

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

(ii) Production lost due to uninsured causes; and

(iii) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvest the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count.

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

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

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

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

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

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

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

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

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

#### 11. Late and Prevented Planting

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

[69 FR 52155, Aug. 25, 2004]

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

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

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

*Reinsured policies: (Appropriate title for insurance provider)*

Both FCIC and reinsured policies: Pecan Revenue Crop Insurance Provisions

#### 1. Definitions

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

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

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

**Approved average revenue per acre**—The total of your average gross sales per acre based on at least the most recent consecutive four years of sales records building to ten years and dividing that result by the number of years of average gross sales per acre. If you provide more than four years of sales records, they must be the most recent consecutive 6, 8 or 10 years of sales records. If you do not provide at least four years of gross sales records, your approved average revenue will be:

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

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

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

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

of the crop, or shelling and packing your own pecans.

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

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

*Harvest*—Collecting mature pecans from the orchard.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2. Unit Division

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) You must report for each unit your gross sales including the amount of harvested and appraised potential production to us for each year of the two-year coverage module on or before the acreage reporting date for the first year of the next two-year coverage module.

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

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

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

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

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

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

the Catastrophic Risk Protection Endorsement is obtained from the same insurance provider from which the additional coverage was obtained.

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

#### 4. Contract Changes

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

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

(b) Any changes in policy provisions, amounts of insurance, premium rates, and program dates (except as allowed herein or as specified in section 3) can be viewed on the RMA Web site at <http://www.rma.usda.gov> or a successor website not later than the contract change date contained in these Crop Provisions. We may revise this information after the contract change date to correct clerical errors.

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

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

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

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

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

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

(d) Your policy may be terminated before the end of the two-year coverage module if you are determined to be ineligible to participate in any crop insurance program authorized under the Act in accordance with section 2(e) of the Basic Provisions or 7 CFR part 400, subpart U.

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

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

6. Report of Acreage

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

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

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

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

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

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

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

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

7. Annual Premium and Administrative Fees

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

8. Insured Crop

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

(a) In which you have a share;

(b) That are grown for harvest as pecans;

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

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

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

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

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

(2) Direct marketed to consumers.

9. Insurable Acreage

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

10. Insurance Period

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

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

(2) For each subsequent two-year coverage module that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior two-year coverage module. Policy cancellation that results solely from transferring an existing policy to a different insurance provider for a subsequent two-year

coverage module will not be considered a break in continuous coverage.

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

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

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period. Acreage acquired after the acreage reporting date will not be insured.

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

(i) A request for a transfer of right to an indemnity is submitted by all affected parties and approved by us;

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

(iii) The transferee is eligible for crop insurance.

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

#### 11. Causes of Loss

(a) In lieu of the first sentence of section 12 of the Basic Provisions, insurance is provided against an unavoidable decline in revenue due to the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions;

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

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

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

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption;

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

(9) Decline in market price;

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

(c) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to the inability to market the pecans for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

#### 12. Duties in the Event of Damage or Loss

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

(a) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

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

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

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

(e) If you fail to meet the requirements of this section, and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

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

#### 13. Settlement of Claim

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

§ 457.167

7 CFR Ch. IV (1-1-05 Edition)

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

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

(1) Multiplying the amount of insurance per acre by the net acres of the insured pecans;

(2) Subtracting the dollar value of the total production to count as determined in section 13(d) from the result of section 13(c)(1):

(i) For additional coverage, the total dollar value of the total production to count determined in accordance with section 13(d); or

(ii) For catastrophic risk protection coverage, the result of multiplying the total dollar value of the total production to count determined in accordance with section 13(d) by the catastrophic risk protection factor contained in the Special Provisions; and

(d) The dollar value of the total production to count from all insurable acreage will include:

(1) The value of all appraised production as follows:

(i) Not less than your amount of insurance per acre for acreage;

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements contained in section 12;

(C) That is damaged solely by uninsured causes;

(D) For which no sales records or unacceptable sales records are provided to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production;

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the value of production to count; and

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

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

(i) The dollar amount obtained by multiplying the number of pounds of pecans sold by the market price for each day the pecans were sold;

(ii) Totaling the results of section 13(d)(2)(i), as applicable;

(iii) The dollar amount obtained by multiplying the number of pounds of pecans harvested, but not sold production, by the market price;

(iv) Totaling the result of section 13(d)(2)(iii), as applicable; and

(v) Totaling the results of section 13(d)(2)(ii) and (iv).

PECAN REVENUE EXAMPLE

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

The approved average revenue equals the total average gross sales per acre divided by the number of years ( $\$2,675 \div 4 = \$669$ ).

The amount of insurance per acre equals the approved average revenue multiplied by the coverage level percent ( $\$669 \times .65 = \$435$ ).

Assume the insured produced, harvested and sold 70 acres of pecans with 300 pounds per acre of pecans on the 13th with an average price per pound of \$0.75, an actual price received of \$0.73, and an average AMS price of \$0.74, and elected not to harvest the other 30 acres of pecans, which were appraised on the 30th at 100 pounds per acre, but because of the quality, the average price per pound was \$0.65 and an average AMS price was \$0.64. The total dollar value of production to count is  $(300 \text{ pounds} \times \$0.75 \times 70 \text{ net acres}) + (100 \text{ pounds} \times \$0.65 \times 30 \text{ net acres}) = \$15,750 + \$1,950 = \$17,700$ .

The indemnity would be:  
The amount of insurance per acre multiplied by the net acres minus the dollar value of the total production to count equals the dollar amount of indemnity ( $\$435 \times 100 = \$43,500.00 - \$17,700.00 = \$25,800$ ).

14. Late and Prevented Planting

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

15. Substitution of Yields

The substitution of yield provisions of the Basic Provisions are not applicable.

**Federal Crop Insurance Corporation, USDA**

**§ 457.167**

16. Written Agreements

Notwithstanding the provisions of section 18 of the Basic Provisions, for counties with actuarial documents for pecans, you must have at least two years of production and gross sales records and for counties without actuarial documents, you must have at least

four years of production and gross sales records to qualify for a written agreement.

[69 FR 52163, Aug. 25, 2004; 69 FR 54179, Sept. 7, 2004, as amended at 69 FR 63041, Oct. 29, 2004]

**PART 458 [Reserved]**