

employing agency or former employing agency by personal delivery is considered filed on the date on which OPM, the employing agency or former employing agency receives it. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the application is presumed to have been mailed 5 days before its receipt, excluding days on which OPM, the employing agency or former employing agency, as appropriate, is closed for business. The date of filing by commercial overnight delivery is the date the application is given to the overnight delivery service.

(c) An application for disability retirement that is filed with OPM or the applicant's former employing agency within 1 year after the employee's separation, and that is incompletely executed or submitted in a letter or other form not prescribed by OPM, is deemed timely filed. OPM will not adjudicate the application or make payment until the application is filed on a form prescribed by OPM.

(d) OPM may waive the 1-year time limit if the employee or Member is mentally incompetent on the date of separation or within 1 year thereafter, in which case the individual or his or her representative must file the application with the former employing agency or OPM within 1 year after the date the individual regains competency or a court appoints a fiduciary, whichever is earlier.

(e) An agency may consider the existence of a pending disability retirement application when deciding whether and when to take other personnel actions. An employee's filing for disability retirement does not require the agency to delay any appropriate personnel action.

#### **PART 844—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DISABILITY RETIREMENT**

4. The authority citation for part 844 is revised to read as follows:

**Authority:** 5 U.S.C. 8461; § 844.201 also issued under 5 U.S.C. 1104.

#### **Subpart A—General Provisions**

5. In § 844.201, paragraphs (a) and (c) are revised to read as follows:

##### **§ 844.201 General requirements.**

(a)(1) Except as provided in paragraphs (a)(3) and (a)(4) of this section, an application for disability retirement is timely only if it is filed with the employing agency before the employee or Member separates from

service, or with the former employing agency or OPM within 1 year thereafter.

(2) An application for disability retirement that is filed with OPM, an employing agency or former employing agency by personal delivery is considered filed on the date on which OPM, the employing agency or former employing agency receives it. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the application is presumed to have been mailed 5 days before its receipt, excluding days on which OPM, the employing agency or former employing agency, as appropriate, is closed for business. The date of filing by commercial overnight delivery is the date the application is given to the overnight delivery service.

(3) An application for disability retirement that is filed with OPM or the applicant's former employing agency within 1 year after the employee's separation, and that is incompletely executed or submitted in a letter or other form not prescribed by OPM, is deemed timely filed. OPM will not adjudicate the application or make payment until the application is filed on a form prescribed by OPM.

(4) OPM may waive the 1-year time limit if the employee or Member is mentally incompetent on the date of separation or within 1 year thereafter, in which case the individual or his or her representative must file the application with the former employing agency or OPM within 1 year after the date the individual regains competency or a court appoints a fiduciary, whichever is earlier.

\* \* \* \* \*

(c) An agency may consider the existence of a pending disability retirement application when deciding whether and when to take other personnel actions. An employee's filing for disability retirement does not require the agency to delay any appropriate personnel action.

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#### **DEPARTMENT OF AGRICULTURE**

#### **Federal Crop Insurance Corporation**

#### **7 CFR Parts 405 and 457**

#### **Apple Crop Insurance Regulations and Common Crop Insurance Regulations, Apple Crop Insurance Provisions**

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of apples. 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, include the current apple crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current apple crop insurance regulation to the 1998 and prior crop years.

**EFFECTIVE DATE:** May 8, 1998.

**FOR FURTHER INFORMATION CONTACT:** Gary Johnson, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Order 12866**

This rule has been determined to be exempt for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

##### **Paperwork Reduction Act of 1995**

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been approved by the Office of Management and Budget (OMB) under control number 0563-0053 through October 31, 2000.

##### **Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates 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. 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 the UMRA.

##### **Executive Order 12612**

It has been determined under section 6(a) of Executive Order 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 economic impact on a substantial number of small entities. The amount of work required of the insurance companies will not increase because the information used to determine eligibility is already maintained at their office and the other information required is already being gathered as a result of the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Additionally, the regulation does not require any action on the part of small entities than is required for large entities. 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 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 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. 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 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

On Thursday, May 8, 1997, FCIC published a notice of proposed rule making in the **Federal Register** at 62 FR 25140 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section 7 CFR 457.158, Apple Crop Insurance Provisions. The new provisions will be effective for the 1999 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring apples found at 7 CFR part 405 (Apple Crop Insurance Regulations). FCIC also amends 7 CFR part 405 to limit its effect to the 1998 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 103 comments were received from reinsured companies, an insurance service organization, producer groups, and apple producers. The comments received and FCIC's responses are as follows:

*Comment:* A reinsured company stated the price elections need to be refined to reflect true markets. The price election for both fresh and processing is too low.

*Response:* Price elections established by FCIC are a projected market price, as required by law. Reported market prices often contain substantial post-production value added, such as harvesting, packing, cullage, transportations to market, and other factors that are not included in the expected market price. Thus, reported market prices are reduced by an amount deemed representative of these post-production added costs. The amount of the price election is determined from cost of production estimated by the Cooperative State Research, Education, and Extension Service or the land-grant university in many states. Therefore, no change will be made.

*Comment:* A reinsured company stated that FCIC acreage determination is based on land acres while the industry uses estimated tree count acres. The commenter stated that FCIC should be more reflective of reality and not impose their unique demands on an industry for no apparent reason.

*Response:* FCIC has discussed the issue of land verses tree acre with producers, reinsured companies, and an insurance service organization, and has determined that land acres will be used, unless otherwise provided in the Special Provisions. This will allow flexibility in situations where circumstances dictate that tree acres may be more accurate.

*Comment:* A reinsured company expressed concern over the paperwork burden. The commenter stated that several years ago a self-certification form was developed to eliminate the need for full inspections on small orchards. Now the self-certification form is required on all orchards in addition to the full inspection and must be completed annually.

*Response:* The overall paperwork burden on the producer or reinsured company on the self-certification form is not materially greater under the proposed provisions. Pre-acceptance field inspections are only required for limited situations as specified in the 1998 FCIC 18010 Crop Insurance Handbook. Pre-acceptance field inspections were designed to identify those situations requiring a full inspection, thereby eliminating the requirement to inspect all orchards. Therefore, no change will be made.

*Comment:* A reinsured company stated the insurance coverage is too expensive for the medium size and larger producers considering the limited protection they receive. The coverage becomes less effective as the acreage increases and the inequity accelerates if the producer has high tree density and high value varieties of apples. Most of the progressive, professional producers are adding more and more acres of the higher value apples with high tree density plantings (more trees per acre), and the coverage is falling further and further behind in being able to provide protection against major losses.

*Response:* FCIC reviews and makes necessary revisions to premium rates for all crop programs including crop type and practices. Insurance guarantees are based on the actual production history (APH) regulations, 7 CFR part 400, subpart G, not the size of the unit. The policy allows for changes in established guarantees when changes in the orchard cause significant changes in yield. FCIC recognizes the commenter's concerns, and will consider them in the future as regulations, procedures and premium rates are revised.

*Comment:* A reinsured company stated the actual production history (APH) method understates future production potential for up trending orchards.

*Response:* FCIC recognizes the commenter's concerns that the APH method understates future production potential for up trending orchards and will take these concerns under consideration when APH regulations and procedures are reviewed to comply with the Federal Crop Insurance Act.

*Comment:* A reinsured company recommended deleting the definition of

"adapted" because it is already covered under the definition of "good farming practices" and referenced in 6(b)(1).

*Response:* FCIC has removed the definition of "adapted" from these provisions.

*Comment:* A reinsured company suggested identifying the states or regions using various container sizes in the definition of "production guarantee."

*Response:* Standard container sizes vary by state or region based on buyers, packinghouses, or processors.

Identifying the state or region using various container sizes in the definition of "production guarantee" would make it difficult to recognize changes in container sizes. The units of measurement for apples are contained in the actuarial documents to permit changes in container sizes to recognize industry practices without changing the regulations. Therefore, no change has been made.

*Comment:* A reinsured company is concerned with the definition of "good farming practice." Commenter suggested the definition should read, \* \* \* "recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the area."

*Response:* FCIC believes the term "area" is less clear than the term "county" and would tend to make determinations more subjective in nature. The definition of "good farming practices" has not been revised, but has been removed from these Crop Provisions and placed in the Basic Provisions.

*Comment:* A reinsured company suggested defining "sunburn" instead of referring to the definition contained in the U.S. Standards for Apples.

*Response:* Referring to "sunburn" as contained in the U.S. Standards for Apples, allows changes in the U.S. Standards to be recognized without changing these regulations. Also, using U.S. Standards for Apples assures standards will be based on a single source. Therefore, no change will be made.

*Comment:* A reinsured company recommended changes in section 2(e)(3). The commenters expressed concern regarding the use of FSN farm serial numbers to establish optional units. The commenter suggested establishing an optional unit by block, with a minimum number of acres required for an optional unit. Also, comments were made that the standard definition from the Common Crop Insurance Policy which defines a unit "all insurable acreage of the insured

crop in the county" should be used. The commenter further suggested that unit division for optional units be based only on non-contiguous land or the irrigated and non-irrigated practice (if allowed in the actuarial documents).

*Response:* All provisions from the Basic Provisions apply unless otherwise excepted in these provisions. FSN farm serial numbers, non-contiguous land, and irrigated and non-irrigated practices are only a few of the requirements needed for establishing optional units. These requirements allow a producer to establish optional units if all applicable requirements are met. Basing optional units on minimum acreage may not be fair to producers who have small acreage in several locations. The optional unit requirements contained in these provisions are consistent with other perennial crop policies. Therefore, no changes have been made.

*Comment:* A reinsured company stated that the change from basic to optional units by contiguous land in 2(e)(3)(iii) should be communicated to the insured. The commenter believes that the insured needs to understand this change and the impact it has on the premium, if the insured wishes to retain units by non-contiguous land.

*Response:* It is the agent's responsibility to explain program changes to their insureds. FCIC will furnish the summary of program changes to insurance providers, who will then notify agents and issue the new policy to policyholders.

*Comment:* A reinsured company requested clarification as to how much change to the orchard would have to occur to reduce the expected yield under section 3(b). The commenter questioned whether the loss of one tree would reduce the expected yield enough so that it must be reported, or would the reduction in trees have to exceed a certain percentage per acre.

*Response:* This section requires the insured to inform the agent when production practices have changed, any damage, removal of trees, or any circumstance specified in the 1998 FCIC 18010 Crop Insurance Handbook that may reduce the yield below the yield upon which the insurance guarantee is based. If the change in the orchard is not likely to affect the yield, the change need not be reported. This requirement is consistent with other perennial crop policies. Therefore, no change has been made.

*Comment:* A producer recommended that the insurance period be defined as late December in section 8. This would allow producers time to consider risk management strategies in a more reasonable time frame. The commenter

believes the November date is too close to the end of the harvest period.

*Response:* The apple crop insurance coverage includes loss of production due to adverse weather conditions, some of which may incur during the winter months. Therefore, it is reasonable and prudent to begin coverage prior to the date such weather is most likely to occur, and has selected November 21 as the date for insurance to attach. While this shortens the time available after harvest for risk management decisions, the need to operate a sound insurance program is paramount. This is also consistent with other perennial crop insurance policies. Therefore, no change has been made.

*Comment:* A producer recommended deleting the phrase "pruning debris has not been removed from the orchard" in section 9(a)(2). The commenter stated it is no longer a standard practice in their area to remove pruning debris from the orchard. Pruned branches customarily are chopped and left on the orchard floor.

*Response:* The practice of chopping pruning debris and leaving it on the orchard floor is not customary in all apple growing regions. This provision applies to pruning debris that is not mulched and left in place. The provision has been clarified to specify unmulched pruning debris.

*Comment:* A producer recommended in section 9(a)(9) removing "wildlife as a cause of loss, unless appropriate control measures have not been taken."

*Response:* Damage caused by wildlife will remain as an insurable cause of loss. This coverage is consistent with other crop policies. FCIC has removed the phrase, "unless appropriate control measures have not been taken" because that language is too subjective.

*Comment:* A reinsured company questioned the provisions in 10(b) that requires a 15 day notice before any production is sold by direct marketing so the insurance provider can appraise the production to count. The commenter believes the pre-inspection process is very inaccurate.

*Response:* This inspection is presently the only method to obtain a reasonable estimate of production to count for direct marketed production. This requirement is consistent with other perennial crop policies. Therefore, no change has been made.

*Comment:* A reinsured company recommended the calculation sequence in section 11(b) (1) through (7) be changed. The commenter stated it was difficult to follow because it is too wordy.

*Response:* The steps in calculating a claim for indemnity in section 11 are

clearly stated. Therefore, no change has been made.

*Comment:* A reinsured company recommended that the provisions in section 11(c)(1)(iv) not allow the insured to defer settlement and wait for a later, generally a lower appraisal, especially since apples have a short shelf life.

*Response:* The later appraisal will only be necessary if the insurance provider agrees that such appraisal would result in a more accurate determination and if the producer continues to care for the crop. If the producer does not care for the crop, the original appraisal is used. If the insurance provider believes the original appraisal is accurate, resolution of the dispute may be sought through arbitration or appeal, whichever is applicable. Therefore, no change has been made.

*Comment:* A reinsured company recommended removing the requirement for a written agreement to be renewed each year contained in section 12(d) "Written agreement."

*Response:* Written agreements are intended to change policy terms or permit insurance in unusual situations. If such practices continue from year to year, they should be incorporated into the policy, Special Provisions or the actuarial documents. To streamline Crop Provisions and prevent duplication, the written agreement section was removed from these Crop Provisions and was added to section 18 of the Basic Provisions.

*Comment:* A reinsured company questioned whether the provisions in section 12(e) allows for orchards purchased or leased after the sales closing or acreage reporting dates to be accepted (add-on) by written agreement.

*Response:* Written agreements can be used to allow insurability of orchards purchased or leased after the sales closing or acreage reporting date as provided in section 18 of the Basic Provisions.

*Comment:* A reinsured company questioned the reference in section 13(f)(1) to section 11(c). They suggested that it reference section 11(b) instead.

*Response:* Sections 13(f)(1) and 11(c) refer to production to count. Section 11(b) refers to the steps used in the settlement of claim for indemnity. Therefore, no change has been made.

*Comment:* A reinsured company recommended changes in section 13(f)(2) by replacing the words "a unit" with "any acreage" designated for fresh market; and questioned if grading procedure applies only to harvested production or the total apple production.

*Response:* The production guarantee is based on total production of apples for each unit. Therefore, no change has been made. The grading procedure applies to the total production to count, including harvested and unharvested.

*Comment:* A reinsured company recommended inserting the word "will" between "better" and "be" \* \* \* in section 13(f)(2)(iv).

*Response:* FCIC has amended the provisions accordingly.

*Comment:* A reinsured company recommended deleting the requirement in section 13(f)(3) that apples knocked to the ground by wind be considered 100 percent cull production. The commenter pointed out that many juicers will not accept apples that are knocked to the ground. This is especially important in view of the excessive requirement that 30 percent of such apples are production to count under the proposed rule.

*Response:* Apples knocked to the ground by wind are covered under "adverse weather" and will be considered 100 percent cull production. In certain areas, thirty (30) percent of all cull production as production to count is not excessive. To account for the other areas, FCIC will make the appropriate adjustments in the Special Provisions.

*Comment:* A reinsured company, producers, and insurance service organization opposed the change in section 13(f)(2)(vii) that increases the amount of culls in the production to count from 15 to 30 percent. One commenter stated it may not reduce the overall loss ratio since many insureds may cancel their policies when they learn of the change. They further stated that the 30 percent figure is too high and makes packing fruit less desirable to the producer. The other commenter recommended that the words, "excessive sun" between "or" and "along" be inserted in section 13(g)(2)(iv).

*Response:* The provision that increases the amount of cull production from 15 to 30 percent is correct. However, FCIC realizes that the increased amount of the percent of cull production may be excessive for some producers in certain growing regions where fresh market fruit may have a normal 10 percent cull rate. If damage in some years is more than 30 percent, the fruit will not be packed as U.S. Fancy and will be diverted to processing because it is economically impossible, due to the high cost of handling and grading damaged fruit, to pack out at least 80 percent U.S. Fancy or better. The producer who has invested more money for the fresh fruit market and has

more intensive pruning, spraying, and handling is under-compensated. Therefore, FCIC has amended the provisions to allow the flexibility of counting 15 percent of cull production for certain regions, if allowed by the Special Provisions. "Excessive sun" has been inserted between the words "or" and "along" accordingly.

*Comment:* A reinsured company asked, if section 13(f)(2) (iii) through (vi) apply only to Option B or to both Options A and B.

*Response:* Sections 13(f)(1) has been revised to incorporate the provisions of section 13(f)(2) (iii) through (vi).

In addition to the changes described above and minor editorial changes, FCIC has made the following changes to these Crop Provisions:

1. Section 1. Removed definitions of "days," "FSA," "good farming practices," "interplanted," "irrigated practice," "USDA," and "written agreement" because these definitions now appear in the Basic Provisions. Deleted the term "ton" because it is not used.

2. Section 2 is revised to remove all provisions that were incorporated into the Basic Provisions.

3. Section 9(b)(1) is revised to move, "russeting" to 9(b)(4) because russeting cannot be described as a failure characteristic.

4. Removed section 12 and added it to the Basic Provisions.

5. Added new section 12 to indicate that late and prevented planting provisions are not applicable for apples.

#### **List of Subjects in 7 CFR Parts 405 and 457**

Crop insurance, Apples, Reporting and recordkeeping requirements.

#### **Final Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends the Apple Crop Insurance Regulations (7 CFR part 405) and the Common Crop Insurance Regulations (7 CFR part 457) as follows:

#### **PART 405—APPLE CROP INSURANCE REGULATIONS FOR THE 1986 THROUGH THE 1998 CROP YEARS**

1. The authority citation for 7 CFR part 405 is revised to read as follows:

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

2. The part heading is revised as set forth above.

3. The subpart heading "Subpart-Regulations for the 1986 through the 1998 Crop Years" is removed.

4. Section 405.7 is amended by revising the introductory text of paragraph (d) to read as follows:

**§ 405.7 The application and policy.**

\* \* \* \* \*

(d) The application is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Apple Insurance Policy for the 1986 through 1998 crop years are as follows:

\* \* \* \* \*

**PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1998 AND SUBSEQUENT CONTRACT YEARS**

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

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

6. The part heading is revised as set forth above.

7. Section 457.158 is added to read as follows:

**§ 457.158 Apple crop insurance provisions.**

The Apple Crop Insurance Provisions for the 1999 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:

*Apple 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**

**Area A.** A geographic area that includes Montana, Wyoming, Utah, New Mexico and all states west thereof.

**Area B.** A geographic area that includes all states not included in Area A, except for Colorado.

**Area C.** Colorado.

**Bin.** A container that contains a minimum of 875 pounds of apples or some other quantity designated in the Special Provisions.

**Box.** A container that contains 35 pounds of apples or some other quantity designated in the Special Provisions.

**Bushel.** In all states except Colorado, 42 pounds of apples. In Colorado, 40 pounds of apples.

**Culls.** Apples that fail to meet the requirements of U.S. Cider Grade.

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

or roadside stand, or a farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

**Excessive sun.** Exposure of unharvested apples to direct or indirect sunlight that causes apples to grade less than U.S. Fancy due to sunburn.

**Harvest.** The picking of mature marketable apples from the trees or removing such apples from the ground.

**Marketable.** Apple production that grades U.S. No. 1, 2, or Cider in accordance with the United States Standards for Grades of Apples.

**Non-contiguous.** 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.

**Pound.** Sixteen (16) ounces avoirdupois.

**Production guarantee (per acre).** The quantity of apples (boxes or bushels) determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

**Russetting.** A brownish roughened area on the surface of the apple.

**Sunburn.** As defined in the United States Standards for Grades of Apples.

**2. Unit Division**

In addition to the requirements of section 34(b) of the Basic Provisions, optional units may be established if each optional unit is located on non-contiguous land.

**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 for all the apples in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each apple 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 the production reporting date designated in section 3 of the Basic Provisions, by type if applicable:

(1) Any damage, removal of trees, 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 number of bearing trees on insurable and uninsurable acreage;

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

(4) The separate acreage of apples intended for fresh-market or processing as shown on the actuarial table; and

(5) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage has changed:

(i) The age of the interplanted crop, and type if applicable;

(ii) The planting pattern; and

(iii) 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: interplanted perennial crop; removal of trees; damage; change in practices and any other circumstance 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 of the Basic Provisions, the contract change date is August 31 preceding the cancellation date.

**5. Cancellation and Termination Dates**

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

**6. Insured Crop**

In accordance with section 8 of the Basic Provisions, the crop insured will be all the apples 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 on tree varieties that:
  - (1) Are adapted to the area;
  - (2) Are in area A and have produced at least an average of 10 bins per acre;
  - (3) Are in area B and have produced at least an average of 150 bushels per acre;
  - (4) Are in Area C and have produced at least an average of 200 bushels per acre; and
- (c) That are grown in an orchard that, if inspected, is considered acceptable by us.

**7. 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, apples interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the insurability requirements contained in your policy.

**8. Insurance Period**

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

(1) Coverage begins on November 21 of each crop year, except for the year of application, if your application is received after November 11 but prior to November 21. In that case, insurance will attach on the 10th day after your properly completed application is received in our local office unless we inspect the acreage prior to the end of the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is November 5.

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

(2) If you relinquish your insurable share on any insurable acreage of apples on or before the acreage reporting date for the crop year, and the acreage was insured by you the previous 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.

#### 9. 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 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 damage due to insufficient or improper application of disease control measures;

(5) Earthquake;

(6) Volcanic eruption;

(7) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period;

(8) Excess sun, only if you have elected the Fresh Fruit Option B and the Sunburn Option as described in section 13; and

(9) Wildlife;

(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 of the fruit to size, shape, or color properly; or

(2) Inability to market the apples 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.

(3) Mechanical damage including, but not limited to, limb rubs, scars, and punctures; or

(4) Russetting.

#### 10. 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 three 3 days of the date harvest should have started if the crop will not be harvested.

(b) You must notify us 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 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 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 of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest, or immediately if damage is discovered during harvest, so that we may inspect the damaged production.

(d) You must not destroy 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.

#### 11. Settlement of Claim

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

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

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

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

(1) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result in section 11(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results in section 11(b)(2) if there are more than one type;

(4) Multiplying the total production to count (see section 11(c)), for each type if applicable, by the respective price election;

(5) Totaling the results in section 11(b)(4), if there are more than one type;

(6) Subtracting the total in section 11(b)(5) from the total in section 11(b)(3); and

(7) Multiplying the result in section 11(b)(6) by your share.

For example:

You have 100 percent share in 28 acres of fresh market apples and 30 acres of processing apples in the unit, with a 300 bushel per acre guarantee and a price election of \$5.00 per bushel for fresh market and \$2.00 per bushel for processing. You are only able to harvest 4,500 bushels of fresh market apples and 6,500 bushels of processing. Your indemnity would be calculated as follows:

(1) 28 acres  $\times$  300 bushels = 8,400 bushels guarantee of fresh market; 30 acres  $\times$  300 bushels = 9,000 bushels guarantee of processing;

(2) 8,400 bushels  $\times$  \$5.00 price election = \$42,000.00 value of guarantee for fresh

market; 9,000 bushels  $\times$  \$2.00 price election = \$18,000.00 value of guarantee for processing;

(3) \$42,000.00 + \$18,000.00 = \$60,000 total value guarantee;

(4) 4,500.00 bushels  $\times$  \$5.00 price election = \$22,500.00 value of production to count for fresh market;

6,500.00 bushels  $\times$  \$2.00 price election = \$13,000.00 value of production to count for processing;

(5) \$22,500.00 + \$13,000.00 = \$35,500.00 total value of production to count;

(6) \$60,000.00 - \$35,500.00 = \$24,500.00 loss; and

(7) \$24,000.00  $\times$  100 percent = \$24,500.00 indemnity payment.

(c) The total production to count (boxes or bushels) 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) That is sold by direct marketing if you fail to meet the requirements contained in section 10;

(C) That is damaged solely by uninsured causes; or

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

(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 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 production to count; and

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

(3) Mature marketable apple production may be reduced as a result of loss in quality due to hail, wind, freeze, or sunburn in accordance with section 13 of these provisions, if you elect one or more of these coverages.

#### 12. Late and Prevented Planting

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

#### 13. Optional Coverage for Quality Adjustment

(a) These quality adjustment options apply only if the following conditions are met:

(1) You have not elected to insure your apples under the Catastrophic Risk Protection (CAT) Endorsement.

(2) You elected the Fresh Fruit Option A or the Fresh Fruit Option B; or you elected both the Fresh Fruit Option B and the Sunburn Option on your application or other form approved by us, and did so on or before the sales closing date for the initial crop year

for which you wish it to be effective. By doing so, you agreed to pay the additional premium designated in the actuarial documents for this optional coverage; and

(3) You or we did not cancel the option in writing on or before the cancellation date. Your election of CAT coverage for any crop year after this endorsement is effective will be considered as notice of cancellation by you.

(b) If you select Fresh Fruit Option A only, Fresh Fruit Option A will apply to all of your apples intended for processing and fresh market.

(c) If you select Fresh Fruit Option B, those provisions will apply to all of your apples intended for fresh market and the provisions of Fresh Fruit Option A will apply to all of your apples intended for processing.

(d) If you select the Sunburn Option as designated in the Special Provisions, you must also select Fresh Fruit Option B.

(e) In addition to the requirements of section 10 of these provisions, you must permit us to inspect and grade the fruit prior to harvest or no quality adjustment will be made.

(f) Fresh Fruit Option A and Fresh Fruit Option B are subject to the following conditions:

(1) Fresh Fruit Option A—In addition to section 11(c) of these provisions and notwithstanding the definition of "marketable" in section 1 of these provisions, your production to count will be adjusted when your apples are damaged by hail to the extent that such apples will not grade U.S. No. 1 (processing). Harvested apple production that is damaged by hail to the extent that it does not grade 80 percent U.S. No. 1 (processing) or better, in accordance with applicable USDA Standards for Grades of Apples, will be adjusted as follows:

(i) Production to count with 21 through 40 percent not grading U.S. No. 1 (processing) or better will be reduced 2 percent for each full percent in excess of 20 percent.

(ii) Production to count with 41 through 50 percent not grading U.S. No. 1 (processing) or better will be reduced 40 percent plus an additional 3 percent for each full percent in excess of 40 percent.

(iii) Production to count with 51 percent through 64 percent not grading U.S. No. 1 (processing) or better will be reduced 70 percent plus an additional 2 percent for each full percent in excess of 50 percent.

(iv) Production to count with 65 percent or more not grading U.S. No. 1 (processing) or better will be considered 100 percent cull production.

(v) The difference between the total production and the production to count as determined above will be considered cull production.

(vi) Thirty (30) percent of all cull production will be considered production to count, unless otherwise specified in the Special Provisions.

(vii) No reduction in production to count will be applied to any apple grading less than U.S. No. 1 (processing) due solely to size, shape, russeting, or color.

(viii) Any appraisal we make on the insured acreage will be considered production to count unless such appraised

production is knocked to the ground by wind or hail or frozen on the tree to the extent that harvest is not practical.

(2) Fresh Fruit Option B—Notwithstanding section 11(c) and the definitions of "harvest" and "marketable" in section 1 of these provisions, the total production to count for a unit will include all harvested and appraised production. Harvested apple production that is damaged by hail to the extent that it does not grade 80 percent U.S. Fancy or better, in accordance with applicable USDA Standards for Grades of Apples, will be adjusted as follows:

(i) Production to count with 21 through 40 percent not grading U.S. Fancy or better will be reduced 2 percent for each full percent in excess of 20 percent.

(ii) Production to count with 41 through 50 percent not grading U.S. Fancy or better will be reduced 40 percent plus an additional 3 percent for each full percent in excess of 40 percent.

(iii) Production to count with 51 percent through 64 percent not grading U.S. Fancy or better will be reduced 70 percent plus an additional 2 percent for each full percent in excess of 50 percent.

(iv) Production to count with 65 percent or more not grading U.S. Fancy or better will be considered 100 percent cull production.

(v) The difference between the total production and the production to count as determined above will be considered cull production.

(vi) Apples that are knocked to the ground by wind or frozen to the extent they can be harvested but not marketed as U.S. Fancy grade apples will be considered 100 percent cull production.

(vii) Thirty (30) percent of all cull production will be considered production to count, unless otherwise specified in the Special Provisions.

(viii) No reduction in production to count will be applied to any apple grading less than U.S. Fancy due solely to size, shape, russeting, or color.

(ix) Any appraisal we make on the insured acreage will be considered production to count unless such appraised production is knocked to the ground by wind, hail, or frozen on the tree to the extent that harvest is not practical.

(g) Sunburn Option

(1) In addition to the causes of loss specified in section 9 of these provisions, excess sun is an insurable cause of loss.

(2) Notwithstanding the definitions of "harvest" and "marketable" in section 1 and 11(c)(1) and (2) of these provisions, the total production to be counted for a unit will include all harvested and appraised production. Harvested apple production that, due to excessive sun or in conjunction with hail damage, does not grade 80 percent U.S. Fancy or better, in accordance with applicable USDA Standards, will be adjusted as follows:

(i) Production to count with 21 through 40 percent not grading U.S. Fancy or better due solely to excessive sun or excessive sun along with hail damage, will be reduced 2 percent for each full percent in excess of 20 percent.

(ii) Production to count with 41 through 50 percent not grading U.S. Fancy or better due

solely to excessive sun or excessive sun along with hail damage, will be reduced 40 percent plus an additional 3 percent for each full percent in excess of 40 percent.

(iii) Production to count with 51 through 64 percent not grading U.S. Fancy or better due solely to excessive sun or excessive sun along with hail damage, will be reduced 70 percent plus an additional 2 percent for each full percent in excess of 50 percent.

(iv) Production to count with 65 percent or more not grading U.S. Fancy or better due solely to excessive sun or excessive sun along with hail damage, will be considered 100 percent cull production.

(v) The difference between the total production and the production to count as determined above will be considered cull production.

(vi) Thirty (30) percent of all cull production will be considered as production to count unless otherwise specified in the Special Provisions.

Signed in Washington, D.C., on April 2, 1998.

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

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## FEDERAL DEPOSIT INSURANCE CORPORATION

**12 CFR Parts 303, 325, 326, 327, 346, 347, 351, and 362**

**RIN 3064-AC05**

### International Banking Regulations: Consolidation and Simplification

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC has revised and consolidated its three different groups of rules and regulations governing international banking. The first group governs insured branches of foreign banks and specifies what deposit-taking activities are permissible for uninsured state-licensed branches of foreign banks. The FDIC's final rule makes conforming changes throughout this group of regulations to reflect the statutory requirement that domestic retail deposit activities must be conducted through an insured bank subsidiary, not through an insured branch. Also with respect to this group of regulations, the FDIC is rescinding the provisions concerning optional insurance for U.S. branches of foreign banks; the pledge of assets formula has been revised; and the FDIC