

§ 457.166

7 CFR Ch. IV (1-1-08 Edition)

which insurance is provided under these crop provisions and within the insurance period;

(ii) The deficiencies, substances, or conditions result in a net price for the damaged production that is less than the local market price;

(iii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health (test weight for quality adjustment purposes may be determined by our loss adjuster).

(4) Millet production that is eligible for quality adjustment, as specified in sections 10(d)(2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions if quality adjustment factors are not available in the county, the eligible millet production will be reduced as follows:

(i) The market price of the qualifying damaged production and the local market price will be determined on the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit.

(ii) The price for the qualifying damaged production will be the market price for the local area to the extent feasible. Discounts used to establish the net price of the damaged production will be limited to those that are usual, customary, and reasonable. The price will not be reduced for:

- (A) Moisture content;
- (B) Damage due to uninsured causes; or
- (C) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the millet; except, if the value of the damaged production can be increased by conditioning, we may reduce the value of the production after it has been conditioned by the cost of conditioning but not lower than the value of the production before conditioning. We may obtain prices from any buyer of our choice. If we obtain prices from one or more buyers located outside your local market area, we will reduce such prices by the additional costs required to deliver the millet to those buyers.

(iii) The value of the damaged or conditioned production determined in section 10(d)(4)(ii) will be divided by the local market price to determine the quality adjustment factor.

(iv) The number of bushels remaining after any reduction due to excessive moisture (the moisture-adjusted gross bushels, if appropriate) of the damaged or conditioned production under section 10(d)(1) will then be multiplied by the quality adjustment factor from section 10(d)(4)(iii) to determine the production to count.

(e) Any production harvested from plants growing in the insured crop may be counted

as production of the insured crop on a weight basis.

11. Late Planting

In lieu of the provisions contained in section 16(a) of the Basic Provisions, the production guarantee for each acre planted to the insured crop during the late planting period, unless otherwise specified in the Special Provisions, will be reduced by:

(a) One percent per day for the first through the tenth day; and

(b) Three percent per day for the eleventh through the twentieth day.

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[67 FR 3037, Jan. 23, 2002, as amended at 67 FR 5925, Feb. 8, 2002; 72 FR 48229, Aug. 23, 2007]

§ 457.166 Blueberry crop insurance provisions.

The Blueberry 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:

Blueberry Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Damaged blueberries. Blueberries ready to harvest that due to an insurable cause of loss as shown in section 8 of these Crop Provisions do not meet the United States Standards for Grades of Blueberries, U.S. No. 1, or such other applicable grading standards specified in the Special Provisions.

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling

through an on-farm or roadside stand, farmer's market, or permitting the general public to enter the field for the purpose of picking the crop.

Harvest. Picking mature blueberries from the bushes either by hand or machine.

Mature blueberry production. Blueberries ready to harvest that meet or exceed the United States Standards for Grades of Blueberries, U.S. No. 1, or such other applicable grading standards contained in the Special Provisions.

Pound. Sixteen ounces avoirdupois.

Production guarantee (per acre). The number of pounds determined by multiplying the approved yield per acre by the coverage level percentage you elect.

Prune. A cultural practice performed to increase blueberry production as follows:

(a) For lowbush blueberries, a process by which the acreage is either burned or mowed; and

(b) For all other blueberries, a process by which parts of the bush are cut off or the bush is cut back.

2. Unit Division

The enterprise, whole-farm, and optional unit provisions in the Basic Provisions are not applicable, and blueberry acreage is limited to basic units as defined in section 1 of the Basic Provisions, unless otherwise specified in the Special Provisions.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election percentage for each blueberry type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) You must report (by type, if applicable) by the production reporting date designated in section 3 of the Basic Provisions:

(1) For all types of blueberries: any damage; removal of bushes; change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based; and the number of affected acres; and

(2) For highbush and rabbiteye blueberry types:

(i) The number of bearing bushes on insurable and uninsurable acreage; and

(ii) The age of the bushes and the planting pattern.

(c) We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the fol-

lowing: Removal of bushes; damage to bushes; changes in practices; and any other circumstance that may affect the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

(d) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer for the next year if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time you request the increase.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

(a) In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are November 20.

(b) If your blueberry policy is canceled or terminated by us for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will be considered to have not attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

(c) We may not cancel your policy when an insured cause of loss has occurred after insurance attached, but prior to the cancellation date. However, your policy can be terminated if a cause for termination contained in sections 2 or 27 of the Basic Provisions exists.

6. Insured Crop

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

(1) In which you have a share;

(2) That are grown on bush varieties that:

(i) Were commercially available when the bushes were set out or have subsequently become commercially available; and

(ii) Are varieties adapted to the area of the following types:

(A) Highbush blueberries;

(B) Lowbush blueberries;

(C) Rabbiteye blueberries; or

(D) Other blueberry types listed on the Special Provisions.

(3) That are produced on bushes that have reached the minimum insurable age or have produced the minimum yield per acre designated in the Special Provisions; and

§ 457.166

7 CFR Ch. IV (1-1-08 Edition)

(4) That, if inspected, are considered acceptable by us.

(b) Lowbush blueberry plants (or other types as specified in the Special Provisions) must be pruned every other year to be eligible for insurance.

7. Insurance Period

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

(1) For the year of application, coverage begins on November 21 of the calendar year prior to the year the insured crop normally blooms, except that, if your application is received by us after November 1, insurance will attach on the twentieth day after your properly completed application is received in our local office unless we inspect the acreage during the 20-day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the blueberry acreage.

(2) 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 for the prior crop year. Policy cancellation that results solely from transferring an existing policy to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) The calendar date for the end of insurance period for each crop year is September 30 for Michigan and September 15 for all other states, unless specified otherwise in the Special Provisions.

(4) Notwithstanding the provisions in this section, coverage may not begin for a crop year if the policy is cancelled or terminated in accordance with section 5(b).

(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. There will be no coverage of any insurable interest acquired after the acreage reporting date.

(2) If you relinquish your insurable share on any insurable acreage of blueberries 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 transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

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

(iii) The transferee is eligible for crop insurance.

(3) If you relinquish your insurable share on any insurable acreage of blueberries 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.

8. Causes of Loss

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

(1) Adverse weather conditions;

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

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

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

(5) Earthquake;

(6) Volcanic eruption;

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

(8) Wildlife, unless appropriate control measures have not been taken; and

(9) Failure of the irrigation water supply, if caused by a cause of loss specified in this section that occurs during the insurance period.

(b) 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:

(1) Failure to install and maintain a proper drainage system;

(2) Failure to harvest in a timely manner;

(3) Inability to market the blueberries for any reason other than actual physical damage to the blueberries 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); or

(4) Mechanical damage.

9. 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:

(1) Within 3 days of the date harvest should have started if the crop will not be harvested.

(2) Within 24 hours if any cause of loss occurs:

- (i) Within 15 days of harvest;
- (ii) When the blueberries are mature and ready for harvest; or
- (iii) During harvest.

(3) At least 15 days before 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 sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals and acceptable records provided by you will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count that is not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(4) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit as a result of previously reported damage, so that we may inspect the damaged production.

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

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

10. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide acceptable production records for any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

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

- (1) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee;
- (2) Multiplying each result in section 10(b)(1) by the respective price election, by type if applicable;
- (3) Totaling the results in section 10(b)(2) if there is more than one type;
- (4) Multiplying the total production to count for each blueberry type, if applicable, by the respective price election;
- (5) Totaling the results in section 10(b)(4), if there is more than one type;
- (6) Subtracting the result in section 10(b)(5) from the result in section 10(b)(3); and
- (7) Multiplying the result in section 10(b)(6) by your share.

Example For Section 10(b)

You have 100 percent share in 25 acres of highbush blueberries with a production guarantee of 4,000 pounds per acre and a price election of \$.45 per pound. You are only able to harvest 62,500 total pounds because adverse weather reduced the yield. Your indemnity would be calculated as follows:

- A. 25 acres × 4,000 pound production guarantee/acre = 100,000 pound total production guarantee;
- B. 100,000 pounds × \$.45 price election = \$45,000 guarantee;
- C. One type only, so same as (2) above, \$45,000;
- D. 62,500 pounds production to count × \$.45 price election = \$28,125 value of production to count;
- E. One type only, so same as (4) above, \$28,125;
- F. \$45,000 – \$28,125 = \$16,875 loss; and
- G. \$16,875 × 100 percent share = \$16,875 indemnity payment.

End of Example

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

(1) All appraised blueberry production as follows:

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

- (A) That is abandoned;
- (B) That is sold by direct marketing if you fail to meet the requirements contained in section 9;
- (C) That is damaged solely by uninsured causes; or
- (D) For which you fail to provide production records;

(ii) Production lost due to uninsured causes; and

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

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

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

§457.167

7 CFR Ch. IV (1-1-08 Edition)

(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