Rules and Regulations

Federal Register
Vol. 69, No. 166
Friday, August 27, 2004

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB92

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 amendments to the Apple Crop Insurance Provisions. The intended effects of this action are to provide policy changes and clarify existing policy provisions to better meet the needs of the insured and to restrict the effect of the current Apple Crop Insurance Regulations to the 2004 and prior crop years.

DATES: Effective August 30, 2004.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Risk Management Specialist, Research and Development, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 426, Kansas City, MO, 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for the purposes of Executive Order 12866 and, therefore, it 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 in this rule have been approved by OMB under control number 0563–0053 through February 28, 2005.

Government Paperwork Elimination Act (GPEA) Compliance

In its efforts to comply with GPEA, FCIC requires all insurance providers delivering the crop insurance program to make all insurance documents available electronically and to permit producers to transact business electronically. Further, to the maximum extent practicable, FCIC transacts its business with insurance providers electronically.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) 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, or a notice of loss and production information to determine 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 small entities are given the same opportunities 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 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 under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J for the informal administrative review process of good farming practices, as applicable, must be exhausted before any action for judicial review of any determination or action by FCIC 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.

Background

On March 29, 2004, FCIC published a notice of proposed rulemaking in the **Federal Register** at 69 FR 16181–16186 to revise 7 CFR 457.158 Apple Crop

Insurance. Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. 182 comments were received from reinsured companies, agents, State agriculture associations, insurance service organizations, producers, trade associations, and other interested parties. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization commented there was a lack of information on how premium rates will be affected by the proposed changes regarding the increase of minimum standards from U.S. Cider Grade to U.S. No. 1 Processing Grade, and the additional causes of loss insured under the basic apple policy instead of under a Fresh Fruit Option. They also stated the proposed changes obviously increase potential losses and are likely to result in increased loss ratios unless the premium rates are revised. The proposed rule provides no information on what the premium rates will be as a result and whether RMA has conducted a rate analysis on the impact of the changes in this proposed rule and, if so, what are the results.

Response: In accordance with section 508(d) of the Federal Crop Insurance Act (Act), FCIC is required to set premiums at levels to cover anticipated losses and a reasonable reserve. FCIC has conducted a routine periodic premium rate review for the 2005 crop year that incorporates apple insurance loss data from the most recent years. Due to inclusion of this updated information, premium rate adjustments will occur for the 2005 crop year with general premium rate increases in many areas. Further, FCIC reviewed the effect on losses due to the specific change from U.S. Cider Grade to U.S. No. 1 Processing Grade in the basic apple policy and determined a relatively small premium rate increase is necessary to cover such losses. In addition, FCIC determined that the proposed changes to add additional perils under the Optional Coverage for Fresh Quality Adjustment will likely result in additional losses and premium rates will be increased to cover these anticipated losses. However, the amount of such increases is dependent on the area since certain areas may have a greater frequency of insured perils or the amount of damage may be more severe than in other areas and section 508(i)(1) of the Act.

Comment: An insurance service organization and an insurance provider stated with the current apple program experiencing a five-year loss ratio of 117 percent, a ten-year loss ratio of 106% (which included 5 years of CAT business of approx. 50 percent of total premium), and a premium rate factor of up to 1.60 for U.S. No. 1 Processing Grade apples with zero buy-back, it would appear the rates would need to be significantly higher. Additionally, the proposed policy covers additional perils not currently insured against under Quality Option A and asked whether allowing apple producers to insure only fresh apples under the Fresh Fruit Quality Option will lead to adverse selection when opting to insure one's worst blocks as fresh apples.

Response: Consistent with its statutory mandate, FCIC is adjusting premium rates to cover anticipated losses and a reasonable reserve, and a premium rate increase will be implemented in many areas as a result of program performance and the changes made to the policy in this rule, consistent with section 508(i)(1) of the Act. Further, additional causes of loss should not affect the producer's behavior with respect to insuring acreage as fresh or processing. The guarantee for fresh and processing is the same in the basic apple policy. It is only the price election that is different between fresh and processing. Only designated fresh apples are available under the Optional Coverage for Fresh Fruit Quality Adjustment. In addition, designation of apples as fresh or processing occurs on the acreage report, which is prior to the bloom. Therefore, it is highly unlikely that a producer could determine which block is worse at the time of designation. If producers do misreport, then misreporting procedures will apply in accordance with Basic Provisions and standard loss adjustment procedures. The Apple Loss Adjustment Standards Handbook is being updated to further address these issues.

Comment: An insurance service organization commented apple producers often complain the premium is too high for the Fresh Fruit Option B under the current apple policy. If the proposed apple policy and quality option are rated properly, it does not seem that it can (or should) be any cheaper.

Response: The current Fresh Fruit Option B may have resulted in indemnities paid for causes of loss not covered under Fresh Fruit Option B. Consequently, program history has caused the premium rates to increase to their current levels. However, the commenter is correct that since the proposed changes include additional causes of loss, it will likely result in premium rates increases and in some instances rate decreases due to favorable experience.

Comment: An insurance service organization commented as to the effect of the change from U.S. Cider Grade to U.S. No. 1 Processing Grade on existing APH databases and asked whether there be a conversion factor for existing databases to reflect the change in what is considered production to count.

Response: FCIC has attempted to determine whether the amount of Cider Grade apples could be determined so a conversion factor could be constructed. It discovered that there is not likely to be a large quantity of Cider Grade apples in the producer's APH and there is little or no information upon which to determine the amount of Cider Grade apples. Therefore, it could not determine an appropriate conversion factor. No change has been made.

Comment: An insurance service organization commented as to the effect of change from U.S. Cider Grade to U.S. No. 1 Processing Grade on existing APH databases and asked whether apples delivered to a juicer or packing shed warehouse will be assumed not to have made U.S. No. 1 Processing Grade.

Response: To obtain an indemnity, producers must prove that the apples did not meet the standards contained in the policy due to an insurable cause of loss. This means the mere fact that apples are delivered to either the juicer or packing shed warehouse is not relevant. The issue will be the grade of such apples and if a grade is not provided, they will be considered to be U.S. No. 1 Processing Grade.

Comment: An insurance service organization commented as to the effect of change from U.S. Cider Grade to U.S. No. 1 Processing Grade on existing APH databases and asked whether companies will have to wait until packing is complete and not count the culls as production. In the past, they have used records of bins or pounds delivered to the juicer or packing shed warehouse, but there will be no records available by production reporting date to show what apples made U.S. No. 1 Processing Grade.

Response: Companies will not have to wait until packing is complete. FCIC has received information from juicers or packing shed warehouses indicating that apples delivered to the juicer or packing shed warehouse have been at least U.S. No. 1 Processing Grade or better or they are not accepted. Further, records of bin or pounds delivered to the juicer or packing shed warehouse will be available by the production reporting date. Therefore, these delivery records can be used without adjustment.

Comment: An insurance service organization commented as to an apparent increased administrative

burden regarding the following: (1) Potential for an increased number of company inspections and field appraisals; (2) determining the amount of processing production to count for loss and APH purposes; (3) determining the amount of damage due to failure to color properly; and (4) providing acceptable production reports for APH and unit purposes.

Response: FCIC acknowledges there will be some increase in administrative burden because of the proposed changes. However, with the exception of task 3, the listed tasks are current insurance procedures. In addition, this proposed rule combines several options from the current program into one option and overall simplifies the apple crop insurance program, which should provide some program savings.

Comment: An insurance service organization and reinsured company stated that according to the proposed language for the basic apple coverage, the standard is U.S. No. 1 Processing Grade (change from U.S. Cider Grade) and U.S. Fancy Grade for the Fresh Fruit Quality Option ''* * * or such other standard contained in the Special Provisions.'' The commenters asked what other standards might be considered and in what regions. The commenters state that making such a change in the Special Provisions (which are not published for public comment) could have a significant impact on the policy in terms of marketing, risk management, premium, liability, and loss ratios.

Response: FCIC added the language about standards contained in the Special Provisions to provide for the use of existing or acceptable apple grade standards that are approved and enforced by individual states, regions, or organizations. This is to prevent producers from being penalized because their state or area uses a slightly different standard. For example, Washington Fancy Grade is comparable to U.S. Fancy Grade. Such standards will be included in the Special Provisions, and any appropriate premium rate adjustment will be made as necessary. However, for the purposes of determining damage, only those standards comparable to U.S. No. 1 Processing Grade and U.S. Fancy Grade will be used.

Comment: An insurance service organization recommended since so many references to the grade standards seem to include ''* * * the United States Standards for Grades of Apples or such other standard contained in the Special Provisions,'' RMA might consider setting this up as the definition for ''grade standards'' instead of having to repeat this again and again. Also, the commenter stated the phrase ''on the Special Provisions'' should be revised to ''in the Special Provisions''.

Response: FCIC agrees that it can create a definition of ''grade standards'' that would include the United States Standards for Grades of Apples or such other standard contained in the Special Provisions and eliminate the duplicate references. FCIC also agrees with the commenter regarding the revision of the phrase ''on the Special Provisions'' and replacing it with ''in the Special Provisions.''

Comment: An insurance service organization recommended FCIC to consider revising the definition of ''damaged'' production as not marketable and redefine ''marketable'' as what is marketable rather than what is not marketable (instead of having both definitions stated negatively).

Response: Under the crop insurance program, the burden has always been on the producer to prove that the crop has been damaged by an insurable cause of loss. Consistent with this requirement, the apples are presumed marketable unless the producer can prove they qualify as damaged apple production. Therefore, the definition is intended to inform the producer of the burden that must be met. If the suggested revision were adopted, the apples would be presumed to be damaged unless they could be proved to be marketable. This may suggest that the burden had switched to the insurance provider to show the apples were marketable. This is not the intent of these definitions. Therefore, no change has been made.

Comment: An insurance service organization stated FCIC should capitalize the entire title of ''United States Standards for Grades of Apples for Processing'' (''processing'' is not capitalized in the proposed language).

Response: FCIC has accepted a previous suggestion to create a definition of ''grading standards'' that incorporates the above stated language. FCIC has also accepted the recommended change regarding capitalization in that definition.

Comment: An insurance service organization recommended FCIC consider revising the definition of ''damaged apple production'' under the Optional Coverage for Fresh Fruit Quality Adjustment to be more readily apparent than referring to ''section 12 only'' and ''sections 12 and 14''. If this is not changed, consider if it is necessary to refer to section 12 again (with section 14) in part B.

Response: FCIC agrees that the standard in part B. is not applicable to section 12. Insurance against apples not grading U.S. Fancy or better, or such other grade standard contained in the Special Provisions is only provided under section 14. The definition has been revised accordingly.

Comment: An insurance service organization asked that with the new definitions of ''fresh apples'' and ''processing apples'', what the effect will be on APH procedures. The commenter also asked whether production to count for APH purposes will continue to include processing production that is not included for loss purposes when the Optional Coverage for Fresh Fruit Quality Adjustment is elected. Further, the commenter asked whether these definitions will be carried through the entire APH and claims processes so only fresh production would be counted on both sides under the Optional Coverage for Fresh Fruit Quality Adjustment. Lastly, the commenter asked whether they will be required to keep two sets of APH databases (one for processing and one for fresh only).

Response: Allowing fresh and processing apples in the same unit should not have any effect on the APH procedures. The APH for the unit will apply equally to all acreage in the unit, regardless of whether such acreage is intended for fresh or processing apples. As with the current crop policy, the production to count is determined for the whole unit under section 12 and will be used for APH purposes regardless of whether the Optional Coverage for Fresh Fruit Quality Adjustment is elected. Section 12 has been revised to make this clear. Therefore, there will only be one APH for the unit. Coverage under the Optional Coverage for Fresh Fruit Quality Adjustment starts with the premise that all production will grade at least U.S. Fancy or better, or such other grade standard contained in the Special Provisions. Therefore, the total amount of apples grading at least U.S. No. 1 Processing is used to determine the APH under the Optional Coverage for Fresh Fruit Quality Adjustment as well as the base coverage under section 12. The APH procedures contained in the Crop Insurance Handbook and Apple Loss Adjustment Standards Handbook will be consistent with the policy.

Comment: An insurance service organization asked: whether the distinction between ''fresh'' and ''processing'' consumption is sufficiently understood by all parties involved in the Apple policy and whether the reference to production sold ''for human consumption'' in the definition of ''harvest'' should also be included in one or more of the

definitions regarding different types of production and/or perhaps add a definition to identify the differences between fresh and processing.

Response: FCIC has revised the definitions to clarify that fresh apples are those that are sold in the basic form and processing apples are those that have undergone a change to their basic form such as peeling, juicing, or crushing, etc. FCIC has also removed the references to the grade standards because it created an ambiguity regarding coverage since a fresh apple was defined as grading U.S. Fancy or better, or such other standard contained in the Special Provisions and only fresh apples qualified under the Optional Coverage for Fresh Fruit Quality Adjustment. This would effectively negate any coverage under that Option because the apples have to grade as U.S. Fancy or better, or such other standard contained in the Special Provisions to even qualify for coverage.

Comment: An insurance service organization asked whether there should be a specific connection between the definitions of ''harvest'' and ''marketable. The commenter also asked if production were not considered harvested, would it ever be considered marketable. (Presumably, this could be true of apples not picked from the tree that are appraised as meeting the appropriate grade.)

Response: Section 12 makes it clear that the marketable standard applies to both appraised and harvested production. The issue for coverage is only if the apple would meet the appropriate grade standard, not whether the apple was harvested. If the apple meets the appropriate grade standard, it is considered marketable. Therefore, no connection needs to be made between the definitions of ''marketable'' and ''harvested''. No change has been made.

Comment: An insurance service organization asked whether by adding the definition of ''mature,'' is it RMA's intention that this definition takes precedence over the definition of ''mature'' contained in the United States Standards for Grades of Apples currently used in determining whether an apple meets the grade of U.S. Fancy?''

Response: It is not FCIC's intent for the new definition of ''mature'' to take precedence over the definitions in the United States Standards for Grades of Apples. Therefore, FCIC has revised the definition to specify that mature is whatever the United States Standards for Grades of Apples defines it to be.

Comment: An insurance service organization stated the definition ''non-contiguous'' is the same as the current definition in the 2004 Basic Provisions, but the Basic Provisions Proposed Rule is pending revision that requires separate ownership. The commenter asked if this definition remains in the Apple Crop Provisions, whether it would take precedence over the definition in the Basic Provisions. There have been a number of questions concerning what is contiguous or non-contiguous, and it has been difficult to obtain an official answer from RMA, in part because of differing definitions in different regions.

Response: FCIC agrees with the commenter and has removed the definition of non-contiguous in section 1 of these Crop Provisions because it is defined in the Basic Provisions.

Comment: An insurance service organization noted the definition of ''pound'' was deleted from the proposed rule. The commenter asked whether the generic definition of a ''pound'' as sixteen ounces avoirdupois no longer needed for apples. The term is used in the definitions of ''bin'', box,'' and ''bushel.''

Response: FCIC agrees with the commenter. Therefore, the definition of ''pound'' as sixteen ounces avoirdupois has been added to these Crop Provisions.

Comment: An insurance service organization commented on the definition ''production guarantee (per acre)''. This definition has been revised to allow the guarantee to be given as a number of bins as well as boxes or bushels. The commenter asked whether some areas use bins instead of boxes or bushels as the unit of measure. The commenter asked whether the definition include the phrase ''as applicable'' (as in the definition of ''damaged apple production'') to clarify that the unit of measure is not the insured's choice.

Response: There are areas where the unit of measure may be bins, bushels, or boxes. However, it was not FCIC's intent to establish production guarantees in terms of bins. Bins will need to be converted to boxes or bushels. FCIC has revised the definition of ''production guarantee (per acre)'' accordingly.

Comment: An insurance service organization disagrees with the proposed definitions of ''russeting'' and ''sunburn'' in the Crop Provisions. The commenter asked if they replace the terms ''russeting'' and ''sunburn'' as they appear in the grade standards, or is a different definition provided in the Special Provisions. The commenter states if the terms ''russeting'' and ''sunburn'' are referred to in the grade standards then policyholders will need to have a copy of the standards.

Response: Since the determination of production to count is dependent on whether the apples meet certain grade standards, it is appropriate for the definitions of certain damage be the definition contain in such standards. If the definitions were different, it could cause confusion with respect to whether the apples actually meet the requisite grade. Since apples are required to be graded, producers have access to the grade standards and they do not need to be provided. FCIC has revised the definitions of ''russeting'' and ''sunburn'' for clarity. To clarify further, FCIC has modified the cause of loss section 10 to specify the causes of ''russeting'' and ''sunburn''.

Comment: An insurance service organization commented on the definition of ''type'' and asked how varietal groups are going to appear in the Special Provisions. The commenter states that currently they are included as a type but the proposed Crop Provisions list only fresh and processing apples as types.

Response: FCIC agrees the definition of ''type'' should be clarified and has revised the definition to include varietal groups. Consistent with this change, FCIC has removed the references to varietal groups in section 3.

Comment: An insurance service organization suggested the definition of ''type'' may not need to begin with the word ''Either'.

Response: FCIC agrees and has made the change accordingly.

Comment: An insurance service organization questioned section 2(a)(1) and (2) and asked whether both non-contiguous land and different varietal groups must be satisfied in order to qualify for optional units. For example, if an insured has a block of Varietal Group A apples contiguous with a block of Varietal Group B apples, the commenter stated this would not be eligible for optional units since the blocks are contiguous even though they have different varietal groups. The commenter stated that if this is the intent, it is a change from the current policy under Varietal Group Option C.

Response: FCIC will allow optional units for either non-contiguous land or by varietal group. FCIC has revised this section to remove the word, ''and'' and replace it with the word ''or'' to clarify this intent.

Comment: An insurance service organization commented on section 2(a)(2) noting there have been concerns with allowing optional units by varietal group without having any indication of what varietal groups might be specified in the actuarial documents. The commenter asked whether the varietal

groups be standard or vary from one region to another or one county to another.

Response: The varietal groups are the same as in the past, and will remain consistent from region to region. Varietal groupings are reviewed annually and changes are specified in the Special Provisions.

Comment: An insurance service organization commented on section 2(a)(2) asking if the proposed changes go through, and optional units by varietal group are a part of the basic policy whether all existing databases will have to be divided according to varietal group. The commenter states that if separate varietal groups were designated in the Special Provisions, databases would have to be set up accordingly, even on CAT policies. It claims that this change could create quite an administrative burden, including large numbers of inspections to provide acceptable separate records for optional unit purposes.

Response: Databases would have to be established according to the types specified in the Special Provisions. Since varietal groups are identified as a type under the current policy, separate databases are already required. Therefore, this change will not increase the administrative burden. No change has been made.

Comment: An insurance service organization commented on section 2(a)(2) stating they had received one comment recommending the varietal groups be divided according to time of maturity or normal harvest dates instead of by price. The commenter stated this would allow loss adjustments to be made more timely and efficiently by unit. If every unit must be appraised before harvest, it would make sense to have units composed of varieties that normally will be harvested at similar times.

Response: The recommendation to change the varietal groupings to a maturity basis rather than by price has merit. However, this would add increased complexity since there will be different prices within each unit. There is insufficient time to assess the impact of these changes on the program and make these changes prior to the start of the 2005 crop year. The recommendations will be considered for the future. Therefore, no change has been made.

Comment: Three trade associations and five growers commented on section 2 and asked FCIC to consider allowing growers to define orchards as smaller units using public right-of-ways or other discernible breaks. The current policy prohibits use of public and private right-of-ways to separate contiguous orchard blocks.

Response: The language in the proposed rule concerning optional unit division guidelines is consistent with other perennial crops. There is no rational basis to allow such changes in this policy but not in the other similar perennial crops. Such changes would have to be made to the definition of ''non-contiguous'' in the Basic Provisions and apply to all similarly situated crops. Further, FCIC is conducting an evaluation regarding optional units and the appropriate rates. Until such evaluation is done, it would not be appropriate to create smaller optional units than currently allowed under the Basic Provisions or other Crop Provisions.

Comment: An insurance service organization commented on section 2(b) and asked FCIC what the qualifications are for optional units. For example, an insured with buy-up coverage and separate records by tract does not qualify for optional units or is that covered sufficiently by the Basic Provisions.

Response: The Basic Provisions contain the record keeping and other requirements to qualify for optional units. Therefore, the provisions regarding coverage and records have been removed from the Crop Provisions and the provisions in the Basic Provisions will control.

Comment: An insurance service organization commented that section 3(b)(1), requires growers to report any changes to the orchards that would affect the guarantee, while section 3(c) states that the guarantee will be reduced in the event of certain changes to the orchard. The commenter suggested the following revision to section 3(c), ''We will reduce your production guarantee, or assess uninsured causes of loss as necessary * * *'' as an alternative in cases such as unreported tree removals.

Response: To allow both an adjustment in the guarantee and assessment of uninsured causes of loss would add an unnecessary complexity to the program. Without language to distinguish which action would result in an adjustment of the yield and which would result in assessment of uninsured causes of loss, the provisions may be applied differently by the different insurance providers. Further, the factors contained in section 3(a) can affect the yield potential of the orchard so adjustments are appropriately made to the guarantee. In addition, the language is consistent with most other perennial crops. Therefore, no change has been made.

Comment: An insurance service organization commented on section 4 by suggesting FCIC add a missing word ''date'' in phrase ''* * * cancellation date for California * * *''.

Response: FCIC agrees and has added the word ''date'' to the sentence.

Comment: An insurance service organization commented on section 5(b) by asking whether it is necessary to refer to ''whichever is later'' of the cancellation and termination dates. If the insurance provider is canceling a policy rather than terminating it, the commenter asked whether the cancellation date would apply even if it were earlier than the termination date.

Response: There is nothing in this provision that would permit the termination date to apply to cancellation of the policy or vice versa. However, this point is moot because the cancellation and termination dates are the same. This language is included because the insurance period ends when the crop is harvested and for the subsequent crop year, insurance attaches on the next day. This means that insurance could attach before the cancellation or termination dates. Questions had arisen regarding whether insurance coverage was provided during that period between insurance attachment and termination or cancellation and whether premium would then be owed. FCIC added this provision to clarify that insurance is not provided and no premium is owed for that period. The term ''whichever is later'' is necessary just to identify the applicable time period in the event the termination or cancellation date is changed so they are not the same date.

Comment: An insurance service organization suggested that section 5(b) be revised to read, ''* * * canceled or terminated by us in accordance with the terms of the policy after insurance attached for the crop year but on or before the applicable cancellation or termination date, insurance will be considered not to have attached * * *'' or ''* * * will not be considered to have attached * * *'' but not ''* * * to not have attached * * *''.

Response: FCIC agrees that the suggested language is more grammatically correct and has revised the provision accordingly.

Comment: An insurance service organization commented on section 7(b) and asked why this provision is not being revised to require the acreage meet production insurability requirements within a specific time frame to remain insurable, as has been done with other fruit policies (such as pears and grapes) as they were revised. For example, once apples in Area A

produce an average of 10 bins, they are insurable from that time on. However, when that 10-bin year rolls off the 5-year database, that unit would appear to be uninsurable.

Response: FCIC agrees that the trees and production should be reviewed periodically to ensure that the minimum threshold for insurability is met. FCIC has revised the provision to require that the minimum threshold of production must be met at least one out of the four previous years.

Comment: An insurance service organization commented on section 7(b) and suggested FCIC rearrange the language as follows to reduce repeated phrases.

''(b) That are grown on tree varieties that are adapted to the area and have produced at least an average of:

''(1) 10 bins of apples per acre in Area A;

''(2) 150 bushels of apples per acre in Area B;

''(3) 200 bushels of apples per acre in Area C.''

Response: FCIC agrees with the commenter and has revised the provisions accordingly.

Comment: An insurance service organization commented on section 8 stating this allows insurance on apples interplanted with another perennial crop subject to inspection. Other ''interplanted'' references are in section 3(b)(4) and 3(c)(4)(i). The commenter states that these references should be in separate sections but asks whether cross referencing be considered to clarify this information.

Response: FCIC realizes that other sections of the provisions refer to interplanting with another perennial crop, but section 8 refers only to the insurability of the apples, and other sections refer to reporting of the interplanted crop and the possible effect on the coverage. Since the purposes are different, it may cause confusion to cross reference other sections. Therefore, no change has been made.

Comment: An insurance service organization commented on section 9(a)(1) stating that by allowing 20 days instead of the current 10 days to inspect initial applications is an improvement, but 30 days would be even better and would match the amount of time allowed in some other perennial crop policies.

Response: Crops that allow 30 days to inspect the crop are usually those where there is little risk of loss within the first 30 days, such as pecans, which are produced mostly in the south. However, apples are produced all over the country and in areas in the north, the risk can increase as the insurance period progresses. FCIC determined that, while there was universal agreement that 10 days was not an adequate amount of time, 30 days would be too long. While the risk still exists by allowing 20 days, it provides a compromise between the interests of producers and the insurance providers. Therefore, no change has been made.

Comment: An insurance service organization commented on section 9(a)(1) stating the proposed language is poorly written and suggest FCIC rearrange the first two sentences to read as follows:

''(1) For the year of application, coverage begins:

''(a) In California, February 1 * * *

''(b) In all other states, November 21* * *

''However, if your application is received by us less than 20 days prior to this date, insurance will attach on the 20th day * * *''

Response: FCIC cannot adopt the recommended change because it is no longer permitted to have undesignated provisions in regulations and the sentence beginning with ''However,'' is undesignated and in the recommended format, there is no appropriate designation. Therefore, no change has been made.

Comment: An insurance service organization commented the last sentence in section 9(a)(1) of the current apple policy is ''You must provide any information we require for the crop to determine the condition of the orchard.'' Proposed language changes this to ''* * * we require for the crop or to determine the condition of the apple acreage.'' The commenter asked whether the information that can be required has been changed.

Response: There has been a change in the information that can be required. Originally, the provision only permitted requests for information regarding the crop and that information would be used to determine the condition of the orchard. Under the proposed language, information can be requested regarding the crop or the acreage. Since there are separate insurability requirements for the crop and the acreage, insurance providers need access to the relevant information regarding both. No change has been made.

Comment: An insurance service organization suggested FCIC modify section 9(a)(2) to delete the comma after ''year of application''. Also, consider changing the opening phrase to ''For each subsequent crop year that the policy remains.* * *'' Since the preceding item in section, 9(a)(1) addresses ''the year of application'', and is redundant.

Response: FCIC agrees and has revised the provisions accordingly.

Comment: An insurance service organization commented on section 9(a)(3) stating the summary of changes in the ''Background'' portion of the proposed rule indicates the calendar date for the end of the insurance period was changed because California varieties ''are typically harvested later than other varieties.'' However, the date listed for California remains at November 5 with the possibility of a different date in the Special Provisions. All other states changed from November 5 to November 20. In addition, it appears that only California counties are eligible for a different calendar date for the end of the insurance period in the Special Provisions without having to run the Apple Crop Provisions through another proposed rule. If this is the intent, the commenter suggests revising the language to read as follows:

''(3) The calendar date for the end of the insurance period for each crop year is:

''(a) November 5 in California, unless otherwise specified in the Special Provisions;

''(b) November 20 in all other states.''

Response: FCIC agrees the proposed language was not correct. The reference to the different insurance period for California was intended to refer to the start of the insurance period, not the end of the period. However, flexibility was needed in those cases where the varieties are harvested later but this could apply to all states, not just California. FCIC has revised the provision to specify that the calendar date for the end of the insurance period for all states is November 5 or such other date as specified in the Special Provisions. This allows the flexibility for all states to have the end of the insurance period adjusted as necessary.

Comment: An insurance service organization questioned section 9(a)(4) and the need for stating, ''Cancellation and termination provisions * * * are contained in section 5 of these crop provisions'' in this section.

Response: Language is needed in section 9 regarding the effect of cancellation or termination after insurance has attached because it would affect the insurance period. However, FCIC has redrafted the provision for clarity.

Comment: An insurance service organization commented on section 9(b)(2) noting they had received one recommendation that the policy language needs to clarify that premium is still due if the insurable share is relinquished after the acreage reporting date.

Response: FCIC agrees the silence regarding the effect of relinquishing the insurable share after the acreage reporting date may create an ambiguity regarding whether such premium is owed. Since this issue is not clearly addressed in section 7 of the Basic Provisions, FCIC has revised the provisions to clarify that premium is still owed if the insurable share is relinquished after the acreage reporting date.

Comment: An insurance service organization commented that the cause of loss in section 10(a) stating ''Fire'' should be revised and clarified by including ''Fire, due to natural causes, unless weeds * * *''.

Response: This change is not necessary because the Act requires all causes of loss to be natural causes, not just fire. Specifically referring to natural disasters with respect to fire but not the other causes of loss could create the impression that other such causes could be something other than from natural causes. Further, section 12 of the Basic Provisions now specifically refers to ''unavoidable'' causes of loss due to ''naturally occurring events''. No change has been made.

Comment: An insurance service organization and eighteen growers commented on section 10(a)(7) stating the language is too ambiguous and references a condition and not a natural insured cause of loss.

Response: FCIC realizes some terms in section 10(a)(7) are not a natural insured cause of loss but rather a condition resulting from a natural insured cause of loss. However, in the past there have been questions regarding the insurability of these conditions even if occurring as a result of a covered cause of loss. FCIC has revised the language to clarify that these conditions are covered if caused by an insured cause of loss and causes the apples to fail to meet the applicable grade standards in the policy.

Comment: An insurance service organization stated it is concerned that all policies, including CAT policies, will be covered for all insurable causes that result in apple production grading less than U.S. No.1 Processing Grade.

Response: Under the proposed rule, all policies, including CAT policies, are covered by all insurable causes that result in the apple production grading less than U.S. No.1 Processing Grade. However, as stated above, the premium will be increased to cover the expected losses with the additional coverage, consistent with section 508(i)(1) of the Act. Therefore, no change has been made.

Comment: An insurance service organization expressed concerns regarding the increase of minimum standards from U.S. Cider Grade to U.S. No. 1 Processing Grade. This increase could make it difficult for loss adjusters to determine if apples meet the U.S. No. 1 Processing Grade.

Response: FCIC disagrees with the commenter. This is not significantly different than other loss adjustment procedures that require knowledge of variety, crop maturity, and weather-related losses. Further, the burden is on the producer to prove the apples failed to grade U.S. No. 1 Processing due to an insurable cause of loss or else the apples are considered as production to count. Therefore, the apples will have to be graded, and this grade will be used to determine whether the apples count as production to count. Specific instructions will be available in the Apple Loss Adjustment Standards Handbook.

Comment: An insurance service organization asked why FCIC is including damages for russeting, sunburn, and failure to size, shape, or color properly, when the standard Apple Policy insures only processing apples and none of these defects are included in the United States Standards for Grades of Apples.

Response: The causes of loss in section 10 applies to both the basic coverage and the Optional Coverage for Fresh Fruit Quality Adjustment. Such standards are applicable to the grading standards for U.S. Fancy. However, to eliminate the ambiguity regarding the applicability of these conditions and the other stated insurable causes of loss, section 10 has been revised to clarify that insurance is provided against the named insurable causes of loss that results in damaged apple production. Therefore, to the extent the above stated conditions are not caused by an insurable cause of loss and do not cause the apples to grade less than U.S. No. 1 Processing or U.S. Fancy, as applicable, the apples will still be considered as production to count.

Comment: An insurance service organization asks if failure of the fruit to size, shape, or color properly is always due to natural causes.

Response: No, if failure of the fruit to size, shape, or color properly is due to failure of the insured to follow good farming practices, it is not an insurable cause of loss. The insured must be able to prove that the failure of the fruit to size, shape, or color properly is specifically due to an insured cause of loss.

Comment: An insurance service organization states the color of apples could change on a daily basis due to weather conditions and varietal characteristics. The commenter asks how insurance providers are to adjust these losses.

Response: This is not significantly different than other loss adjustment procedures that require knowledge of variety, crop maturity, and weather-related losses. Loss adjuster will determine if the damage was caused by an insurable cause of loss and graders will grade the apples and these grades will be used to adjust losses. Specific instructions will be available in the Apple Loss Adjustment Standards Handbook. Therefore, no change has been made.

Comment: An insurance service organization asked why ''disease'' and ''insect infestation'' were listed as excluded perils, when all current provisions include them as covered perils with exclusions. They also asked under section 10(b)(1)(ii) how adverse weather causes disease or insect infestation.

Response: For consistency with other perennial crops, FCIC is moving the provisions back to the insured cause of loss provisions. However, this does not change the responsibility of the producer to prove that the disease or insect infestation occurred and that all proper control measures have been used.

Comment: An insurance service organization commented on the removal of the provisions from the current Apple Crop Provisions, which state: ''Mechanical damage including, but not limited to, limb rubs, scars and punctures,'' and asked if mechanical damage will continue to be an uninsured cause of loss since it is not due to a natural cause.

Response: The language in the old policy created the presumption that limb rub, scars, and punctures were always caused by mechanical damage, which may not be the case. By removing this exclusion, mechanical damage remains an uninsured cause of loss because it is not a natural cause but any limb rubs, scars, and punctures due to an insurable cause of loss are covered if they result in damaged apple production. For example, high winds can inflict these damages and would be covered under the policy. Further, apples adjusted prior to harvest will not normally have mechanical damage. Therefore, no change has been made.

Comment: An insurance service organization commented on section 11(c) asking why the current policy language ''* * * we may consider all such production to be undamaged * * *'' has changed to a passive tone ''* * * all such production will be considered undamaged * * *''

Response: FCIC agrees with the commenter and has revised the statement accordingly.

Comment: An insurance service organization questioned the necessity of the phrase in section 12 in the Basic Coverage example ''that graded U.S. No. 1 Processing or better'' after ''$4.76 per bushel for processing apples'' (covered by the new ''fresh apples'' definition). The commenter stated that if it were not deleted, then it would seem the reference to fresh apples should include ''$9.10 per bushel for fresh apples that graded U.S. Fancy or better''.

Response: FCIC agrees that the reference to the grade standard is not appropriate after the price for processing apples. Including the references would suggest that the fresh apples must grade U.S. Fancy or an indemnity may be paid but this is not the case. As long as the apples grade U.S. No. 1 Processing or higher, they are counted as production to count. The price is only used to determine the value of such production. However, it still needs to be made clear that the fresh and processing apples produced are marketable. FCIC has revised the provision to specify that the amount produced is marketable.

Comment: An insurance service organization commented on revising section 12, Basic Coverage example, step 1 from ''6,000-bushels guarantee'' and ''3,000-bushels guarantee'' to ''6,000 bushel fresh * * * 3,000 bushel processing * * *''

Response: Step 1 states that the 6,000 bushel guarantee is for fresh apples and the 3,000 bushel guarantee is for processing apples. No further reference to fresh or processing apples is necessary. Therefore, no change has been made.

Comment: An insurance service organization noted that in section 12, Basic Coverage example, steps 6 and 7, the figures are incorrect. The indemnity amount should be $18,620.00 instead of $18,540.00.

Response: FCIC agrees and has made the correction accordingly.

Comment: An insurance service organization suggested moving the Basic Coverage example to the end of section 12 or moving it to the end of the Crop Provisions.

Response: FCIC agrees with the commenter. Since the example also relies on a determination of production to count, it should be moved to after section 12(c).

Comment: An insurance service organization commented that the Basic Coverage example should include the term ''bins'' in the reference to total apple production (in boxes, bins, or bushels).

Response: Since FCIC has removed the reference to ''bins'' from the definition of ''production guarantee (per acre),'' bins are no longer to be used as a measure of production for the purposes of the guarantee or production to count. Bins must be converted to bushels or boxes. Therefore, no change has been made.

Comment: An insurance service organization commented on section 12(c)(3) stating this should be an unnumbered paragraph following section 12(c)(2) or renumbered as section 12(d). It does not flow from the lead-in of section 12(c) indicating the total production to count.

Response: FCIC agrees but it has removed section 12(c)(3) because it is not necessary. Section 14 has been revised to specify it is adjusting the harvested and appraised marketable fresh apple production.

Comment: An insurance service organization recommended reversing the order in section 14(b)(1) and (2) to address what is required to be eligible before specifying the deadlines involved.

Response: FCIC agrees and has revised the provisions accordingly.

Comment: An insurance service organization recommended rewording the language in section 14(b)(4) to state: ''In lieu of sections 12(c)(1)(iii) and (iv) and (2), the production to count for appraised and harvested production for fresh apple acreage will include all fresh apple production in accordance with this option.''

Response: FCIC agrees the language must be modified and has revised it to clarify that all appraised and harvested marketable production of fresh apples is included as production to count and such production may be adjusted under the option.

Comment: An insurance service organization commented on the language in the current Fresh Fruit Option B that refers to adjusting production to count when damaged, harvested production ''does not grade 80 percent U.S. Fancy or better.'' The commenter stated that the proposed language for the Optional Coverage for Fresh Fruit Quality Adjustment says adjustments apply when damage results in production where ''* * * 80 percent or more of the fresh apples do not grade U.S. Fancy or better * * *'' The commenter states that the proposed language appears to be the opposite from before and question whether this was intended. The commenter asks if it is really the intent to adjust the production to count only when less than 20 percent grade U.S. Fancy or better.

Response: The intent is to provide adjustments in production to count in the Optional Coverage for Fresh Fruit Quality Adjustment when the fresh apple production is damaged to the extent that more than 20 percent of the apples do not grade U.S. Fancy or better. FCIC has made the appropriate changes to the Optional Coverage for Fresh Fruit Quality Adjustment.

Comment: An insurance service organization commented on the Optional Coverage for Fresh Fruit Quality Adjustment example, stating that it is difficult to follow how a loss is calculated under the Optional Coverage for Fresh Fruit Quality Adjustment example as written. The commenter claims that step (4) in this example is confusing as described. The commenter also states that it needs to be clearer on where the 55 percent and 45 percent figures come from since 55 percent ends up being both the percent grading U.S. Fancy or better and the total percentage reduction of the production to count from section 14(b)(5).

Response: FCIC agrees with the commenter. Therefore, the example has been modified for clarification.

Comment: An insurance service organization and insurance provider commented on the Optional Coverage for Fresh Fruit Quality Adjustment example, stating that both examples (Basic Coverage and Optional Coverage for Fresh Fruit Quality Adjustment examples) should be at the end of the Crop Provisions. Since the introductory information is identical, it would not have to be repeated and the separate calculated examples would be identified in accordance to the type of coverage involved.

Response: The introductory text is the same in most instances but the example in section 14 requires the apple production not grading U.S. Fancy, which is immaterial to the example under section 12. FCIC has determined that it would be better to keep the examples separate to avoid any confusion regarding the applicability of the provisions in section 12 and those in section 14. Therefore, no change has been made.

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

1. Removed section 3(d) because it no longer is applicable and has been removed from the Basic Provisions.

2. Revised section 6 to specify that blocks of apple acreage grown for processing are not eligible for the Optional Coverage for Fresh Quality

Adjustment option contained in section 14 of these Crop Provisions.

Good cause is shown to make this rule effective less than 30 days after publication in the **Federal Register**. Good cause to make the rule effective less than 30 days after publication when the 30 day delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

With respect to the provisions of this rule, it would be contrary to the public interest to delay implementation of improved insurance benefits until the 2006 crop year. The public interest is served by improving the insurance product as follows: (1) Revising Fresh Fruit Option B (now the Optional Coverage for Fresh Fruit Quality Adjustment) to provide coverage for all perils so that producers receive adequate coverage, thereby stabilizing the farm economy and reducing the need for ad hoc disaster payment; (2) eliminating several options under the current program, which will eliminate program complexity and confusion; (3) incorporating sunburn caused by excessive sun as an insured cause of loss under the Basic Apple Crop Provisions to provide additional coverage, thereby stabilizing the farm economy and reducing the need for ad hoc disaster payment; and (4) providing simplification and clarity to the apple crop insurance program.

If FCIC is required to delay the implementation of this rule 30 days after the date it is published, the provisions of this rule could not be implemented until the 2006 crop year. This would mean the affected producers would be without the benefits described above for an additional year.

For the reasons stated above, good cause exists to make these policy changes less than 30 days after the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 457

Crop insurance, Reporting and recordkeeping requirements.

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 for the 2005 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) and 1506(p).

■ 2. Revise § 457.158 as follows:

§ 457.158 Apple crop insurance provisions.

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

* * * * *

1. *Definitions*

Apple production. All production of fresh apples and processing apples from the insurable acreage.

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 Colorado.

Area C. Colorado.

Bin. A container that contains a minimum of 875 pounds of apples or another quantity as designated in the Special Provisions.

Box. A container that contains 35 pounds of apples or another quantity as designated in the Special Provisions.

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

Damaged apple production.

(1) With respect to losses calculated under section 12 only, the percentage of fresh or processing apple production that fails to grade U.S. No. 1 Processing or better in accordance with the grade standards, within each lot, bin, bushel or box, as applicable, due to an insurable cause of loss; or

(2) With respect to losses calculated under section 14, the percentage of fresh apple production that fails to grade U.S. Fancy or better in accordance with the grade standards, within each lot, bin, bushel, or box, as applicable, due to an insurable cause of loss.

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.

Fresh apples. Apple production:

(1) That is sold, or could be sold, for consumption without undergoing any change in its basic form, such as peeling, juicing, crushing, etc.; and

(2) From acreage that is reported as fresh apples on the acreage report.

Grade standards. The United States Standards for Grades of Apples, the United States Standards for Grades of Apples for Processing, or such other standards contained in the Special Provisions.

Harvest. The picking of mature apples from the trees or collecting of mature apples from the ground. Apples collected from the ground that cannot be sold for human consumption will not be considered harvested.

Lot. A quantity of production that can be separated from other quantities of production by grade characteristics, load, location or other distinctive features.

Marketable. Apple production that is not damaged apple production.

Mature. Apples defined as ''mature'' under the applicable grade standards.

Pounds. Sixteen (16) ounces avoirdupois.

Processing apples. Apple production:

(1) That is sold after it had undergone a change to its basic structure such as peeling, juicing, crushing, etc.; and

(2) From acreage designated as processing apples on the acreage report.

Production guarantee (per acre). The quantity of apples in boxes or bushels determined by multiplying the approved APH yield per acre by the coverage level percentage you elect. If the production of apples has been measured in bins, the amount must be converted to boxes or bushels.

Russeting. A defect on the surface of the apple as described in the grade standards.

Sunburn. A defect as described in the grade standards.

Type. Fresh, processing, or varietal group apples as specified in the Special Provisions.

Varietal group. Apple varieties with similar characteristics that are grouped for insurance purposes as specified in the Special Provisions.

2. *Unit Division*

(a) In addition to the requirements of section 34(b) of the Basic Provisions, optional units may be established if each optional unit is:

(1) Located on non-contiguous land; or

(2) By varietal group.

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; and

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

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

(ii) The planting pattern; and

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

(c) 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 October 31 preceding the cancellation date for California and August 31 preceding the cancellation date for all other states.

5. *Cancellation and Termination Dates*

(a) In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31 in California and November 20 in all other states.

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

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

6. *Report of Acreage*

In addition to the requirements contained in section 6 of the Basic Provisions, you must report and designate all acreage by type by the acreage reporting date. Blocks of apple acreage grown for processing are not eligible for the Optional Coverage for Fresh Quality Adjustment option contained in section 14 of these Crop Provisions.

7. *Insured Crop*

In accordance with section 8 of the Basic Provisions, the crop insured will be all 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 are adapted to the area and have, in at least one of the previous four years, produced:

(1) 10 bins of apples per acre in Area A; or

(2) 150 bushels of apples per acre in Area B; or

(3) 200 bushels of apples per acre in Area C; and

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

8. *Insurable Acreage*

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance from 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 requirements contained in your policy.

9. *Insurance Period*

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

(1) For the year of application in California, coverage begins on February 1 of the calendar year the insured crop normally blooms. In all other states, coverage begins November 21 of the calendar year prior to the calendar year the insured crop normally blooms, except that, if your application is received by us after January 12 but prior to February 1 in California, or after November 1 but prior to November 21 in all other states, insurance will attach on the 20th day after your properly completed application is received in our local office, unless we inspect the acreage during the 20-day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the apple acreage.

(2) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring an existing policy to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) The calendar date for the end of the insurance period for each crop year is November 5, or such other date as specified in the Special Provisions.

(4) Notwithstanding the provisions in this section, coverage will not be considered to have begun for a crop year if the policy is canceled or terminated in accordance with section 5(b).

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

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period. There will be no coverage of any insurable interest acquired after the acreage reporting date.

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

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

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

(iii) The transferee is eligible for crop insurance.

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

10. *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 and result in damaged apple production:

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

(8) Wildlife; and

(9) All other natural causes of loss that cannot be prevented, including, but not limited to, hail, wind, excess sun causing sunburn and frost and freeze causing russeting.

(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 your 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.

11. *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 at least 3 days prior to 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. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and include it as production to count.

12. *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 unit, 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 on any unit by:

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

(2) Multiplying each result in section 12(b)(1) by the respective price election;

(3) Totaling the results in section 12(b)(2) if there are more than one type;

(4) Multiplying the total production to count (see section 12(c)), for each type as applicable, by the respective price election;

(5) Totaling the results in section 12(b)(4), if there are more than one type;

(6) Subtracting the total in section 12(b)(5) from the total in section 12(b)(3); and

(7) Multiplying the result in section 12(b)(6) by your share.

(c) The total production to count (in 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 11;

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

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

(ii) Production lost due to uninsured causes;

(iii) Unharvested apple production that would be marketable if harvested; and

(iv) Potential marketable apple 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 harvested marketable production from the insurable acreage.

Basic Coverage example:

You have 100 percent share and designated 10 acres of fresh apples and 5 acres of processing apples in the unit on the acreage report, with a 600 bushels per acre guarantee for both fresh and processing apples and a price election of $9.10 per bushel for fresh apples and $4.76 per bushel for processing apples. You are only able to harvest 5,000 bushels of fresh apples and 1,000 bushels of processing apples that grade at least U.S. No. 1 Processing. Your indemnity would be calculated as follows:

A. 10 acres × 600 bushels = 6,000 bushels guarantee of fresh apples; 5 acres × 600 bushels = 3,000 bushels guarantee of processing apples;

B. 6,000 bushels × $9.10 price election = $54,600.00 value of guarantee for fresh apples; 3,000 bushels × $4.76 price election = $14,280.00 value of guarantee for processing apples;

C. $54,600.00 value of guarantee for fresh apples + $14,280.00 value of guarantee for processing apples = $68,880.00 total value guarantee;

D. 5,000 bushels of harvested marketable fresh apple production to count × $9.10 price election = $45,500.00 value of production to count for fresh apples; 1,000 bushels of harvested marketable processing apple production to count × $4.76 price election = $4,760.00 value of production to count for processing apples;

E. $45,500.00 value of production to count for fresh apples + $4,760.00 value of production to count for processing apples = $50,260.00 total value of production to count;

F. $68,880.00 total value guarantee − $50,260.00 total value of production to count = $18,620.00 value of loss; and

G. $18,620.00 value of loss × 100 percent share = $18,620.00 indemnity payment.

[End of Example]

(d) The production to count determined in accordance with section 12(c) will be used for APH purposes, regardless of whether there are any adjustments under section 14.

13. *Late and Prevented Planting*

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

14. *Optional Coverage for Fresh Fruit Quality Adjustment.*

(a) In the event of a conflict between the Apple Crop Insurance Provisions and this option, this option will control.

(b) In return for payment of the additional premium designated in the actuarial documents, this option provides for quality adjustment of fresh apple production as follows:

(1) To be eligible for this option, you must have elected to insure your apples at the additional coverage level. If you elect Catastrophic Risk Protection (CAT) after this option is effective, it will be considered as notice of cancellation of this option by you.

(2) You must elect this option on or before the sales closing date for the initial crop year for which you wish to insure your apples under this option. This option will continue in effect until canceled by either you or us for any succeeding crop year by written notice to the other party on or before the cancellation date.

(3) This option will apply to all your apple acreage designated in your acreage report as grown for fresh apples and that meets the insurability requirements specified in the Apple Crop Insurance Provisions, except any acreage specifically excluded by the actuarial documents. Any acreage designated in your acreage report as grown for processing apples is not eligible for coverage under this option.

(4) In lieu of sections 12(c)(1)(iii) and (iv) and (2), the production to count will include all appraised and harvested production for a unit's fresh apple acreage that grades at least U.S. No. 1 Processing, adjusted in accordance with this option.

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

(i) Fresh apple production to count with 21 percent through 40 percent damaged apple production will be reduced 2 percent for each full percent in excess of 20 percent.

(ii) Fresh apple production to count with 41 percent through 50 percent damaged apple production will be reduced 40 percent plus an additional 3 percent for each full percent in excess of 40 percent.

(iii) Fresh apple production to count with 51 percent through 64 percent damaged apple production will be reduced 70 percent plus an additional 2 percent for each full percent in excess of 50 percent.

(iv) Fresh apple production to count with 65 percent or more damaged apple production will not be considered production to count.

(v) Notwithstanding sections 14(b)(i) through (iv), if you sell any of your fresh apple production as U.S. Fancy, all such sold production will be included as production to count under this option. The following is an example of loss under the Optional Coverage for Fresh Fruit Quality Adjustment:

You have 100 percent share and designated 10 acres of fresh apples and 5 acres of processing apples in the unit on the acreage report, with a 600 bushel per acre guarantee for both fresh and processing apples and a price election of $9.10 per bushel for fresh apples and $4.76 per bushel for processing apples. You harvest 5,000 bushels of apples from your designated fresh acreage that grade U.S. No. 1 Processing or better, but only 2,650 of those bushels grade U.S. Fancy or better. You also harvest from your designated processing acreage 1,000 bushels apples that grade U.S. No. 1 Processing or better. Your indemnity would be calculated as follows:

A. 10 acres × 600 bushels per acre = 6,000 bushels guarantee of fresh apples; 5 acres × 600 bushels per acre = 3,000 bushels guarantee of processing apples;

B. 6,000 bushels guarantee of fresh apples × $9.10 price election = $54,600.00 value of guarantee for fresh apples; acreage; 3,000 bushels guarantee of processing apples × $4.76 price election = $14,280.00 value of guarantee for processing apple acreage;

C. $54,600.00 value of guarantee for fresh apple acreage + $14,280.00 value of guarantee for processing apple acreage = $68,880.00 total value of guarantee for all apple acreage;

D. The value of the fresh apple and processing apple production to count is determined as follows:

i. 5,000 bushels of apples that graded U.S. No. 1 or better − 2,650 bushels that graded U.S. Fancy = 2,350 bushels not grading U.S. Fancy;

ii. 2,350 / 5,000 = 47 percent of fresh apples that did not make U.S. Fancy grade;

iii. In accordance with section 14(b)(5)(ii): 47 percent − 40 percent = 7 percent in excess of 40 percent;

iv. 7 percent × 3 percent = 21 percent;

v. 40 percent + 21 percent = 61 percent;

vi. 5,000 bushels of apples that graded U.S. No. 1 or better × .61 (61 percent) = 3,050 bushels of fresh apple production to count;

vii. 3,050 bushels of fresh apples production to count × $9.10 = $27,755.00 value of the fresh apple production to count; 1,000 bushels of harvested marketable processing apple production to count × $4.76 price election = $4,760.00 value of the processing apple production to count;

E. $27,755.00 value of the fresh apple production to count + $4,760.00 value of the processing apple production to count = $32,515.00 total value of production to count;

F. $68,880.00 total value of guarantee for all apple acreage − $32,515.00 total value of production to count = $36,365.00 value of loss; and

G. $36,365.00 value of loss × 100 percent share = $36,365.00 indemnity payment.

[End of Example]

Signed in Washington, DC, on August 24, 2004.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 04–19596 Filed 8–24–04; 2:35 pm]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1724 and 1726

Correction of Electric Program Standard Contract Forms

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture's Rural Development Utilities Programs, is correcting its regulations relating to two RUS forms. RUS Form 211, Engineering Services Contract for the Design and Construction of a Generating Plant, and RUS Form 198, Equipment Contract, are being revised to correct two typographical errors and a numbering error, respectively.

DATES: Effective Date: September 27, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Fred J. Gatchell, Deputy Director, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1569, 1400 Independence Ave., SW., Washington, DC 20250–1569. Telephone: (202) 720–1398. FAX: (202) 720–7491. E-mail: *fred.gatchell@usda.gov.*

SUPPLEMENTARY INFORMATION: RUS has determined that pursuant to 5 U.S.C. 553, a notice of proposed rule making and opportunity for comment is impracticable, unnecessary, or contrary to the public interest and is exempt from the provisions of Executive Order Nos. 12866 and 12988. It has been