Rules and Regulations

Federal Register

Vol. 77, No. 169

Thursday, August 30, 2012

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–11–0011]

RIN 0563–AC34

Common Crop Insurance Regulations; Peach Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Peach Crop Insurance Provisions. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The changes will apply for the 2013 and succeeding crop years.

DATES: This rule is effective August 30, 2012.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, 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 provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of 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 that small entities are given the same opportunities as large entities 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 final 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 or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 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 economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This rule finalizes changes to the Common Crop Insurance Regulations (7 CFR part 457) 457.153 Peach Crop Insurance Provisions that were published by FCIC on January 24, 2012, as a notice of proposed rulemaking in the **Federal Register** at 77 FR 3400–3404. The public was afforded 60 days to submit comments after the regulation was published in the **Federal Register**. A total of 202 comments were received from 17 commenters. The commenters were insurance providers, agents, growers, growers associations, an insurance organization, and other interested parties.

The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

General:

Comment: A commenter stated many of the proposed changes in the Peach Crop Provisions Proposed Rule, as explained in the ''Background'' section, appear to be reasonable.

Response: FCIC thanks the commenter for their review of the proposed rule and their support.

Section 1—Definitions:

Comment: A few commenters expressed support for the proposed change to remove the definition of ''actual price per bushel for'' since the Free on Board (FOB) prices are no longer consistently reported by Agricultural Marketing Service (AMS).

Response: FCIC thanks the commenters for their review of the proposed rule and their support. The proposed changes have been retained in this final rule.

Comment: A few commenters do not agree with the proposed addition of definitions of ''fresh and ''processing'' and recommend revising the definition to ''Fresh production'' or ''Fresh peach production'' as in the current Apple Crop Provisions. This would then necessitate revising item (1) to state ''Peaches from insurable acreage that:'' instead of ''Peach production * * *.'' Commenters also recommended revising the definition to ''Processing production'' or ''Processing peach production'' as in the current Apple Crop Provisions.

Response: FCIC agrees and has revised the definition of ''Fresh'' to ''Fresh peach production'' and ''Processing'' to ''Processing peach production'' in these this final rule.

Comment: A few commenters recommended revising the definition of ''fresh'' to read * * * ''its basic form * * *'' to ''* * * the basic form * * *'' as in the Apple Crop Provisions.

Response: FCIC agrees and has deleted the word ''its'' and replaced with ''the'' from the definition of ''fresh'' and ''processing''.

Comment: A few commenters recommended that if the lead-in remains ''Peach production'' instead of ''Peaches'', to match a singular subject, change the word ''Are'' to ''Is'' at the start of section 1(1)(i), (iii) & (iv); and change the first word of section 1(1)(ii) to ''Grades'' and section 1(1)(iv) to ''Follows''.

Response: FCIC agrees with the commenters and has revised the provisions accordingly.

Comment: A few commenters questioned the definition of ''fresh.'' The definition requires fresh peaches to ''Grade at least U.S. Extra No. 1 or better consisting of the minimum diameter as specified in the Special Provisions.'' This requires the peaches actually be produced and graded before the determination is made. The commenters expressed concern because the peach acreage must be reported as fresh or processing on the acreage report. The commenters ask who will be required to grade the peaches because insurance providers have had no training for grading peaches in the past. The commenters ask whether there are USDA peach graders available to assist in the event of any questions or disagreements on the grading of peaches.

Response: FCIC understands and agrees with the commenters that the determination of whether a peach meets the definition of fresh or processing is difficult when it is reported on the acreage report. There is no way to know whether a peach is a fresh peach or processing unless is it graded. The designation of peach acreage as fresh and processing occurs on the acreage report based on the certification provided by the producer that at least 50 percent of the peaches have been sold as fresh and meets the other requirements for fresh. If these requirements are met, the acreage qualifies as fresh even if the peaches subsequently produced do not meet the definition for fresh. If the acreage is subsequently determined not to meet the definition of fresh peach production, the policy provides for remedies. Further, the Peach Loss Adjustment Standards provides instructions to insurance providers to grade peach production or have the samples of the peach production taken to a State/Federal licensed grader to determine the grade of the peach production. No change has been made.

Comment: Numerous commenters stated the phrase ''each unit'' needs to be revised to avoid the problem associated with the Apple Crop Provisions which necessitated issuance of a number of bulletins to clarify, the reference to ''each unit'' in section 1((1)(v) of the definition of ''Fresh''.

Response: A large number of apple producers, who are also peach producers, pointed out that they can and do maintain records of production by unit. However, once apples or peaches are delivered to a warehouse, which is often a third party, for sales and distribution, it is virtually impossible and/or impractical to expect all the apples or peaches to be tracked by unit. FCIC agrees with the commenter and will revise the phrase ''each unit'' to ''total production''.

Comment: Numerous commenters asked how the insured would ''certify,'' as noted in section 1(1)(v) of this definition, that at least 50 percent of the production from acreage reported as fresh peach acreage from each unit was sold as fresh peaches in one or more of the four most recent crop years.'' The commenter asked whether this is accomplished simply by the fact that the insured is reporting the acreage as fresh rather than as processing, or whether some form of additional documentation required (and if so, is it required with the acreage report or at some other time, such as in the event of an Actual Production History (APH) review).

Response: As with all APH programs, certifications include not only the yield but also an attestation to the fact that the producer has the actual records to support the yield. The same concept applies here. The producer is certifying that not only has at least 50 percent of the production from the acreage in the unit been sold as fresh but also that the producer has the records to support those sales. Verification by the insurance provider that records exist would occur the same as any other program where there is a need to verify the production reported for the purpose of establishing the guarantee. No change has been made.

Comment: Numerous commenters stated that based on market demand, large growers must place peaches in cold storage where they lose quality over time. To illustrate, 1000 bushels of peaches that could be sold as fresh peaches today are placed in cold storage. When peaches are removed

from cold storage, only 850 bushels can be sold as fresh; thus only 850 bushels can be used to qualify for fresh coverage. In contrast a smaller grower who distributes to local businesses will timely sell all 1000 bushels as fresh and use 1000 bushels towards fresh coverage qualification. In this common situation, the policy does not treat to all growers equally.

Response: It appears that the commenter is suggesting that grading records obtained before the peaches are put in storage be used to determine whether the acreage qualifies for fresh or processing. FCIC cannot simply use grading records because there are instances where peaches that grade as fresh are intended to be and are sold in the processing market. Because fresh peaches gets a higher price election than processing peaches, in order to avoid over-insuring the crop, FCIC must ensure the producer is capable of producing fresh peaches and has a buyer for the fresh peaches. Further, basing insurance on the intent to sell the production as fresh is too subjective a standard. FCIC can only base its insurance offer on verifiable documentation, in this case the sales records of the production. FCIC has taken the concerns expressed by the commenter into consideration when it set the threshold at 50 percent and not some greater percentage to establish that the acreage of peaches was produced for the fresh market. No change has been made.

Comment: A few commenters stated direct marketers sell fresh peaches. Due to diverse methods of record keeping many direct marketers will be unable to produce verifiable sold records to qualify for fresh coverage. Most direct marketers are willing to comply with the requirements for a verifiable record. However, under the proposed policy many will be limited to processing coverage for one or more years until they can convert their record keeping methods and meet the 50 percent sold as fresh peach production. In this common situation, the policy does not treat to all growers equally.

Response: As with all APH programs, there is a requirement to certify yields based on actual records of production or transitional yields. This means producers should already have records of past production. This record keeping requirement applies to all crops insured under the APH program, including those crops that are commonly direct marketed. FCIC understands direct marketing producers may have diverse methods of record keeping so FCIC has made revisions to procedure to allow other acceptable verifiable records to be used for peach direct marketers. In the past, there have been issues with respect to whether producers seeking insurance have the experience to grow and to follow cultural practices appropriate to produce fresh peaches. Fresh peaches receive a higher price than processing peaches. Therefore, to protect program integrity, FCIC must maintain the requirement that producers demonstrate that they can produce fresh peaches to be eligible to insure their peach acreage as fresh. No change has been made.

Comment: A few commenters recommended that due to lack of records in a new orchard (or transferred orchards) and along with the desire of producers to insure fruit for fresh production, a new eligible producer or a new orchard, should be allowed to insure for fresh coverage by declaration.

Response: Declarations of intent without the requirement for maintaining supporting records has proven in the past to lead to instances of abuse of the program when producers declare their intent to produce the crop as fresh when they have not been able to produce a crop meeting the definition of fresh or they have no viable market for their fresh production. FCIC cannot permit insurance based on a higher price election if the producer does not have the ability to ever receive that price. Unfortunately, this issue especially applies to new producers and new orchards where there is no history of ever producing a fresh peach crop. FCIC has taken the commenters concerns into consideration when it set the 50 percent threshold for producing fresh peaches and the one year requirement instead of some other percentage or number of years. In addition, the 50 percent threshold and record keeping requirement may limit insurance but if the new producer legitimately grows the peaches for the fresh market, this limitation should not last more than a year. No change has been made.

Comment: A few commenters stated the apple policy requires apples to be sold at a price commensurate with that of a fresh apple via product management bulletin. If FCIC intends for the peach policy to follow the same rules then the price language needs to be added to the definition of Fresh. In addition, FCIC needs to define ''a price commensurate with that of a fresh peach''. The current definition is ambiguous and does not allow for unilateral application among the insurance providers.

Response: FCIC agrees with the commenters and has clarified in the definition of ''fresh peach production'' to specify that peaches must have been sold or could have been sold for a price not less than Risk Management Agency's (RMA) published fresh peach price election. If fresh peaches were sold or could have been sold at a fresh price that was less than the RMA's published fresh peach price election for the applicable year, then the producer must provide verifiable records to show that the price received was not less than the price for fresh peaches sold in the area the insured normally sells peach her or her production.

Comment: Commenters stated it is critical for FCIC to define ''verifiable records'' in the definition of ''Fresh'' in section 1. Growers need to have a clear and concise explanation of what constitutes ''verifiable records'', especially for ''you- pick operations'' to properly comply with the regulations.

Response: Subsequent to this proposed rule, FCIC published a final rule amending the Common Crop Insurance Regulations. A definition for the term ''verifiable records'' was added to that final rule to refer the reader to the definition contained in 7 CFR part 400, subpart G. Therefore, a definition of ''verifiable records'' is now contained in the policy. No change has been made.

Comment: A few commenters asked if yields for you-pick operations can be verified by an on tree pre-harvest appraisal as opposed to sales receipts.

Response: As in the case of most perennials, the peach policy states before production is sold by direct marketing a pre-harvest appraisal must be completed by the insurance provider to determine the potential production to count. However, a pre-harvest appraisal may determine potential production to count, but it does not determine the quantity of the total production sold as fresh peaches. Therefore, it is incumbent upon the insured to provide verifiable records when requested, that must reflect whether the value received is consistent with the value of fresh peaches verses the value of processing peaches. No change has been made.

Comment: A few commenters stated that it is confusing as to why the phrase in section 1 in the definition of ''fresh peach production'' subsection (2) requires peach acreage with production not meeting all the requirements in subsection (1) of the ''fresh peach production'' definition to be designated on the acreage report as processing peach production. The commenters ask whether this designation of processing acreage on the acreage report considered a forward-looking or an after-the-fact looking statement, or both. The commenters suggested this provision would be better situated in section 6 (Report of Acreage). If all of the requirements in subsection (1) of the

''fresh peach production'' definition must be met, then it would be impossible that any acreage could be designated as fresh peach production, as subsection (1) of the ''fresh peach production'' definition most likely will never be satisfied.

Response: FCIC agrees with the commenter that the designation of acreage not producing production meeting the requirements as fresh peach production as processing acreage on the acreage report is not a definitional requirement and, therefore, FCIC has removed paragraph (2) and redesignated the remaining provisions. FCIC has also revised the provisions in section 6 to clarify that any acreage not qualifying for fresh peach production in accordance with these Crop Provisions must be designated on the acreage report as processing peach production.

Comment: A few commenters recommended changing the term ''Grade'' to ''Grades'' in section 1 of ''fresh peach production'' since the definition refers to U.S. Extra No. 1 or better.

Response: FCIC agrees with the commenters and has revised the definition of ''fresh peach production'' accordingly.

Comment: FCIC received numerous comments in reference to the definition of ''post production cost'' in section 1, asking how ''post production cost'' is determined and stating the definition needs further clarification.

Response: As FCIC stated in the ''Background'' of the proposed rule, the definition of ''post production cost'' is defined as cost associated with activities that occur during harvesting, packing, transportation, and marketing. Insurance coverage is limited to those perils and costs that occur while the crop is in the field. Therefore, for the purposes of determining ''post production costs,'' FCIC will separate those costs as determined by using regional peach price data of peach production budgets from regional respective universities extension, other USDA agencies, and other third party resources. The ''post production cost'' is utilized in order to adjust quality damage by normalizing the actual sale price to the price election amount which is valued ''on tree''. Post production cost amounts will be provided in the Special Provisions. However, FCIC has revised the definition to specify how the post production costs will be determined.

Section 2—Unit Division:

Comment: Numerous commenters expressed support for the proposed change in section 2 which allows optional units by fresh, processing, and non-contiguous land as specified in the Special Provisions. The commenters stated this change will allow producers more flexibility in making management decisions on how to insure their crops.

Response: FCIC thanks the commenters for their review of the proposed rule and their support. The proposed change has been retained in this final rule.

Section 3—Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities:

Comment: A few commenters questioned using the word ''bearing'' in the section 3(c)(2). Producers are required to report their uninsurable acres, and when trees are first planted, they will be non-bearing. The commenters ask whether it is the intent for producers to report zero trees on their uninsurable acres. If the block consists of older trees and younger interplanted trees of the same variety, and only the bearing trees are counted, the commenter states that there will be inconsistencies with the acres, the tree spacing, and the density. If growers remove many older trees and replace them with younger trees, they will need to report them on the producer's Pre-Acceptance Worksheet (PAW) as they have performed cultural practices that will reduce the yield from previous levels. Commenters suggested growers should be required to report all trees and this number should remain constant until they remove trees or plant new trees. Insurance providers should not be required to track only the trees that are bearing and be required to revise this figure each year.

Response: The information that must be submitted in accordance with section 3(c) is required in order to establish the producers' APH, approved yield, and the amount of coverage. Section 3(c)(2) requires the bearing trees on both insurable and uninsurable acreage to be reported. The number of bearing and non-bearing trees on insurable and uninsurable acreage must be reported on the Pre-acceptance Worksheet. Otherwise, there will be inconsistencies with acres, tree spacing, and the density, if only bearing trees are reported. Since non-bearing trees are not eligible for coverage under the policy, the intent is to have the producer report zero if there are no bearing trees in the unit. Since premium and indemnity payments are based on the number of trees that meet eligibility requirements, insurance providers are required to track both bearing and non-bearing trees as outlined in the Crop Provisions and the Crop Insurance Handbook. No change has been made.

Comment: Numerous commenters expressed support for the proposed change in section 3 allowing the insured to select different coverage levels for fresh and processed peaches within the same unit. The commenters stated this change will allow producers more flexibility in making management decisions on how to insure their crops.

Response: FCIC thanks the commenters for their review of the proposed rule and their support. The proposed change has been retained in this final rule.

Comment: A few commenters referenced section 3(d) about the reduction of the yield used to establish the production guarantee for subsequent crop years due to tree damage, removal of trees, change in practices, interplanted of a perennial crop, or any other circumstances that reduce the yield. The commenters state that the eastern peach growing areas have had downward trending component based on the 5 year database for APH calculations. The commenters state that this makes the peach database much more responsive to yield changes than a 10 year database. Commenters stated procedural changes by RMA to the application of ''downward trending'' circumvent actions taken by Congress to minimize flaws in the Federal crop insurance program through the Agricultural Risk Protection Act of 2000 (ARPA).

ARPA created a yield adjustment option and mandated that in the event of a significant crop loss or zero production on a given insurance unit, the producer would be able to replace the low yield with 60 percent of the transitional yield. Recent procedural changes regarding downward trending as applied to the peach crop insurance program prohibits producers from selecting the yield adjustment option when there are two consecutive years of crop losses recorded on a particular insurance unit regardless of the reason for the loss. This change negatively affects APH and is in direct contradiction of the ARPA. Additionally downward trending allows RMA to reduce the APH to 75 percent of its value. Currently, by definition and application, a 6 year old block entering its prime production years could be subject to downward trending if it has losses in 2 of the last 3 years due to climatic weather events. In such a case losing the yield adjustment option directly refutes the ARPA intention of Congress in 2000 and dramatically lowers the producer's APH. Therefore this rule should be removed or, at the very minimum, be applied to orchards that are 10 years of age.

Response: Since the recommended changes were not proposed, and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. However, in 2009 FCIC released the ''Perennial Crop and Declining Yield Report to Congress'' *http://www.rma.usda.gov/pubs/2009/perennialcrops.pdf.* In this publication FCIC addressed the issues of utilizing the insured's APH in place of T-yields for yield adjustments, as well as high variability testing for crops with a shorter base period. As noted in the report, FCIC has requested legislative authority for these changes. Until legislative authority is granted, FCIC procedures allow RMA Regional Offices to modify or waive a high variability adjustment, which includes downward trend adjustments, and to authorize yield adjustment for APH, when appropriate. No change has been made.

Comment: FCIC received numerous comments in reference to the last sentence of section 3(d), ''* * * We will reduce the yield used to establish your production guarantee for the subsequent crop year''. Commenters questioned what happens if the event that occurred was something that only impacts the crop for the year in question and has no carryover effect on the yield into the next year. Commenters suggested the language needs to be revised to provide the insurance provider some latitude as to whether the subsequent years yield should be reduced and to what extent it should be reduced. There could also be certain events that occur that have some effect on the next year but the impact is less than the production that was assessed for the year in which the event occurred. Therefore, this sentence needs to be modified to allow the approved insurance provider to have some flexibility to be able to determine how much, if any, that the yield should be reduced for the subsequent crop year.

Response: Section 3(d) states that a reduction in the yield will be done, as necessary. This gives the insurance provider the discretion to determine the event will cause a reduction in yield on the subsequent crop year. In addition, section 3(d) allows the insurance provider to estimate the effect of any reduction in future years. Therefore, the provision already contains the flexibility requested. No change has been made.

Section 6—Report of Acreage:

Comment: FCIC received numerous comments regarding the provision to report and designate all acreage of peaches as fresh or processing peaches by the acreage reporting date. However, fresh and processing are identified as types in the Special Provisions of the Actuarial Information Browser. FCIC stated in the ''Background'' of the Peach Crop Provision proposed rule, it removed the word ''type'' because it is no longer applicable. The commenters stated, since the proposal is to remove the word ''type'', it will be necessary to change the Special Provisions. Due to the importance of the Special Provisions, the commenter recommended FCIC provide insurance providers with a preview of the Special Provisions, so they can see the changes.

Response: FCIC understands the commenter's concern and agrees the types as well as the numerical type codes may change for the 2013 crop year. As stated in the proposed rule, the word ''type'' will not be applicable in the future, which is why the definitions of ''fresh'' and ''processing'' were added. The Actuarial Information Browser will provide a generic definition of ''type'', which allows for changes or additional types in the future. This is consistent with other Crop Provisions and allows FCIC to make changes in the Special Provisions, if applicable, without having to promulgate regulations to revise, add, or change types of peaches, which allows FCIC to be more responsive to the risk management needs of producers. Since these changes are similar to other crops, it is not necessary to provide a preview of the changes since implementation of the Special Provisions are time sensitive and FCIC is concerned that sending the Special Provisions out for preview will delay implementation. The change also aids in sharing information with other United States Department of Agriculture (USDA). Adding the definition of ''fresh peach production'' and ''processing peach production'' clearly defines the intended use of peach production. No change has been made.

Section 7—Insured Crop:

Comment: FCIC received comments stating that the introductory paragraph in section 7 seems to be redundant. The opening paragraph states ''* * * the crop insured will be all the peaches in the county for which a premium rate is provided by the actuarial documents''. Section 7(c) repeats the same opening paragraph by stating ''* * * any varieties of peaches that are grown for the production of fresh or processing peaches on insured acreage for which a guarantee and premium rate are provided by the actuarial documents.''

Response: FCIC agrees with the commenters stating the opening paragraph in section 7 is redundant with section 7(c) and the provision has been revised accordingly.

Section 9—Insurance Period:

Comment: A few commenters stated subsections in section 9(a)(1) and (c) seem somewhat contradictory and confusing. According to (a)(1): ''Coverage begins on November 21 of each crop year, except that for the year of application* * *'' if the application is received in the last 10 days before sales closing date, coverage attaches on the 10th day. But according to (c): ''* * * for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period * * *'' The calendar date for the end of the insurance period is September 30 in accordance with section 9(a)(2), so this indicates coverage would begin October 1 (unless some other event ended coverage earlier) rather than November 21. It appears that the November 21 date applies only the year of application (with the 10-day exception for applications during that 10-day period) rather than for ''each'' crop year since all subsequent crop years are addressed in (c).

Response: Since the recommended changes were not proposed, and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. However, FCIC believes there is no conflict. Insurance coverage begins on November 21 of each crop year, except for the year of application. Insurance coverage ends on September 30. However, in accordance with these Crop Provisions, for each subsequent crop year that the policy is remains continuously in force, coverage begins on the day immediately following the end of insurance period for the prior crop year. The insurance period is set to provide insurance during the same time when the crop is at risk from normal causes of loss. This is period is not the same for all crops. There needs to be variance in the beginning and ending of insurance periods to reflect differences in the crops being insured and the areas where they are grown. The calendar date for the end of insurance period must reflect the normal harvest date for each crop. No change has been made.

Comment: A commenter recommended the words ''* * * after an inspection * * *'' should be removed in section 9(b)(1). If damage has not generally occurred in the area where such acreage is located, it should be up to the insurance providers' discretion to decide whether the acreage needs an inspection to be considered acceptable. The language in this section already refers to the insurance provider having the ability to consider the acreage acceptable. Since the acreage

and production reporting dates are after insurance attaches, the insurance provider may not know if the acreage was acquired after coverage began, but before the acreage reporting date. The insurance provider reserves the right to perform an inspection if they deem necessary, but this should NOT be a requirement.

Response: Since the recommended changes were not proposed, and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter recommended adding language to this section to allow the insurance provider the opportunity to inspect and insure any additional acreage that is acquired after the acreage reporting date if they wish to do so. The insurance provider should have the opportunity to accept or deny coverage in these types of situations. This would be similar to what is currently allowed for acreage that is not reported in accordance with section 6(f) of the Basic Provisions.

Response: Since the recommended changes were not proposed, and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Section 11—Duties in the Even of Damage:

Comment: FCIC received comments that the provision in section 11 requiring the insured to leave representative samples in units should be removed. Peaches are extremely perishable, with a ripening period of only 10–14 days. Beyond that, the fruit will begin to break down and decay. Fruit left on trees provides an ideal environment for insect and disease infestation. Many units contain multiple varieties, ripening on different timelines. This practice of leaving samples would increase the likelihood of infection for neighboring varieties''.

Response: FCIC realizes that there is a narrow window of time to harvest the peaches and has tried to achieve a balance with will the need to provide meaningful coverage, such as direct harvest which requires an appraisal because of the difficulty with verifiable records, and protect program integrity. Insurance providers know of the expediency needed to appraise peaches and the goal is to conduct such appraisals in a timely manner to avoid any adverse consequences to the peaches or trees. No change has been made.

Section 12—Settlement of Claim:

Comment: A few commenters suggested adding a second example in section 12(b) depicting two optional units, one for fresh peaches and a second for processing peaches and to demonstrate within the fresh peach unit a portion of the total production that does not meet the requirements for fresh production and is sold as processing peach production.

Response: FCIC understands the commenters suggestion, but due to the numerous situations regarding optional units, it is not possible to list them all in an example. The example in section 12(b) is only intended to provide only a general explanation of how the indemnity payment would be calculated in accordance with these Crop Provisions. To the extent that other examples may be necessary, they will be provided in the applicable procedures. No change has been made.

Comment: A few commenters recommended adding hyphens in the phrase ''3,000-bushel production guarantee'' and ''1,500-bushel production guarantee'' in steps (A) (B).

Response: FCIC has revised the provision accordingly.

Comments: Commenter asks why the steps are designated (A)–(G) rather than (1)–(7) to match (b) (1)–(7) and to be consistent with other crop policies.

Response: FCIC understands the commenters questioning why the steps in the example designated as (A)–(G) rather that (1)–(7) to match (b) (1)–(7). However, the example follows paragraph (7) and is, in effect, a descriptor for paragraphs (1) through (7). Therefore, it did not make sense to designate these provisions again as paragraphs (1) through (7). Further, descriptive headings and formatting of various policy provisions are formulated for convenience only and are not intended to affect the construction or meaning of any of the policy provisions. No change has been made.

Comment: A few commenters recommended the subsection designation of ''(2.)'' should read ''(2)''.

Response: FCIC has revised the provision accordingly.

Comment: A commenter asked whether the reference to the fresh peach price election and processing peach price election in section 12(c)(3)(i) and (ii)(A) is the same as RMA's price election in the Special Provisions or the addendum to the Special Provisions and not the insured's price election.

Response: The ''fresh peach and processing price election'' referenced in section 12(c)(3)(i) and (ii)(A) are RMA's price elections as published in the Special Provisions. No change has been made.

In addition to the changes described above, FCIC has made minor typographical and punctuation changes.

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

With respect to the provision for this rule, it would be contrary to public interest to delay implementation because public interest is served by improving the insurance product as follows: (1) Increasing insurance flexibility by providing for separate optional units by fresh and processing; (2) allowing different coverage levels for all fresh peach acreage in the county and for all processing peach acreage in the count; and (3) providing simplification and clarity to the peach crop insurance program.

If FCIC is required to delay the implementation of this rule 30 days after the date it is published, the provisions of this rule could not be implemented unit the 2014 crop year. This would mean the affected producers would be without the benefits described above for an additional year.

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

List of Subjects in 7 CFR Part 457

Crop insurance, Peach, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2013 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(o).

■ 2. Amend § 457.153 as follows:

■ a. Amend the introductory text by removing the ''2001'' and adding ''2013'' in its place;

■ b. Remove the undesignated paragraph immediately preceding section 1.

■ c. Amend section 1 as follows:

■ 1. Add definitions of ''fresh peach production'', ''post production cost'', and ''processing peach production'' in alphabetical order; and

■ 2. Remove the definition of ''actual price per bushel for''.
■ d. Redesignate sections 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 as 3, 4, 5, 7, 8, 9, 10, 11, 12, and 13, respectively.
■ e. Add a new section 2.
■ f. Amend redesignated section 3 as follows:
■ i. Remove the phrase ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)'' in the introductory text;
■ ii. Redesignate paragraphs (a), (b), and (c) as (b), (c), and (e), respectively, and adding a new paragraph (a);
■ iii. Revise redesignated paragraphs (b), (c) introductory text, (c)(1), (c)(3), and (c)(4)(ii);
■ iv. Designate the undesignated paragraph following redesignated paragraph (c) as paragraph (d); and
■ v. Revise redesignated paragraph (d).
■ g. Amend redesignated section 4 by removing the phrase ''(Contract Changes)''.
■ h. Amend redesignated section 5 by removing the phrase ''(Life of Policy, Cancellation and Termination)''.
■ i. Add a new section 6.
■ j. Amend redesignated section 7 as follows:
■ i. Remove the phrase ''(Insured Crop)'';
■ ii. Amend paragraph (c) by removing phrases ''of the types or'' and ''(except Processing Peaches excluded in California) on insured acreage and for which guarantee and premium rate are provided by the Actuarial Table'';
■ iii. Amend paragraph (d) by removing the word ''and'' at the end;
■ iv. Amend paragraph (e) by removing the period at the end and adding the phrase ''; and'' in its place; and
■ v. Add a new paragraph (f).
■ k. Amend redesignated section 8 by removing the phrase ''(Insurable Acreage)''.
■ l. Amend redesignated section 9 as follows:
■ i. Remove the phrase ''(Insurance Period)''in paragraphs (a) and (b); and
■ ii. Amend paragraph (c) by removing the phrase ''paragraph (a)(1)'' and adding the phrase ''section 9(a)(1)'' in its place.
■ iii. Amend paragraph (d) to add a comma after the phrase, ''termination dates.''
■ m. Amend redesignated section 10 by removing the phrase ''(Causes of Loss)'' in paragraphs (a) and (b).
■ n. Amend redesignated section 11 as follows:
■ i. Redesignate the introductory text as paragraph (b);
■ ii. Redesignate paragraphs (a), (b), (c), and (d) as (1), (2), (3), and (4), respectively;
■ iiii. Add a new paragraph (a); and
■ iv. Remove the phrase ''(Duties in the Event of Damage or Loss)'' in redesignated paragraph (b).
■ o. Amend redesignated section 12 as follows:
■ i. Revise paragraphs (b)(1) through (b)(7);
■ ii. Add a loss example after paragraph (b)(7);
■ iii. Revise paragraph (c)(1) introductory text:
■ iv. Revise paragraph (c)(1)(i)(B);
■ v. Revise paragraph (c)(1)(iii);
■ vi. Revise paragraph (c)(2); and
■ vii. Revise paragraphs (c)(3)(i) and (c)(3)(ii).

The revised and added text reads as follows:

§ 457.153 Peach crop insurance provisions.

* * * * *

1. Definitions.

* * * * *

Fresh peach production. Peach production from insurable acreage that:

(1) Is sold, or could be sold, for human consumption without undergoing any change in the basic form, such as peeling, juicing, crushing, etc.

(2) Grades at least U.S. Extra No. 1 or better, and consisting of a 2¼ inch minimum diameter, unless otherwise specified in the Special Provisions.

(3) Is from acreage that is designated as fresh peaches on the acreage report;

(4) Follows the recommended cultural practices generally in use for fresh peach acreage in the area in a manner generally recognized by agricultural experts;

(5) Is from acreage that you certify, and if requested by us, provide verifiable records to support, that at least 50 percent of the total production from acreage reported as fresh peach acreage was sold as fresh peaches in one or more of the four most recent crop years; and

(6) Is sold or could have been sold for a price that is not less than the applicable fresh peach price election for the applicable crop year in the actuarial documents. If the fresh peach production is sold or could have been sold for a price less than the applicable fresh peach price election for the applicable crop year in the actuarial documents, you must provide verifiable records to show that the price received was at least the amount paid by buyers for fresh peaches in the area in which you sell your peaches.

* * * * *

Post production cost. The costs, as specified in the Special Provisions, associated with activities that occur during harvesting, packing, transportation, and marketing, as determined by FCIC using regional peach price data of peach production budgets from regional respective universities extension, other USDA agencies, and other third party resources.

Processing peach production. Peach production from insurable acreage that is:

(i) Sold, or could be sold, for the purpose of undergoing a change to its basic structure such as peeling, juicing, crushing, etc.; or

(ii) From acreage designated as processing peaches on the acreage report.

* * * * *

2. Unit Division.

In addition to the requirements contained in section 34 of the Basic Provisions, optional units may be established if each optional unit is:

(a) Located on non-contiguous land; or

(b) By fresh and processing as specified in the Special Provisions.

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

* * * * *

(a) You may select a separate coverage level for all fresh peach acreage and for all processing peach acreage. For example, if you choose the 55 percent coverage level for all fresh peach acreage, you may choose the 75 percent coverage level for all processing peach acreage.

(1) Notwithstanding paragraph (a) of this section, if you elect the Catastrophic Risk Protection (CAT) level of coverage for fresh peach acreage or processing peach acreage, the CAT level of coverage will be applicable to all insured peach acreage in the county of both fresh and processing peaches.

(2) If you only have fresh peach acreage designated on your acreage report and processing peach acreage is added after the sales closing date, we will assign a coverage level equal to the coverage level you selected for your fresh peach acreage.

(3) If you only have processing peach acreage designated on your acreage report and fresh peach acreage is added after the sales closing date, we will assign a coverage level equal to the coverage level you selected for your processing peach acreage.

(b) 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 fresh and processing peaches. If the Special Provisions allow

different price elections, you may select a separate price election for all your fresh peaches and for all your processing peaches. If the Special Provisions do not allow for different price elections, the price elections you choose for fresh peaches and processing peaches must have the same percentage relationship to the maximum price offered by us for fresh and processing peaches. For example, if you choose 100 percent of the maximum price election for fresh peaches, you must choose 100 percent of the maximum price election for processing peaches.

(c) You must report, not later than the production reporting date designated in section 3 of the Basic Provisions, separately by fresh and processing peach acreage, as applicable:

(1) Any event or action that could impact the yield potential of the insured crop including, interplanting of a perennial crop, removal of trees, any tree damage, change in practices, or any other circumstance that may reduce the expected yield upon which the insurance guarantee is based, and the number of affected acres;

(2) * * *

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

(4) * * *

(ii) The variety;

* * * * *

(d) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any situation listed in sections 3(c)(1) through (4). If the situation occurred:

(1) Before the beginning of the insurance period, we will reduce the yield used to establish your production guarantee for the current crop year as necessary. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee at any time we become aware of the circumstance;

(2) Or may occur after the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee is due to an uninsured cause of loss;

(3) Or may occur after the beginning of the insurance period and you fail to notify us by the production reporting date, production lost due to uninsured causes equal to the amount of the reduction in yield used to establish your production guarantee will be applied in determining any indemnity (see section 12(c)(1)(ii). We will reduce the yield used to establish your production guarantee for the subsequent crop year.

* * * * *

6. Report of Acreage.

In addition to the requirements contained in section 6 of the Basic Provisions, you must report and designate all acreage of peaches as fresh or processing peaches by the acreage reporting date. Any acreage not meeting all the requirements to qualify for fresh peach production must be designated on the acreage report as processing peach production.

7. Insured Crop.

* * *

(f) That are grown for:

(1) Fresh peach production; or

(2) Processing peach production.

* * * * *

11. Duties In the Event of Damage or Loss.

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples in accordance with our procedures.

* * * * *

12. Settlement of Claim.

* * * * *

(b) * * *

(1) Multiplying the insured acreage for fresh and processing peaches, as applicable, by the respective production guarantee;

(2) Multiplying each result in section 12(b)(1) by the respective price election;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production of fresh and processing peaches to be counted, as applicable (see subsection 12(c)) by the respective price election;

(5) Totaling the results in section 12(b)(4);

(6) Subtracting the total in section 12(b)(5) from the total in section 12(b)(3); and

(7) Multiplying the result in section 12(b)(6) by your share.

Example:

You have a 100 percent share in one basic unit with 10 acres of fresh peaches and 5 acres of processing peaches designated on your acreage report, with a 300 bushel per acre production guarantee for both fresh and processing peaches, and you select 100 percent of the price election of $15.50 per bushel for fresh peaches and $6.50 per bushel for processing peaches. You harvest 2,500 bushels of fresh peaches and 500 bushels of processing peaches. Your indemnity will be calculated as follows:

(A) 10 acres × 300 bushels = 3,000-bushel production guarantee of fresh peaches;

5 acres × 300 bushels = 1,500-bushel production guarantee of processing peaches;

(B) 3,000-bushel production guarantee × $15.50 price election = $46,500 value of the production guarantee for fresh peaches; 1,500-bushel production guarantee × $6.50 price election = $9,750 value of the production guarantee for processing peaches;

(C) $46,500 value of the production guarantee for fresh peaches + $9,750 value of the production guarantee for processing peaches = $56,250 total value of the production guarantee;

(D) 2,500 bushels of fresh peach production to count × $15.50 price election = $38,750 value of the fresh peach production to count; 500 bushels of processing peach production to count × $6.50 price election = $3,250 value of the processing peach production to count;

(E) $38,750 value of the fresh peach production to count + $3,250 value of the processing peach production to count = $42,000 total value of the production to count;

(F) $56,250 total value of the production guarantee—$42,000 total value of the production to count = $14,250 value of loss; and

(G) $14,250 value of loss × 100 percent share = $14,250 indemnity payment.

[End of Example]

(c) * * *

(1) All appraised production as follows:

(i) * * *

(B) From which production is sold by direct marketing if you fail to meet the requirements contained in section 11.

* * *

(iii) Unharvested peach production that would be marketable if harvested;

* * *

(2) All harvested marketable peach production from the insurable acreage.

(3) * * *

(i) For fresh peaches by:

(A) Dividing the value of the damaged peaches minus the post production cost specified in the Special Provisions, by the fresh peach price election; and

(B) Multiplying the result of section 12(c)(3)(i)(A) (not to exceed 1.00) by the number of bushels of the damaged fresh peaches.

(ii) For processing peaches by:

(A) Dividing the value of the damaged peaches minus the post production cost specified in the Special Provisions, by the processing peach price election; and

(B) Multiplying the result of section 12(c)(3)(ii)(A) (not to exceed 1.00) by the number of bushels of the damaged processing peaches.

* * * * *

Signed in Washington, DC, on August 24, 2012.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2012–21350 Filed 8–29–12; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Doc. No. AMS–FV–12–0002; FV12–929–1 IR]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Changing Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule revises the reporting requirements currently prescribed under the marketing order that regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York (order). The order is administered locally by the Cranberry Marketing Committee (Committee). This rule changes the dates covered by the third reporting period and the date by which the Handler Inventory Report (Form HIR) is due to the Committee. These changes will help ensure the Committee has current and complete information available for its discussions during its annual August meeting, while providing handlers sufficient time to submit their reports.

DATES: Effective August 31, 2012; comments received by October 29, 2012 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 929, both as amended (7 CFR part 929), regulating the handling of cranberries produced in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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

This rule revises the reporting requirements currently prescribed under the order. This rule changes the dates covered by the third reporting period and the date by which the Handler Inventory Report (Form HIR) is due to the Committee. These changes will help ensure the Committee has current and complete information available for its discussions during its annual August meeting, while providing handlers sufficient time to submit their report. These changes were unanimously recommended by the Committee at a meeting on August 31, 2011.

Section 929.62 of the cranberry marketing order provides, in part, that each handler engaged in the handling of cranberries or cranberry products shall, upon request of the Committee, report as to the quantity of cranberries acquired and handled during any designated period or periods. This section also provides that handlers report cranberries or cranberry products held in inventory on such date as the Committee may designate.

Currently, § 929.105 provides that certified reports shall be filed with the Committee, on a form provided by the Committee, by each handler not later than January 20, May 20, and August 20 of each fiscal period and by September 20 of the succeeding fiscal period. This Handler Inventory Report (Form HIR) must show the total quantity of cranberries acquired and the total quantity of cranberries and *Vaccinium oxycoccus* cranberries handled from the beginning of the reporting period indicated through December 31, April 30, July 31, and August 31, respectively. The report must also show the total quantity of cranberries and *Vaccinium oxycoccus* cranberries as well as cranberry products and *Vaccinium oxycoccus* cranberry products held by the handler on January 1, May 1, August 1, and August 31 of each fiscal period. The information obtained from handlers is compiled into reports which are reviewed by the Committee and used to make informed decisions regarding the activities under the order.

In 2010, the Committee recommended changing the dates when handler reports were due in order to provide handlers with additional time to submit their report (75 FR 5898). Under that action, the due dates were changed from January 5, May 5, and August 5 of each fiscal period and by September 5 of the