count. The commenters asked FCIC to reinstate the provision

specifying pecans that are direct marketed to consumers is not insured unless allowed by the Special Provisions or by written agreement.

*Response:* FCIC did not intend to insure pecans directly marketed to consumers unless allowed by the Special Provisions or written agreement. FCIC agrees that the burden and costs are much higher due to the multiple harvesting of pecans and has added the provisions back to section 8(f).

*Comment:* One comment suggested rewording section 8(e) to "that are improved pecan varieties" since the definition includes "a distinguishable planting pattern."

*Response:* FCIC has removed the definitions of "improved pecan varieties" and "unimproved pecan varieties" since FCIC insured both improved and unimproved varieties in the pilot program, it has elected to continue to insure all pecan varieties.

*Comment:* One comment questioned why the new provision in section 8(e) requires "\* \* \* an orchard that consists of a minimum of one (1) contiguous acre, unless allowed by written agreement." The commenter asked why the provision was added and how the size was determined. The commenter asked if small orchards (less than one acre) considered to be at greater risk, or if they involve proportionately greater administrative expense than larger orchards. They asked how that compares to the increased expense involved in the written agreement process if those pecan producers still want coverage.

*Response:* Pecan orchards are susceptible to a number of risks if good farming practices are not carried out. FCIC believes pecan orchards must be of some size for good farming practices to be carried out. Requiring orchards be at least one acre in size should minimize the chance of insuring orchards where recommended farming practices are not utilized and the risks would be greater. FCIC believes there are few orchards less than an acre in size and very few written agreements will be requested.

*Comment:* Eight comments disagreed with the provision contained in section 9(a) that required a written agreement to insure acreage in which more than 10 percent of the total acreage is unimproved pecan varieties. All of the commenters stated many of the seedlings produce the same quality and quantity as improved varieties, with some areas having a higher value than the improved varieties in Georgia. Commenters stated as seedling pecans constitute a significant part of the acreage in many regions, all varieties should be allowed to be insured as all

levels of protection are either based on county averages or proven yields. All of the commenters stated that while in the pilot phase, the pecan program was not limited to improved varieties and it should be up to each individual region to determine what, if any, type or variety should not be insured. Many of the comments stated the requirement for a written agreement is ill advised, cumbersome, difficult to manage and too much extra work for the producers, agents, and FCIC.

*Response:* FCIC agrees and has removed section 9(a) and all references to unimproved and improved varieties. All pecans will now be insurable.

*Comment:* Two comments were received regarding the requirement contained in section 10(a)(1) that notification of acceptance or rejection of an application would be made within 30 days after the sales closing date. One commenter thought 30 days did not provide sufficient time to complete and review the required inspection. One commenter stated that the 30 day requirement was reasonable and much more to their satisfaction than the previous 10 day requirement.

*Response:* Under the pilot program, a crop inspection and acceptance or rejection of the application had to be completed within 10 days. FCIC recognized insurance providers needed additional time to inspect the acreage and determined that 30 days provides a good balance between the needs of producers to know whether they have coverage and time for the required inspections. No changes will be made.

*Comment:* One commenter agreed with section 10(b)(1) to allow coverage on acreage acquired up to the acreage reporting date. The commenter recommended the acreage reporting date be March 31 which would allow for the many orchards that change ownership in February or March to be handled in accordance with these provisions.

*Response:* Acreage report dates are being adjusted and will be set on a regional basis determined by the growing season. For the 2005 crop year, the acreage reporting date will be March 1.

*Comment:* One comment asked if section 10(b)(2) meant if the insurable share is relinquished between the first and second years of the two-year coverage module, whether the insured should report zero acres on the acreage report for the second year. If so, there seems to be a loophole in requirement that pecans be insured both years of the two-year coverage module.

*Response:* This provision does not provide a loophole because it is only applicable if the producer no longer has

an insurable interest in the orchard. In those cases, the producer should not be required to pay premium on acreage when the producer no longer has an insurable interest and cannot receive an indemnity. If the producer continues to have an interest in the pecans, coverage cannot be canceled during the two-year coverage module.

*Comment:* Section 10 of the proposed rule revised the dates for when coverage begins and the end of the insurance period. Nine commenters suggested the sales closing date, acreage reporting date and production reporting dates be changed to dates other than currently in effect. Four of the comments indicated an acreage reporting date and production reporting date of April 1 would be consistent with a grower's schedule. This change would allow a grower the time to know which groves he will have for the coming year and harvesting and sales of the crop would be complete. Five of the commenters stated the southwestern growers do not start harvest until November or December and a sales closing date of February or March would be better suited for the southwestern growers. Three southwestern growers stated that some growers enter into pools and do not receive a final price until July or August. FCIC must consider the appropriateness of all growing areas when establishing crop insurance reporting dates.

*Response:* FCIC recognizes the required dates in the pilot program were not suitable for all regions. Program dates contained in the Crop Provisions have been changed and are no longer the same as those in the pilot program. All other reporting and program date requirements are contained in the actuarial documents and will be revised as appropriate for the growing area.

*Comment:* One comment suggested that section 10(b)(2)(i) be revised to "A transfer of right to an indemnity" rather than "A transfer of coverage and right to an indemnity."

*Response:* FCIC agrees with the comment and the provision has been revised accordingly.

*Comment:* Two commenters recommended revising section 11 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.

*Response:* This change is not necessary because the Act requires all causes of loss to be natural causes, not just fire. Specifically referring to natural disasters with respect to fire but not the other causes could create the impression that such other causes of loss could be

caused by something other than natural causes. No change will be made.

*Comment:* In response to the provision contained in section 11(a)(8), one comment questioned how likely plant disease or insects would cause a failure of the irrigation water supply. It was suggested the language contained in the pilot policy would be sufficient rather than specifying "11(a)(1) through (7)."

*Response:* While it is highly unlikely that plant disease or insects would cause failure of the irrigation water supply, such coverage is provided in most other policies, and should be provided here to protect any possibility. Further, the proposed language would not eliminate this coverage. The specific reference to paragraphs (1) through (7) is needed to ensure that coverage is limited to those perils included in this policy and not those that may be included in other policies that may be different. No change will be made.

*Comment:* Two comments indicated the provision in section 12(b) requires appraisals be made when determining production to count for production sold by direct marketing. Pecan trees are harvested three times and the provision entails making three appraisals for each orchard, which is very expensive from an administrative standpoint. Both commenters asked if there were any other types of records that would be acceptable and could alleviate the need to do an appraisal on all of the direct marketing situations regardless of whether or not the acreage is in a loss situation.

*Response:* As stated above, FCIC revised section 8 of these Crop Provisions to reinsert the pilot language specifying that production that is to be sold via direct marketing will only be insurable if provided in the Special Provisions or by written agreement. Therefore, the burdens are no different than existed in the pilot program. Further, because of the impossibility to verify production sold through direct marketing, appraisals must be conducted on direct marketed acreage. The provision contained in section 12(b) has been revised to clarify it only applies if the Special Provisions or a written agreement authorizes direct marketing.

*Comment:* One commenter wrote that section 12(d) specifies the insured must not sell, destroy or dispose of the damaged crop until after written consent has been given. They asked if pecans are selling for less than the market price, it is assumed there is damage. Since there is not a standard grading process, the commenter asks how an insurance provider determine

what, if any, damage exists to give consent.

*Response:* Damage cannot be presumed from low market prices. The producer must still establish that any price decline was unavoidable and not caused by the actions of the producer or a third party (such as bioterrorism). Since the market price is determined on the date of the appraisal, the insurance provider should be able to determine whether an indemnified loss has occurred and whether to give consent to sell, destroy, or dispose of the crop.

*Comment:* One comment asked if section 13(d)(1)(i) should refer to "amount of insurance per acre" rather than "insurance guarantee" since it is not defined in the Crop Provisions.

*Response:* FCIC agrees with the comment and has revised the provision to specify "amount of insurance per acre."

*Comment:* A commenter suggested the example in section 13 be moved to the end of the section as some of the information comes from section 13(d).

*Response:* FCIC agrees with the suggestion and has revised section 13 so that the example of indemnity is contained at the end of the section and expanded the example to include sold and appraised production.

*Comment:* Nine commenters suggested additional pecan growers would benefit if the pecan crop insurance program were to be offered in other pecan producing states and counties. The commenters requested consideration is given to expand the availability of pecan crop insurance as it becomes a permanent insurance program.

*Response:* The criteria considered for crop program expansion does not change regardless of whether the pecan revenue program is a pilot or permanent program. FCIC expanded the pecan revenue program for the 2004 crop year based on expansion requests and supporting data. FCIC will continue to review county expansion requests on the merit of supporting data.

*Comment:* A commenter asked if section 18 of the Basic Provisions would be applicable and mean written agreements may be requested for organically certified pecans.

*Response:* To be consistent with other Crop Provisions, an organic practice premium rate factor will be in the actuarial documents and if qualified, organic acreage of pecans will be insured.

*Comment:* A commenter asked if section 36 "Substitution of Yields" of the Basic Provisions applies to pecans.

*Response:* Substitution of yield provisions are applicable for actual

production history plans of insurance. Pecans are insured under a revenue plan of insurance and section 36 of the Basic Provisions is not applicable. A new section 15 has been added for clarity.

*Comment:* One comment asked if the Pecan Disclaimer would still be required as part of the policy. If it is useful in making sure an insured understands the difference between the pecan policy and other multiple peril crop insurance policies, it should be updated according to these Crop Provisions.

*Response:* The Pecan Disclaimer is no longer required.

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

1. Modified the definition of "approved average revenue per acre" to clarify that if four years of gross sales records are not provided, the approved average revenue will be the average of two years of gross sales records and two years of the lowest available dollar span amount provided in the actuarial documents. If no gross sales records are provided, the approved average revenue will still be the lowest available dollar span amount provided in the actuarial documents.

2. Added a definition for "enterprise unit" to specify all insurable acreage in the county will be considered as an "enterprise unit." This change is to clarify the revisions in section 2 that will allow both "enterprise units" and "basic units."

3. Revised section 7 to remove references to CAT. The Catastrophic Risk Protection Endorsement states that no premium is due for CAT policies and when administrative fees must be paid, but to prevent any ambiguity the phrase "as applicable" has been added.

4. Revised section 10 to add a provision as section 10(a)(2) to clarify for each two-year coverage module following application of the first two-year module, the policy will remain continuously in force and coverage begins the day immediately following the end of the insurance period for the prior two-year coverage module. Section 10(a)(2) has been renumbered as section 10(a)(3).

5. Added a new section 7(b)(3) to clarify when insurable pecan acreage is relinquished after the acreage reporting date, coverage will be provided for insurable causes of loss that occurs before the date the share was relinquished, and the premium earned for such acreage will be due for that crop year.

6. Amended section 11 to add a new section 11(b) to clarify if damage occurs before the beginning of the crop year,

coverage is only provided if the crop was insured the previous crop year. The proposed section 11(b) has been renumbered as section 11(c).

7. Removed the phrase "as determined by us" from sections 13(d)(1)(v), 13(d)(2)(i), and 13(d)(2)(ii). This change is necessary due to the revisions in the definition of "market price."

8. Added a new section 16 (Written Agreement) clarifying that producers must have at least two years of production and gross sales records in counties with actuarial documents and at least four years of production and gross sales records in counties without actuarial documents to qualify for a written agreement.

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

It is in the public interest to implement changes in this rule because it will provide improved insurance benefits for pecan producers. These changes include: Converts the pecan revenue insurance program from a pilot phase to a permanent program. This will allow the program to be expanded into areas where coverage was not previously provided; Increases insurance flexibility by providing additional insurance units for producers who lease multiple pecan orchards or have a share in the crop; Moves the contract change date to a later date to provide a greater amount of time between the contract change date and the sales closing date. This will allow producers more time to make insurance decisions; Changes the limitation on the amount of trees that can be thinned in an orchard. Tree thinning is a recommended practice that will increase the pecan production one year after thinning; Allows hail and fire coverage to be excluded as causes of loss if additional coverage levels are selected; and Provides clarification of what actions may cause changes in the amount of pecan revenue insurance.

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 next crop year. This would mean the affected producers would be without the benefits described above for at least an additional year and those producers currently insured under the pilot insurance program, coverage would be delayed until the 2007 crop

year because pecan coverage is provided under a two-year insurance module.

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

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

Crop insurance, Pecan, Reporting and recordkeeping requirements.

#### Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation is amending 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), 1506(p).

■ 2. Section § 457.167 is added to read as follows:

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

The Pecan Revenue 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:  
Pecan Revenue Crop Insurance Provisions

##### 1. Definitions

*AMS.* The Agricultural Marketing Service of the United States Department of Agriculture.

*Amount of insurance per acre*—The amount determined by multiplying your approved average revenue per acre by the coverage level percentage you elect.

*Average gross sales per acre*—Your gross sales of pecans for a crop year divided by your net acres of pecans grown during that crop year. For example, if for the 2004 crop year, your gross sales were \$100,000 and your net acres of pecans was 100, then your average gross sales per acre for the 2004 crop year would be \$1,000.

*Approved average revenue per acre*—The total of your average gross sales per acre based on at least the most recent consecutive four years of sales records building to ten years and dividing that result by the number of years of average gross sales per acre. If you provide more

than four years of sales records, they must be the most recent consecutive 6, 8 or 10 years of sales records. If you do not provide at least four years of gross sales records, your approved average revenue will be:

(1) The average of two years of your gross sales per acre and two years of the lowest available dollar span amount provided in the actuarial documents; or

(2) If you do not provide any gross sales records, the lowest available dollar span amount provided in the actuarial documents.

**Crop year**—The period beginning February 1 of the calendar year in which the pecan trees bloom and extending through January 31 of the year following such bloom, and will be designated by the calendar year in which the pecan trees bloom.

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

**Enterprise unit**—In lieu of the definition of "enterprise unit" contained in the Basic Provisions, for pecan revenue, an enterprise unit will be all your insurable pecan acreage in the county in which you have any share on the date coverage begins for the crop year.

**Gross sales**—Total value of in-shell pecans grown during a crop year.

**Harvest**—Collecting mature pecans from the orchard.

**Hedge**—The removal of vegetative growth from the tree to prevent overcrowding of pecan trees.

**In-shell pecans**—Pecans as they are removed from the orchard with the nutmeats in the shell.

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

**Market price**—The market price that is the greater of:

(1) The average price per pound for in-shell pecans of the same variety or varieties insured offered by buyers on the day you sell any of your pecans, you harvest any of your pecans if they are not sold, or your pecans are appraised if you are not harvesting them, in the area in which you normally market the pecans (If buyers are not available in your immediate area, we will use the average in-shell price per pound offered by buyers nearest to your area.);

(2) The actual price received for any sold pecan production;

(3) The average of the AMS prices for similar quality pecans published during the week you sell any of your pecans, you harvest your pecans if they are not sold, or your pecans are appraised if you are not harvesting them (For example, if you sell production on November 5 and harvest production on November 14 but do not sell the production, the average of the AMS prices for the week containing November 5 will be used to determine the market price for the production sold on November 5 and the average of the AMS prices for the week containing November 14 will be used to determine the market price for the production harvested on November 14).

**Net acres**—The insured acreage of pecans multiplied by your share.

**Pound**—A unit of weight equal to sixteen ounces avoirdupois of in-shell pecans.

**Scion**—Twig or portion of a pecan variety used in top work.

**Sequentially thinned**—A method of systematically removing pecan trees for the purpose of improving sunlight penetration and maintaining the proper spacing necessary for continuous production.

**Set Out**—The transplanting of pecan trees into the orchard.

**Top work**—To graft scions of one pecan variety onto the tree or branch of another pecan variety.

**Two-year coverage module**—A two-crop-year subset of a continuous policy in which you agree to insure the crop for both years of the module, and we agree to offer the same premium rate, amount of insurance per acre, coverage level, terms and conditions of insurance for each year of coverage except for legislatively mandated changes, as long as all policy terms and conditions are met for each year of the coverage module, including the timely payment of premium, and you have not done anything that would result in a revision to these terms, as specified in this policy.

## 2. Unit Division

(a) For both years of the two-year coverage module a unit will be:

(1) A enterprise unit as defined in section 1; or

(2) A basic unit as defined in section 1 of the Basic Provisions.

(b) Provisions in section 34 of the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number, by irrigated and non-irrigated practices, or grown under an organic farming practice are not applicable.

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

In lieu of section 3 of the Basic Provisions the following applies:

(a) You may select only one coverage level for both years of the two-year coverage module for all pecans in the county. By giving us written notice, you may change the coverage level for the succeeding two-year coverage module not later than the sales closing date of the next two-year coverage module.

(b) For coverage in excess of catastrophic risk protection, your insurance guarantee for the unit will be determined by multiplying your amount of insurance per acre by the net acres.

(c) For coverage under the Catastrophic Risk Protection Endorsement, your insurance guarantee for each unit equals your approved average revenue per acre multiplied by the percentage listed in the Special Provisions and multiplied by the net acres.

(d) Your amount of insurance per acre will remain the same as stated in the Summary of Coverage on each unit for each year of the two-year coverage module unless:

(1) Otherwise provided in the Special Provisions, you sequentially thin more than 12.5 percent of your insured acres, your average gross sales for those acres thinned will be multiplied by a factor of .80 for the first year after thinning or a factor contained in the Special Provisions.

(2) You increase the previous year's insured acreage by more than 12.5 percent, which will result in the recalculation of your approved average revenue using the sales records for the added acreage. If such sales records are not available for the added acreage, the lowest available dollar span amount provided in the actuarial documents will apply to the added acreage.

(3) You take any other action that may reduce your gross sales below your approved average revenue, which will result in an adjustment to your approved average revenue to conform to the amount of the reduction in gross sales expected from the action.

(e) If you remove a contiguous block of trees from the unit, you must report such removal on your acreage report in accordance with section 6, or within 3 days if removal has occurred after the acreage reporting date, and your insurable acreage will be reduced by the number of acres of trees that have been removed.

(f) You must report for each unit your gross sales including the amount of harvested and appraised potential production to us for each year of the



two-year coverage module on or before the acreage reporting date for the first year of the next two-year coverage module.

(1) If you do not report your gross sales in accordance with this paragraph, we will assign a gross sales amount for any year you fail to report. The gross sales amount assigned by us will be not greater than the lowest available dollar span provided by the actuarial table for the current coverage module.

(2) If your gross sales are reported after the acreage reporting date for the two-year coverage module, we will readjust your average gross sales per acre for the next crop year.

(3) The gross sales or your assigned gross sales amount will be used to compute your sales history for the next two-year coverage module.

(4) If you filed a claim for any year, the value of harvested production and appraised potential production used to determine your indemnity payment will be the gross sales for that year.

(g) Hail and fire coverage may be excluded from the covered causes of loss for this insurance plan only if additional coverage is selected, and you have purchased the same or a higher dollar amount of coverage for hail and fire from us or another source.

(h) If you have additional coverage for pecans in the county and the acreage has been designated as "high risk" by FCIC, you will be able to obtain a High Risk Land Exclusion Option for the high risk land under the additional coverage policy and insure the high risk acreage under a separate Catastrophic Risk Protection Endorsement, provided that the Catastrophic Risk Protection Endorsement is obtained from the same insurance provider from which the additional coverage was obtained.

(i) Any person may sign any document related to pecan crop insurance coverage on behalf of any other person covered by this policy provided that person has a properly executed power of attorney or such other legally sufficient document authorizing such person to sign.

#### 4. Contract Changes

In lieu of the provisions contained in section 4 of the Basic Provisions:

(a) We may change the terms of your coverage under this policy for any two-year coverage module. Any change to your policy within a two-year coverage module may only be done in accordance with this policy.

(b) Any changes in policy provisions, amounts of insurance, premium rates, and program dates (except as allowed herein or as specified in section 3) can be viewed on the RMA Web site at [http://](http://www.rma.usda.gov/)

[www.rma.usda.gov/](http://www.rma.usda.gov/) or a successor website not later than the contract change date contained in these Crop Provisions. We may revise this information after the contract change date to correct clerical errors.

(c) The contract change date is October 31 preceding the next two-year coverage module.

(d) After the contract change date, all changes specified in section 4(b) will also be available upon request from your crop insurance agent. You will be provided, in writing, a copy of the changes to the Basic Provisions, Crop Provisions, and a copy of the Special Provisions. If changes are made that will be effective for the second year of the two-year coverage module, such copies will be provided not later than 30 days prior to the termination date. If changes are made that will be effective for a subsequent two-year coverage module, such copies will be provided not later than 30 days prior to the cancellation date. For changes effective for subsequent two-year coverage modules, acceptance of the changes will be conclusively presumed in the absence of written notice from you to change or cancel your insurance coverage in accordance with the terms of this policy.

#### 5. Life of Policy, Cancellation and Termination Dates

(a) In lieu of section 2(a) of the Basic Provisions, this is a continuous policy with a two-year coverage module and will remain in effect for each subsequent two-year coverage module until canceled by you in accordance with the terms of this policy or terminated by us or by the operation of the terms of this policy.

(b) In lieu of section 2(c) of the Basic Provisions, after acceptance of your application, you may not cancel or transfer your policy to a different insurance provider during the initial two-year coverage module. Thereafter, the policy will continue in force for each succeeding two-year coverage module unless canceled, terminated, or transferred to a different insurance provider in accordance with the terms of this policy.

(c) In lieu of section 2(d) of the Basic Provisions, this contract may be canceled by either you or us for the next two-year coverage module by giving written notice on or before the cancellation date.

(d) Your policy may be terminated before the end of the two-year coverage module if you are determined to be ineligible to participate in any crop insurance program authorized under the Act in accordance with section 2(e) of

the Basic Provisions or 7 CFR part 400, subpart U.

(e) The cancellation date is January 31 of the second crop year of each two-year coverage module.

(f) The termination date is January 31 of each crop year.

#### 6. Report of Acreage

(a) In addition to the requirements of section 6 of the Basic Provisions you must report, by the acreage reporting date designated in the Special Provisions:

(1) Any damage to trees, removal of trees, change in practices, sequential thinning in excess of 12.5 percent of your insured acreage or any other action that may reduce the gross sales below the approved average revenue upon which the amount of insurance per acre is based and the number of affected acres;

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

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

(4) Any acreage that is excluded under sections 8 or 9; and

(5) Your gross sales receipts as required under section 3(f);

(b) We will reduce the amount of your insurable acreage based on our estimate of the removal of a contiguous block of trees or damage to trees of the insured crop. We will reduce your amount of insurance per acre based on our estimate of the expected reduction in gross sales from a change in practice or sequential thinning in excess of 12.5 percent of your insured acreage.

(c) If you fail to notify us of any circumstance stated in section 6(a)(1), we will reduce your insured acreage or your amount of insurance per acre to an amount to reflect the expected reduction of gross sales, as applicable, at any time we become aware of the circumstance.

#### 7. Annual Premium and Administrative Fees

In addition to the requirements of section 7 of the Basic Provisions, the premium and administrative fees, as applicable, are due annually for each year of the two-year insurance period.

#### 8. Insured Crop

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

(a) In which you have a share;

(b) That are grown for harvest as pecans;

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

(d) That are grown on trees that have reached at least the 12th growing season after either being set out or replaced by transplants, or that are in at least the 5th growing season after top work and have produced at least 600 pounds of pecans in-shell per acre in at least one year after having been grafted;

(e) That are in an orchard that consists of a minimum of one (1) contiguous acre, unless allowed by written agreement; and

(f) That are not (unless allowed by the Special Provisions or by written agreement):

(1) Grown on trees that are or have been hedged; or

(2) Direct marketed to consumers.

### 9. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance attaching to a crop planted with another crop, pecans interplanted with another perennial crop are insurable if allowed by the Special Provisions or by written agreement.

### 10. Insurance Period

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

(1) Coverage begins on February 1 of each crop year. However, for the year of application, we will inspect all pecan acreage and will notify you of the acceptance or rejection of your application not later than 30 days after the sales closing date. If we fail to notify you by that date, your application will be accepted unless other grounds exist to reject the application, as specified in section 2 of the Basic Provisions of the application. You must provide any information that we require for the crop or to determine the condition of the orchard.

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

(3) The calendar date for the end of the insurance period is January 31 of the crop year.

(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. Acreage acquired after the acreage reporting date will not be insured.

(2) If you relinquish your insurable share on any insurable acreage of pecans 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 request for a transfer of right to an indemnity is submitted by all affected parties and approved by us;

(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 pecans 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 year.

### 11. Causes of Loss

(a) In lieu of the first sentence of section 12 of the Basic Provisions, insurance is provided against an unavoidable decline in revenue due to 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 unmulched pruning debris has not been removed from the orchard;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption;

(8) Failure of the irrigation water supply, if caused by a cause of loss specified in sections 11(a)(1) through (7) that occurs during the insurance period; or

(9) Decline in market price;

(b) If damage occurs before the beginning of the crop year, coverage is only provided if and to the extent the crop was insured the previous crop year;

(c) 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 the inability to market the pecans 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.

### 12. 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 within 3 days of the date harvest should have started if the crop will not be harvested.

(b) If the Special Provisions permit or you have a written agreement authorizing direct marketing, you must notify us at least 15 days before harvest begins if 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 for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine the dollar value of your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised dollar value of production to count that is not less than the amount of insurance per acre for the direct-marketed acreage if such failure results in our inability to make the required appraisal.

(c) If you intend to claim an indemnity, you must notify us at least 15 days prior to the beginning of harvest, or immediately if a loss occurs during harvest, so that we may inspect the damaged production.

(d) You must not sell, destroy or dispose of the damaged crop until after we have given you written consent to do so.

(e) 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.

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

### 13. Settlement of Claim

(a) Indemnities will be calculated separately for each year in the two-year coverage module.

(b) We will determine your loss on a unit basis.

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

- (1) Multiplying the amount of insurance per acre by the net acres of the insured pecans;
- (2) Subtracting the dollar value of the total production to count as determined in section 13(d) from the result of section 13(c)(1):
  - (i) For additional coverage, the total dollar value of the total production to count determined in accordance with section 13(d); or
  - (ii) For catastrophic risk protection coverage, the result of multiplying the total dollar value of the total production to count determined in accordance with section 13(d) by the catastrophic risk protection factor contained in the Special Provisions; and
  - (d) The dollar value of the total production to count from all insurable acreage will include:
    - (1) The value of all appraised production as follows:
      - (i) Not less than your amount of insurance 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 12;
- (C) That is damaged solely by uninsured causes;
- (D) For which no sales records or unacceptable sales records are provided to us;
  - (ii) Production lost due to uninsured causes;
  - (iii) Unharvested production;
  - (iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we

will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the value of production to count; and

- (v) The market price will be used to value all appraised production in section 13(d)(1); and

(2) The value of all harvested production from the insurable acreage determined as follows:

- (i) The dollar amount obtained by multiplying the number of pounds of pecans sold by the market price for each day the pecans were sold;
- (ii) Totaling the results of § 457.167(d)(2)(i), as applicable;
- (iii) The dollar amount obtained by multiplying the number of pounds of pecans harvested, but not sold production, by the market price;
- (iv) Totaling the result of § 457.167(d)(2)(iii), as applicable; and
- (v) Totaling the results of § 457.167(d)(2)(ii) and (iv).

**PECAN REVENUE EXAMPLE**

Year	Acres	Average pounds per acre	Average gross sales per acre
2004 .....	100	750	\$1,050
2003 .....	100	625	625
2002 .....	100	200	250
2001 .....	100	1250	750
<b>Total Average Gross Sales Per Acre .....</b>			<b>2,675</b>

The approved average revenue equals the total average gross sales per acre divided by the number of years ( $\$2,675 \div 4 = \$669$ ).  
 The amount of insurance per acre equals the approved average revenue multiplied by the coverage level percent ( $\$669 \times .65 = \$435$ ).  
 Assume the insured produced, harvested and sold 70 acres of pecans with 300 pounds per acre of pecans on the 13th with an average price per pound of \$0.75, an actual price received of \$0.73, and an average AMS price of \$0.74, and elected not to harvest the other 30 acres of pecans, which were appraised on the 30th at 100 pounds per acre, but because of the quality, the average price per pound was \$0.65 and an average AMS price was \$0.64. The total dollar value of production to count is  $(300 \text{ pounds} \times \$0.75 \times 70 \text{ net acres}) + (100 \text{ pounds} \times \$0.65 \times 30 \text{ net acres}) = \$15,750 + \$1,950 = \$17,700$ .  
 The indemnity would be:  
 The amount of insurance per acre multiplied by the net acres minus the dollar value of the total production to count equals the dollar amount of indemnity ( $\$435 \times 100 = \$43,500.00 - \$17,000.00 = \$25,800$ ).

- 14. Late and Prevented Planting  
 The late and prevented planting provisions of the Basic Provisions are not applicable.
- 15. Substitution of Yields  
 The substitution of yield provisions of the Basic Provisions are not applicable.
- 16. Written Agreements  
 Notwithstanding the provisions of section 18 of the Basic Provisions, for counties with actuarial documents for pecans, you must have at least two years of production and gross sales records and for counties without actuarial documents, you must have at least four years of production and gross sales records to qualify for a written agreement.

Signed in Washington, DC, on August 19, 2004.  
**David C. Hatch,**  
*Acting Manager, Federal Crop Insurance Corporation.*  
 [FR Doc. 04-19446 Filed 8-23-04; 9:20 am]  
**BILLING CODE 3410-08-P**

---

**DEPARTMENT OF AGRICULTURE**  
**Commodity Credit Corporation**  
**7 CFR Part 1434**  
**RIN 0560-AH17**  
**Nonrecourse Marketing Assistance Loan and Loan Deficiency Payment Regulations for Honey**  
**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Interim final rule.

---

**SUMMARY:** This interim final rule amends the regulations governing the Honey Nonrecourse Marketing Assistance Loan (MAL) and Loan Deficiency Payment (LDP) Programs of the Commodity Credit Corporation (CCC). This rule allows honey pledged as collateral for securing an MAL or to be eligible for an LDP to be stored in CCC-approved, five-gallon plastic storage containers, in addition to the plastic Intermediate Bulk Containers already allowed, metal containers, and steel containers. This rule is intended to increase the storage options for honey producers that participate in the MAL and LDP programs.

**DATES:** This rule is effective August 25, 2004. Comments on this rule must be