

the Common Crop Insurance Policy Basic Provisions (§ 457.8) and the Forage Production Crop Insurance Provisions (§ 457.117) are amended to incorporate the following terms and conditions:

(a) For this Endorsement to be effective, you must have the Common Crop Insurance Policy Basic Provisions (§ 457.8) and the Forage Production Crop Insurance Provisions (§ 457.117) in force and you must comply with all terms and conditions contained therein.

(b) This Endorsement is not available for forage crops insured under a Catastrophic Risk Protection Endorsement.

(c) You must elect this Endorsement on your application or on a form approved by us, for coverage under this Endorsement, on or before the sales closing date specified in the Special Provisions for the crop year in which you wish to insure your forage under this Endorsement.

(d) This Endorsement is available for the following acreage in all counties for which the actuarial table designates forage production premium rates:

(1) Fall planted acreage, for the first and subsequent crop years following the year of establishment; and

(2) Spring planted acreage, for the second and subsequent crop years following the year of establishment.

(e) Under this Endorsement, the insurance period will be as follows:

(1) Insurance will attach on acreage with an adequate stand on the later of the date we accept your application or the applicable calendar dates following the end of the insurance period for the previous crop year as listed below:

(i) For all states except California—October 16;

(ii) For California—January 1.

(2) Insurance will end on the earliest of:

(i) Total destruction of the forage crop;

(ii) Removal from the windrow or the field for each cutting;

(iii) Final adjustment of the loss;

(iv) Abandonment of the forage crop;

(v) The date grazing commences on the forage crop; or

(vi) The following dates of the crop year:

(A) All states except California—October 15;

(B) California—December 31.

(f) This is a continuous Endorsement and it will remain in effect for as long as your forage production policy remains in effect or you cancel this coverage in accordance with paragraph (g).

(g) This Endorsement may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding the crop year for which the cancellation of this Endorsement is to be effective.

Signed in Washington, DC, on September 5, 1996.

Kenneth D. Ackerman,  
Manager, Federal Crop Insurance Corporation.

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## 7 CFR Part 457

RIN 0563-AB54

### Common Crop Insurance Regulations; Cranberry Crop Insurance Provisions

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

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation ("FCIC") proposes specific crop provisions for the insurance of cranberries. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and combine the current Cranberry Endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms.

**DATES:** Written comments, data, and opinions on this proposed rule will be accepted until close of business November 12, 1996, and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through November 12, 1996.

**ADDRESSES:** Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, USDA, 14th and Independence Avenue, SW., Washington, DC., 8:15 a.m.-4:45 p.m., est, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Richard Brayton, Program Analyst, Research and Development Division, Product Development Branch, FCIC, at the Kansas City, MO, address listed above, telephone (816) 926-3834.

#### SUPPLEMENTARY INFORMATION:

Executive Order No. 12866 and Departmental Regulation 1512-1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866 and Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 30, 2001.

This rule has been determined to be not significant for the purposes of

Executive Order No. 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563-0003 through September 30, 1998.

The amendments set forth in this proposed rule do not contain additional information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Cranberry Crop Insurance Provisions." The information to be collected includes: a crop insurance application and acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of cranberries that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

The comment period for information collections under the Paperwork Reduction Act of 1995 continues for the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Bonnie Hart, Advisory and Corporate Operations Staff, Regulatory Review Group, Farm Service Agency, PO Box 2415, STOP 0572, U.S. Department of Agriculture, Washington, DC 20013-2415, telephone (202) 690-2857. Copies of the information collection may be obtained from Bonnie Hart at the above address.

#### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104.4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures of State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Executive Order No. 12612

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

#### Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or

destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured may use actual records of production or receive a transitional yield which does not require the maintenance of production records. If the insured elects to use actual records of acreage and production as the basis for the production guarantee, the insured must report this information on a yearly basis. This regulation does not alter those requirements. Therefore, the amount of work required of the insurance companies and Farm Service Agency (FSA) offices delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C § 605), and no Regulatory Flexibility Analysis was prepared.

#### Federal Assistance Program

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

#### Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

#### Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions in 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

#### Environmental Evaluation

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

#### National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate

unnecessary or duplicative regulations and improve those that remain in force.

#### Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.132, Cranberry Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace the current provisions for insuring cranberries found at 7 CFR 401.127 (Cranberry Endorsement). Upon publication of the Cranberry Crop Provisions as a final rule, the current provisions for insuring cranberries will be removed from § 401.127 and that section will be reserved.

This rule makes minor editorial and format changes to improve the Cranberry Endorsement's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring cranberries as follows:

1. Section 1—Add definitions for the terms "days," "good farming practices," "irrigated practice," "production guarantee," and "written agreement" for clarification purposes.

2. Section 2—Revise the unit language for clarity. There is no change in the unit structure.

3. Section 3(b)—Specify that the producer must report any damage, removal of vines, and change in practices that may reduce yields. If the producer fails to notify the insurance provider of any action or occurrence that may reduce yields from previous levels, the insurance provider will reduce the production guarantee at any time it becomes aware of any damage, removal of vines, or change in practices. This requirement is necessary to advise the insurer of circumstances that may require adjustment of the actual production history yields that are used to determine the insurance guarantee.

4. Section 7—Clarify that if the application is accepted after November 20, insurance will not attach until the 10th day after the application is received by the insurance provider. Provide policy guidelines for attachment of insurance when insurable acreage is acquired or relinquished. The guidelines are consistent with existing agency practice as contained in internal agency handbooks.

5. Section 8(b)(1)—Clarify that disease and insect infestations are excluded causes of loss unless adverse weather prevents the proper application of control measures, causes control measures to be ineffective when properly applied, or causes disease or insect infestation for which no effective

control mechanism is available. These exclusions are added so that insurance coverage is not provided for causes of loss that could be prevented. Also clarify that the inability to market the cranberries for any reason other than actual physical damage is not a covered cause of loss.

6. Section 9—Add provisions that require an insured to notify the insurer of probable loss at least 15 days before the beginning of harvesting or immediately if discovered after harvesting has begun so an inspection can be made. The provisions also prohibit the insured from selling or otherwise disposing of any damaged production until the earlier of 15 days from request or when the insurer provides written consent to do so. This was changed to standardize the perennial crop policies and is needed to assure accurate determinations of the insurance guarantee.

7. Section 11—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover application for and duration of written agreements.

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

Crop insurance, Cranberry.

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations, (7 CFR part 457), effective for the 1998 and succeeding crop years, to read as follows:

#### **PART 457—[AMENDED]**

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

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

2. 7 CFR part 457 is amended by adding a new § 457.132 to read as follows:

#### **§ 457.132 Cranberry Crop Insurance Provisions**

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

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Cranberry Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions,

and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions, and these crop provisions will control the Basic Provisions.

#### 1. Definitions

*Barrel*—100 pounds of cranberries.

*Days*—Calendar days.

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

*Harvest*—The picking of cranberries from the vines for the purpose of removal from the land.

*Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by an overhead solid set irrigation system with the intention of providing the quantity of water needed to prevent frost and to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

*Non-contiguous land*—Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

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

*Written agreement*—A written document that alters designated terms of a policy in accordance with section 11.

#### 2. Unit Division

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

(b) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

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

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

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

(1) You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

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

(3) Each optional unit must be located on non-contiguous land.

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

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

(a) You may select only one price election for all the cranberries in the county insured under this policy.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

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

(2) The age of the vines; and

(3) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: removal of vines, damage, and change in practices on 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.

#### 4. Contract Changes

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

#### 5. Cancellation and Termination Dates

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

#### 6. Insured Crop

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

(a) In which you have a share;

(b) That are grown for harvest as cranberries;

(c) That are grown in a bog that, if inspected, is considered acceptable by us; and

(d) That are grown on vines that have reached at least the fourth growing season after setout, unless a written agreement provides for earlier coverage.

#### 7. Insurance Period

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

(1) Coverage begins on November 21 of each crop year, except that for the first crop year, if the application is accepted by us after November 20, insurance will attach on the 10th day after the application is received in your insurance provider's local office.

(2) The calendar date for the end of the insurance period for each crop year is November 20.

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

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of cranberries on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium 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; and

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

#### 8. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur 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 bog;
- (3) Wildlife;
- (4) Earthquake;
- (5) Volcanic eruption;
- (6) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

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

- (1) Disease or insect infestation, unless adverse weather:
  - (i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or
  - (ii) Causes disease or insect infestation for which no effective control mechanism is available; or
- (2) Inability to market the cranberries 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 the cranberries due to quarantine, boycott, or refusal of any person to accept production.

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

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8):

(a) If you discover any insured units damaged, of if you intend to claim an

indemnity on any unit, you must give us notice of probable loss:

(1) At least 15 days before the beginning of any harvesting, or

(2) Immediately if probable loss is discovered after harvesting has begun.

(b) You must not sell or dispose of the damaged crop until after the earlier of 15 days from request or when we give you written consent to do so.

(c) If you fail to meet the requirements of this section, all such production will be considered undamaged and included as production to count.

#### 10. Settlement of Claim

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

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

(2) 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 by the production guarantee;

(2) Multiplying this product by the price election;

(3) Subtracting from this total, the dollar amount obtained by multiplying the total production to count (see subsection 10(c)) by the price election; and

(4) Multiplying this result by your share.

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

- (1) All appraised production as follows:
  - (i) Not less than the production guarantee per acre for acreage:
    - (A) That is abandoned;
    - (B) Damaged solely by uninsured causes; or
    - (C) For which you fail to provide production records that are acceptable to us;
  - (ii) Production lost due to uninsured causes;
  - (iii) Unharvested production; and
  - (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 to 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 production to count; and
- (2) All harvested production from the insurable acreage.

(3) Harvested production and potential unharvested production which, due to insurable causes, does not meet, or would not if properly handled meet, the United States Standards for Fresh Cranberries for Processing, and has a value of less than 75 percent of the market price for cranberries meeting the minimum requirements will be adjusted by:

(i) Dividing the market value per barrel of such cranberries by the market price per barrel for cranberries meeting the minimum requirements; and

(ii) Multiplying the result by the number of barrels of such cranberries.

#### 11. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 11(e);

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

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

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

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on September 9, 1996.

Kenneth D. Ackerman,  
Manager, Federal Crop Insurance Corporation.

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#### 7 CFR Part 457

#### Common Crop Insurance Regulations; Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions

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

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of fresh market tomatoes. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and combine the current Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations with the Common Crop Insurance Policy for ease of use and consistency of terms.