

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

[Docket ID FCIC–21–0007]

RIN 0563–AC75

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

**AGENCY:** Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Apple Crop Insurance Provisions. The intended effect of this action is to provide policy changes to better meet the needs of the apple producers, to address program vulnerabilities that have caused increased loss ratios and rising premium costs, and to provide safeguards against fraud, waste, and abuse. The proposed changes will be effective for the 2023 and succeeding crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business February 14, 2022 and will be considered when the rule is to be made final.

**ADDRESSES:** We invite you to submit comments on this rule. You may submit comments by either of the following methods, although FCIC prefers that you submit comments electronically through the Federal eRulemaking Portal:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov> and search for Docket ID FCIC–21–0007. Follow the instructions for submitting comments.

- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency (RMA), U.S. Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205. In your comment, specify docket ID FCIC–21–0007.

- Comments will be available for viewing online at [www.regulations.gov](http://www.regulations.gov).

#### FOR FURTHER INFORMATION CONTACT:

Francie Tolle; telephone (816) 926–7829; or email [francie.tolle@usda.gov](mailto:francie.tolle@usda.gov). Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

#### SUPPLEMENTARY INFORMATION:

##### Background

The FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIP) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

FCIC proposes to amend the Common Crop Insurance Regulations by revising 7 CFR 457.158 Apple Crop Insurance Provisions to be effective for the 2023 and succeeding crop years.

The proposed changes to 7 CFR 457.158 Apple Crop Insurance Provisions are as follows:

1. Throughout the Crop Provisions, FCIC proposes to include a reference to a type listed in the actuarial documents. The type name proposed is “Fresh (Combined),” which is synonymous with type “Fresh 111” that policyholders are likely familiar with. FCIC proposes no changes to what is insurable under the type; the only proposed change is to the type name.

2. Section 1—FCIC proposes to add a definition of “Apple Supplemental Report.” This term and its definition are added because of proposed changes in section 3 and section 6.

FCIC proposes to add a definition of “block.” This term is used in the Crop Provisions but had not been defined.

FCIC proposes to revise the definition of “damaged apple production.” The current definition defines damaged apple production in two parts: (1) With respect to production insured under the base policy, damaged apple production is fresh or processing apple production

that fails to grade U.S. No. 1 Processing or better; and (2) with respect to production insured under the Fresh Fruit Quality Adjustment (Quality Option), damaged apple production is fresh apple production that fails to grade U.S. Fancy or better. FCIC is proposing changes in the Quality Option that require production that grades U.S. #1 Processing or better but less than U.S. Fancy to be included in production to count at a reduced value; therefore, the proposed revisions to the definition of “damaged apple production” had to be the same for apples insured under the base policy and apples insured under the Quality Option. Due to these proposed changes, the second part of the definition of “damaged apple production,” which refers to the Quality Option, is proposed to be removed.

FCIC proposes to revise the definition of “direct marketing.” Direct marketing is the sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper, buyer, or broker. The definition is being revised to provide two clarifications. The first is to state that production records are controlled exclusively by the policyholder. The second is to add a sentence clarifying that only the portion of the crop sold directly to consumers will be considered direct marketed.

FCIC proposes to revise the definition of “fresh apple production.” FCIC proposes to move paragraphs (1)(ii), (1)(iv) and (2) to Section 7, Insured Crop, because these paragraphs contain provisions that are more appropriately placed in that section. FCIC proposes to redesignate paragraph (1)(i) as (1), paragraph (1)(iii) as (3), revise redesignated paragraphs (1) and (3), and add a new paragraph (2). In redesignated paragraph (1), the definition contains a list of actions that the apples undergo to change them from their basic form. Even though “dicing” was not included in the list of actions, one could maintain that it was included in the catch-all “etc.” at the end of the list. However, FCIC received questions regarding whether “dicing” would be considered in this list of actions. To provide clarification, FCIC proposes to add the word “dicing” to the list of actions that would constitute changing apples from their basic form.

In new paragraph (2), FCIC proposes to clarify that apples sold for the processing market are not considered fresh apple production unless they were sold with a grade of U.S. Fancy or better. For example, apples sold for the slicer market or the hard cider market that are not sold with a grade of U.S. Fancy or better. According to the definition, as here pertinent, “fresh apple production” is apples that do not undergo any change in basic form. Slicer apples are, just as their name suggests, apples that are sliced, which is a change in basic form. Sales of slicer apples are currently allowed to be considered fresh if the sales price was commensurate with fresh apple sales. However, slicers are a processed apple, meaning they undergo a change in basic form. Similarly, apples sold to the hard cider market undergo a change in basic form. A contracted study completed at FCIC’s request determined that prices for slicers are more commensurate with processing apples. Currently, apples sold as slicers can be insured as Fresh, thus qualifying for optional coverage under the Quality Option; however, they can be sold without a grade of U.S. Fancy, thus never being included in production to count, and contributing to high loss ratios in some areas. Under this proposed change, records indicating apples were sold as slicers or for hard cider will not be used to determine whether production meets the one-in-four fresh requirement under the Quality Option unless the apples were sold with a grade of U.S. Fancy or better.

FCIC also proposes to revise redesignated paragraph (3). The current provisions require producers to follow cultural practices generally in use for fresh apple acreage in the area in a manner generally recognized by agricultural experts. FCIC proposes to revise this paragraph to provide flexibility through Special Provisions to include additional cultural practices that may be required for acreage to meet the definition of “fresh apple production.” Examples of cultural practices may include specific spraying programs, hail netting, and wind machines or misting systems.

FCIC proposes to add a definition of “fresh fruit factor.” This term and its definition are added because of proposed changes made in section 14.

FCIC proposes to add a definition of “graft.” This term and its definition are added because of proposed changes made in section 7(f).

FCIC proposes to add a definition of “high density.” This term and its definition are added because of a proposed change in section 6.

FCIC proposes to add definitions of “maximum additional value price” and “premium price election” because of proposed changes made in section 3.

FCIC proposes to revise the definition of “processing apple production.” FCIC proposes to add the word “dicing” to the list of actions that would constitute changing apples from their basic form, to be consistent with the addition in the definition of “fresh apple production.” FCIC also proposes to remove the phrase “failing to meet the insurability requirements for fresh apple production” and add similar language to it in Section 7, Insured Crop, because this language contains provisions that are more appropriately placed in that section.

3. Section 2—FCIC proposes to designate the undesignated paragraph as paragraph (a) and revise the lead-in sentence in that paragraph to make two proposed changes. First, current provisions reference section 34(b) of the Basic Provisions. However, section 34(c) of the Basic Provisions is a more appropriate reference. Second, the current provisions are not clear whether producers can have optional units in addition to or instead of the optional unit offerings under the Basic Provisions. FCIC proposes to clarify that optional units by non-contiguous land or type may be established in addition to or instead of the optional unit provisions in the Basic Provisions.

FCIC proposes to redesignate paragraphs (a) and (b) as paragraphs (a)(1) and (2). FCIC proposes to revise redesignated paragraph (a)(2). This section currently allows optional units by type “as specified in the Special Provisions.” Currently, every county where apples are insured includes a Special Provisions statement that allows optional units by type. The “as specified in the Special Provisions” provided the flexibility to permit optional units by type by county. Since optional units by type are permitted in every county, FCIC proposes to remove the phrase “as specified in the Special Provisions” and simply allow optional units by type through the Crop Provisions. FCIC also proposes to add the phrase “unless otherwise provided in the Special Provisions” to allow flexibility through Special Provisions to alter this language if it is determined optional units by type should not be allowed in certain counties.

FCIC also proposes to add a new paragraph (b). Optional units by type are allowed in the Crop Provisions.

However, the Crop Provisions do not address situations where more than one type is planted on the same acreage. For example, Granny Smith apples are often

planted with other types of apples on the same acreage. In section 3, FCIC proposes to allow separate coverage levels and percentages of price elections by type. If optional units by type were not allowed in this situation, there would be a chance that AIPs would have to combine units resulting in different coverage levels and percentages of price elections within a single unit. To address this, FCIC proposes to add language that states the requirements of section 34 of the Basic Provisions that require the crop to be planted in a clear and discernable break in the planting pattern at the boundaries of each optional unit are not applicable for optional units by type. This will allow separate optional units for types that do not have a clear and discernable planting pattern, such as situations where more than one type is planted on the same acreage. However, it is important that producers maintain separate records of production for each optional unit in accordance with section 12(a) of the Apple Crop Provisions.

4. Section 3—FCIC proposes to revise paragraph (a) to allow separate coverage levels by type. The current provisions allow producers who purchase additional coverage to only select separate coverage levels by fresh apple acreage and processing apple acreage. Fresh and processing are separate types; however, in addition to the general “Fresh (Combined)” type, there are three other fresh types listed in the actuarial documents that are classified as fresh: Varietal group A, varietal group B, and varietal group C. Under the current provisions, producers who insure apples under any of the fresh type must select the same coverage level for all of their fresh types. The proposed changes will provide producers the ability to select a separate coverage level for each fresh type and will allow producers, who purchase additional coverage, to structure their coverage based on the perceived risk associated with each fresh type. For example, the producer could select 90 percent coverage level for varietal group A and 70 percent coverage level for varietal group B.

FCIC proposes to revise paragraph (b) to replace the “Special Provisions” reference in two places with a reference to the “actuarial documents” because the provisions refer to the location of price elections. Actuarial documents are where the price elections are located, so actuarial documents are a more appropriate reference. FCIC also proposes to revise paragraph (b) to allow the price election percentage to differ among each type. The types may have

different characteristics with different risks. By allowing producers to select a different percentage of the price election by type, this change allows producers to manage premium costs based on their risks.

FCIC also proposes to add a sentence in paragraph (b) clarifying that the percentage of the price election producers elect must be in accordance with FCIC approved procedures based on the level of coverage elected. For example, if a producer elected 75 percent coverage level, FCIC approved procedures allow producers to choose a percentage of price election between 67 and 100 percent. FCIC also proposes to add similar to language in paragraph (a) regarding assigning coverage levels to acreage that is added after the acreage reporting date. The language added in paragraph (b) is added for guidance on assigning price election percentages to acreage added after the acreage reporting date.

FCIC proposes to redesignate paragraphs (c) and (d) as (d) and (e), respectively, and add a new paragraph (c) to provide producers an opportunity to insure at a price, called the premium price election, greater than the published price election for apples that are sold predominantly to a direct market or a premium processing market. Direct markets are often niche markets that demand higher prices than wholesale markets. FCIC's processing price is historically based upon standard juice processing prices and market prices for premium processing is not generally available to establish prices. The premium processing prices generally demand higher prices and include items such as baby food, which demands high-quality apples; or hard ciders, which have similar quality expectations as wineries. Additionally, slicers, which are apples often sold for school lunches, are a premium processing-priced apple and demand a price, on average, about 20 percent higher than the standard processing prices. This change addresses producers' concerns regarding the higher prices they receive for apples sold via direct marketing and premium processing apples (such as slicers). The premium price election will be based on the producer's history reported on the Apple Supplemental Report and the maximum additional value price published in the actuarial documents and only offered in specific areas, via Special Provision statements, where premium processors or direct markets are prevalent. The premium price election will be greater than the published price election for type "Fresh (Combined)" or type "Processing," as

applicable, and less than or equal to the maximum additional value price. In order to obtain the premium price election, producers must submit an Apple Supplemental Report to capture producers' production by fresh sales (including direct marketing sales) and processing sales. For data-gathering purposes, FCIC is also requiring producers to submit their revenue by fresh sales and processing sales to allow FCIC to maintain the program (e.g., transitional yields and price elections) in light of data collected and reported by third-party organizations becoming scarce.

FCIC proposes to revise redesignated paragraph (e) to revise for clarity. The current provisions point back to specific situations that occur as outlined in redesignated paragraph (e). However, other situations, not addressed in redesignated paragraph (e), could occur that affect the yield used to establish the production guarantee. The current language limits the situations to those in redesignated paragraph (e). FCIC proposes to revise the language to refer to situations not necessarily specific to redesignated paragraph (e).

FCIC proposes to revise redesignated paragraph (e)(1). This paragraph addresses situations where any circumstance that may reduce the producer's yields from previous levels occurs before the insurance period. It is silent on the timeframe in which the producer notifies the AIP. However, in redesignated paragraph (e)(2), the producer notifies the AIP by the production reporting date. For consistency between the two paragraphs, FCIC proposes to add the same language in redesignated paragraph (e)(2) to (e)(1) regarding notification by the production reporting date.

FCIC also proposes to revise redesignated paragraph (e)(1) to remove the last sentence. This information is proposed to be incorporated into redesignated paragraph (e)(3).

FCIC proposes to revise redesignated paragraphs (e)(2) and (e)(3). The first sentence in each paragraph requires the producer to notify the AIP if a situation occurred or may occur after the beginning of the insurance period. While redesignated paragraph (e)(2) refers to situations when the producer notifies the AIP by the production reporting date and redesignated paragraph (e)(3) refers to situations when the producer fails to notify the AIP by the production reporting date, both paragraphs expect the producer to be aware of circumstances that have not occurred yet. Therefore, FCIC proposes

to remove the phrase "or may occur" in both paragraphs.

FCIC also proposes to revise redesignated paragraph (e)(3) to add clarifying language in the last sentence. The last sentence says, "We will reduce the yield used to establish your production guarantee for the subsequent crop year." To further clarify the purpose of the yield reduction in the subsequent crop year, FCIC proposes to add language that says the yield reduction will reflect any reduction in the productive capacity of the trees or the yield potential of the insured acreage. The proposed provisions in redesignated paragraph (e) consistent with provisions that FCIC recently added to other perennial crop policies, such as the Texas Citrus Fruit Crop Insurance Provisions. Adding these provisions is intended to remove potential ambiguity regarding the consequences when circumstances occur that will reduce the yield potential and to promote consistency with administration of similar policies.

FCIC proposes to add a new paragraph (f) to inform producers that they can insure fresh acreage in aggregate under type "Fresh (Combined)" or by other fresh types identified in the actuarial documents (e.g., fresh varietal group types), not both. The type "Fresh (Combined)" includes all fresh varieties insured under the apple policy and the price offered for type "Fresh (Combined)" is an average price of all insurable varieties. Fresh varieties can also be insured under other types, either in groupings of specific varieties identified in the Special Provisions or individual varieties, if available in the county's actuarial documents. The fresh varieties insured in groupings of specific varieties identified in the Special Provisions or as individual varieties are insured at prices that are reflective of those smaller groupings. Under this proposed change, producers may insure all of their fresh acreage together under an umbrella of Fresh for an average price or they can insure groupings of fresh varieties and receive better prices by those groupings, if they have records to substantiate the separate varieties.

5. Section 6—FCIC proposes to designate the undesignated paragraph as paragraph (a). FCIC proposes to revise newly designated paragraph (a) to divide the paragraph into subparagraphs for ease of reading.

In paragraph (a)(1), FCIC proposes to make two changes. First, the word "option" is removed following "Optional Coverage for Fresh Fruit Quality Adjustment" because the word is redundant. Second, the reference to

“these Crop Provisions” is struck for consistency, whereby only references to external documents are named by title.

FCIC proposes to revise newly designated paragraph (a)(2)(i). The current provisions state if producers designate fresh acreage on their acreage report then they are certifying that at least 50 percent of the production from fresh apple acreage in each 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.”

FCIC also proposes to revise newly-designated paragraph (a)(2)(i) to replace the reference to the definition of “fresh apple production” with the reference to section 7(d). FCIC is proposing to move some provisions in the definition of “fresh apple production” to section 7(d). Therefore, the reference in newly-designated paragraph (a)(2)(i) needs to be updated to reflect the new location of the provisions in section 7(d).

FCIC proposes to add a new paragraph (a)(2)(ii) to require producers who wish to insure as fresh to submit an Apple Supplemental Report that captures their total production by all fresh types aggregated and the processing type. This supports the existing FCIC rule to insure as fresh, which is that at least one of the prior four years must have produced at least 50 percent of the fresh guarantee. This change also allows FCIC to collect data to assist in determining whether fresh production requirements under the policy should be adjusted in the future. Adjustments could include using the producer’s historical percent sold as fresh, replace the one-in-four fresh requirement with the producer’s historical percent of fresh sales, etc.

FCIC also proposes to revise newly-designated paragraph (a) to add a new paragraph (a)(2)(iii) to complement the proposed language in new paragraph (a)(2)(ii) regarding the Apple Supplemental Report. The language proposed to be added in new paragraph (a)(2)(iii) notifies the producer that failure to submit the Apple Supplemental Report will result in no coverage under any fresh types. The producer will be able to have coverage under the processing type.

FCIC also proposes to revise newly-designated paragraph (a) to add a new paragraph (a)(2)(iv) to an exception to the fresh apple production requirement mentioned in the above paragraph for high density acreage in the first year of insurability or in other circumstances as authorized by FCIC. First, high density acreage is established with the intent of producing fresh apples and FCIC recognizes that producers that invest in

high density systems are intending to grow for fresh, but may not have the sales records in the first year of insurability to substantiate sales of fresh production. Therefore, it is not necessary to require high density acreage to meet the fresh apple production requirement for that first year of insurability. Second, allowing exceptions to the fresh apple production requirement in other circumstances as authorized by FCIC will provide FCIC to waive the fresh apple production requirement on a case-by-case basis if producers suffer exceptionally bad years (such as a year in which a natural disaster or other extreme weather occurs) which affected the end use of their apples that they intended to sell as fresh.

FCIC proposes to add a new paragraph (b) to require producers to notify the AIP 15 days prior to harvest if they intend to sell production via direct marketing so AIPs can perform the necessary preharvest inspections. Producers who sell production via direct marketing are required to notify AIPs prior to harvest if there is a loss. Currently, there is no provision that requires those producers to notify AIPs prior to harvest if there is no loss. By adding this provision, it provides AIPs an opportunity to conduct a preharvest appraisal when there is no loss.

6. Section 7—FCIC proposes to revise paragraph (d) to add language that was previously contained in the definition of “fresh apple production.” That language is better suited in this section than in the definition. Additionally, FCIC is proposing to revise the language that is moved to paragraph (d). The first proposed change is to replace a reference of “unit” with “policy or unit, as applicable”. Over the years, FCIC received comments that producers find it difficult and inappropriate to maintain separate records by unit after the apple production has left the field. Producers pointed out that while they can and do maintain records of production by unit, once the apples are delivered to a warehouse, which is often a third party, for later sales and distribution it is virtually impossible and/or impractical to expect all the apples to be tracked by unit. In 2011, FCIC issued a Manager’s Bulletin (MGR–11–015) that allowed producers who do not have separate records by unit of fresh apple production in one of the last four years but do have records of total fresh apple production may still be able to qualify for the fresh apple production requirement (at least 50 percent of the production from fresh apple acreage was sold as fresh apples in one or more of the four most recent

crop years). MGR–11–015 authorized AIPs to consider records of total production (e.g., by policy rather than by unit, if the producer could not provide records by unit) from one of the four most recent crop years that reflect fresh apple sales. FCIC is proposing to incorporate the guidance in MGR–11–015 by adding replacing “unit” with “policy or unit, as applicable” in paragraph (d).

The second proposed change in paragraph (d) is to add after the phrase “one or more of the four most recent crop years” the phrase “preceding the previous crop year, unless authorized by FCIC.” The proposed phrase aligns the one-in-four fresh requirement with the years proposed to be reported on the Apple Supplemental Report. Under the current provisions, the one-in-four fresh requirement is based on the four most recent crop years. For example, if the producer is purchasing crop insurance for the 2023 crop year, then the AIP would consider records from crop years 2019 through 2022. Under the proposed provisions, the Apple Supplemental Report is requesting information for the crop year prior to the previous crop year. Therefore, if the producer is purchasing crop insurance for the 2023 crop year, then producer would report information based on the 2021 crop year. The proposed changes in this paragraph are meant to align the information the producer reports on the Apple Supplemental Report with the last year in the one or more of the four most recent crop years.

FCIC also proposes to move language in paragraph (d) regarding “processing apple production” to a new paragraph (e) and add language that was previously contained in the definition of “processing apple production.” That language is better suited in this section than in the definitions.

FCIC also proposes to add a new paragraph (f) to allow for a reduced premium in certain circumstances. Currently, producers must report their acreage by the January 15th acreage reporting date, which is before they typically conduct routine orchard maintenance. Producers typically graft or remove apple trees after the acreage reporting date and into March. Those trees that are grafted or removed will not produce apples that crop year. This provision allows producers to either report the acreage as uninsurable as of the acreage reporting date; or receive a reduced premium rate to better reflect the condition of their orchards if they submit a revised acreage report by March 31st that trees were grafted or removed.

7. Section 9—FCIC proposes to revise paragraph (b)(3) to insert the following phrase at the beginning of the paragraph: “Except as provided in section 28 of the Basic Provisions.” Paragraph (b)(3) of the Apple Crop Provisions speaks only to relinquishing the producer’s insurable share after the acreage reporting date and is silent on whether a transfer of coverage occurred to relinquish the insurable share. This paragraph implies that coverage ends on the date the producer relinquishes their share. It is not clear, as it is written, whether a transfer of coverage and right to indemnity was submitted and approved in accordance with section 28 of the Basic Provisions. To clarify that this provision only addresses situations when a transfer of coverage and right to indemnity is not approved, FCIC proposes to add the aforementioned phrase.

8. Section 11—FCIC proposes to revise paragraph (b)(2). This paragraph outlines the requirements for producers when any portion of the crop is direct marketed. FCIC proposes to revise this paragraph to make a few changes. First, the phrase “15 days” is proposed to be clarified to “15 calendar days.” Next, FCIC proposes to require, in the event any portion of the crop will be direct marketed, the producer to notify the AIP at least 15 calendar days before the crop is harvested. The current provisions require notification prior to when the crop is sold. The proposed revision allows for the AIPs to conduct pre-harvest appraisals. Lastly, FCIC proposes to make other changes within the paragraph for clarification purposes.

9. Section 12—FCIC also proposes to revise the claim example following paragraph (b).

FCIC also proposes to redesignate paragraph (c)(2) as (c)(3) and add a new paragraph (c)(2) to state that when 65 percent or more of a unit’s processing apple production is damaged apple production, the processing apple production from the unit will not be considered production to count provided none of the processing apple production from the unit will be sold. Based on engagement with apple producers, FCIC was made aware that at certain thresholds of damage, processors will not accept apple production. In response to this feedback, FCIC proposes to allow for adjustments to processing production that reflect current industry standards.

10. Section 14—FCIC proposes to revise paragraph (b). The phrase “this option provides for quality adjustment of fresh apple production” reads more clearly when the word “coverage” is

added between the words “provides” and “for.”

FCIC proposes to revise paragraph (b)(1) to replace the phrase “Catastrophic Risk Protection (CAT)” with the acronym “CAT.” The acronym is spelled out earlier in the Crop Provisions, so it is only necessary here to use the acronym.

FCIC proposes to revise paragraph (b)(3). The current provisions say that apple acreage designated on your acreage report qualifies for the Optional Coverage for Fresh Apple Quality Adjustment. FCIC proposes to clarify that only fresh apple acreage qualifies for the option.

FCIC proposes to revise paragraph (b)(5) to make several changes. Where available, the Quality Option allows apple producers the option to purchase additional coverage that compensates them when their fresh apple production fails to grade U.S. Fancy or better due to an insurable cause of loss. The revisions to this paragraph clarify that production to count for apples is the greater of sold production adjusted according to the sliding scale in paragraph (b)(5) or adjusted for quality in paragraph (b)(6), instead of basing the determination on the sliding scale alone.

In paragraph (b)(5), FCIC also proposes to revise the sliding scale under which production to count is adjusted due to damage so that it is linear. A linear sliding scale is more appropriate than the current sliding scale which alternates from linear to non-linear back to linear again. The current sliding scale adjusts production in increments beginning at 21 percent damage and zeroing at 65 percent damage:

- The first increment is between 21 percent and 40 percent with a reduction of 2 percent for each full percent of damage in that range,
- The second 41 percent to 50 percent with a reduction of 3 percent for each full percent of damage in that range, and
- The third 51 percent to 64 percent with a reduction of 2 percent for each full percent of damage in excess of 50 percent.

The current sliding scale is not regionally appropriate. As proposed, the revised sliding scale would begin adjustments at 15 percent and reduce production to count by two percent for each full percent more than 15 percent. FCIC received producer feedback that the sliding scale should start at a lesser threshold of damage (15 percent rather than 20 percent). The only difference between the current sliding scale and the proposed one is when the range of production not grading U.S. Fancy or

better is greater than 15 percent but less than 50 percent. After 50 percent, the current sliding scale and the proposed sliding scales are identical.

In paragraph (b)(6), the following proposed changes are necessary to address concerns regarding the high loss ratios and rising premium costs under the Quality Option. The high loss ratios are a result of producers’ inability to maintain records to meet the requirements to qualify for the Quality Option and to settle claims, and climate and growing conditions in certain regions may limit the ability of producers in these areas to consistently produce U.S. Fancy grade.

- Production sold with a grade of U.S. Fancy or better will continue to be counted on a one-for-one basis.
- Production that grades U.S. #1 Processing or better but less than U.S. Fancy will be included in production to count at a reduced value by multiplying a fresh fruit factor to the sold marketable production as follows:
  - The fresh fruit factor applies to production sold:
    - As fresh without a grade that exceeds what appraised as U.S. Fancy or better (prior to adjustments under the sliding scale);
    - Any production sold for fresh without a grade will be counted on a one-to-one basis not to exceed the production that appraised as U.S. Fancy or better (prior to adjustments under the sliding scale).
    - Any production sold for a grade below U.S. Fancy;
    - Any production sold as processing, excluding any production that grades less than U.S. #1 Processing.
      - For the basic coverage, all apples that are U.S. #1 Processing or better are included in production to count, without any further discounts for quality adjustment. Currently, for the Quality Option, all apples that are sold as U.S. Fancy or better are included as production to count. Not all sales indicate a grading standard and therefore a producer could claim that no fresh apples were sold as U.S. Fancy or better, even if the apples were sold as fresh. Therefore, a producer could “double-dip” on indemnity and sales from these apples. Adjustments to production under the Quality Option are not reflected in the producer’s actual production history (APH); therefore, the guarantee does not accurately reflect expected production of fresh apples. The intent of the fresh fruit factor is to capture the reduced value of apples sold for other than U.S. Fancy or better so that the APH will more accurately reflect the producer’s guarantee.

○ The fresh fruit factor will not be applied to any production that grades less than U.S. #1 Processing or better.

○ The fresh fruit factor will be published in the actuarial documents to account for regional differences.

FCIC proposes to revise paragraph (c). The current provisions state any 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. According to the current definition of “damaged apple production,” damaged apple production under the Quality Option is anything that fails to grade U.S. Fancy or better. In other words, the aforementioned production will be considered U.S. Fancy or better. As stated earlier, FCIC is proposing to remove the portion of the definition that refers to the Quality Option. Therefore, paragraph (c) needs to be revised so that the provision has the same meaning as before: Any production not graded or appraised prior to the earlier of the time apples are placed in storage or the date the apples are delivered will be considered U.S. Fancy or better.

FCIC proposes to add a new paragraph (e) to address written agreements. The Quality Option is contained within the Crop Provisions, which confuses whether written agreements should apply to the Quality Option when written agreements are written on the Crop Provisions. The proposed language allows written agreements to apply to the Quality Option with three requirements: (1) The option may apply to a written agreement for apples when this option is contained in the actuarial documents for the county and crop; (2) the option may apply to apples in a county which does not have actuarial documents for the crop when a written agreement specifically allows this option; and (3) FCIC has the right to not allow this option on a written agreement in accordance with the provisions in section 18 of the Basic Provisions. This requirement also allows the producer to have coverage by written agreement on apple production insured under the Crop Provisions if the requirements for written agreement are not met on the Quality Option.

FCIC proposes to revise the claim example following new paragraph (e) to align with the proposed changes made throughout section 14.

#### Notice and Comment, and Exemptions

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay

in the effective date provisions do not apply when the rule involves specified actions, including matters relating to contracts. This rule governs contracts for crop insurance policies and therefore falls within that exemption. Although not required by APA or any other law, FCIC has chosen to propose the regulatory changes and request comments on the changes prior to issuing a final rule.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

#### Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has not reviewed this rule and analysis of the costs and benefits is not required under either Executive Order 12866 or 13563.

#### Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?

• Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?

• What else could we do to make the rule easier to understand?

#### Environmental Review

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347) and the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508). FCIC conducts programs and activities that have been determined to have no individual or cumulative effect on the human environment. As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

#### Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

RMA has assessed the impact of this rule on Indian Tribes and determined

that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under E.O. 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected to have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, RMA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified in this rule are not expressly mandated by Congress.

### The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments, or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of 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.

### Federal Assistance Program

The title and number of the Federal Domestic Assistance Program listed in the Catalog of Federal Domestic Assistance to which this rule applies is No. 10.450—Crop Insurance.

### Paperwork Reduction Act of 1995

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the rule does not change the information collection approved by OMB under control numbers 0563–0053.

### USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or

parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 or 844–433–2774 (toll-free nationwide).

Additionally, program information may be made available in languages other than English. To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: [OAC@usda.gov](mailto:OAC@usda.gov).

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### List of Subjects in 7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

### Proposed Rule

For the reasons discussed above, FCIC proposes to amend 7 CFR part 457 to read as follows:

### PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

■ 2. Amend § 457.158 by:

■ a. Revising the introductory text;

■ b. In section 1:

■ i. Adding in alphabetical order the definitions for “Apple Supplemental Report,” “block,” “fresh fruit factor,” “graft,” “high density,” “maximum additional value price,” and “premium price election”;

■ ii. Adding in the definition of “Area A”, a comma after the words “New Mexico”; and

■ iii. Revising the definitions for “damaged apple production,” “direct

marketing,” “fresh apple production,” and “processing apple production”;

■ c. Revising section 2;

■ d. Revising section 3;

■ e. Revising section 6;

■ f. In section 7:

■ i. Removing in paragraph (c), the word “and” at the end of the sentence;

■ ii. Revising paragraph (d); and

■ iii. Adding new paragraphs (e) and (f);

■ g. In section 9:

■ i. Removing in paragraph (b)(3), the word “If” at the beginning of the paragraph and adding the words

“Except as provided in section 28 of the Basic Provisions, if” in its place;

■ h. Revising section 11 paragraph (b)(2);

■ i. In section 12:

■ i. Revising the example following paragraph (b) titled “Basic Coverage Example”;

■ ii. Removing in paragraph (c)(1)(iv), the word “; and” at the end of the sentence and adding “.” in its place;

■ iii. Redesignating paragraph (c)(2) as (3), and adding a new paragraph (c)(2); and

■ j. Revising section 14.

The revisions and additions read as follows:

### § 457.158 Apple crop insurance provisions.

The apple crop insurance provisions for the 2023 and succeeding crop years are as follows:

\* \* \* \* \*

#### 1. Definitions

\* \* \* \* \*

*Apple Supplemental Report.* A written report, supported by acceptable records, submitted as required on our form and in accordance with section 3 and section 6, as applicable. The information contained on the report will be based on your sales history, as applicable, from the crop year prior to the previous crop year (e.g., on the production reporting date for the 2023 crop year, the Apple Supplement Report reflects total revenue from the 2021 crop year).

\* \* \* \* \*

*Block.* Trees in an orchard of a single or mixed age and density, distinguished by applicable practice, type, T-Yield Map Areas, or other characteristics shown in the actuarial documents.

\* \* \* \* \*

*Damaged apple production.* Fresh or processing apple production that fails to grade U.S. No. 1 Processing or better in accordance with the applicable grade standards due to an insurable cause of loss.

*Direct marketing.* The sale of the insured crop directly to consumers

without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper, buyer, or broker. Production records are controlled exclusively by the policyholder. Examples of direct marketing include selling through an on-farm or roadside stand, a farmer's market, or permitting the general public to enter the field for the purpose of picking all or a portion of the crop. Only the portion of the crop sold directly to consumers will be considered direct marketed.

*Fresh apple production.* Apples:

(1) That are sold, or could be sold, for human consumption without undergoing any change in the basic form, such as peeling, juicing, crushing, dicing, etc.;

(2) That are not sold for the processing market (e.g., slicer or hard cider market) except for apples sold with a grade of U.S. Fancy or better (unless another grade is specified in the Special Provisions); and

(3) 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 any other practices specified in the Special Provisions.

*Fresh fruit factor.* A factor contained in the actuarial documents that is used to account for the salvage value of sold apples for production insured under the Optional Coverage for Fresh Fruit Quality Adjustment contained in section 14.

\* \* \* \* \*

*Graft.* To unite a shoot or bud with a rootstock in accordance with recommended practices to form a living union.

\* \* \* \* \*

*High density.* The number of trees per acre and any other characteristics specified in the Special Provisions.

\* \* \* \* \*

*Maximum additional value price.* A price established by type by FCIC and published in the actuarial documents when authorized by the Special Provisions. It is used to compute the premium price election.

\* \* \* \* \*

*Premium price election.* A price calculated using your sales history reported on the Apple Supplemental Report and the maximum additional value price. The premium price election will be no less than the published price election for type "Fresh (Combined)" or type "Processing," as applicable, and no greater than the maximum additional value price.

*Processing apple production.* Apples from insurable acreage that are sold, or could be sold for the purpose of undergoing a change to the basic structure such as peeling, juicing, crushing, dicing, etc.

\* \* \* \* \*

## 2. Unit Division

(a) In addition to, or instead of, establishing optional units as provided in section 34(c) of the Basic Provisions, optional units may be established if each optional unit is:

(1) Located on non-contiguous land;

or

(2) By type, unless otherwise provided in the Special Provisions.

(b) The requirements of section 34 of the Basic Provisions that require the crop to be planted in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit are not applicable for optional units by type.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one coverage level for each type. For example, if you choose the 55 percent coverage level for one type, you may choose the 75 percent coverage level for another type. However, if you elect the Catastrophic Risk Protection (CAT) level of coverage for any of your 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 lowest 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.

(b) You may select only one price election for all the apples in the county insured under this policy unless the actuarial documents provide different price elections by type, in which case you may select one price election for each apple type designated in the actuarial documents. The price elections you choose for each type are not required to have the same percentage relationship to the maximum price election offered by us for each type. However, the percentage of the maximum price election must be in accordance with FCIC approved

procedures. For example, if you choose 100 percent of the maximum price election for one type, you may choose a different percentage of the maximum price election for all other types. 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 price election percentage equal to the lowest price election percentage 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 price election percentage equal to the price election percentage you selected for your processing apple acreage.

(c) If you elect an additional level of coverage, you may insure your type "Fresh (Combined)," type "Processing," or both, at the premium price election if:

(1) Authorized in the Special Provisions;

(2) You submit an Apple Supplemental Report, by policy by the production reporting date, containing your total sales (including production and revenue), differentiated by the following, as applicable:

(i) Fresh and direct marketing; and

(ii) Processing;

(3) Upon initial election of the premium price election, you provide three years of production and revenue as indicated in section 3(c)(2); and

(4) You meet any additional requirements specified in the Special Provisions.

(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 (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.

(e) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any circumstance that may reduce your yields from previous levels. If the circumstance occurred:

(1) Before 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 regardless of whether the circumstance was due to an insured or uninsured cause of loss;

(2) 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) Before or after the beginning of the insurance period and you fail to notify us by the production reporting date, an amount equal to the reduction in the yield will be added to the production to count calculated in section 12(c) due to uninsured causes. We will reduce the yield used to establish your production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees or in the yield potential of the insured acreage.

(f) If the actuarial documents contain type "Fresh (Combined)," you can elect to insure your fresh acreage in aggregate under type "Fresh (Combined)" or by other fresh types identified in the actuarial documents, but not both.

\* \* \* \* \*

6. Report of Acreage

(a) 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.

(1) Any acreage not qualifying for fresh apple production is not eligible for the Optional Coverage for Fresh Fruit Quality Adjustment contained in section 14.

(2) If you designate fresh apple acreage on the acreage report:

(i) You are certifying that your fresh apple acreage meets the requirements in section 7(d), unless otherwise authorized by FCIC.

(ii) You must submit an Apple Supplemental Report on the same basis you certify your acreage in section 6(a)(2)(i) by the production reporting date, containing the following, as applicable.

- (A) Production sold as fresh;
(B) Production sold by direct marketing;
(C) Production sold as processing; and
(D) Production in storage.

(iii) And you fail to submit an Apple Supplemental Report in accordance with section 6(a)(2)(ii), you will not have coverage under any fresh type listed in the actuarial documents.

(iv) And you have high density acreage, the requirement in section 6(a)(2)(i) does not apply to high density acreage in the first year of insurability or as authorized by FCIC procedure.

(b) If any portion of your crop will be direct marketed, you must notify us at least 15 calendar days before any production will be harvested. We will conduct an appraisal that will be used to verify your production records in accordance with FCIC procedures.

7. Insured Crop

\* \* \* \* \*

(d) That are grown for fresh apple production on acreage:

(1) That is designated as fresh apples on the acreage report; and

(2) That you certify and, if requested by us, provide verifiable records to support, that at least 50 percent of the production from all acreage reported as fresh apple acreage by policy or unit, as applicable, was sold as fresh apples in one or more of the four most recent crop years preceding the previous crop year (e.g., for the 2023 crop year, the four most recent crop years preceding the previous crop year end in the 2021 crop year), unless authorized by FCIC procedures;

(e) That are grown on acreage designated as processing apple production on the acreage report. Any production from acreage not meeting the requirements in section 7(d) must be designated on the acreage report as processing apple production; and

(f) If you anticipate performing any action that will reduce the productive capacity of the trees or the yield potential of the insured acreage (e.g., removing or grafting trees) after the acreage reporting date you:

(1) May report all apple acreage when you report your acreage for the crop year and specify any affected acreage as uninsurable acreage (By doing so, no

coverage will be considered to have attached on the specified acreage and no premium will be due for such acreage. If you do not perform any action that will reduce the productive capacity of the trees or the yield potential of the insured acreage, you will be subject to the under-reporting provisions contained in section 6 of the Basic Provisions); or

(2) May report all apple acreage as insurable when you report your acreage for the crop year. Premium will be due on all the acreage except as set forth herein.

(i) On acreage for which you perform actions that will reduce the productive capacity of the trees or the yield potential of the insured acreage, you may qualify for a reduction in premium only if you notify us in writing on a revised acreage report on or before March 31st or the date designated in the Special Provisions, and do not claim an indemnity on the acreage. No reduction in premium will be allowed if the required notice is not given or if you claim an indemnity for the acreage.

(ii) Upon receiving timely notice, insurance coverage on such acreage will cease and we will process your revised acreage report to indicate the applicable reduction in premium. If you do not perform the actions to the apple acreage as intended, you will be subject to the under-reporting provisions contained in section 6 of the Basic Provisions.

\* \* \* \* \*

11. Duties in the Event of Damage or Loss

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

(2) If any portion of your crop will be direct marketed, you must notify us at least 15 calendar days before any production will be harvested. We will conduct an appraisal that will be used to verify your production records in accordance with FCIC procedures. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any other acceptable records required to be provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

\* \* \* \* \*

12. Settlement of Claim

\* \* \* \* \*

(b) \* \* \*

## 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 apples are harvested and 1,000 bushels of processing apples are harvested.

(E) 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;

(F) \$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;

(G) \$62,100 total value of the production guarantee – \$48,000 total value of production to count = \$14,100.00 value of loss; and

(H) \$14,100 value of loss × 100 percent share = \$14,100 indemnity payment.

(c) \* \* \*

\* \* \* \* \*

(2) Notwithstanding section 12(c)(1), when 65 percent or more of a unit's processing apple production is damaged apple production, the processing apple

production from the unit will not be considered production to count provided none of the processing apple production from the unit will be sold.

\* \* \* \* \*

## 14. Optional Coverage for Fresh Fruit Quality Adjustment

(a) In the event of a conflict between the Apple Crop Insurance Provisions and this option, this option will control. Insureds who select this option cannot receive less than the indemnity due under section 12.

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

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

(2) You must elect this option on or before the sales closing date for the initial crop year for which you wish to insure your apples under this option. This option will continue in effect until canceled by either you or us for any succeeding crop year by written notice to the other party on or before the cancellation date. (3) This option will apply to all your fresh apple acreage designated on your acreage report and that meets the insurability requirements specified in the Apple Crop Insurance Provisions, except any acreage specifically excluded by the actuarial documents. Any acreage designated in your acreage report as grown for processing apple production is not eligible for coverage under this option.

(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) Except as provided in section 14(b)(6), if the block or unit, as applicable, is damaged due to an insurable cause of loss to the extent that more than 15 percent of the apple production does not grade U.S. Fancy or better (unless another grade is specified in the Special Provisions) the following adjustments to the production to count will apply:

(i) When 16 percent through 64 percent of the apple production does not grade U.S. Fancy or better (unless another grade is specified in the Special Provisions), the production to count will be reduced two percent for each full one percent in excess of 15 percent.

(ii) When 65 percent or more of the apple production does not grade U.S. Fancy or better (unless another grade is specified in the Special Provisions), the production will not be considered production to count.

(6) If you sell any of your fresh apple production from the block or unit, as applicable, your production to count will be the greater of the amount determined in section 14(b)(5) or the sum of the amount determined as follows:

(i) All apples sold with a grade of U.S. Fancy or better (unless another grade is specified in the Special Provisions);

(ii) All marketable apple production sold with a grade of less than U.S. Fancy (unless another grade is specified in the Special Provisions) multiplied by the fresh fruit factor;

(iii) All marketable apple production sold as fresh without a grade. This amount is not to exceed what appraised or graded as U.S. Fancy or better (unless another grade is specified in the Special Provisions) prior to the adjustments under section 14(b)(5);

(iv) All marketable apple production sold as fresh without a grade that exceeds what appraised or graded as U.S. Fancy or better (unless another grade is specified in the Special Provisions) prior to the adjustments under section 14(b)(5) multiplied by the fresh fruit factor; and

(v) All marketable apple production sold as processing without a grade multiplied by the fresh fruit factor.

(7) The grade standards used in accordance with section 14(b)(6) and applied during the appraisal process will be the applicable grade standards used when evaluating the final disposition of the apple production.

(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 be considered U.S. Fancy or better (unless another grade is specified in the Special Provisions) and included in 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.

(e) Regarding written agreements under this option:

(1) This option may apply to a written agreement for apples when this option is contained in the actuarial documents for the county and crop.

(2) This option may apply to apples in a county which does not have actuarial documents for the crop when

a written agreement specifically allows this option.

(3) FCIC has the right to not allow this option on a written agreement in accordance with the provisions in section 18 of the Basic Provisions.

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 marketable 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, your indemnity would be calculated as follows:

(A) 10 acres × 600 bushels per acre = 6,000-bushel production guarantee of fresh apples;

(B) 6,000-bushel production guarantee of fresh apples × \$9.10 price election × 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)(i): 47 percent – 15 percent = 32 percent in excess of 15 percent;

(iv) 32 percent × 2 = 64 percent;

(v) 5,000 bushels harvested × .64 (64 percent) – 3,200 bushels of fresh apple production not grading U.S. Fancy or better;

(vi) 5,000 bushels harvested – 3,200 bushels of fresh apple production not grading U.S. Fancy or better = 1,800 bushels of adjusted fresh apple production to count;

(vii) 1,800 bushels of adjusted fresh apples production to count × \$9.10 price election × 100 percent of price election = \$16,380 value of fresh apple production to count;

(D) \$54,600 value of production guarantee for fresh apples – \$16,380 value of fresh apple production to count = \$38,220 value of loss;

(E) \$38,220 value of loss × 100 percent share = \$38,220 indemnity payment.

#### Richard Flournoy,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 2021–26989 Filed 12–14–21; 11:15 am]

BILLING CODE 3410–08–P

## DEPARTMENT OF ENERGY

### 10 CFR Part 430

[EERE–2021–BT–TP–0023]

RIN 1904–AF18

#### Energy Conservation Program: Test Procedures for Cooking Products

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of proposed rulemaking; extension of public comment period and notification of data availability (NODA).

**SUMMARY:** The U.S. Department of Energy (DOE) is extending the public comment period for the notice of proposed rulemaking (“NOPR”) that DOE published on November 4, 2021 regarding a proposal for a new test procedure for conventional cooking tops, a category of cooking products, that would replace the procedure that DOE withdrew on August 18, 2020. DOE is also publishing a NODA regarding the results of DOE’s recently completed test program assessing the repeatability and reproducibility of the proposed test procedure. DOE is publishing the results of its testing and requests comment, data, and information regarding the results.

**DATES:** The comment period for the NOPR which published on November 4, 2021 (86 FR 60974), is extended. DOE will accept comments, data, and information regarding the NOPR and NODA on or before January 18, 2022.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2021–BT–TP–0023, by any of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.

2. *Email:* [CookingProducts2021@ee.doe.gov](mailto:CookingProducts2021@ee.doe.gov). Include the docket number EERE–2021–BT–TP–0023 in the subject line of the message.

No telefacsimilies (“faxes”) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of

the ongoing coronavirus 2019 (“COVID–19”) pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

*Docket:* The docket for this activity, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), comments, and other supporting documents/materials, is available for review at [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at [www.regulations.gov/docket/EERE-2021-BT-TP-0023](http://www.regulations.gov/docket/EERE-2021-BT-TP-0023). The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1943. Email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: [Celia.Sher@hq.doe.gov](mailto:Celia.Sher@hq.doe.gov).

#### SUPPLEMENTARY INFORMATION:

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- II. Summary of Additional Testing Performed by DOE
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##### I. Background

DOE originally established test procedures for cooking products in a final rule published in the **Federal Register** on May 10, 1978. 43 FR 20108, 20120–20128. In the years following, DOE amended the test procedure for conventional cooking tops on several