# Rules and Regulations

Federal Register
Vol. 62, No. 143
Friday, July 25, 1997

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

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

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Parts 403 and 457

### General Crop Insurance Regulations; Peach Crop Insurance Regulations, and Common Crop Insurance Regulations; and Peach Crop Insurance Provisions

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of peaches. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current peach (fresh) crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect to the current peach crop insurance regulations to the 1997 and prior crop years.

**EFFECTIVE DATE:** August 25, 1997.

**FOR FURTHER INFORMATION CONTACT:** Richard Brayton, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

### Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

### Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions on information collection requirements being reviewed by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) previously approved by OMB under OMB control number 0563–0053. No public comments were received.

### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

### Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

### Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

### Federal Assistance Program

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

### Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 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 No. 12988

The final rule has been reviewed in accordance with Executive Order No. 12988. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of the rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

### Environmental Evaluation

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

### National Performance Review

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

### Background

On Tuesday, November 19, 1996, FCIC published a notice of proposed rulemaking, in the **Federal Register** at 61 FR 58786 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.153, Peach Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring peaches found at 7 CFR part 403 (Peach (Fresh) Crop Insurance Regulations). FCIC also amends 7 CFR 403 to limit its effect to the 1997 and prior crop years.

Following publication of that proposed rule, the public was afforded 60 days to submit written comments and opinions. A total of 116 comments were received from FCIC, the National Peach Council, state peach councils, peach growers, and the reinsured companies. The comments received, and FCIC's responses, are as follows:

*Comment:* The peach council made several recommendations on peach appraisals: (a) Adjustments be made in the field, (b) quality adjustments be made for all insured causes of loss, (c) signatures of the producer and adjuster be required on all appraisals, (d) arbitration or similar process be used for unsatisfactory adjustments, and (e) regulations should clearly provide unencumbered ownership of any remaining peaches after a claim is settled.

*Response:* Adopting recommendations in (a), (b) and (c) would simplify the settlement of claims and result in earlier payment of an indemnity, but they are not appropriate under insurance principles. Although peach appraisal methods are believed to be reliable, they are not as accurate as measured final production. Production to count of peaches may change greatly during the last few days before maturity, depending on how the peach sizes during the final swell stage. To protect its interests, the insurance provider would be required to assume that maximum sizing would occur. This may be contrary to the producers' interests. Use of arbitration is mandated by section 17 of the Common Crop Insurance Policy Basic Provisions whenever the crop is insured under a contract reinsured by FCIC. When the producer and the insurance provider agree on the settlement of the claim, insurance on the unit will end. The producer owns any peaches that remain on the unit. For these reasons, no changes have been made.

*Comment:* The peach council noted that the responsibilities of producers are apparently even greater under the proposed peach policy than in the current policy. Notification by the producer is required, for each insured unit, on at least 5 occasions: (a) Within 72 hours of initial discovery of damage; (b) ''any circumstance that may affect the yield'; (c) 15 days prior to direct marketing; (d) within 3 days of the date that harvest ''* * * should have started if the crop will not be harvested'; and (e) ''* * * at least 15 days prior to the beginning of harvest of the damaged variety, if you previously gave notice * * *'' The Regulatory Flexibility Act review section summarized in the **Federal Register** notice states, ''this rule does not have any greater or lesser impact on the producer,'' and thereby claims exemption to a Regulatory Flexibility Analysis. The council contended that the impact to peach producers is indeed greater under the proposed rule. The council proposes, once initial notification of potential crop damage is provided by the producer to the insurance provider, responsibility for tracking crop status should be shared by the producer and the insurance provider.

*Response:* FCIC does not agree that the burden on the typical insured is materially greater under the proposed provisions than under the current policy. The typical insured is not required to provide 5 notices for every insured unit. Only those notices that are appropriate for each unit are required. The requirements that the producer give notice of circumstances that may affect the yield compared to prior years and within 15 days of direct marketing have been added. Previously, direct marketed production was not insurable. With the extension of insurance to such production appropriate notice provisions were added. However, relatively few producers should be affected since these conditions are the exception, not the norm. The other three events requiring notice are contained in the present policy, but the time of notice may have changed to assure that the insurance provider has opportunity to timely assess the damage and determine the amount of the loss. The insurance provider does have responsibility for tracking the potential for loss adjustment activity once initial notices are provided by producers. This assures that an adequate number of adjusters will be available. However, only the producers know the stage of development of the crop on a particular unit, and must bear the responsibility for promptly advising the insurance provider so that the loss adjustment can be performed in a timely manner. Therefore, no change has been made.

*Comment:* The peach councils and peach growers proposed a change to improve equity in the actual production history (APH) calculation. These commenters maintain that more equitable APH determination must be enacted in these regulations, and proposed that a 5-year APH be derived by using 8 years of production history but eliminating the 2 lowest and 1 highest yields. They stated that this method of calculating APH will help mitigate wild APH yield swings.

*Response:* There is no statutory authority to eliminate reported production history. Therefore, no change has been made.

*Comment:* The peach councils proposed that the practice of devising and assigning ''transitional yields'' be addressed in the peach policy to offer guidelines that: (1) Are more consistent from region to region; (2) are more closely related to APH and related to producing areas within the respective regions; and (3) require favorable yield adjustments for commercial producers with proven production skills and sound management practices.

*Responses:* Transitional yields are determined in accordance with 7 CFR part 400, subpart G and are consistent for all crop policies. To change the methodology for determining such yields on a crop, region, or farm basis would significantly increase the administrative burden on the program and subject it to greater program vulnerabilities. Production capabilities are different between producers depending on a myriad of factors including farming practices, soil types, climate, etc. Use of standardize transitional yields will ensure that all producers are treated equally until they establish their own yield bases. Therefore, no change has been made.

*Comment:* The peach councils proposed to alleviate policy problems by (1) excluding commercial peach packers from the definition of ''direct marketing;'' (2) identifying the intended marketing path of insured peaches in the definition; (3) requiring that direct marketers make their declaration in the insurance contract; (4) covering direct marketers under a separate specialized peach policy, possibly through a pilot program; (5) that pick-your-own operations be identified in the insurance contract and be covered under a policy distinct from the policy covering commercial peach producers. A separation of this sort should streamline the process for the insured and insurance provider. They also proposed that commercial producers should be excluded from ''Direct Marketing'' and that for producers declaring a direct marketing intent, the proposed 15 day notification period is indeed unreasonable and should be changed to require 7 days notice before the actuarial practice of direct marketing begins; and (6) notification that the 15 day notification requirement in section 10(b) be deleted.

*Response:* With respect to liability and risk, there is generally no distinction between direct marketed production and production marketed through a processor. The only difference is the insurance providers ability to accurately determine the amount of production. The 15 day notice requirement is intended to give insurance providers sufficient time to appraise the loss of production prior to direct marketing. This policy distinction is insufficient to justify the paperwork and administrative burden of creating a separate policy. However, section 10 is modified by adding the provisions that the insured must notify us at least 15 days before any production from any

unit will be sold by direct marketing, unless the producer will have verifiable records to show that direct marketed peaches were harvested and graded through a packing shed. Further, FCIC does not believe the 15 day notice to be unreasonable. The insurance provider needs adequate time to schedule a site visit to appraise the production. Therefore, no change has been made.

*Comment:* The peach councils recommended from a safety net perspective, that FCIC delete all distinction between ''fresh'' and ''processing'' peaches and that FCIC should offer assurance of a level of production, a price as agreed in the contract, and standardization of loss adjustment procedure for fresh and processing peaches without regard to how the peaches are marketed.

*Response:* Fresh and processing uses have different requirements for quality as well as different prices and markets. Therefore, fresh and processing peaches must be differentiated to provide a fair insurance offer to producers and an actuarial sound insurance program for the insurance providers. Therefore, no change has been made.

*Comment:* The peach councils pointed out that the peach industry may move away from the ¾ bushel box, however, the ¾ bushel graded equals 1 bushel ungraded as established by the insurance industry is fair and realistic and the grade/ungraded equivalent relationship should remain.

*Response:* FCIC recognizes that the unit of measurement for peaches is not always a ¾ bushel. Any unit of measure can be converted to a full 50 pound bushel. Therefore, references to a ¾ bushel carton has been removed from these provisions.

*Comment:* The peach council asked for an explanation regarding FOB prices in the background section item 13, and section 11.

*Response:* FCIC has amended the term ''FOB'' in section 1 under the definition for ''Actual price per bushel.'' The shipping point price reported by the Market News Service is used to determine the value of production for the purpose of quality adjustment.

*Comment:* The crop insurance industry questioned why Freight on Board (FOB) is also used in the definition of ''actual price per bushel'' and recommended it be changed to read ''(FOB) (Freight on Board)'' for reference.

*Response:* The term ''(FOB) (Freight on Board)'' has been removed from the definitions. However, ''FOB'' will still be used in the term of ''actual price per bushel.''

*Comment:* The peach councils requested that the Special Provisions be open for comments and modification.

*Response:* FCIC agrees that the terms of the Special Provisions are important to producers because they are part of the insurance contract. However, the Special Provisions contain those terms and conditions that are unique to an area. Great variations in production and marketing practices make inclusion of all terms into the Crop Provisions impractical. Any person with questions or comments regarding the Special Provisions should direct such comments to the applicable Regional Service Office.

*Comment:* The peach council recommended that the Secretary be given discretionary authority in the policy to declare a Crop Failure Mitigation Floor under which the decrease in the APH yield would be limited to 10 percent when a commodity within a growing region meets specified parameters for a total or near total crop failure.

*Response:* Section 508(g) in the Federal Crop Insurance Act, as amended, provides for the calculation of APH. This section requires a straight average of the annual yield in the data base and does not authorize the use of yield ceilings or floors. Therefore, no change has been made.

*Comment:* The peach council contends that standardization of crop policies should not be to the detriment of the peach producers.

*Response:* FCIC does not believe that standardization of crop policies adversely affects the producers. FCIC makes every possible effort to assure that any unique characteristics of a crop are recognized. This is the reason that the Crop Provisions are used in conjunction with the Common Crop Insurance Policy.

*Comment:* In three comments received from the peach council, two recommended that the definition ''Actual price per bushel'' be changed by deleting the distinction between fresh and processing peach types. The third commenter suggested deleting the entire paragraph.

*Response:* The definition ''Actual price per bushel'' is used for quality adjustment purposes. Since marketing prices for fresh and processing uses differ materially, distinction between peach types is necessary. Therefore, no change has been made.

*Comment:* The peach growers and the crop insurance industry expressed concern with the definition of ''Actual price per bushel'' referring to U.S. Extra No. 1 ''2 inch'' peach. There has not been a market for a ''2 inch'' peach in Pennsylvania and Maryland for many years. Most growers market ''2½ inch'' peaches.

*Response:* FCIC recognizes that the typical size of marketable peaches varies among regions. For this reason, the definition states that, if the average price is not available for ''2 inch,'' the next larger size for which a price is available will be used. Therefore, no change has been made.

*Comment:* The peach council recommended that ''adverse weather conditions'' be defined in the context of damage to the insured crop rather than specific weather events. They noted that problems previously have been experienced with events such as ''flooding,'' which technically was not considered flooding because water did not overflow the banks of a nearby river. There was no regard to the crop damage or inability to harvest and market the crop, which was a direct result of excessive moisture. Such technicalities should be avoided.

*Response:* FCIC agrees that technicalities should be avoided, and believes that the Basic Provisions in conjunction with the Crop Provisions clearly specify that any adverse weather conditions, including excess moisture, that causes damage to the insured crop is covered by the policy. The consequence of adverse weather, such as inability to harvest or market the crop, would be covered as long as cause can be adequately established. However, under the principals of insurance, the actual cause of the loss, inability to harvest etc., must be identified, not just the result of that cause. Therefore, no change has been made.

*Comment:* Two comments from the peach council recommended changes to the definition of ''Bushel.'' One peach council member proposed changing the definition of ''Bushel'' to better reflect actual practices of peach producers, as well as to parallel other existing industry definitions. The commenter noted that the peach industry is moving from the ¾ bushel box as the unofficial industry standard toward a ½ bushel box to meet marketplace demands. The ½ bushel box is more expensive to pack and distribute. In that light, the existing graded/ungraded relationship equivalent should be consistent, with due consideration given to packaging changes. The commenter proposed that the definition be amended to read, ''A ¾ bushel of graded peaches is considered equivalent to a 50-pound bushel of ungraded peaches.'' Another peach council member proposed deleting the second sentence in the definition of a bushel which states ''A ¾ bushel of graded peaches is

considered equivalent to a forty-eight-pound bushel of ungraded peaches.''

*Response:* FCIC agrees with the comments and has amended the provision to read ''bushel—fifty pounds of ungraded peaches.''

*Comment:* The crop insurance industry recommended that in the definition of ''Bushel'' identify who grades the peaches, i.e., a licensed grader.

*Response:* A licensed grader is only used by the government or processor when the peach production is being shipped to market. For direct marketing producers, i.e., roadside stand, farmers market, u-pick etc., the bushel is a bulk 50 pounds measure and not graded by a licensed grader. Therefore, no change has been made.

*Comment:* Two comments from the peach council, addressed the definition of ''crop year.'' The peach council opposed the length of the proposed crop year because it further shortened the period producers have to make critical decisions for the upcoming crop by 10 days. The peach council proposed definition is, ''The period beginning December 1 and extending through September 30 of the following year, which is designated by the calendar year in which the insurance period ends.''

*Response:* The definition of ''crop year'' has been removed from the proposed rule because it is contained in the Common Crop Insurance Policy Basic Provisions. FCIC believes that an insurance attachment date of November 21 rather than December 1 does not pose an undue hardship and simplifies the program because the November 21 date is consistent with other perennial crop insurance policies.

*Comment:* The peach councils recommended modifying the definition of ''harvest'' by deleting the words ''or removal.'' The comment was based on the potential of usual and customary commercial peach production practices to cause peaches to be unintentionally knocked from the tree. The proposed definition could be misconstrued and misapplied. The council proposed the following definition: ''The picking of mature peaches from the trees either by hand or machine with the intent to sell.''

*Response:* FCIC believes the words ''removal of peaches'' must remain in the definition to prevent the intentional knocking of peaches to the ground to reduce the production to count in a loss situation. Loss adjustment procedures account for ordinary and customary losses. Therefore, no change has been made.

*Comment:* The peach council proposed adding a definition for the term ''in the field.''

*Response:* The term is not used in the policy. Therefore, no change has been made.

*Comment:* The peach council recommended the definition of ''irrigated practice'' be changed because the proposed definition contains redundancies and is ambiguous. The council recommended changing the definition of ''irrigated practice'' to read ''A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times.''

*Response:* The definition was written in the current manner to prevent insureds with inadequate irrigation facilities and those who do not supply sufficient water during the crop year from qualifying for an irrigated loss. Therefore, no change has been made.

*Comment:* A reinsured company recommended adding the words ''and quality'' to the definition of ''irrigated practice.''

*Response:* FCIC agrees that water quality is an important issue. However, there are no established criteria regarding the quality of water necessary to produce a crop. Such criteria would be difficult to develop and administer due to the complexity of the factors. Therefore, no change has been made.

*Comment:* The peach council proposed adding a definition of ''loss in quality.''

*Response:* A definition of ''loss in quality'' has been added which specifies that the crop must be damaged to the extent that the producer does not receive the price for U.S. Extra No. 1 Peaches.

*Comment:* The peach council recommended adding a definition ''peach type'' to include all insurable peach types for clarification.

*Response:* Peach types are not contained in the Crop Provisions. Insurable peach types for the county are listed on the Special Provisions. It is the agent's responsibility to have the current county actuarial documents. Therefore, no change has been made.

*Comment:* The peach council recommended clarifying the clause in section 2(e)(1) that states ''you must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee'' by adding ''unless the unit is for trees that are in the fourth year of leaf growth or the unit is for insurable trees added since the previous crop year for which no records are available.''

*Response:* The (APH) Crop Insurance Handbook contains procedures for determining coverage on newly acquired acreage provided the peach trees are in the fourth leaf of growth or the acreage of insurable trees added that have no prior year records. It is the agent's responsibility to have the current procedure. For reason stated, and to be consistent with other crop policies, no change has been made.

*Comment:* A reinsured company expressed concern that the opening clause of section 2(e)(3)(ii) is not necessary since 2(e)(3) states that optional units must meet one or more of the following criteria.

*Response:* FCIC agrees with the comment and has amended the provisions accordingly.

*Comment:* A reinsured company asked what is considered a ''bearing'' tree as opposed to a ''non-bearing'' tree as these terms are used in section 3(b)(2).

*Response:* FCIC has added a definition of ''bearing tree,'' which based on industry standards, is a tree in at least its 4th growing season after set out.

*Comment:* The peach council recommended inserting the words ''reasonable and pertinent'' between the words ''other information'' in section 3(b)(4)(iv).

*Response:* Since the information requested must be necessary to establish the approved yield, it is presumed reasonable and pertinent.

*Comment:* The peach council recommended deleting the sentence ''If you fail to notify us of any circumstance that may affect your yields from previous levels, we will adjust your production guarantee as necessary at any time we become aware of the circumstances'' from section 3(b)(4)(iv) because broad and ambiguous phrases like ''any circumstance'' are inappropriate and unreasonable.

*Response:* This provision in its entirety requires information to establish reasonable yields for orchards that are interplanted, for which production practices have changed, etc. If the insurance provider discovers, after an approved yield has been established, that the condition of the orchard is not as reported, the insurance provider must have the right to adjust the production guarantee to reflect the actual condition of the orchard. Therefore, no change has been made.

*Comment:* A reinsured company questioned why the proposed language in section 6 omitted the reference to peaches ''grown for the production of

fresh and processing peaches (except processing peaches in California'') that is contained in the current policy.

*Response:* FCIC agrees and has added section 6(c) in these provisions.

*Comment*: The peach councils recommended the cancellation and termination dates remain November 30.

*Response*: The cancellation and termination dates were changed from November 30 to November 20 to be consistent with other perennial crop insurance policies. This action was taken to comply with legal directives that the program be simplified. Combining similar dates does reduce complexity. Further, this change is consistent with the change to the date insurance attaches. Therefore, no change has been made.

*Comment*: The peach councils recommended changing section 8(a)(1) to state that insurance attaches on December 1 or ten (10) days after application for those applications filed after November 21.

*Response*: FCIC has changed the date to November 21 to be consistent with other perennial crops. Therefore, no change has been made.

*Comment*: The peach councils and peach growers requested that split pits not be automatically excluded as insured damage. They requested that section 9(b)(2) be revised to read ''Split pits regardless of cause, unless damaged by an insured cause of loss.''

*Response*: FCIC realizes that the percentage of split pits may increase under certain adverse weather situations. However, some varieties are inherently subject to split pits. It is difficult to identify whether a split pit is the result of natural tendencies or is weather related. Split pits are not always obvious since the damage is internal. Principals of sound insurance require that losses be definite as to time, place, and cause. FCIC does not believe that split pits meet these principles. Therefore, no change has been made.

*Comment*: The peach councils requested the notification date in section 10(a) be changed from 3 days to 7 days prior to the date that harvest of the damaged variety should have started if the crop is not to be harvested.

*Response*: FCIC recognizes that 3 days is a short time frame. However, FCIC wants to provide the insured with the maximum amount of time to determine whether the crop can be harvested while still providing time for the insurance provider to conduct an appraisal. This requirement is consistent with other perennial crop insurance policies. Therefore, no change has been made.

*Comment*: The peach councils recommended changes to section 10(c) by deleting the phrases ''at least 15 days prior to the beginning of harvest'' and ''you must not sell or dispose of the damaged crop until after we have given written consent to do so.'' The inherent nature of farming, weather, and marketing suggest that a notice one-half month (15 days) prior to beginning of harvest is unreasonable. Numerous examples can be raised to demonstrate the potential problems with this provision. If notice of damage has been previously given as required, then the insurance provider should accept at least a portion of the responsibility in managing the potential claim. Nullification of coverage for failure to meet this requirement is far too severe.

*Response*: Initial reports of damage often do not result in a loss because the damage was not severe enough. The insured is best able to assess the conditions of the crop as it matures because he or she observes it. The insurance providers responsibility is to appraise the loss once it has been determined that a loss is likely. Under the insurance policy, the burden is on the insured to prove that a loss occurred as a result of an insured cause of loss. FCIC will not shift the burden to the insurance provider. Therefore, no change has been made.

*Comment*: The peach council recommended a new section 10(d) that states ''in addition to our responsibilities outlined in the Basic Provisions, we will assume responsibilities for inspection requirements outlined in this section, following the initial notification by you that a crop may be damaged.''

*Response*: The insurance provider does not have the day to day contact with the crop that the producer does to identify when losses have manifested themselves. It would place an undue burden on the insurance provider to take this responsibility. Therefore, no change has been made.

*Comment*: The peach councils recommended the language in section 11(b) be modified to be consistent with the current policy. The current policy specifies multiplying the total production to be counted by the actual price per bushel or by the price election, whichever is larger.

*Response*: This change was made so that the same price is used to establish liability and the amount of loss. FCIC is no longer offering revenue insurance on peaches because it is currently not authorized under the Federal Crop Insurance Act, as amended, except on a pilot basis. Therefore, no change has been made.

*Comment*: The peach councils recommended deleting the reference relating to direct marketing from section 11(c)(1)(i)(B).

*Response*: FCIC will insure direct marketed peaches, so the requirement in section 10 must be addressed in determining the total production to count. Therefore, no change has been made.

*Comment:* The peach council recommended deleting the last sentence in section 11(a) which reads, ''In the event you are unable to provide separate acceptable production records: * * *.''

*Response:* Maintaining separate records is a condition of receiving optional units. If production records for optional units are not kept separate, it would be impossible to accurately determine production to count for each unit. Therefore, no change has been made.

*Comment:* The peach council recommended changing 11(a)(1) to read: For any optional unit, we will combine all optional units for which ''timely notice was not reported or representative samples for appraisals are not available.''

*Response:* Neither timely notices nor representative samples for appraisals are a requirement for optional units. Units are combined when a producer fails to maintain separate production records. Therefore, no change has been made.

*Comment:* The peach council recommended that FCIC delete 11(a)(2) which reads ''For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.''

*Response:* If production is commingled it is impossible to accurately establish the amount of production attributed to each unit. Allocation in proportion to our liability for the harvested acres in units is a fair and equitable process. The alternative is to deny liability due to failure to follow policy provisions. Therefore, no change has been made.

*Comment:* The peach councils recommended that sections 11(b)(1), (2), (3), (4), (5), (6), and (7) be replaced by: ''11(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiply the insured acreage of peaches on the farm unit by the applicable production guarantee per acre which product will be the production guarantee for the farm unit;

(2) Subtract therefrom the total production of peaches to be counted for the farm unit;

(3) Multiply the remainder by the applicable price election for computing indemnities; and

(4) Multiply the result obtained in step (3) by the insured's share.

*Response:* The abbreviated formula is not correct when both fresh and processing peaches are insured within the same unit. When applicable, separate prices must be used to establish the amount of liability and the value of the production to count. Therefore, no change has been made.

*Comment:* The peach councils recommended deleting in the proposed provisions, references to appraised production in sections 11(c)(1)(i)(B) and (D), 11(c)(1)(ii), (iii), and (iv), and 11(c)(2) and (3).

*Response:* The recommended changes would permit abuse of the insurance program in many ways. A producer could simply elect not to harvest the crop and if the references to appraised production were deleted, the producer would receive a zero production to count. The crop insurance program only insures against legitimate losses of production. To permit such a change would significantly increase the premium rates for all producers. Therefore, no change has been made.

*Comment:* The peach council proposed that two guidelines for production to count be added: ''(A) Peaches damaged by an insured cause of loss that fail to appraise ''2 inches'' and up in size will not be recorded as production to count; and (B) Upon inspection, peaches showing evidence of internal damage will not be recorded as production to count.''

*Response:* In some regions of the country, certain varieties of peaches which grade near ''2 inches'' in size are sold. Peaches that are less than ''2 inches'' in size due to an insurable cause of loss are eligible for quality adjustment that takes into consideration their reduced value. If this damage is from an insurable cause and results in unmarketability of the peaches, they are not included as production to count. Therefore, no change has been made.

*Comment:* The peach council recommended modifying section 11(c)(1) to read ''any appraisal we have made on insured acreage will be considered production to count.'' This recommendation would result in deleting the language ''unless such appraised production is exceeded by the actual harvested production.''

*Response:* Harvested production is the most accurate determination and will be used as production to count. Appraisals are, by necessity, an estimate of production. Therefore, no change has been made.

*Comment:* The peach councils recommended changing section 11(c)(1)(iv) to read: (1) potential production on insured acreage that you intended to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period ''and all crop adjustments'' for the acreage will end; and (2) add the statement ''In any regard, however, once you and we reach an agreement on appraised production, further activity or inactivity with the crop is immaterial.''

*Response:* When the insurance period ends the producer can do whatever the producer wishes with the crop. Therefore, no change has been made.

*Comment:* The peach council recommended revising section 11(c)(2) to read ''all production from the insurable acreage, unless the insurance period has ended due to a previous agreement between you and us.''

*Response:* Harvested production will be used as production to count. For any acreage that is not harvested by the end of the insurance period, the appraised production will be used as production to count. Once the insurance period has ended and the claim finalized, the producer can do whatever the producer wishes with the crop. Therefore, no change has been made.

*Comment:* The peach council recommended deleting section 11(c)(3). This provision permits mature marketable peach production to be reduced due to loss in quality as a result of an insured cause of loss.

*Response:* This provision allows quality adjustment on damaged production due to all insured causes of loss. The current policy only permits quality adjustment for damage due to hail, wind, and misshapen fruit. Therefore, no change has been made.

*Comment:* The peach councils recommended deleting section 11(c)(3)(i)(A) which allows for (FOB) peach prices in the absence of the Market News Service.

*Response:* The current policy does not specify the price to use when the Market News Service does not establish a price for peaches. The change to the definition of actual price per bushel rectifies this omission. Therefore, no change has been made.

*Comment:* The peach councils recommended deleting that part of section 11(c)(3)(i) which reads: ''peaches grown for fresh use by:'' and deleting subparagraph 11(c)(3)(ii) in its entirety.

*Response:* The county actuarial table provides for different price elections for fresh and processing peaches. For example: The price election for fresh peaches is $5.25 per bushel and processing peaches is $4.00 per bushel. While it is true that some fresh market varieties may be marketed as either fresh or processing, the true processing peaches do not make good fresh market peaches. Also the Market News Service only quotes prices for fresh peaches that are packed and shipped. Therefore, no change has been made.

*Comment:* The peach council suggested adding a section 11(c)(5) ''Economic Zero or Threshold Yield.'' This section would contain language to allow an appropriate level in which production is not economically feasible to maintain and therefore should be zero in production to count.

*Response:* The crop insurance program only protects against loss of yield or crop damage due to insured causes. It does not ensure a profit. Therefore, no change has been made.

*Comment:* The peach councils suggested adding language to section 11(c)(6) to state ''Peaches damaged by an insured cause of loss that failed to appraise ''2 inch'' and up in size will not be recorded as production to count.''

*Response:* Peaches less than ''2 inch'' in size due to an insurable cause of loss may still have value if they are sold. Such production will be eligible for quality adjustment which is more equitable for the insurance provider and insured. Therefore, no change has been made.

*Comment:* One comment received from the peach council requested clarification of the written agreement in the summary. Specifically, an explanation of the phrase ''certain modifications allowed'' and the policies for which modifications are allowed was requested.

*Response:* Written agreements are designed to modify certain terms and conditions of the crop insurance policy. Each crop insurance policy specifies the provisions that may be modified by written agreement. For example, section 6(c) states that: ''We may agree in writing to insure peaches on acreage that has not reached the fourth growing season after being set out if it has produced at least 100 bushels of peaches per acre.

*Comment:* A reinsured company recommended that the requirement for a written agreement to be renewed each year should be removed in section 12. Terms of the agreement should be stated in the agreement to fit the particular situation for the policy, or if no substantive changes occur from one year to the next, allow the written agreement to be continuous.

*Response:* Written agreements are temporary and intended to address unusual situations. If the condition for written agreement remains from year to year, that condition should be

incorporated into the policy, the Special Provisions or the Actuarial Table. Therefore, no change has been made.

In addition to the changes described above, FCIC has made the following changes to the Peach Crop Provisions.

1. Section 1—Clarified the definition of ''actual price per bushel.''

2. Section 1—Added the definition of ''packing shed'' and ''set out'' for clarification.

3. Section 2(e)(1)—Clarified that the insured must provide records not later than the production reporting date of acreage and production for each optional unit for at least the last crop year used to determine the production guarantee.

4. Section 3(a)—Clarified that the insured may select one price election for each peach type ''fresh or processing.''

5. Section 3(b)(4)(i)—Clarified that for the first year of insurance, the insured must report the age of any perennial crop interplanted with peaches.

6. Section 9—Added wildlife as an insurable cause of loss to be consistent with other perennial crop insurance policies. Clarified that peaches are insured for the same causes of loss as other crops. Disease and insect infestation are insured causes of loss, if due to natural causes beyond the control of the producer. The former limitation that ''adverse weather'' be the sole cause factor no longer is necessary.

7. Section 11(c)(3)(ii)(A)—Clarified that the production to count for damaged peaches grown for processing is calculated by dividing the value of the damaged peaches by the actual price of undamaged peaches for processing.

## List of Subjects in 7 CFR Parts 403 and 457

Crop Insurance, Peach crop.

## Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation, hereby amends 7 CFR parts 403 and 457, as follows:

## PART 403—GENERAL CROP INSURANCE REGULATION

1. The authority citation for 7 CFR part 403 is revised to read as follows:

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

2. The part heading is revised to read as set forth above.

3. The subpart heading ''Subpart-Regulations for the 1986 and Succeeding Crop Years'' is removed.

4. Section 403.7 is amended by revising the introductory text of paragraph (d) to read as follows:

### § 403.7 The application and policy.

* * * * *

(d) The application for the 1986 and succeeding crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.34, 400.38). The provisions of the Peach Insurance Policy for the 1986 through 1997 crop years are as follows:

* * * * *

## PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

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

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

6. Section 457.153 is added to read as follows:

### § 457.153 Peach crop insurance provisions.

The Peach Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

**Department of Agriculture**

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Peach Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), the Crop Provisions, the Special Provisions, and the Catastrophic Risk Protection Endorsement, if applicable, the Special Provisions will control the Crop Provisions and these Basic Provisions; the Crop Provisions will control the Basic Provisions; and the Catastrophic Risk Protection Endorsement, if applicable, will control all provisions.

1. Definitions

*Actual price per bushel for:*

(a) Fresh peaches means the average price per bushel of U.S. Extra No. 1 ''2-inch'' peaches (if not available, the next larger size for which a price is available) determined from applicable prices reported by the Market News Service of the United States Department of Agriculture for seven consecutive marketing days, commencing with the day harvest of the variety begins. In the absence of FOB shipping point price from the Market News Service, the price per bushel of U.S. Extra No. 1 ''2-inch'' peaches will be the total of the price election and allowable costs for the undamaged peaches; and

(b) Processing peaches means the average price per bushel received from the processor for that applicable variety determined for seven consecutive marketing days, commencing with the day harvest of the variety begins.

*Bearing tree.* A tree in at least the 4th growing season after set out.

*Bushel.* Fifty pounds of ungraded peaches.

*Days.* Calendar days.

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

*FSA.* The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

*Good farming practices.* The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

*Harvest.* The picking or removal of mature peaches from the trees either by hand or machine.

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

*Irrigated practice.* A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

*Loss in quality.* When the crop is damaged to the extent that the producer does not receive the average price for U.S. Extra No. 1 peach.

*Packing shed.* A facility at which peaches are graded, packed and cooled in preparation for shipment to a wholesale market.

*Production guarantee (per acre).* The number of peaches (bushels) determined by multiplying the approved actual production history (APH) yield per acre by the coverage level percentage you elect.

*Set out.* Transplanting the tree into the orchard.

*Written agreement.* A written document that alters designated terms of this policy in accordance with section 12.

2. Unit Division

(a) Unless limited by the Special Provisions, a basic unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8) may be divided into optional units if, for each optional unit, you meet all the conditions of this section.

(b) Basic units may not be divided into optional units on any basis other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you for the units combined.

(d) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

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

(1) You must have provided records not later than the production reporting date, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) For each crop year, records of marketed production from each optional unit must be maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(3) Each optional unit must meet one or more of the following criteria, as applicable, unless otherwise specified by written agreement:

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

(ii) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* Optional units may be based on irrigated acreage and non-irrigated acreage (in those counties where ''non-irrigated'' practice is allowed in the actuarial table) if both are located in the same section, section equivalent, or FSA Farm Serial Number. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based and you may not continue into non-irrigated acreage in the same rows or planting pattern.

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

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the peaches in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each peach type (fresh or processing) designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must choose 100 percent of the maximum price election for all other types.

(b) You must report, not later than the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by type if applicable:

(1) Any damage, removal of or addition of trees, or change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

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

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

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

(i) The age of the crop that is interplanted with the peaches;

(ii) The variety, and type if applicable;

(iii) The planting pattern; and

(iv) Any other reasonable and pertinent information that we request in order to establish your approved yield.

We will adjust the yield used to establish your production guarantee as necessary, based on our estimate of the effect of interplanting a perennial crop; removal or addition of trees or varieties of trees; physical or structural tree damage; a change in practices or changes in tree population and density, and any other circumstance affecting the yield potential of the insured crop. If you fail to notify us of any circumstance that may affect your yields from previous levels, we will adjust your production guarantee as necessary at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are November 20.

6. Insured Crop

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

(a) In which you have a share;

(b) That are grown on tree varieties that:

(1) Were commercially available when the trees were set out;

(2) Are a variety having a chilling hour requirement that is appropriate for the area;

(3) Are grown on a root stock that is adapted to the area.

(c) That the crop insured will be any of the types or varieties of peaches that are grown for the production of Fresh or Processing Peaches (except Processing Peaches excluded in California) on insured acreage and for which a guarantee and premium rate are provided by the Actuarial Table.

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

(e) That has reached at least the fourth growing season after set out. However, we may agree in writing to insure acreage that has not reached this age if it has produced at least 100 bushels of peaches per acre.

7. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, peaches interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

8. Insurance Period

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

(1) Coverage begins on November 21 of each crop year, except that for the year of application, if your application is received after November 11 but prior to November 21, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10-day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is September 30.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage 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.

(2) If you relinquish your insurable interest on any acreage of peaches on or before the acreage reporting date for the crop year and if the acreage was insured by you the previous crop year, insurance will not be considered to have attached, and no premium or indemnity will be due for such acreage for that crop year unless:

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

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions;

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

(3) Earthquake;

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

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

(6) Volcanic eruption;

(7) Wildlife, unless control measures have not been taken;

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

(9) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Split pits, regardless of cause; or

(2) Inability to market the peaches for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), and unless the insurance period has ended prior to each of the following events, the following will apply:

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

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing unless you have records verifying that the direct market peaches were ''weighed and graded'' through a packing shed. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) If you previously gave notice in accordance with section 14 of the Basic Provisions (§ 457.8), and if you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest of the damaged variety, so that we may inspect the damaged production. You must not sell or dispose of the damaged crop until after we have given you written consent to do so.

(d) 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.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(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 11(b)(1) by the respective price election;

(3) Totaling the results in section 11(b)(2);

(4) Multiplying the total production to be counted by type, if applicable, (see subsection 11(c)) by the respective price election;

(5) Totaling the results in section 11(b)(4);

(6) Subtracting the total in section 11(b)(5) from the total in section 11(b)(3); and

(7) Multiplying the result in section 11(b)(6) by your share.

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

(1) All appraised production will be determined as follows:

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

(A) That is abandoned;

(B) From which production is sold by direct marketing if you fail to meet the requirements contained in section 10;

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

(D) For which you fail to provide production records that are acceptable 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 adequately care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(v) Any appraised production on insured acreage will be considered production to count unless such production is exceeded by the actual harvested production.

(2) All harvested production from the insurable acreage.

(3) Mature marketable peach production may be reduced as a result of a loss in quality due to an insured cause of loss. The amount of production to count for such peaches will be determined as follows:

(i) Peaches grown for fresh use by:

(A) Dividing the value of the damaged peaches by the actual price for undamaged peaches; and

(B) Multiplying the result of section 11(c)(3)(i)(A) by the number of bushels of the eligible damaged peaches.

(ii) Peaches grown for processing by:

(A) Dividing the value of the damaged peaches by the actual price of undamaged peaches for processing; and

(B) Multiplying the result of section 11(c)(3)(ii)(A) by the number of bushels of the eligible damaged peaches.

(4) Peaches that cannot be marketed due to insurable causes will not be considered production to count.

12. Written Agreements

Terms of this policy which are specifically designated for the use of written agreement may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 12(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is

determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on July 21, 1997.

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 97–19631 Filed 7–24–97; 8:45 am]

BILLING CODE 3410–08–P

## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

## 8 CFR Part 301

**[INS No. 1736–95]**

**RIN 1115–AE19**

## Acquisition of Citizenship; Equal Treatment of Women in Conferring Citizenship on Children Born Abroad

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Immigration and Naturalization Service (Service) regulations relating to procedures for certain United States citizen women to confer citizenship on their children born outside of the United States before noon (Eastern Standard Time) May 24, 1934. The purpose of this rule is to ensure that all women receive equal treatment under laws relating to nationality. This rule allows for the issuance of certificates of citizenship to certain foreign-born children previously ineligible to acquire citizenship from United States citizen mothers.

**DATES:** This rule is effective August 25, 1997.

**FOR FURTHER INFORMATION CONTACT:** Jane B. Barker, Adjudications Officer, Benefits Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

**SUPPLEMENTARY INFORMATION:** On July 5, 1996, at 61 FR 35111, the Immigration and Naturalization Service published an interim rule with request for comments to amend Service regulations by adding a new part 301. This was necessary to implement section 101(a)(2) of the Immigration and Nationality Technical Corrections Act of 1994 (INTCA), Public Law 103–416, which amended the Immigration and Nationality Act (Act) by adding new section 301(h). Section 301(h) permits certain United States citizen women to confer citizenship on their children born outside of the United States before noon (Eastern Standard Time) May 24, 1934. Persons qualifying for citizenship under section 301(h) are considered citizens of the United States from birth and are not subject to any provisions of law that provided for loss of citizenship or nationality (including section 301(b) of the Act (as in effect before October 10, 1978) and the provisions of section 201(g) of the Nationality Act of 1940) if they failed to come to, reside, or be physically present in the United States. Section 301(h) also provides that for purposes of transmission of citizenship, any person who acquires United States citizenship under section 301(h) must meet applicable residence/physical presence requirements in order to transmit citizenship to their children born abroad. Finally section 301(h) has no effect on the validity of the citizenship of anyone who obtained United States citizenship under section 1993 of the Revised Statutes (as in effect before the enactment of the Act of May 24, 1934, 48 Stat. 797) and does not confer citizenship, nor have any effect on the validity of any denaturalization, deportation, or exclusion action against any person who is or was excludable from the United States for participation in Nazi persecution or genocide, or who was excluded from, or who would not have been eligible for admission to the United States under the Displaced Persons Act of 1948 or under section 14 of the Refugee Relief Act of 1953.

The interim rule outlined the application procedures and specific documentary requirements that applicants must satisfy in order to establish their claim to citizenship under 8 CFR part 301. The interim rule also provided procedures for processing such applications within the United States and abroad.

On August 27, 1996, at 61 FR 43948, the Service published a correction to the interim rule removing the requirement to take the oath of allegiance before any diplomatic or consular officer of the United States, since the Department of State does not require the oath of allegiance in connection with its adjudication of passport applications and issuance of passports.

Interested parties were invited to submit written comments to the interim rule by September 3, 1996.

### Discussion of Comments on Interim Rule

Two commenters were concerned that the wording of the interim rule implies that the person is not a United States citizen prior to the approval of the application for a Certificate of Citizenship (Form N–600), which is contrary to section 301 of the Act which states that ''The following shall be nationals and citizens of the United States at birth.'' The Service notes this error and has amended § 301.1 accordingly.

One commenter noted that the word ''adoption'' should be deleted in reference to the supporting documentation mentioned in 8 CFR 301.1(a) because section 301(h) does not include adopted children and only covers natural-born children. The Services agrees and has removed the word ''adoption'' from § 301.1(a)(1).

One commenter noted that a person residing in the United States who is a United States citizen pursuant to section 301(h) is also able to document his or her citizenship by applying for a United States passport in addition to or in place of applying for a Certificate of Citizenship with the Service. The Service agrees and has amended § 301.1(a) to reflect this option.

One commenter noted that 8 CFR 301.1(b)(2) is redundant and should be removed. The Service agrees that, after the corrections to this section were made on August 27, 1996, paragraph (b)(2) became duplicative. Accordingly, the Service has removed paragraph (b)(2) in the final rule.

### Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic effect on a substantial number of small entities because of the following factors. This rule provides procedures for certain United States citizen women to confer citizenship on their children born outside of the United States before May 24, 1934. The affected parties are not small entities, and the effect of the regulation is not an economic one.

### Executive Order 12866

This rule is not considered by the Department of Justice, immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

### Executrive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or