

official authorized by APHIS, prior to beginning treatment.

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Done in Washington, DC, this 18<sup>th</sup> day of August 2010.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563-AC10

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

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Apple Crop Insurance Provisions. The intended effect of this action is to provide policy changes and clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The changes will apply for the 2011 and succeeding crop years.

**DATES:** This rule is effective August 25, 2010.

**FOR FURTHER INFORMATION CONTACT:** Erin Albright, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility—Mail Stop 0812, PO Box 419205, Kansas City, MO 64141-6205, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

##### Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563-0053 through March 31, 2012.

##### E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

##### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

##### Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

##### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A

Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

##### Federal Assistance Program

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

##### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

##### Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

##### Environmental Evaluation

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

##### Background

This rule finalizes changes to the Common Crop Insurance Regulations, Apple Crop Insurance Provisions that were published by FCIC on September 8, 2009, as a notice of proposed rulemaking in the **Federal Register** at 74 FR 46023-46026. The public was afforded 60 days to submit written comments after the regulation was published in the **Federal Register**. Based on comments received and specific requests to extend the comment period, FCIC published a notice in the **Federal Register** at 74 FR 59108 on November 17, 2009, extending the initial 60-day comment period for an additional 30 days, until December 17, 2009.

A total of 193 comments were received from 39 commenters. The

commenters were members of the U.S. Congress, insurance providers, State agricultural associations, agents, an insurance service organization, producers, State departments of agriculture, grower associations, agricultural credit associations, and other interested parties.

The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

#### *General*

*Comment:* Several commenters urged FCIC to extend the comment period. A few commenters stated due to the public comment period overlapping with the apple harvest in some areas, sixty days was not adequate to properly review the proposed changes. The very producers the proposed amendment affected need ample time to study the changes and make their comments when not in the middle of their busy harvest season. An extended comment period would allow producers a fair chance to engage themselves in an issue directly affecting their livelihood. A commenter recommended extending the comment period six months and delaying the changes until the 2011 crop year. Another commenter recommended extending the comment period 30 days.

*Response:* FCIC elected to reopen the comment period for 30 days and on November 17, 2009, a notice of reopening and extension of the comment period was published in the **Federal Register**. Written comments and opinions on the proposed rule were accepted until close of business on December 17, 2009. The changes in this rule will be effective for the 2011 crop year.

*Comment:* A commenter stated the changes listed in the proposed rule seem reasonable. However, the commenter stressed the importance of letting each producer insure by orchard block, and not just as a farm entity. Each orchard block is in a different location and carries a different variety, and therefore a different value of "fresh apple production." The location can also determine whether a certain block is more prone to weather damage than another. Considering these variables, it would be unreasonable to force apple producers to insure as a farm entity rather than by block.

*Response:* Crop insurance is provided on a unit basis in accordance with the Basic Provisions and section 2 of the Apple Crop Provisions, not by block or farm entity. Therefore, policyholders must report acreage of a crop on a unit basis because all insurable acreage of apples within the unit is the basis for

determining coverage, premium, and indemnity. Apple acreage may be divided into optional units according to section 34 of the Basic Provisions and section 2 of the Apple Crop Insurance Provisions. Section 2 of the Apple Crop Insurance Provisions allows optional units on noncontiguous land or for different types. No change has been made.

*Comment:* A commenter requested that a packing house inspection on apples not be added to the policy. The commenter stated that apples are already a perishable product and delays can cost the producer a great deal especially if the product has been damaged.

*Response:* The current Apple Crop Provisions do not reference packing house inspections and no changes regarding packing house inspections were proposed. No change has been made.

*Comment:* Several commenters urged FCIC to increase the price election for processing apples. A few commenters stated they do not spray, fertilize, prune, weed spray or thin differently for processing apples or fresh market apples in their area, but realize this is not the case in every State. Because of this, the commenters think the processing apple price election is too low. A commenter stated their reason for the requested price increase is the U.S. Standards for processing apples, established on June 1, 1961, no longer reflects the present industry standards that producers must meet. These new standards are much higher and are more costly to meet. Comparing a large apple processing plant's processing requirements to U.S. #1 Processing or U.S. #1, the quality requirements are U.S. #1 not U.S. #1 Processing. This is especially true in reference to peeling the apple. In another processor's standard, the amount of allowable defects is 2 percent by weight not the 5 percent allowed by U.S. #1 processing.

A commenter recommended the processing apple price be 50 percent of the fresh market apple price. A few commenters recommended the processing price election be \$6.00 to \$7.00 per bushel. A few commenters stated the processing price election should be \$5.50 per bushel. Another commenter stated the average price received for processing over the past three years in their area was \$4.54 and believes this should be a minimum price for processing apples.

*Response:* FCIC establishes the price for apples through the Special Provisions because such prices must be set each year. Further, the price is not based on the cost of producing the crop.

The price is based on the best estimate of the average price producers can expect to receive for mature on-tree fruit ready for harvest. Since the Federal Crop Insurance Act (Act) limits coverage to crops in the field, with only a few exceptions, post-harvesting costs are excluded from the price data used to arrive at the value of processing apples for crop insurance purposes. Further, FCIC has no authority to arbitrarily set the suggested price or set a minimum price. According to the Act, the price election is the expected market price at the time of harvest. Any change to price elections for apples will be stated in the Special Provisions. No change has been made.

#### *Section 1—Definitions*

*Comment:* A few commenters stated the definition of "damaged apple production" should be revised to indicate that U.S. Fancy or better may be modified in the Special Provisions to make it clear that the Special Provisions have the authority to change these grades (*i.e.* Washington Fancy Grade, marketing orders, etc.).

*Response:* The definition of "grade standards" has language referencing 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. However, for the purposes of determining damage, only those standards provided in the Special Provisions, which are comparable to U.S. No. 1 Processing Grade and U.S. Fancy Grade, will be used. No change has been made.

*Comment:* A commenter stated the proposed definition of "fresh apple production" stating policyholders must "follow the recommended cultural practices generally in use for fresh apple acreage in the county as determined by agricultural experts" is not practical. According to the Common Crop Insurance Policy Basic Provisions, agricultural experts are "persons who are employed by the Cooperative State Research, Education and Extension Service or the agricultural departments of universities, or other person approved by FCIC." The commenter believed the "expert" should be the crop adjuster using guidelines to determine what apple variety is commonly grown for processing (*ex.* Taylor Rome or York). The extension agent is charged to help educate the commercial farmer using research based information. The

commenter believed extension agents should not be a regulator/expert for crop insurance.

*Response:* Due to frequent changes in apple cultural practices apple growers used in different areas of the country, neither FCIC nor the insurance providers have the knowledge necessary to determine the recommended cultural practices generally used for the apple acreage in the area and, therefore, has deferred such determinations to agricultural experts who do have the knowledge to determine cultural practices. FCIC has revised the phrase “as determined by agricultural experts” to “in a manner generally recognized by agricultural experts” to be consistent with the definition of “good farming practices” in the Basic Provisions.

*Comment:* Several comments were received regarding subparagraph (4) in the definition of “fresh apple production.” A few commenters understood the necessity and rationale behind the proposed rule change to the definition of “fresh apple production.” A commenter appreciated FCIC taking steps to avoid fraud and abuse of crop insurance. Another commenter was in favor of the proposal to clarify the definition of “fresh apple production.” While the commenter believed this will cause some concern in some of the apple growing areas, they believe it is needed to improve program integrity.

*Response:* FCIC believes such changes are necessary to protect the integrity of the program. No change has been made.

*Comment:* Several commenters stated that in North Carolina the majority of apples orchards are sprayed, mowed and maintained to grow fresh apple production. Many of the apple producers in North Carolina have renewed their orchards over the past few years by planting new varieties specifically for the fresh market. However, in the past five years, North Carolina has received adverse weather conditions resulting in damaged apple production. The result of these conditions has been that apples originally grown for the fresh market have had to be diverted for processing. The commenters stated because the proposed rule requires “verifiable” proof that at least fifty-percent of the fresh apple acreage was sold as fresh apples in one or more of the past three years, many of North Carolina’s largest producers would be locked out of the market for fresh market apple insurance because of the unique weather conditions they have experienced in the past three years. The proposed amendments would basically eliminate crop insurance for producers who have suffered losses beyond their control, at

a time when those same producers are most in need of a safety net to manage risk (and to access credit for another crop year). A commenter questioned what the proposed changes to the definition of “fresh apple production” would do to a policyholder’s fresh apple production coverage if it was damaged three years in a row. It seems as though that would be no fault of the policyholder (since due to an insurable cause of loss) but would result in the policyholder not being able to insure the apples as fresh. Therefore, the commenters urged FCIC to take into account the weather related challenges apple producers have encountered by lengthening the time period in which apple producers can demonstrate in one of those years they have sold at least 50 percent of their apple acreage in the fresh market. Several commenters recommended lengthening the time period to at least five years, as opposed to three. Another commenter recommended a threshold of two of the last five years as this would be consistent with other coverage thresholds, such as written agreements for grapes. A few commenters recommended leaving the policy as it currently is and not making the proposed changes.

*Response:* FCIC understands apple producers may be subject to conditions that are out of their control. However, there have been issues with respect to whether producers seeking insurance have the experience or whether producers follow cultural practices appropriate to produce fresh apples. Fresh apples receive a higher price than processing apples and policyholders must demonstrate that they can produce fresh apples to be eligible to insure their apple acreage as fresh. However, FCIC agrees the proposed number of years in which policyholders must demonstrate they have sold at least 50 percent of their apple production as fresh to be eligible to insure their acreage as fresh may be too restrictive. Therefore, FCIC has revised the definition of “fresh apple production” by lengthening the time period in which policyholders can demonstrate that they have sold at least 50 percent of their production from fresh apple acreage as fresh apples to one of the last four crop years. This time period is consistent with section 7 of the Apple Crop Provisions which requires apples be grown on tree varieties that are adapted to the area and have, in at least one of the previous four years, produced a certain amount of production to be insured.

*Comment:* A few commenters stated the States in the Pacific Northwest Region primarily produce apples only

for the fresh market and, therefore, this region should have more stringent requirements for substantiating fresh production in the definition of “fresh apple production.” The commenters recommended these requirements include requiring the producer to have records to support two years in the past four years or possibly even two years in the past three years. Also, the producer must be able to provide pack-out records and the percentage of fresh history should be greater than 50 percent.

A commenter stated apple producers are subject to a variety of growing conditions that are uncontrollable and cannot be anticipated. Additionally, apple producers across the country employ different growing methods, face different growing challenges, and grow very different produce. What complicates the issue even further is the fact that FCIC would use an average of the previous three years sales for determining if producers are able to buy all fresh insurance or a mixture of fresh and processing insurance. Asking producers who have a significant financial investment in their product to carry insurance that would not cover their input costs is not sound policy.

*Response:* FCIC does not believe it is necessary to have more stringent requirements for substantiating fresh production in the Pacific Northwest Region. The intent of the provisions is just to ensure that the apples are intended for a fresh market and that the producer has the capability of producing fresh market apples. The final provisions should accomplish these goals. Therefore, the fresh apple production requirements will remain consistent from region to region. No change has been made.

*Comment:* A few commenters stated there needs to be clarification in subparagraph (4) of the definition of “fresh apple production” so that events beyond the producer’s control do not affect the designation of acreage as fresh apple acreage. A commenter requested that any year declared as an emergency by the Governor be excluded and replaced with the next most recent year. Another commenter recommended adding to the proposed policy: “that any year when a Secretarial Disaster Declaration is made will be excluded and replaced with the next most recent year (provided that next most recent year was not also a disaster declared year).” Another commenter stated since the ultimate use of many varieties depends so much on weather and markets, the 50 percent rule seems appropriate. However, due to multi-year losses caused by adverse weather, the

commenter requested that in the event of multiple year claims, that a loss year could be replaced by a prior year in order to comply with the 50 percent rule.

*Response:* FCIC understands multi-year losses caused by adverse weather could make it difficult for some policyholders to prove they have sold at least 50 percent of their production from fresh apple acreage as fresh apples. However, replacing a year designated as a disaster with the next most recent crop year would add unnecessary complexity and confusion to the requirement. As stated above, FCIC has revised the definition of "fresh apple production" by lengthening the time period in which apple producers can demonstrate that they have sold at least 50 percent of their production from fresh apple acreage as fresh to one of the last four crop years. This change should lessen the likelihood a policyholder would be unable to insure their apple acreage as fresh due to multi-year losses and is less complex to administer.

*Comment:* A few commenters stated subparagraph (4) of the definition of "fresh apple production" is vague and needs to be clarified something like: "\* \* \* You certify and, if requested by us, provide verifiable records to show at least 50 percent of the production from acreage reported as fresh apple acreage was sold as fresh apples in one or more of the three most recent crop years from the specific acreage to be insured." The commenters stated this needs to be in place to prevent policyholders from moving records between units, which undermines program integrity. Another commenter stated it is good the requirement in the definition of "fresh apple production" to show 50 percent of the production from the acreage reported as fresh was sold as fresh in one or more of the three most recent crop years is not tied to either a unit basis or a whole-farm basis. This provides flexibility and the leeway to help producers qualify as fresh market producers even if they have damage on part of their farm that requires part of their production to go to the processor. It also should encourage producers to buy above a catastrophic level of coverage in order to have separate units for fresh and processing apples even if the majority of their acreage is for processing.

*Response:* FCIC agrees the policyholder should provide verifiable records by unit to prevent producers from moving records from unit to unit. Insurance coverage is provided on a unit basis. Therefore, it is appropriate to require verifiable records by unit. FCIC has revised the provisions to state that

to qualify as fresh apple production a policyholder must certify, and provide records if requested, that at least 50 percent of the production from each unit reported as fresh apple acreage, was sold as fresh apples.

*Comment:* A few comments were received regarding the term "verifiable records" used in subparagraph (4) of the definition of "fresh apple production." A few commenters stated it is critical that FCIC clearly define the term "verifiable records" in the proposed amendments. Producers need to have a clear and concise explanation of what constitutes "verifiable records" in order to properly comply with the regulations.

A commenter stated the term "verifiable records" needs to be made clear because of the multiple ways producers report their production. At present, there are many different types of records being submitted for reporting apple production. The producers need clear and specific definition of what will be accepted. An example would be: Name of buyers, date sold, quantity sold, grade, variety, and unit harvested from.

*Response:* Subsequent to the proposed rule, FCIC published a final rule amending the Common Crop Insurance Regulations, Basic Provisions on March 30, 2010. A definition for the term "verifiable records" was added to that final rule to refer the reader to the definition contained in 7 CFR part 400, subpart G. Therefore, a definition of "verifiable records" is not needed in the Apple Crop Provisions since the Common Crop Insurance Regulations Basic Provisions are a part of the policy. No change has been made.

*Comment:* A commenter stated a significant number of apple producers sell all or a portion of their apple production to the public as fresh apples, without undergoing any change in its basic form. Because the apple production is sold directly to the consumer without an intermediary, they are required to have a pre-harvest production appraisal completed prior to opening the orchard to the public. The commenter recognized the "Pre-Harvest Appraisal" policy requirement as a valuable element to the integrity of the program and that it provides the means for direct-marketers to substantiate the disposal of their apple production. An addition to the Apple Appraisal worksheet that references how the crop is to be disposed of would provide the supporting documentation necessary to meet this requirement.

A commenter stated direct market, retail, u-pick operations will not be able to provide third party verifiable records to show that at least 50 percent of the

production was sold as fresh apples. All direct market, retail, u-pick operations that sell directly to the consumer without an intermediary are required to have a pre-harvest production appraisal. The commenter recommended adding a section/box on the pre-harvest appraisal that states, "Crop Disposition: Fresh or Processing" could meet the requirement.

*Response:* Under the Apple Crop Provisions, for direct marketed crops, pre-harvest and any verifiable records will be used to establish the production to count. To the extent that there are not verifiable records, production to count will be based on the appraisal. Although pre-harvest appraisals establish the production to count, a pre-harvest appraisal does not establish whether the production was sold as fresh apple production. Therefore, pre-harvest appraisals cannot be used to meet the requirements contained in paragraph (4) of the definition of "fresh apple production." The direct market records can be used to establish the production sold as fresh. No change has been made.

*Comment:* A commenter stated there should be a period of three years the producer has to start keeping these records as most do not keep this type of record now. The commenter recommended by the year 2015 a producer should be able to produce a fresh apple production record. Another commenter recommended a delay of the implementation date of this rule would permit producers ample time to ensure that all necessary records are being kept and that all requirements are being met in the event they have to file a claim.

*Response:* As with all APH programs, there is a requirement to certify yields based on actual records of production or transitional yields. This means producers should already have these records of past production. Therefore, the changes in this rule will be effective for the 2011 crop year. No change has been made.

*Comment:* A few commenters stated a producer may have fresh quality fruit grown in one of the past three years, but did not have a market for that fresh quality fruit. Because the policy does not insure against the inability to market the fruit, it should not limit the producer's ability to have insurance for fresh apple production. The commenters questioned whether this fresh acreage would not be covered if they are unable to prove a history and the provisions do not include language indicating when an appraisal is appropriate. The commenters recommended subparagraph (4) of the definition of "fresh apple production" should state verifiable records may also include appraisals performed by the

insurance provider. Another commenter stated the requirement in subparagraph (1) refers to production “\* \* \* sold, or could be sold \* \* \*” The commenter questioned whether the requirement in subparagraph (4) should have something similar to account for production that could have been sold as fresh (with an appraisal as documentation of the fresh quality) but was not.

A few commenters stated the definition of “fresh apple production” needs to include language that will indicate the FCIC/insurance provider action if the producer is not able to provide records of fresh production being sold due to specific circumstances. A commenter stated there would be a concern if the acreage would not be insured in this situation as policyholders could then use this provision to their advantage by not having to pay any premium after it is apparent that they do not have a loss by indicating after the fact that they do not have the necessary records to be insured as fresh apple production. The commenter questioned whether there would be a need for the type being insured for the current crop year to be changed from fresh to processing in this situation. The commenter also questioned whether a misreporting information factor would apply in this type of situation and if additional language should be added to clarify what would happen in this situation. The commenters also recommended that the coverage be changed from fresh to processing in these types of situations.

*Response:* Under paragraph (4) of the definition of “fresh apple production,” for the acreage to qualify as for fresh fruit production, at least 50 percent of the apples had to be sold as fresh fruit. Therefore, the appraised production is not relevant to this particular requirement. Paragraph (1) only pertains to the quality of the apples, not whether they are sold or the quantity sold. Therefore, appraisals could be used for that particular requirement. If a policyholder is unable to find a market for their fresh quality apples as fresh apple production in at least one of the four most recent crop years, it would be questionable whether they were growing apples in an area conducive to producing fresh quality apples. If there is no market for the fresh fruit, then it must be considered as processing and should not be eligible to receive the higher price election.

Subsequent to the proposed rule, FCIC published a final rule amending the Common Crop Insurance Regulations, Basic Provisions on March 30, 2010, which removed the misreporting information factor.

Therefore, the misreporting information factor would not apply in this situation. If a producer is certifying that 50 percent of the apples for the unit were sold as fresh, the producer is also certifying they have the records in support. If the producer provides this certification and does not have the records, this could be considered a false statement, which carries several different sanctions including avoidance of the policy, denial of an indemnity for a possible scheme or device, or administrative, civil or criminal sanctions. Once certified, the producer cannot change the certification. No change has been made.

*Comment:* A commenter stated while verifiable sales records may not appear to be a problem to FCIC in the definition of “fresh apple production,” apple producers do not believe it is fair to entirely depend on sales records to prove fresh apple production. The commenter recommended FCIC consider additional data in cases where multiple years of hail and/or weather related conditions damage an apple crop, that was intended to be sold as fresh fruit, but then had to be sold as processing fruit. In these cases, FCIC should consider asking apple producers to provide a copy of their spray records to document it was their intention to produce fresh apples. This requirement would be fair to apple producers and would be consistent with FCIC’s proposed rule which stated “FCIC also proposes to revise the definition to clarify insureds must follow the recommended cultural practices generally in use for fresh apple acreage in the county as determined by agricultural experts.” Using a combination of sales records and spray records will help ensure the new apple policy is fair to apple producers who are doing their best to produce a quality fresh apple and are also following the cultural practices necessary to produce a quality fresh apple. Apple producers understand and appreciate FCIC’s intent to clarify existing policy provisions and at the same time reduce vulnerability to program fraud, waste and abuse. The commenter requested that the new policy provide policyholders with an additional reporting opportunity when hail and weather conditions ruin an apple crop in three or more years. Giving the policyholder this additional reporting opportunity will help document the cultural practices and the additional expenses that are involved in bringing a fresh apple to market.

*Response:* As stated above, FCIC has amended the requirement to allow the acreage to qualify as fresh production if the producer sold at least 50 percent of

the production as fresh apple acreage in one or more of the four most recent crop years. It is unlikely that weather would prevent the sales of fresh apples for four consecutive years and, if it does, it provides evidence that the area may not be conducive to the production of fresh apples. Insurance for the fresh market can only be provided if the producer can produce and market apples as fresh. This requirement is simply a measure of that ability.

*Comment:* A commenter stated fresh cut apple slices are sold for fresh consumption. These should be considered fresh apples in the definition of “fresh apple production,” even though the apple undergoes a change to its basic structure. It is consumed in the same way most people would eat fresh apples.

*Response:* If a policyholder sells fresh apple production for the purpose of apple slices, the apples would meet the requirements contained in subparagraph (1) of the definition of “fresh apple production.” FCIC does not consider simply slicing the apple to be a change in basic form. However, to meet all the requirements of fresh apple production the policyholder would still need to be able to certify, and, if requested, provide records to show at least 50 percent of the production from acreage reported as fresh apple acreage by unit, was sold as fresh in one or more of the four most recent crop years. No change has been made.

*Comment:* A few commenters stated the language in the definitions of “fresh apple production” and “processing apple production” stating “or could be sold” is very confusing and weakens these two definitions. The commenters questioned what exactly is meant by “could be sold.” The commenters recommended the language be changed to “or intended to be sold.”

*Response:* The Apple Crop Provisions do not insure against a policyholders inability to sell their fresh apple production as fresh apples. Assuming that the producer meets all the other requirements for fresh production, if a policyholder has fresh apple production, but is unable to market the fruit to sell as fresh, these apples should still be counted as fresh apple production to count and valued at the fresh apple price election. Therefore, the phrase “could be sold” should be included in the definition. The suggested revision to the definition cannot be adopted because use of the phrase “or intended to be sold” is vague and it is difficult to prove intent. No change has been made.

*Comment:* A few commenters stated the definitions of “fresh apple

production” and “processing apple production” changed “Apple production” to “Apples” at the beginning (and “is sold” to “are sold” to match) but subparagraph (1) still refers to a change in “its” basic form or structure, which no longer matches the plural subject “Apples.” The commenters stated a possible solution would be to delete the word “its” in each definition.

*Response:* FCIC agrees the word “its” no longer matches the plural subject and has deleted the word “its” from the definitions of “fresh apple production” and “processing apple production.”

*Comment:* A commenter stated the structure of the definition of “fresh apple production” indicates any apples that fail to meet all four requirements would not be considered fresh apple production and presumably, by default, would be considered processing apple production. The first part of the definition of “processing apple production” would support this, but the rest might not. For example, apples that met subparagraphs (1) through (3) of the “fresh apple production” definition, but did not have the records required in subparagraph (4) that at least half were sold as fresh at least once in the last three years would not meet the “fresh apple production” definition, but would not fall under either subparagraph (1) or (2) of the “processing apple production” definition. The commenter stated if the failure to meet any one of the four requirements for fresh means the apple production will be considered processing, it would seem the “processing apple production” definition could end after “Apples from insurable acreage failing to meet the insurability requirements for fresh apple production.” However, that might leave open the question of whether apples reported as fresh on the acreage report are really to be considered and insured as processing. The commenter stated these definitions need to be reviewed and probably rewritten.

*Response:* FCIC has clarified in the definition of “fresh apple production” that if the acreage has production that does not meet all of the requirements for fresh apples, the acreage must be designated on the acreage report as acreage as processing apple production. Therefore, such production will fall within paragraph (2) of the definition of “processing apple production.”

*Comment:* A few commenters stated the first word of subparagraph (1) in the definitions of “fresh apple production” and “processing apple production” does not need to be capitalized unless the numbered subparts start a new line, in which case the first word of the other

subparts would need to be capitalized as well.

*Response:* FCIC has revised the definitions of “fresh apple production” and “processing apple production” to create subparagraphs and has capitalized the first word of each subparagraph.

*Comment:* A few commenters questioned if a policyholder reports apple acreage as fresh on the acreage report, but ends up selling the production for processing, whether that will require a retroactive revised acreage report to change the insured type from fresh to processing. Or, if the acreage remains insured under the intended fresh type, the commenters questioned whether that year’s acreage and production will be certified as fresh (as reported) or processing (as the production was disposed) to update the APH database for the subsequent crop year. If so, this will present significant difficulties, and even more so if different coverage levels are involved.

*Response:* By designating the apples as fresh on the acreage report, the policyholder is certifying they meet the requirements to qualify as fresh apple production. If a policyholder reports apple acreage as fresh on the acreage report, and meets the requirements to qualify as fresh apple production, but has a loss in quality due to an insured cause of loss and sells the production for processing; this will not require a retroactive revised acreage report. The crop is still insured as fresh apple production and the producer may be eligible for an indemnity for the damaged production. If the production is not damaged, it is included as fresh apple production to count. That production would be reported on the subsequent year’s production report. Regardless of whether the apples are damaged, failure to sell the production as fresh apple production may impact the ability to insure the acreage as fresh market production in future crop years. No change has been made.

*Comment:* A commenter stated the definitions of “fresh apple production” and “processing apple production” contain requirements that are very troubling when determining what production is used for claim purposes. It currently appears that production produced from acreage designated as fresh apples on the acreage report would not meet the definition of fresh apple production and, therefore, could not be included as production to count, if such production was sold after undergoing a change in basic structure (*i.e.*, processing apple). This would be true even in cases where the production did not qualify as damaged production.

*Response:* Under the base policy, production to count is determined by whether the apple is marketable or whether it grades at least U.S. No. 1 Processing, not on the disposition of the fruit. Therefore, production from acreage that meets all the requirements for fresh apple production that grades at least U.S. No. 1 Processing will be considered as production to count, even if such production is sold for processing. No change has been made.

*Comment:* A few commenters understood in the definition of “type” that replacing the specific definition of “Fresh, processing, or varietal group apples\* \* \*” with the generic “A category of apples as designated in the Special Provisions” provides flexibility “to allow for type changes in the future” as stated in the Background of the proposed rule. In such cases, it would be helpful to provide a sample Special Provisions for reference as to whether any type changes are being proposed, presumably not immediately for Apples since the Background refers to “future” changes. Such a generic definition also makes it less clear than before as to what might constitute a type; it becomes necessary to look up one or more of the county Special Provisions to get some idea as to what “types” are involved when referenced elsewhere in the Crop Provisions. A few commenters questioned with the proposed rule eliminating the term “varietal group” and revising the definition of “type,” will FCIC be utilizing the existing numerical type codes as shown in the Special Provisions. If FCIC is considering expanding to new type codes, the commenters recommended the use of new type codes and not re-use of the existing 111 and 112 type codes, as well as the 114 and 115 type codes, as this may create issues with converting existing data. The commenter stated that if the proposed changes are implemented, it will be necessary to change the Special Provisions, too. Because of the importance of the Special Provisions, the commenter recommended that FCIC provide insurance providers with a preview of the Special Provisions.

*Response:* The types and numerical type codes will not change for the 2011 crop year. As stated in the proposed rule, a more generic definition of “type” will allow for changes or additional types in the future. FCIC agrees if type codes are expanded in the future, new type codes may be used as opposed to using the existing type codes. This is also consistent with other Crop Provisions and allows FCIC to make changes in the Special Provisions, if applicable, and without having to

promulgate regulations to revise, add or change type of apples. This will allow insurance of new types much quicker than if rulemaking were required, allowing FCIC to be more responsive to the risk management needs of producers. By including only the insurable apple types in the Special Provisions for a county, which are provided annually to the producer, there should be no confusion in any county what types are insurable. Because no new types are currently proposed to be added, there is nothing available for preview. No change has been made.

#### Section 2—Unit Division

*Comment:* A few commenters stated it is difficult to comment on the impact of this proposed change when the definition of “type” is essentially deferred to the Special Provisions so the commenters cannot be certain how many types there might be. If fresh, processing and varietal groups continue to be separate types, then the proposed change will allow separate optional units for fresh and processing apples as well as for varietal groups and non-contiguous land, as before. This probably would be a beneficial change for apple producers who produce both fresh and processing, since the types are supposed to be kept separate anyway. The commenters questioned if RMA has researched the potential increased risk of allowing these additional optional units to determine if the premium rates might need to be revised accordingly.

*Response:* As stated above, the types and numerical type codes will not change for the 2011 crop year. FCIC agrees allowing separate optional units by type will be a beneficial change for apple policyholders who produce both fresh and processing apples. FCIC reviewed the effect on losses due to allowing optional units by type and determined this change should not have any adverse affect on current premium rates. No change has been made.

*Comment:* A few commenters questioned when it will be determined whether the apple production is considered fresh or processing; when it is reported on the current year’s acreage report; when final disposition of the production is made; or when the acreage and production is certified to update the next year’s APH database. If apple acreage is reported as fresh on the acreage report, but then sold as processing, the commenters questioned what that will do to the separate optional units for fresh and processing apples.

*Response:* Designation of apple acreage as fresh or processing occurs on

the acreage report based on the certification provided by the producer. If the acreage is subsequently determined not to qualify as fresh apple production, the policy and law provides for remedies. As stated above, production to count is determined in accordance with the claims provisions, not the disposition of the crop. The production to count for the current crop year will be considered as the production to be reported for the next crop year. Apple production, from apple acreage designated as fresh on the acreage report, that is sold as processing, could affect the producer’s ability to qualify their apple acreage as fresh for the subsequent crop year. If, in the subsequent crop year, the producer is unable to prove that at least 50 percent of the production from acreage reported as fresh apple acreage by unit was sold as fresh apples in one or more of the four most recent crop years, the acreage would not qualify as fresh for that year. No change has been made.

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

*Comment:* A commenter stated provisions that will allow optional units by type, processing or fresh, and allow separate levels of coverage by type should solve current policy inequities and encourage proper separation of types. A few commenters stated section 3(a) may be beneficial in some regions but the majority of apple production in the Pacific Northwest is intended for fresh market only.

*Response:* FCIC agrees allowing optional units by type and allowing different coverage levels for all fresh apple acreage in the county and for all processing apple acreage in the county will encourage proper separation of processing and fresh acreage. FCIC had received several requests prior to the proposed rule to allow separate coverage levels by fresh and processing apple acreage. Offering separate coverage levels by fresh and processing apple acreage provides the apple producers a better method to manage their risk. No change has been made.

*Comment:* A few commenters did not agree with the intended effect of the proposed provisions in section 3(a). It was the commenters’ recommendation that the policyholder continue to be allowed to choose a single coverage level on a county basis and all insurable types in the county would be insured on this basis. Another commenter stated if the intent in the future is to allow different levels, prices and units by variety (like occurred for grapes this year) in section 3(a), the policy should

be prepared for this. The commenter recommended the language should state “You may select only one coverage level by type,” rather than saying by fresh and by processing.

*Response:* FCIC did not intend to allow coverage levels by type. The intent of the provisions in section 3(a) is to allow different coverage levels for all fresh apple types in the county and for all processing apple types in the county. Offering separate coverage levels by fresh and processing apples provides the apple producers a better method to manage their risk. No change has been made.

*Comment:* A few commenters stated they have concerns with making the proposed change in section 3(a) since the different types are not treated as separate crops (such as for California grapes where the insureds would have to add all types/varieties by the sales closing date with the chosen level and price) but are potentially separate optional units that could end up being combined if the optional unit requirements are not met. The commenters questioned what happens if fresh apples are being insured and processing apples are added to the acreage report (because all apples in the county must be insured) or it is determined the apples do not qualify as fresh apple acreage during the coverage period, when it is after the sales closing date deadline to select a coverage level. These items need to be addressed in the provisions.

*Response:* The intent of the proposed provisions in section 3(a) is to allow separate coverage levels for all qualifying fresh apple acreage in the county and for all processing apple acreage in the county. Offering a separate coverage level by fresh apple acreage and processing apple acreage does not automatically imply each type be treated as a separate crop. FCIC has revised section 3 to include provisions if the policyholder only has fresh apple acreage designated on the acreage report and processing apple acreage is added after the sales closing date, the insurance provider will assign a coverage level equal to the coverage level the policyholder selected for their fresh apple acreage. If the policyholder only has processing apple acreage designated on the acreage report and fresh apple acreage is added after the sales closing date, the insurance provider will assign a coverage level equal to the coverage level the policyholder selected for their processing apple acreage. The producer knows if the acreage qualifies as fresh apple acreage by acreage reporting and if the information is incorrectly



reported, there are remedies in the policy and by law.

*Comment:* A few commenters questioned in section 3(a) if the Special Provisions continue to designate fresh, processing, and varietal groups as separate types, would the acreage reported as fresh and the acreage reported as processing within the same varietal group be allowed to have different coverage levels although they may be required to have the same price election.

*Response:* As stated above, the types and numerical type codes will not change for the 2011 crop year. Varietal groups are identified as fresh types in the Special Provisions. Therefore, any apple acreage grown for processing must be designated as the processing apple type and would not qualify as a fresh type. The price election is different for fresh apple types and the processing apple types. Acreage reported as fresh and the acreage reported as processing would be allowed to have different coverage levels. No change has been made.

*Comment:* A few commenters questioned whether in section 3(a) an apple producer would be able to elect catastrophic risk protection (CAT) coverage on the processing apple acreage and buy-up coverage on fresh apple acreage as long as the price percentage on the fresh was the same as the CAT percentage. The commenters questioned if the option to have different levels is intended to apply only to different buy-up levels. Some Crop Provisions include a statement to the effect that if CAT coverage is elected on any type/variety, then all types/varieties must be CAT.

*Response:* If the policyholder elected the CAT level of insurance for fresh apple acreage or processing apple acreage, the CAT level of coverage will be applicable to all insured apple acreage (fresh and processing) in the county. FCIC has revised the provisions accordingly.

*Comment:* A few commenters stated it was their understanding the intent of the proposed section 3(a) was to allow the policyholder to elect different coverage levels for fresh apple acreage versus processing apple acreage. The language does not currently indicate this intent as it only indicates one coverage level may be elected for each of these different types of apples. If this is the intent, the commenters stated the language needs to be clarified such as "You may select a different coverage level for fresh apple acreage and processing apple acreage." This revised language addresses the fact the coverage level could be different for each of these

different types versus previously being limited to the same coverage level percentage for both types. When the language states one level may be selected for each of these two types it is not clear whether it must be the same or can vary between these two types. The language needs to be clarified so it is clear as to what is being intended.

*Response:* Section 3(a) specifically states that it allows different coverage levels for processing and fresh apples. It does not mention "type" at all so there should not be any confusion. FCIC has revised the provisions to add an example to clarify a policyholder may select one coverage level for all fresh apple acreage in the county and a different coverage level for all processing apple acreage in the county.

*Comment:* A commenter stated the first comma between the words "including" and "interplanted" in section 3(c) should be deleted.

*Response:* FCIC has revised the provisions accordingly.

*Comment:* A few commenters questioned using the word "bearing" in redesignated section 3(c)(2). Producers are required to report their uninsurable acres, and when trees are first planted, the trees will be non-bearing. The commenters questioned whether it is really the intent for producers to report zero trees on their uninsurable acres.

*Response:* The information that must be submitted in accordance with section 3(c) is required in order to establish the producer's APH approved yield and the amount of coverage. While section 3(c)(2) only requires the bearing trees on insurable and uninsurable acreage to be reported, the number of bearing and non-bearing trees on insurable and uninsurable acreage must be reported on the Pre-acceptance Worksheet.

However, since non-bearing trees are not eligible for coverage under the policy, the intent is to have the producer report zero if there are no bearing trees in the unit. Since premium and indemnity payments are based on the number of trees that meet eligibility requirements, insurance providers are required to track bearing trees as outlined in the Crop Provisions and the Crop Insurance Handbook. No change has been made.

*Comment:* A few commenters questioned the need to know the planting pattern in redesignated section 3(c)(3). This requires space on the Pre-acceptance Worksheet that could better be used to ask if the producer is "intending to direct market" any portion of their crop. The commenters stated the insurance providers already capture tree spacing and tree count, which is what is needed to determine if there have

been tree removals or acreage reductions.

*Response:* FCIC requires the policyholder to report the planting pattern so the insurance provider can use this information to determine if there is adequate tree spacing for the policyholder to carry out the recommended orchard management practices. No change has been made.

*Comment:* A commenter was in favor of the language in section 3(d), which allows the insurance provider to charge uninsured causes (rather than lower the guarantee) if the producer fails to notify the insurance provider of an event or cultural practice that reduces the yield potential. This will provide incentive for the producer to report this to the insurance providers rather than wait to see if they are caught at loss time.

*Response:* FCIC agrees the language proposed in section 3(d) will provide incentive for policyholders to notify their insurance provider of an event or cultural practice that reduces the yield potential. No change has been made.

*Comment:* A few commenters stated section 3(d) specifically states the yield used to establish the production guarantee will be reduced. Although much of this language exists in the current Apple Crop Provisions, the commenters stated FCIC needs to clarify what the yield will be reduced to or the procedures to be applied to reduce the yield.

*Response:* There are numerous possible situations and it is not possible to list them all in the policy. For this reason, instructions are provided in sections 7F(2)(c) through (f) of the Crop Insurance Handbook. Since the preamble to the Basic Provisions already states that the handbooks issued by FCIC apply to the policy, it is not necessary for a specific reference to such procedures in this provision. No change has been made.

*Comment:* A few commenters stated section 3(d), as written in the proposed rule, now appears to require a yield reduction any time anything happens that may reduce the approved APH yield. The commenters recommended either retaining the phrase "as necessary" before the phrase "based on our estimate" or changing "We will \* \* \*" to "We may \* \* \*"

*Response:* FCIC agrees and has retained the phrase "as necessary" before the phrase "based on our estimate" in section 3(d).

*Comment:* A few commenters stated the phrase "as indicated below" at the end of the first sentence of section 3(d) could be deleted since the subsequent phrase "If the event or action occurred:" leads into sections 3(d)(1) through (3).



*Response:* FCIC has revised the provisions accordingly.

*Comment:* A few commenters stated the reference to the phrase “any event or action of any of the items listed in sections 3(c)(1) through (4)” in section 3(d) should be changed to refer to section 3(c)(1), or possibly sections 3(c)(1) and (4), since section 3(c)(2), number of bearing trees, and section 3(c)(3), age of trees and planting pattern, are not an “event or action” that will occur at a particular time and potentially reduce the approved actual production history (APH) yield.

*Response:* FCIC agrees and has revised the provision to refer to any “situation” listed in sections 3(c)(1) through (4). This better describes all of the possibilities.

In addition, FCIC has removed the phrase “of any of the items” in section 3(d) because it is not needed.

*Comment:* A few commenters stated according to the Background of the proposed rule, this proposed change is intended to eliminate redundancy, but there is still a fair amount of repetition in sections 3(d)(1) through (3). As one example, section 3(d) begins “We will reduce the yield used to establish your production guarantee \* \* \*” but that phrase is repeated in each of sections 3(d)(1) through (3) when perhaps it could be abbreviated to something like “\* \* \* the yield will be reduced \* \* \*”].

*Response:* FCIC has revised the provisions.

*Comment:* A few commenters recommended language be added to the last sentence of section 3(d)(1) to read as follows: “\* \* \* If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee or assess uninsured cause of loss against your claim at any time we become aware of the circumstances.” The phrase “or assess uninsured cause of loss against your claim” is the additional suggested language being proposed. The producers have a responsibility to report to us damage and removal of trees, etc. If they report it to us timely, we can adjust their production guarantee and premium. There should be a penalty if they do not timely report this information and it is discovered by the adjuster at claim time. Currently there is no penalty, so there is little incentive to timely report this information to us.

*Response:* FCIC does not agree the additional suggested language should be added. Section 3(d)(1) refers to circumstances that occur before the beginning of the insurance period. Coverage can never be provided for any damage occurring prior to the beginning

of the insurance period. Therefore, premium cannot be charged and there cannot be any uninsured cause of loss appraisals for coverage that could never be provided. No change has been made.

*Comment:* A commenter questioned, in proposed section 3(d)(1) for a carryover policy, how this is even possible as the current crop year’s insurance period begins on the day immediately following the end of the insurance period for the prior crop year (in most cases harvest of the crop). It would appear in most cases if the insured had damage to the prior year’s crop on trees or damage to the trees themselves, the insured would report a notice of loss.

*Response:* The insurance period ends when the crop is harvested, so if the trees are thinned at the end of harvest but before it is complete, this would be prior to the start of the insurance period. However, because it does not affect the harvest, sections 3(d)(2) or 3(d)(3) would not be applicable and the provisions of section 3(d)(1) would apply. No change has been made.

*Comment:* A few commenters questioned in sections 3(d)(2) and (3) if insureds will always be aware of an event or action that “may occur after the beginning of the insurance period \* \* \*” in order to notify the insurance provider of that potential event or action. The commenters questioned how something unknown to the insured can be reportable. A commenter recommended deleting the opening phrase “Or may occur” in each of these subsections. And if such notification is not provided, but the event or action does not occur, does section 3(d)(3) still require the insurance provider to do an appraisal and reduce the approved APH yield. A commenter stated sections 3(d)(2) and (3) indicate both the current year’s APH and the subsequent crop year’s APH will be reduced; the commenters questioned whether this was the intent.

*Response:* Generally, producers should be aware of what is going on in their farming operations, including situations that may affect this year’s crop production that may occur after the beginning of the insurance period (e.g., a planned orchard renovation). Therefore, the producers should be able to timely notify their reinsured company. In situations where a planned event (e.g., grafting of new varieties on existing trees) does not occur, then no adjustments are made since the situation did not occur. For situations impacting the yield used to establish the production guarantee after insurance has attached but the reinsured company was not notified, production lost due to

uninsured causes equal to the amount of the reduction in the yield used to establish your production guarantee will be applied in determining any indemnity. The yield used to establish the production guarantee is not adjusted for the current crop year.

#### *Section 5—Cancellation and Termination Dates*

*Comment:* A few commenters recommended moving the phrase “in accordance with the terms of the policy” in section 5(b) to the beginning of the sentence to read: “If, in accordance with the terms of the policy, your apple policy is cancelled or terminated for any crop year after insurance attached \* \* \*” The commenters also recommended adding a comma before “whichever is later” or use parentheses instead of commas. A commenter recommended changing “insurance will be considered to have not attached” to “insurance will be considered not to have attached”

*Response:* FCIC has revised the provisions accordingly.

#### *Section 6—Report of Acreage*

*Comment:* A few commenters stated the Background section of the proposed rule indicates the second sentence of section 6 will be revised “\* \* \* to clarify only acreage qualifying as fresh apple production is eligible for the Optional Coverage for Fresh Fruit Quality Adjustment provisions contained in section 14 \* \* \*” in order to “\* \* \* help ensure processing apple production is not insured or adjusted as fresh apple production.” However, no actual proposed language to replace that second sentence was provided in the proposed rule. The commenters questioned whether the public will be given an opportunity to review a draft of these proposed revisions.

The commenters also stated this language also indicates the insured must designate all acreage by type by the acreage reporting date. As indicated in the above comments, if different coverage levels are going to be allowed between fresh apple acreage versus processing apple acreage, these two types and levels will need to be timely reported by the sales closing date in order to comply with the deadlines for adding types and levels.

*Response:* The proposed language to replace the second sentence of section 6 was in the amendatory language of the proposed rule with request for comments. The amendatory language, which preceded the regulatory text in the proposed rule, stated “g. Amend section 6 by removing the phrase ‘Blocks of apple acreage grown for

processing are' and adding the phrase 'Any acreage not qualifying for fresh apple production is' in its place in the second sentence." As stated above, FCIC has revised section 3 to include provisions if the policyholder only has fresh apple acreage designated on the acreage report and processing apple acreage is added after the sales closing date, the insurance provider will assign a coverage level equal to the coverage level the policyholder selected for their fresh apple acreage. If the policyholder only has processing apple acreage designated on the acreage report and fresh apple acreage is added after the sales closing date, the insurance provider will assign a coverage level equal to the coverage level the policyholder selected for their processing apple acreage.

#### Section 7—Insured Crop

*Comment:* A few commenters recommended deleting the "or" at the end of section 7(b)(1) since it is not the second-to-last item listed.

*Response:* FCIC has revised the provisions accordingly.

*Comment:* A few commenters questioned whether it is necessary to add section 7(d) to "clarify" the insured crop is apples "(d) That are grown for: (1) Fresh apple production; or (2) Processing apple production." This would seem to be covered by the opening statement of (d), "\* \* \* all apples in the county for which a premium rate is provided by the actuarial table." If this remains as is, a commenter recommended revising to "and/or" at the end of section 7(d)(1), as both types of apples may be insured.

*Response:* While section 7(d) may not be strictly necessary, it is provided to clarify the insured crop is not only for all apples in the county, but apples grown for either fresh apple production or processing apple production. The term "and/or" is synonymous with the word "or" which means any combination of two options; one, the other (either), or both. No change has been made.

#### Section 9—Insurance Period

*Comment:* A few commenters stated the first sentence of section 9(a)(1) gives the calendar date for the beginning of coverage for the year of application in California only. The second sentence provides the date for all other States, but does not specify this is also only for the year of application, and then goes on to provide an exception that applies to California as well. The commenters recommended revising the language to read something like:

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

"(i) In California, on February 1 \* \* \*"  
 "(ii) In all other States, on November 21 \* \* \*"

"However, if your application is received by us after \* \* \*"

*Response:* FCIC has revised section 9(a)(1) to separate the calendar dates for the beginning of the insurance period for the year of application in California and all other States from the exceptions in California and all other States.

*Comment:* A commenter stated the reference to "insurance provider" in section 9(a)(2) should be changed to "approved insurance provider".

*Response:* The term "insurance provider" is consistent with the Basic Provisions and other Crop Provisions. No change has been made.

*Comment:* A few commenters stated the words "after an inspection" should be removed from section 9(b)(1). If damage has not generally occurred in the area where such acreage is located, the commenters stated it should be up to the insurance provider's discretion to decide whether the acreage needs an inspection to be considered acceptable.

The commenters also stated the last sentence of section 9(b)(1) indicates "There will be no coverage of any insurable interest acquired after the acreage reporting date." The commenters recommended this sentence be changed to allow insurance providers the opportunity to inspect and insure such acreage if they wish to do so. Insurance providers should have the opportunity to accept or deny coverage in these types of situations. This would be similar to what is currently allowed for acreage that is not reported per section 6(f) of the Basic Provisions.

*Response:* FCIC does not agree with the commenters regarding removal of the phrase "after an inspection." The insurance provider must inspect the acreage to ensure the newly-acquired acreage meets all policy requirements. This requirement is consistent with other perennial Crop Provisions, such as stonefruit, grapes and pears and ensures that only acreage that meets the requirements for coverage is insured. If left to the discretion of the insurance provider, there may be instances where acreage that is not insurable is provided coverage, creating a program integrity vulnerability.

Additionally, section 9(b)(1) is silent regarding allowing insurance providers the opportunity to inspect and insure acreage that was acquired after the acreage reporting date. Therefore, section 6(f) of the Basic Provisions, which allows the insurance providers to determine by unit the insurable crop

acreage, share, type and practice, or to deny liability if the producer failed to report all units, has been applied in this situation under other Crop Provisions and would apply here. The provisions in this final rule are consistent with provisions in other Crop Provisions, such as Texas citrus fruit, peaches and pears and to change them here would suggest section 6(f) of the Basic Provisions would not be applicable to these other policies, creating an unnecessary ambiguity. The Crop Insurance Handbook also allows for insurance providers to revise an acreage report that increases liability if the crop is inspected and the appraisal indicates the crop will produce at least 90 percent of the yield used to determine the guarantee or amount of insurance for the unit. No change has been made.

#### Section 10—Causes of Loss

*Comment:* A commenter recommended the insured cause of loss in section 10(a)(2) be clarified as "Fire, due to natural causes, \* \* \*" (or "Fire, if caused by lightning, \* \* \*", as in the proposed revisions to the Tobacco Crop Provisions).

*Response:* FCIC disagrees with the commenter. Revising the insured cause of loss to read "Fire, due to natural causes" is not necessary since section 12 of the Basic Provisions states all insured causes of loss must be due to a naturally occurring event. Further, the Federal Crop Insurance Act also limits coverage to naturally occurring events. To include this requirement for a single cause of loss in the Crop Provisions will only create confusion regarding whether or not the other listed causes must be naturally occurring. FCIC also disagrees with revising the insured cause of loss to read "Fire, if caused by lightning \* \* \*" as in the proposed revisions to the Tobacco Crop Provisions. "Fire, if caused by lightning \* \* \*" was proposed in the Tobacco Proposed Rule. However, due to public comments, the original provision, "Fire," was retained because there are naturally occurring fires caused by other than lightning, such as animals getting stuck in transformers causing sparks to trigger a fire. No change has been made.

*Comment:* A few commenters recommended adding a comma after the phrase "excess sun causing sunburn" in section 10(a)(9) to separate it from the phrase "and frost and freeze causing russetting."

*Response:* FCIC has revised the provision accordingly.

#### Section 12—Settlement of Claim

*Comment:* A few commenters stated since the proposed rule offers different

coverage levels for fresh and processing, and separate optional units by type, it would be more helpful to have a revised Basic Coverage example that included separate units and different levels for the fresh and processing types instead of this basic example with both types in one basic unit. Additionally, as processing and fresh are two separate types requiring separate APH databases, a commenter questioned the likelihood of each type having the same guarantee. The commenter recommended revising the example to be more reflective of an actual situation.

*Response:* The claims provisions provide a step by step guide to calculating the indemnity. Claim examples are provided to the Settlement of Claim section to only provide a general illustration. Since it is impossible to address every situation, more detailed instructions are more appropriately provided in the Apple Loss Adjustment Handbook. No change has been made.

*Comment:* A commenter recommended adding a comma before the phrase “all grading U.S. No. 1 Processing or better” in the second sentence of the Basic Coverage example.

*Response:* FCIC has revised the provisions accordingly.

*Comment:* A commenter recommended adding hyphens in “6,000-bushel production guarantee” and “3,000-bushel production guarantee” in paragraphs (A) and (B) of the Basic Coverage Example.

*Response:* FCIC has revised the provisions accordingly.

*Comment:* A commenter stated the proposed section 12(d), which states “any apple production not graded prior to sale or storage will be considered as production to count” is not practical based on the lack of USDA licensed graders in many apple growing areas. Production sold from one producer to another is very common as well as roadside stands that sell directly to the consumer. Implementation of this new language will provide an unfair burden on the producer.

*Response:* The policy provides coverage for fresh and processing apples. There is no way to know whether an apple is a fresh apple unless it is graded. Further, failure to grade the apples will result in producers grading their own and there is no way to prevent them from reducing the grade to collect an indemnity. There must be an independent third party establishing the grade of the apple. For policyholders who sell production by direct marketing (i.e., one producer to another, roadside stands, etc.), section 11(b) of the Apple Crop Provisions requires notice of loss

be given at least 15 days before any production will be sold by direct marketing so an appraisal can be made by the insurance provider. If damage occurs after this appraisal, an additional appraisal will be made. The appraisals and any acceptable production records will be used to determine production to count. Since insurance is provided for direct marketed crops, and there may not be any verifiable records associated with such sales, this provision is necessary to more accurately determine production to count. FCIC has revised section 12(d) to clarify a policyholder must either have an appraisal or have their production graded prior to sale or storage in response to another comment. No change has been made.

*Comment:* A commenter recommended in section 12(d) either deleting the comma after “ \* \* \* placed in storage \* \* \* ” or adding a matching comma after “ \* \* \* or other handler \* \* \* ” at the end of that set-off phrase.

*Response:* FCIC has removed the comma after the phrase “placed in storage” in sections 12(d) and 14(c).

#### Section 14—Optional Coverage for Fresh Fruit Quality Adjustment

*Comment:* A commenter recommended quality adjustment for processing fruit, because the industry standard for processing fruit in North Carolina is U.S. #1 not U.S. #1 Processing. A commenter requested FCIC allow North Carolina producers to purchase the quality adjustment option for any processed apples that meet U.S. Grade A apple standards.

*Response:* Since the recommended changes were not proposed, and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

*Comment:* A few commenters stated the background section of the proposed rule states the intended effects of this policy are to clarify existing policy provisions to better meet the needs of producers, to reduce vulnerability to program fraud, waste, and abuse, and to simplify program administration. However, the language concerning the Optional Coverage for Fresh Fruit Quality Adjustment is so unclear and contradictory that producers and insurance providers will likely incur many hours in arbitration. This happens when the policy language is vague and alludes to issues that are then totally changed via the Apple Loss Adjustment Standards Handbook (LASH) and informational memorandums after the policy has been finalized and issued to the policyholders. This provides no opportunity for the apple producers to

comment on the procedure because these procedures are not a part of the proposed rule. The intent of the policy language needs to be clearly spelled out in the final version of the Apple Crop Insurance Provisions so as to reduce the amount of clarification that needs to be made later in the Apple LASH or informational memorandums.

*Response:* FCIC has made the policy as clear as possible. However, without specifying particular provisions that the commenter believes are ambiguous, FCIC is not able to adequately respond to make changes to the provisions. No change has been made.

*Comment:* A commenter suggested going back to the old policy with quality adjustment on frost, freeze, or hail. The commenter also stated if FCIC would keep the current policy as is with the causes of loss the same and does away with the sliding scale, it would be fair to all involved. If a producer has a claim of 65 percent, it should stand at 65 percent; that way the producer would have their 35 percent of fresh apple production to count back and it wouldn't automatically go to a 100 percent loss. The commenter stated this would be fair to the producers, insurance companies, and government.

*Response:* Since the recommended changes were not proposed, and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

*Comment:* A few commenters stated the background section of the proposed rule indicates a proposed revision “to specify insureds who select the Optional Coverage for Fresh Fruit Quality Adjustment cannot receive less than the indemnity due under section 12.” However, no actual proposed language was provided in the proposed rule. The commenters questioned whether the public would be given an opportunity to review a draft of these proposed revisions.

*Response:* The proposed language to replace the second sentence of section 14(a) was in the amendatory language of the proposed rule with request for comments. The amendatory language, which preceded the regulatory text in the proposed rule, stated “n. Amend section 14(a) by adding at the end of the paragraph the following sentence, ‘Insureds who select this option cannot receive less than the indemnity due under section 12.’”

*Comment:* A few commenters stated the background indicates the proposed change in section 14(b)(4) is “to clarify production to count under the Optional Coverage for Fresh Fruit Quality Adjustment will include all appraised

and harvested production from all of the fresh apple acreage in the unit.” This revision deletes the reference to production “that grades at least U.S. No. 1 Processing, adjusted in accordance with this option.” The commenters questioned whether the intention is to count harvested *unmarketable* production, or should this specify “all appraised and harvested marketable production.”

*Response:* For the purposes of section 14(b)(4), production to count should be all apples on the tree (i.e., unmarketable and marketable). FCIC has added the phrase “adjusted in accordance with this option” back to the provisions in section 14(b)(4) to clarify the production to count in section 14(b)(4) is adjusted in accordance with section 14(b)(5) for the purposes of the Optional Coverage for Fresh Fruit Quality Option. Therefore, any apples that are unmarketable will be removed from the production to count in the loss adjustment under section 14. No change has been made.

*Comment:* A commenter stated as currently written in sections 14(b)(4) and 14(b)(5)(v), in a situation where an insured has elected the option, but also has processing apples in the same unit; if the production from the processing acreage is sold as U.S. Fancy, it is not counted as production to count under the Optional Coverage for Fresh Fruit Quality Adjustment and valued at the fresh apple production price.

*Response:* If the acreage was designated as processing apple acreage on the acreage report and the apple production was subsequently sold as U.S. Fancy or better, it would not be considered production to count under the Optional Coverage for Fresh Fruit Quality Adjustment because processing apples are not covered under section 14. However, the sold production would be counted as production to count under section 12 of the Apple Crop Provisions and would be valued at the processing apple production price. No change has been made.

*Comment:* A few commenters stated the phrase “within the applicable unit” in section 14(b)(5) may be subject to misinterpretation. It appears the intent of these added words are meant to clarify the Optional Coverage for Fresh Fruit Quality Adjustment is administered on a unit basis, however this new language could be misinterpreted. The procedures outlined in the Apple LASH require the field grading to be done by variety, by block, or by unit, as applicable, and then total each individual production to count to determine the production to count for the unit.

For example, a producer may have 10 acres of Goldens and 50 acres of Reds within a unit. Assume a hail storm damaged the Goldens resulting in a 50 percent loss and the Reds only incurred a 10 percent loss. It would seem to be the intent the reduction would apply to the Goldens to determine the production to count for the Goldens. The Reds would not qualify as they do not meet the 20 percent damage deductible, and all the Reds would count as production to count. The wording that says “within the applicable unit is damaged to the extent that more than 20 percent” could lead one to assume in this example the overall unit did not sustain 20 percent damage, and no quality adjustment would apply. Another example would be if producers harvested 80 percent of their acreage prior to a hail storm, and then the storm came along and totaled the remaining 20 percent of the acreage. The commenters assumed the intent is that the loss adjuster would do a field grade on the remaining acreage even though less than 20 percent damage was sustained on a unit basis. The language, as proposed, might lead one to assume loss adjusters would, instead, say no adjustment is made because the producers have not incurred 20 percent damage across the whole unit. In order to eliminate this confusion, the commenters recommended the words ‘within the applicable unit’ not be added to this section. This language needs to be clarified so it is clear how this section of the policy is intended to be applied.

*Response:* FCIC agrees the proposed language could be subject to misinterpretation and has revised the provision to refer to “for the block or unit, as applicable.” In accordance with the Apple LASH, separate appraisals are required for each block within a unit and adjusted in accordance with section 14. The adjusted production to count from each block is added together to determine the total adjusted production to count for the unit.

*Comment:* A few commenters stated the proposed rule does not amend sections 14(b)(5)(i) through (iv). However, FCIC should revisit the adjustments in the current Apple Crop Provisions and the Apple LASH to determine whether the current salvage values merit reconsideration.

*Response:* If the commenters have any recommendations, they can provide such information to FCIC for consideration at a future date. FCIC is willing to work with any interested parties to revisit the provisions in section 14(b)(5)(i) through (iv). No change has been made.

*Comment:* Several comments were received regarding section 14(b)(5)(v). A commenter stated section 14(b)(5)(v) has been the most significant concern of insurance providers and policyholders and should be deleted as there are numerous other crop policies that allow similar deductions for extensive damage amounts and/or poor quality, etc., such that the production to count on the claim is reduced in excess of the actual monetary reductions to the producer. If section 14(b)(5)(v) remains in effect as written, FCIC should stop implying it is not their intent for insurance providers to keep claims open until production in storage was removed and then sold. Unless an insurance provider truly waits until all of the unit production is sold, they will not know the amount of production that was sold as U.S. Fancy or better.

A few commenters stated the language in section 14(b)(5)(v) that was inserted into the Apple Crop Provisions (after the proposed rule) for the 2005 crop year has been so problematic that the Apple LASH was revised numerous times, and informational memorandums issued and then incorporated into the Apple LASH long after the Apple Crop Provisions were published as a final rule and policies were sold to producers. Exhibit 2 of the Apple LASH has created a procedure whereby the insurance provider must use the greater of the production that is sold as fancy or better, or the amount of production that was determined as production to count in the field. However, this language is nowhere to be found in the 2005 Apple Crop Insurance Provisions or in this proposed rule for the 2011 crop year provisions. Instead, there is conflicting language with no explanation of how it is to be administered.

The commenters stated in order to determine what is “sold as fancy or better” and to comply with section 14(b)(5)(v), the insurance provider would need to wait to receive the pack-out. However, the example in the proposed rule makes no mention of waiting for the pack-out to see what is sold as fancy for a comparison. The example deals with the number of bushels “harvested” and number of bushels that don’t grade fancy or better based on the field grade and the damage chart, AND NOT FROM THE PACK-OUT. The proposed rule even states in section 14(c): “Any apple production not graded prior to the earlier of the time apples are placed in storage, or the date the apples are delivered to a packer, processor, or other handler, will not be considered damaged apple production and will be considered production to count under this option.”

Since it is not possible for the warehouse to grade and sell all the fruit the day it is delivered, one would need to presume the pack-out should not apply ever at any time.

The commenters recommended section 14(b)(5)(v) be removed and the language in the Optional Coverage for Fresh Fruit Quality Adjustment be made simple, clear, and fair. If section 14(b)(5)(v) was removed, all the confusing and contradictory language in the Apple LASH could also be removed. The producers who elect this option pay a substantial price for this coverage. It was designed to increase the claim payment when there is a significant amount of damage because of the added expense of dealing with a highly damaged crop. The removal of section 14(b)(v) would give the producer freedom to decide whether: to try to salvage some of the good fruit; to deliver it to a juicer or processor; or to leave it unharvested. Producers should not be penalized for trying to salvage their crop. It is unreasonable for FCIC to penalize producers for attempting to salvage a part of their crop.

Another commenter recommended section 14(b)(5)(v) either be removed or modified since it requires insurance providers to keep a claim open until final disposition of the fruit (for policies with the quality option), which can often take 12–13 months.

*Response:* FCIC has the legal authority to only cover a loss of production or a reduction in price received due to an insured cause of loss. Section 14(b)(5)(v) cannot be removed because if the policyholder harvests apples that are undamaged and sells them as fresh apples and receives at least the expected market price, those apples must be counted as production to count. FCIC has a responsibility to ensure policyholders only receive the amount of indemnity to which they are entitled. Since the amount of sold production is included as production to count, the insurance provider must establish the value of the sold production based on the sales records when the crop is sold. FCIC understands that this can result in a delay in the claim. However, FCIC does not know of any other means to account for production that is actually sold as U.S. Fancy or better. If the commenters have any specific recommendations to address this issue, they can provide such information to FCIC for consideration at a future date. FCIC is willing to work with any interested parties to revisit the provisions in section 14(b)(v) to improve the Optional Coverage for Fresh Fruit Quality Adjustment. No change has been made.

*Comment:* A commenter suggested the addition of the words “or appraised” to the first sentence of the new section 14(c), to read; “Any apple production not graded *or appraised* prior to the time.” The reason for the suggested change is when apples are placed in storage, the insurance coverage ends, and this could be confusing and unclear to producers experiencing losses that result in claims. The commenter’s proposal helps clarify the claim procedure by specifically noting producers with a potential loss claim must either have an appraisal or have their production graded prior to placement in storage.

*Response:* FCIC has revised the provisions in sections 12(d) and 14(c) accordingly.

*Comment:* A few commenters recommended either deleting the comma after the phrase “placed in storage” or adding a matching comma after the phrase “or other handler” at the end of that set-off phrase in section 14(c).

*Response:* As stated above, FCIC has removed the comma after the phrase “placed in storage” in sections 12(d) and 14(c).

*Comment:* A few commenters recommended, identifying the example in section 14 as an “Optional Coverage for Fresh Fruit Quality Adjustment example” for clarity. The commenters also recommended adding hyphens in the phrase “6,000-bushel production guarantee”. The commenters also recommended considering whether it is necessary to have “[END OF EXAMPLE]” when this is the end of the Apple Crop Provisions (no other policy provisions following the example).

*Response:* FCIC has revised the provisions accordingly.

*Comment:* A few commenters stated the example in section 14 shows the bushels of fruit that grade U.S. Fancy or better with an adjustment made on production to count based upon this grade. It should be clarified in the example that in addition to the grading, if the producer sells (X) amount of bushels at U.S. Fancy or better these will or will not be adjusted based upon the percentage that grade U.S. Fancy or better. It would reduce the confusion since there is an adjustment used in the appraisal process based upon the percentage that grade U.S. Fancy or better and producers do not understand what percentage is used in the indemnity process using production sold as US Fancy or better. Again, this information should be contained in the policy language as well as this example. For example, for a farm that has 25 percent of the production that grades US

Fancy it would be considered zero production to count of a full indemnity. If the producer can pack this fruit and he packs out 20 percent US Fancy, those bushels are currently taken off the claim. This action needs to be made clear in the provisions. A few commenters stated the example in section 14 shows 5,000 bushels harvested and 2,350 bushels not grading fancy or better. The example then goes on to show 47 percent actual damage equates to 61 percent actual damage and the example then shows the claim paid based on 39 percent production to count, which equals 1,950 bushels. However, if the producer has delivered the production to the warehouse, packed the fruit, and the pack-out shows the exact amount of actual damage as the field adjustment, 53 percent of the fruit would pack-out as U.S. Fancy or better. Therefore, the greater of the production to count would be 2,650. However, the example does not show this to be the case. It shows the production to count to be 1,950 bushels. There is no language about waiting for the pack-out and using the greater of the production to count from the field appraisal or the amount of apples sold as fancy or better.

*Response:* FCIC has revised the Optional Coverage for Fresh Fruit Quality Adjustment Example in section 14 to clarify it provides only a general explanation of how the indemnity payment would be calculated in accordance with section 14 assuming the producer did not sell any of their fresh apple production as U.S. Fancy.

In addition to the changes described above, FCIC has revised section 12(b)(2), section 12(b)(4), the Basic Coverage Example, and the Optional Coverage for Fresh Fruit Quality Adjustment Example to address the applicability of the percent of price election.

Good cause is shown to make this rule effective less than 30 days after publication in the **Federal Register**. Good cause to make a rule effective less than 30 days after publication in the **Federal Register** exists 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 public interest to delay implementation because public interest is served by improving the insurance product as follows: (1) Increasing insurance flexibility by providing for separate by type; (2) allowing different coverage levels for all fresh apple acreage in the county and for all processing apple acreage in the county; and (3) 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 2012 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 effective less than 30 days after publication in the **Federal Register**.

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

Crop insurance, Apple, Reporting and recordkeeping requirements.

**Final Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2011 and succeeding crop years as follows:

**PART 457—COMMON CROP INSURANCE REGULATIONS**

1. The authority citation for 7 CFR Part 457 is revised to read as follows:

**Authority:** 7 U.S.C. 1506(l), 1506(o).

- 2. Amend § 457.158 as follows:
  - a. Revise the introductory text;
  - b. Remove the paragraph immediately preceding section 1;
  - c. Add definitions in section 1 for “fresh apple production” and “processing apple production;” remove the definitions of “fresh apples,” “lot,” “processing apples,” and “varietal group;” revise the definitions of “apple production” and “type;” and amend the definition of “damaged apple production” by removing the phrase “, within each lot, bin, bushel, or box, as applicable,” from both paragraphs (1) and (2);
  - d. Revise section 2(b);
  - e. Amend section 3 by redesignating paragraphs (a), (b), and (c) as (b), (c), and (d) respectively, and adding a new paragraph (a);
  - f. Revise redesignated sections 3(c)(1) and 3(d);
  - g. Revise section 5(b);
  - h. Revise section 6;
  - i. Amend section 7(b)(1) by removing the word “or” after the semicolon at the end;
  - j. Amend section 7(b)(3) by removing the word “and” after the semicolon at the end;
  - k. Amend section 7(c) by removing the period at the end and replacing it with “; and”;
  - l. Add a new section 7(d);
  - m. Revise section 9(a)(1);

- n. Amend section 10(a)(9) by adding a comma after the phrase “excess sun causing sunburn”;
- o. Amend section 11 by redesignating paragraphs (a), (b), and (c) as (1), (2), and (3) respectively, redesignating the introductory text as paragraph (b), and adding a new paragraph (a);
- p. Revise sections 12(b)(2) and 12(b)(4);
- q. Revise the Basic Coverage Example in section 12 and move it to follow section 12(b)(7);
- r. Revise section 12(d);
- s. Amend section 14(a) by adding at the end of the paragraph the following sentence, “Insureds who select this option cannot receive less than the indemnity due under section 12.”;
- t. Amend section 14(b)(3) by removing the phrase “fresh apples” and adding the phrase “fresh apple production” in its place and removing the phrase “processing apples” and adding the phrase “processing apple production” in its place;
- u. Revise section 14(b)(4);
- v. Revise section 14(b)(5) introductory text;
- w. Amend section 14(b)(5) (i), (ii), and (iii) by adding the word “one” after the phrase “percent for each full”;
- x. Amend section 14(b)(5)(v) by adding the phrase “or better” after the phrase “if you sell any of your fresh apple production as U.S. Fancy”;
- y. Add new sections 14(c) and (d) before the Optional Coverage for Fresh Fruit Quality Adjustment Example; and
- z. Revise the Optional Coverage for Fresh Fruit Quality Adjustment Example.  
The revised and added text reads as follows:

**§ 457.158 Apple crop insurance provisions.**

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

\* \* \* \* \*

1. Definitions.

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

\* \* \* \* \*

*Fresh apple production.* (1) Apples: (i) That are sold, or could be sold, for human consumption without undergoing any change in the basic form, such as peeling, juicing, crushing, etc.;

(ii) From acreage that is designated as fresh apples on the acreage report;

(iii) That follow the recommended cultural practices generally in use for fresh apple acreage in the area in a manner generally recognized by agricultural experts; and

(iv) From acreage that you certify, and, if requested by us provide verifiable records to support, that at least 50 percent of the production from acreage reported as fresh apple acreage from each unit, was sold as fresh apples in one or more of the four most recent crop years.

(2) Acreage with production not meeting all the requirements above must be designated on the acreage report as processing apple production.

\* \* \* \* \*

*Processing apple production.* Apples from insurable acreage failing to meet the insurability requirements for fresh apple production that are:

(1) Sold, or could be sold for the purpose of undergoing a change to the basic structure such as peeling, juicing, crushing, etc.; or

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

\* \* \* \* \*

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

2. Unit Division.

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

(a) You may select only one coverage level for all fresh apple acreage and only one coverage level for all processing apple acreage. For example, if you choose the 55 percent coverage level for all your fresh apple acreage (*i.e.*, fresh, varietal group types), you may choose the 75 percent coverage level for all your processing apple acreage.

However, if you elect the Catastrophic Risk Protection (CAT) level of insurance for fresh apple acreage or processing apple acreage, the CAT level of coverage will be applicable to all insured apple acreage in the county. If you only have fresh apple acreage designated on your acreage report and processing apple acreage is added after the sales closing date, we will assign a coverage level equal to the coverage level you selected for your fresh apple acreage. If you only have processing apple acreage designated on your acreage report and fresh apple acreage is added after the sales closing date, we will assign a coverage level equal to the coverage level you selected for your processing apple acreage.

\* \* \* \* \*

(c) \* \* \*

(1) Any event or action that could impact the yield potential of the insured

crop including interplanted perennial crop, removal of trees, any damage, change in practices, or any other circumstance that may reduce the expected yield upon which the insurance guarantee is based, and the number of affected acres;

\* \* \* \* \*

(d) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any situation listed in sections 3(c)(1) through (c)(4). If the situation occurred:

(1) Before the beginning of the insurance period, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the situation was due to an insured or uninsured cause of loss. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce the yield used to establish your production guarantee at any time we become aware of the circumstance;

(2) Or may occur after the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) Or may occur after the beginning of the insurance period and you fail to notify us by the production reporting date, production lost due to uninsured causes equal to the amount of the reduction in the yield used to establish your production guarantee will be applied in determining any indemnity (see section 12(c)(1)(ii)). We will reduce the yield used to establish your production guarantee for the subsequent crop year.

\* \* \* \* \*

5. Cancellation and Termination Dates.

\* \* \* \* \*

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

\* \* \* \* \*

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. Any acreage not qualifying for fresh apple production is not eligible for the Optional Coverage for Fresh Fruit Quality Adjustment option contained in section 14 of these Crop Provisions. If you designate fresh apple acreage on the acreage report, you are certifying at least 50 percent of the production from acreage reported as fresh apple acreage, by unit, was sold as fresh apples in one or more of the four most recent crop years in accordance with the definition of "fresh apple production" and that you have the records to support such production.

7. Insured Crop.

\* \* \* \* \*

- (d) That are grown for:
  - (1) Fresh apple production; or
  - (2) Processing apple production.

\* \* \* \* \*

9. Insurance Period.

(a) \* \* \*

(1) For the year of application, coverage begins on February 1 of the calendar year the insured crop normally blooms in California and November 21 of the calendar year prior to the calendar year the insured crop normally blooms in all other States. Notwithstanding the previous sentence, 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.

\* \* \* \* \*

11. Duties In the Event of Damage or Loss.

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples in accordance with our procedures.

\* \* \* \* \*

12. Settlement of Claim.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

(7) \* \* \*

Basic Coverage Example:

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

A. 10 acres × 600 bushels = 6,000-bushel production guarantee of fresh apples;

5 acres × 600 bushels = 3,000-bushel production guarantee of processing apples;

B. 6,000-bushel production guarantee × \$9.10 price election × 100 percent of price election = \$54,600 value of production guarantee for fresh apples;

3,000-bushel production guarantee × \$2.50 price election × 100 percent of price election = \$7,500 value of production guarantee for processing apples;

C. \$54,600 value of production guarantee for fresh apples + \$7,500 value of production guarantee for processing apples = \$62,100.00 total value of the production guarantee;

D. 5,000 bushels of fresh apple production to count × \$9.10 price election × 100 percent of price election = \$45,500 value of fresh apple production to count;

1,000 bushels of processing apple production to count × \$2.50 price election × 100 percent of price election = \$2,500 value of processing apple production to count;

E. \$45,500 value of fresh apple production to count + \$2,500 value of processing apple production to count = \$48,000 total value of production to count;

F. \$62,100 total value of the production guarantee - \$48,000 total value of production to count = \$14,100.00 value of loss; and

G. \$14,100 value of loss × 100 percent share = \$14,100 indemnity payment.

[END OF EXAMPLE]

\* \* \* \* \*

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

\* \* \* \* \*

14. Optional Coverage for Fresh Fruit Quality Adjustment.

\* \* \* \* \*

(b) \* \* \*

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

(5) If appraised or harvested fresh apple production for the block or unit,



as applicable, is damaged to the extent that more than 20 percent of the apple production does not grade U.S. Fancy or better the following adjustments to the production to count will apply:

\* \* \* \* \*

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

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

#### Optional Coverage for Fresh Fruit Quality Adjustment Example:

You have a 100 percent share in 10 acres of fresh apples designated on your acreage report, with a 600 bushel per acre guarantee, and you select 100 percent of the price election on a price election of \$9.10 per bushel. You harvest 5,000 bushels of apples from your designated fresh apple acreage, but only 2,650 of those bushels grade U.S. Fancy or better. Assuming you do not sell any of your fresh apple production as U.S. Fancy or better, your indemnity would be calculated as follows:

A. 10 acres  $\times$  600 bushels per acre = 6,000-bushel production guarantee of fresh apples;

B. 6,000-bushel production guarantee of fresh apples  $\times$  \$9.10 price election  $\times$  100 percent of price election = \$54,600 value of production guarantee for fresh apple acreage;

C. The value of the fresh apple production to count is determined as follows:

i. 5,000 bushels harvested – 2,650 bushels that graded U.S. Fancy or better = 2,350 bushels of fresh apple production not grading U.S. Fancy or better;

ii.  $2,350/5,000 = 47$  percent of fresh apple production not grading U.S. Fancy or better;

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

iv.  $7 \text{ percent} \times 3 = 21$  percent;

v.  $40 \text{ percent} + 21 \text{ percent} = 61$  percent;

vi. 5,000 bushels harvested  $\times$  .61 (61 percent) = 3,050 bushels of fresh apple production not grading U.S. Fancy or better;

vii. 5,000 bushels harvested – 3,050 bushels of fresh apple production not grading U.S. Fancy or better = 1,950 bushels of adjusted fresh apple production to count;

viii. 1,950 bushels of adjusted fresh apples production to count  $\times$  \$9.10 price election  $\times$  100 percent of price election = \$17,745 value of fresh apple production to count;

D. \$54,600 value of production guarantee for fresh apples – \$17,745 value of fresh apple production to count = \$36,855 value of loss;

E. \$36,855 value of loss  $\times$  100 percent share = \$36,855 indemnity payment.

\* \* \* \* \*

Signed in Washington, DC, on August 16, 2010.

**William J. Murphy,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 2010-20619 Filed 8-24-10; 8:45 am]

**BILLING CODE 3410-08-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2010-0482; Directorate Identifier 2009-NM-225-AD; Amendment 39-16411; AD 2010-17-17]

RIN 2120-AA64

#### **Airworthiness Directives; Bombardier, Inc. Model CL-600-2B19 (Regional Jet Series 100 & 440) Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

There have been several Stick Pusher Capstan Shaft failures causing severe degradation of the stick pusher function. This directive is issued to revise the first flight of the day check of the stall protection system to detect degradation of the stick pusher function. It also introduces a new repetitive maintenance task to limit exposure to dormant failure of the stick pusher capstan shaft.

Dormant loss or severe degradation of the stick pusher function could result in reduced controllability of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective September 29, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 29, 2010.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Bruce Valentine, Avionics and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7328; fax (516) 794-5531.

#### **SUPPLEMENTARY INFORMATION:**

##### **Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 3, 2010 (75 FR 31324). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

There have been several Stick Pusher Capstan Shaft failures causing severe degradation of the stick pusher function. This directive is issued to revise the first flight of the day check of the stall protection system to detect degradation of the stick pusher function. It also introduces a new repetitive maintenance task to limit exposure to dormant failure of the stick pusher capstan shaft.

Dormant loss or severe degradation of the stick pusher function could result in reduced controllability of the airplane. You may obtain further information by examining the MCAI in the AD docket.

##### **Comments**

We gave the public the opportunity to participate in developing this AD. We considered the comment received. Air Line Pilots Association, International supports the NPRM.

##### **Conclusion**

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

##### **Differences Between This AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use