

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563-AC10

### Common Crop Insurance Regulations; Apple Crop Insurance Provisions

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Apple 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 proposed changes will be effective for the 2011 and succeeding crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business November 9, 2009 and will be considered when the rule is to be made final.

**ADDRESSES:** Interested persons are invited to submit comments, titled "Apple Crop Provisions", by any of the following methods:

- *By Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility—Mail Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141-6205.
- *By Express Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, 9240 Troost Avenue, Kansas City, MO 64131-3055.
- *E-Mail:* [DirectorPDD@rma.usda.gov](mailto:DirectorPDD@rma.usda.gov).
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133-4676.

**FOR FURTHER INFORMATION CONTACT:** Erin Albright, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO 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 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), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. 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.

##### 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 proposed 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 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

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising § 457.158, Apple Crop Insurance Provisions, to be effective for the 2011 and succeeding crop years. Several requests have been made for changes to improve the coverage offered, address program integrity issues, simplify program administration, and improve clarity of the policy provisions.

The proposed changes are as follows:

1. FCIC proposes to remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of a conflict. This same information is contained in the Basic Provisions. Therefore, it is duplicative and should be removed in the Crop Provisions.

2. Section 1—FCIC proposes to revise the definition of “apple production” to reference “fresh apple production and processing apple production” to be consistent with the proposed changes to revise the names of the defined terms of “fresh apples” and “processing apples” to “fresh apple production” and “processing apple production.”

FCIC proposes to revise the definition of “damaged apple production” to remove the reference to “within each lot, bin, bushel, or box, as applicable.” Questions have been raised regarding whether claims for indemnity, including appraisals and quality adjustment determinations, were required to be completed for each lot, bin, bushel, or box of damaged apples rather than on a unit basis. This change is being made to clarify that damage is determined on a unit basis.

FCIC proposes to revise the name of the defined term “fresh apples” to “fresh apple production” for

clarification. FCIC also proposes to revise the definition to require insureds to certify and, if requested by their approved insurance provider, provide verifiable records to prove at least 50 percent of their fresh apple acreage was sold as fresh apples in one or more of the three most recent crop years. FCIC also proposes to revise the definition to clarify insureds must follow the recommended cultural practices generally in use for fresh apple acreage in the county as determined by agricultural experts. These revisions will help ensure processing apple production is not insured as fresh apple production.

FCIC proposes to revise the name of the defined term “processing apples” to “processing apple production” for clarification. FCIC also proposes to revise the definition to clarify processing apple production is apples from insurable acreage failing to meet the fresh apple production requirements.

FCIC proposes to revise the definition of “type” to refer to a category of apples as designated in the Special Provisions. This change is being made to allow for type changes in the future.

FCIC proposes to delete the definition of “lot.” With the removal of any reference to “lot” in the definition of “damaged apple production,” this term will no longer be needed and is no longer recognized by the apple industry.

FCIC also proposes to delete the definition of “varietal group.” With the removal of the term in the definition of “type” and section 2(b), this term will no longer be needed.

3. Section 2—FCIC proposes to revise section 2(b) to allow optional units by type as specified in the Special Provisions. Different types may have significantly different management practices, production risks and uses.

4. Section 3—FCIC proposes to add a new section 3(a) to allow the insured to select different coverage levels for all fresh apple acreage in the county and for all processing apple acreage in the county.

FCIC also proposes to revise redesignated section 3(c)(1) to revise the list of possible effects on yield potential to include all of the items currently listed in section 3(c).

FCIC proposes to revise redesignated section 3(d) to add provisions to specify if the insured fails to notify the insurance provider by the production reporting date of an event or action that occurs during the crop year that may reduce the yield potential, any loss of production from such acreage will result in an appraisal for uninsured causes. The yield used to establish the insured’s

production guarantee will be reduced for the subsequent crop year. FCIC also proposes to revise redesignated section 3(d) to remove the list of possible effects on yield potential and to add language that refers back to section 3(c)(1)–(4), which currently contains the possible effects on yield potential. Removing the list of possible effects on yield potential in redesignated section 3(d) eliminates redundancy.

5. Section 6—FCIC proposes to revise the second sentence in section 6 to clarify that only acreage qualifying as fresh apple production is eligible for the Optional Coverage for Quality Adjustment provisions contained in section 14. This revision will help ensure processing apple production is not insured or adjusted as fresh apple production.

6. Section 7—FCIC proposes to add a new section 7(d) to clarify the insured crop is apples grown for either fresh apple production or processing apple production as defined in section 1.

7. Section 11—FCIC proposes to add a new section 11(a) to clarify the insured must leave representative samples for appraisal purposes if required by the insurance provider in accordance with the Basic Provisions.

8. Section 12—FCIC proposes to revise the Basic Coverage example in section 12 and move it to follow section 12(b)(7) to be consistent with the proposed example in section 14.

FCIC proposes to remove the current section 12(d) and move the provisions to a new section 14(d). FCIC also proposes to add a new section 12(d) to state any apple production not graded prior to sale or storage will be considered as production to count. Since harvest ends the insurance period, no coverage is provided for any subsequent damage that occurs after the apple production is sold or placed in storage. Provisions have been added to make this clear.

9. Section 14—FCIC proposes to revise section 14(a) to specify that insureds who select the Optional Coverage for Quality Adjustment cannot receive less than the indemnity due under section 12.

FCIC proposes to revise section 14(b)(4) to clarify that production to count under the Optional Coverage for Quality Adjustment will include all appraised and harvested production from all of the fresh apple acreage in the unit.

FCIC proposes to revise section 14(b)(5) to clarify the percent of damaged appraised or harvested apple production is applied within the applicable unit.

FCIC proposes to revise section 14(b)(5)(v) by adding the phrase “or better” after the phrase “U.S. Fancy” to clarify if any fresh apple production is sold as U.S. Fancy or better, all such sold production will be included as production to count under the Optional Coverage for Quality Adjustment.

FCIC also proposes to add a new section 14(c) to state if any production is not graded prior to sale or storage, it will be considered as production to count. As stated above, since harvest ends the insurance period, no coverage is provided for any subsequent damage that occurs after the apple production is sold or placed in storage. Provisions have been added to make this clear.

FCIC proposes to add a new section 14(d) to add provisions that any adjustments that reduce your production to count under the Optional Coverage for Quality Adjustment will not be applied when determining production to count for actual production history (APH) purposes. These provisions were previously contained in section 12(d), but since they are applicable to the Optional Coverage for Quality Adjustment, they are more appropriately included here.

FCIC proposes to revise the example in section 14 to clarify loss calculations under the Optional Coverage for Quality Adjustment to include all appraised and harvested production for all of the unit’s fresh apple acreage.

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

Crop insurance, Apple, Reporting and recordkeeping requirements.

**Proposed Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2011 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 § 457.158 as follows:

a. Revise the introductory text;  
b. Remove the paragraph immediately preceding section 1;

c. Add definitions in section 1 for “fresh apple production” and “processing apple production;” remove the definitions of “fresh apples,” “lot,” “processing apples,” and “varietal group;” revise the definitions of “apple production” and “type;” and amend the definition of “damaged apple production” by removing the phrase “, within each lot, bin, bushel, or box, as

applicable,” from both paragraphs (a) and (b);

d. Revise section 2(b);

e. Amend section 3 by redesignating paragraphs (a), (b), and (c) as (b), (c), and (d) respectively, and adding a new paragraph (a);

f. Revise sections 3(b)(1) and 3(c);

g. Amend section 6 by removing the phrase “Blocks of apple acreage grown for processing are” and adding the phrase “Any acreage not qualifying for fresh apple production is” in its place in the second sentence;

h. Amend section 7(b)(3) by removing the word “and” after the semicolon at the end;

i. Amend section 7(c) by removing the period at the end and replacing it with “; and”;

j. Add a new section 7(d);

k. Amend section 11 by redesignating the introductory text as paragraph (b), redesignating paragraphs (a), (b), and (c) as (1), (2), and (3) respectively, and adding a new paragraph (a);

l. Revise the Basic Coverage Example in section 12 and move it to follow section 12(b)(7);

m. Revise section 12(d);

n. Amend section 14(a) by adding at the end of the paragraph the following sentence, “Insureds who select this option cannot receive less than the indemnity due under section 12.”;

o. Amend section 14(b)(3) by removing the phrase “fresh apples” and adding the phrase “fresh apple production” in its place and removing the phrase “processing apples” and adding the phrase “processing apple production” in its place;

p. Revise section 14(b)(4);

q. Revise section 14(b)(5) introductory text;

r. Amend section 14(b)(5) by adding the word “one” after the phrase “percent for each full” in paragraphs (i), (ii), and (iii);

s. Amend section 14(b)(5)(v) by adding the phrase “or better” after the phrase “if you sell any of your fresh apple production as U.S. Fancy”;

t. Add new sections 14(c) and (d);

u. Revise the Optional Coverage for Quality Adjustment example; and  
The revised and added text reads as follows:

**§ 457.158 Apple crop insurance provisions.**

The apple crop insurance provisions for the 2011 and succeeding crop years are as follows:

\* \* \* \* \*

**1. Definitions.**

*Apple production.* All fresh apple production and processing apple production from insurable acreage.

\* \* \* \* \*

*Fresh apple production.* Apples: (1) That are sold, or could be sold, for consumption without undergoing any change in its basic form, such as peeling, juicing, crushing, etc.; (2) from acreage that is designated as fresh apples on the acreage report; (3) that follow the recommended cultural practices generally in use for fresh apple acreage in the county as determined by agricultural experts; and (4) you certify and, if requested by us, provide verifiable records to show at least 50 percent of the production from acreage reported as fresh apple acreage was sold as fresh apples in one or more of the three most recent crop years.

\* \* \* \* \*

*Processing apple production.* Apples from insurable acreage failing to meet the insurability requirements for fresh apple production that are: (1) Sold, or could be sold for the purpose of undergoing a change to its basic structure such as peeling, juicing, crushing, etc.; or (2) from acreage designated as processing apples on the acreage report.

\* \* \* \* \*

*Type.* A category of apples as designated in the Special Provisions.

**2. Unit Division.**

\* \* \* \* \*

(b) By type as specified in the Special Provisions.

\* \* \* \* \*

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

\* \* \* \* \*

(a) You may select only one coverage level for all fresh apple acreage and only one coverage level for all processing apple acreage.

\* \* \* \* \*

(c) \* \* \*

(1) Any event or action that could impact the yield potential of the insured crop including, interplanted perennial crop, removal of trees, any 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;

\* \* \* \* \*

(d) We will reduce the yield used to establish your production guarantee based on our estimate of such event or action of any of the items listed in section 3(c)(1) through (4) as indicated below. If the event or action 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, we will reduce the yield used to establish your production guarantee for the current crop year as necessary; or

(3) Or may occur after the beginning of the insurance period and you fail to notify us by the production reporting date, we will appraise your production in accordance with section 12(c)(1)(ii). We will reduce the yield used to establish your production guarantee for the subsequent crop year.

7. Insured Crop.

\* \* \* \* \*

(d) That are grown for:

- (1) Fresh apple production; or
(2) Processing apple 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) \* \* \*
(7) \* \* \*

Basic Coverage example:

You have a 100 percent share in one basic unit with 10 acres of fresh apples and 5 acres of processing apples designated on your acreage report, with a 600 bushel per acre production guarantee for both fresh and processing apples, and a price election of \$9.10 per bushel for fresh apples and \$2.50 per bushel for processing apples. You harvest 5,000 bushels of fresh apples and 1,000 bushels of processing apples all grading U.S. No. 1 Processing or better. Your indemnity will be calculated as follows:

- (A) 10 acres x 600 bushels = 6,000 bushel production guarantee of fresh apples;
5 acres x 600 bushels = 3,000 bushel production guarantee of processing apples;
(B) 6,000 bushel production guarantee x \$9.10 price election = \$54,600.00 value of production guarantee for fresh apples;
3,000 bushel production guarantee x \$2.50 price election = \$7,500.00 value of production guarantee for processing apples;
(C) \$54,600.00 value of production guarantee for fresh apples +

- \$7,500.00 value of production guarantee for processing apples = \$62,100.00 total value of the production guarantee;
(D) 5,000 bushels of fresh apple production to count x \$9.10 price election = \$45,500.00 value of fresh apple production to count;
1,000 bushels of processing apple production to count x \$2.50 price election = \$2,500.00 value of processing apple production to count;
(E) \$45,500.00 value of fresh apple production to count + \$2,500.00 value of processing apple production to count = \$48,000.00 total value of production to count;
(F) \$62,100.00 total value of the production guarantee - \$48,000.00 total value of production to count = \$14,100.00 value of loss; and
(G) \$14,100.00 value of loss x 100 percent share = \$14,100.00 indemnity payment.

[End of Example]

\* \* \* \* \*

(d) Any apple production not graded prior to the earlier of the time apples are placed in storage, or the date the apples are delivered to a packer, processor, or other handler will not be considered damaged apple production and will be considered production to count.

\* \* \* \* \*

14. Optional Coverage for Quality Adjustment.

\* \* \* \* \*

(b) \* \* \*

(4) In lieu of sections 12(c)(1)(iii), (iv) and (2), the production to count will include all appraised and harvested production from all of the fresh apple acreage in the unit.

(5) If appraised or harvested fresh apple production within the applicable unit is damaged to the extent that more than 20 percent of the apple production does not grade U.S. Fancy or better the following adjustments will apply:

\* \* \* \* \*

(c) Any apple production not graded prior to the earlier of the time apples are placed in storage, or the date the apples are delivered to a packer, processor, or other handler will not be considered damaged apple production and will be considered production to count under this option.

(d) Any adjustments that reduce your production to count under this option will not be applicable when determining production to count for APH purposes.

Optional Coverage for Quality Adjustment:

You have a 100 percent share in 10 acres of fresh apples designated on your

acreage report, with a 600 bushel per acre guarantee, and a price election of \$9.10 per bushel. You harvest 5,000 bushels of apples from your designated fresh apple acreage, but only 2,650 of those bushels grade U.S. Fancy or better. Your indemnity would be calculated as follows:

- (1) 10 acres x 600 bushels per acre = 6,000 bushel production guarantee of fresh apples;
(2) 6,000 bushel production guarantee of fresh apples x \$9.10 price election = \$54,600.00 value of production guarantee for fresh apple acreage;
(3) The value of the fresh apple production to count is determined as follows:
(i) 5,000 bushels harvested - 2,650 bushels that graded U.S. Fancy or better = 2,350 bushels of fresh apple production not grading U.S. Fancy or better;
(ii) 2,350/5,000 = 47 percent of fresh apple production not grading U.S. Fancy or better;
(iii) In accordance with section 14(b)(5)(ii): 47 percent - 40 percent = 7 percent in excess of 40 percent;
(iv) 7 percent x 3 = 21 percent;
(v) 40 percent + 21 percent = 61 percent;
(vi) 5,000 bushels harvested x .61 (61 percent) = 3,050 bushels of fresh apple production not grading U.S. Fancy or better;
(vii) 5,000 bushels harvested - 3,050 bushels of fresh apple production not grading U.S. Fancy or better = 1,950 bushels of adjusted fresh apple production to count;
(viii) 1,950 bushels of adjusted fresh apples production to count x \$9.10 price election = \$17,745.00 value of fresh apple production to count;
(4) \$54,600.00 value of production guarantee for fresh apples - \$17,745.00 value of fresh apple production to count = \$36,855.00 value of loss;
(5) \$36,855.00 value of loss x 100 percent share = \$36,855.00 indemnity payment.

[End of Example]

\* \* \* \* \*

Signed in Washington, DC, on September 1, 2009.

William J. Murphy,
Manager, Federal Crop Insurance Corporation.

[FR Doc. E9-21598 Filed 9-4-09; 8:45 am]