

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.

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Chapter XIII

Compact Over Order Price Regulation; Correction

AGENCY: Northeast Dairy Compact Commission.

ACTION: Correction to proposed rule.

SUMMARY: This document contains corrections to the proposed rule and required findings of fact published by the Northeast Dairy Compact on April 28, 1997, 62 FR 23032. The rule proposed a Compact over-order price for Class I milk in the six New England States for a six month period.

DATES: Comments must be received by May 12, 1997.

ADDRESSES: Comments should be submitted to the Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, VT 05601.

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission, at the above address or by telephone at (802) 229-1941 or by facsimile at (802) 229-2028.

SUPPLEMENTARY INFORMATION: As published the proposed rule and statement of required findings of fact published on April 28, 1997, 62 FR 23032 contain errors which may prove to be misleading and are in need of clarification. Accordingly the proposed rule and statement of required findings of fact are corrected as follows:

1. Footnote 2 on page 23033 in the second column is corrected to read "61 FR 65604 (December 13, 1996)."

2. Footnote 16 on page 23034, in the second column, the sentence beginning, "As described at footnote 3" is corrected to read, "As described in text accompanying footnote 3, the Commission has noted the difficulties and diversity of available cost of production analysis and has concluded that it should initiate a regional cost of production study by the close of the regulation adopted under this rule."

3. Subsection (3) on page 23035 in the second column, first paragraph, line 10, the word "insufficiency" is corrected to read "instability".

4. Subsection (3) on page 23035 in the second column, second paragraph, line 10, the sentence which begins "The base scenario is premised upon * * *" is corrected to read "The base scenario is premised upon a Class I price trajectory beginning at \$16.17 per hundredweight at Zone 21 and a blend price of \$14.70 per hundredweight."

5. Footnote 42 on page 23036, second column is corrected to read, "Submission by William Zweigbaum, U-NH Extension, 3/31/97 AC."

6. Subsection (5) on page 23036, third column, the last paragraph, line 3, the figure "\$7.17" is corrected to read "\$17.17."

7. Subsection (5) on page 23037, first column, fourth paragraph, the comments of Wayne Bissonette should be cited to W/C 192 (Bissonette).

8. Footnote 66 on page 23041, column 2 is corrected to read 62 FR 12252 (March 14, 1997). Section II Finding, on page 23042, Column 2, the list of subjects and issues numbered (1) through (10) is corrected as follows: Subjects (3) and (4) are transposed and should be inverted. After item (5) insert a new item (6) as follows: (6) The price needed to yield a reasonable rate of return to processors of fluid milk products. The remaining items should be renumbered (7) through (14) in their original order.

9. Footnote 70 on page 23042, column 3 is corrected to read, See 61 FR 65604 (December 13, 1996) and 62 FR 12252 (March 14, 1997).

10. Footnote 77 on page 23044 the name "De Guess" is corrected to read "De Geus."

11. Footnote 83 on page 23045, column 2, is corrected to read, "See 61 FR 65604 (December 13, 1996); 62 FR 12252 (March 14, 1997)."

12. Footnote 84 on page 23045, column 3 is corrected to read, "61 FR 65604 (December 13, 1996); 62 FR 12252 (March 14, 1997)."

13. Subsection L. 1 on page 23049, first column, second full paragraph at line 5, the sentence which begins "This order found * * *" is corrected to read, "This order found that a 50 mile shift in the epi-center of the milk supply causes a three cent increase in milk prices."

14. Footnote 109 on page 23053, second column, line 7, the sentence that begins, "The Commission has determined" is corrected to read, "The Commission has determined that a useful empirical record can still be developed in six months * * *"

15. Footnote 110 on page 23053, third column, is corrected to read, "62 FR 12252 (March 14, 1997)."

16. Footnote 116 on page 23045, first column is corrected to read 62 FR 12252 (March 14, 1997).

Daniel Smith,

Executive Director.

[FR Doc. 97-11963 Filed 5-7-97; 8:45 am]

BILLING CODE 1650-01-P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 405 and 457

Apple Crop Insurance Regulations; and Common Crop Insurance Regulations, Apple Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of apples. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current apple crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current apple crop insurance regulation to 1997 and prior crop years.

DATES: Written comments on this proposed rule will be accepted until close of business June 9, 1997 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866 and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563-0003 through September 30, 1998.

Section 7 of the 1998 Apple Crop Provisions adds interplanting as an insurable farming practice for apples interplanted with another perennial crop as long as the crop would not be adversely affected. This practice was not insurable under the previous Apple Crop Insurance Policy. Consequently, interplanting information will need to be collected using the FCI-12-P Pre-Acceptance Perennial Crop Inspection Report form for approximately 1 percent of the 32 insureds who interplant their apple crop. Standard interplanting language has been added to most perennial crops. Offering insurance for this practice will benefit agriculture because now more perennial crop producers will be covered by insurance and less acreage will need to be placed into the noninsured crop disaster assistance program (NAP). Section 13 of the 1998 Apple Crop Provisions adds optional quality adjustment for fresh fruit and processing apples, thus eliminating the Apple Fresh Fruit Option Form and the Apple Sunburn Option Form. The incorporation of these options reduces paperwork more than the slight increase which will result from the interplanting language for those few insureds who interplant their apple crop.

The amendments set forth in this proposed rule do not contain additional information collections that require clearance by the OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Apple Crop Insurance Provisions." The information to be collected includes a

crop insurance application and acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of apples that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

FCIC is requesting comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule contains no Federal

mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must also annually certify to the previous years production if adequate records are available to support the certification. The producer must maintain the production records to support the certified information for at least three years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 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 No. 12988

This proposed rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

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

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.158, Apple Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring apples found at 7 CFR part 405 (Apple Crop Insurance Regulations). FCIC also proposes to amend 7 CFR part 405 to limit its effect to the 1997 and prior crop years.

This rule makes minor editorial and format changes to improve the Apple Crop Insurance Regulations' compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring apples as follows:

1. Section 1—Add definitions for the terms "adapted," "culls," "days," "direct marketing," "excessive sun," "FSA," "good farming practices," "interplanted," "irrigated practice," "non-contiguous," "pound," "production guarantee (per acre)," "russeting," "sunburn," "ton," "USDA," and "written agreement" for clarification. Remove the definitions for "contiguous land" for consistency with other crop policies; "freeze," "frost," and "fruit set failure" because these causes of loss will be referred to as "adverse weather;" and "loose field box" because it has been changed to "box." Amend the definition of "bushel" for clarification.

2. Section 2—Add a provision to permit optional unit division when acreage is located in non-contiguous parcels rather than by contiguous land as provided in the current policy. Also, add a provision to allow producers from all areas to select optional units by section, section equivalent or FSA Farm Serial Number. These changes were made to be consistent with other perennial crops.

3. Section 3(a)—Specify that an insured may select only one price election for all the apples in the county insured under the policy, unless the Special Provisions provide different price elections by type, in which case the insured may select one price election for each apple type designated in the Special Provisions.

4. Section 3(b)—Specify that the insured must report damage, removal of trees, and change in practices that may reduce the expected yield. The insured must also report, for the first year of insurance for acreage interplanted with another perennial crop and anytime the planting pattern of such acreage is changed, the age and type, if applicable, of any interplanted crop, its planting pattern, and any other information that the insurer requests in order to establish the yield upon which the production guarantee is based. If the insured fails to notify the insurer of factors that may reduce yields from previous levels, the insurer will reduce the production guarantee at any time the insurer becomes aware of damage, removal of trees, or change in practices. This change will standardize these provisions with those in other perennial crop policies.

5. Section 7—Add a provision making apples interplanted with another perennial crop insurable unless, after an inspection, the insurer determines it does not meet the requirements contained in the policy.

6. Section 8(a)(1)—Change the date that insurance begins for the year of application. If the application is received after November 11 but prior to November 21, insurance will attach on the 10th day after the insured's properly completed application is received in the insurer's local office unless the insurer inspects the acreage during the 10 day period and determines that the requirements of the insurance contract are not met. These provisions were modified to avoid interpretation that late-filed applications are allowed and a thirty day period in this situation is not reasonable. Ten days is sufficient for the insurance provider to inspect the condition of the orchard with limited exposure for the producer.

7. Section 8(b)(1)—Clarify the date coverage begins if the producer acquires an insurable interest in any insurable acreage of apples on or before the acreage reporting date of any crop year. Clarify that there is no coverage for an insurable interest acquired after the acreage reporting date.

8. Section 8(b)(2)—Clarify that insurance will be deemed to not have attached if the producer relinquishes an insurable interest in any insurable acreage of apples on or before the acreage reporting date of any crop year unless a transfer of coverage and right to an indemnity is completed and the insurance provider is notified in writing on or before the acreage reporting date. The transferee must be eligible for crop insurance.

9. Section 9(a)(1)—Add adverse weather conditions as a cause of loss. Delete frost, freeze, hail, drought, wind and fruit-set failure because these are included by the term adverse weather.

10. Section 9(a) (3) and (4)—Clarify that disease and insect infestation are included causes of loss, but not damage due to insufficient or improper application of disease or pest control measures.

11. Section 9(a)(9) and (b) (2) and (3)—Add wildlife as a cause of loss unless appropriate control measures have not been taken. Also specifically exclude from coverage inability to market apples for any reason other than actual physical damage from an insurable cause of loss, and mechanical damage. These changes were made to be consistent with other perennial crop provisions.

12. Section 10—Require the producer to give notice: (1) Within 3 days of the date harvest should have started if the crop will not be harvested; (2) at least 15 days before any production from any unit will be sold by direct marketing so an inspection can be made; and (3) if the crop has been previously damaged and notice provided, at least 15 days prior to harvest as a result of that previous damage so a preharvest inspection can be made if the insured intends to claim an indemnity. These changes will incorporate and standardize the notice of loss requirements used for other perennial crops.

13. Section 12—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contracts by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover the procedures for, and duration of, written agreements.

14. Section 13—Add optional quality adjustment provisions for fresh fruit and processing apples to the Apple Crop Provisions, thereby eliminating insured's paperwork burden of completing the Apple Fresh Fruit Option and the Apple Sunburn Option forms. Also, add provision that specifies these options are not available to insureds who elect the Catastrophic Risk Protection (CAT) Endorsement. Also, increase the percentage of cull production that will be considered as production to count from 15 to 30 percent. This change provides for a reduced long term loss ratio by increasing the percentage of the cull production as production to count.

List of Subjects in 7 CFR Parts 405 and 457

Apple Crop insurance, Apple crop insurance regulations.

Proposed Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 405 and 457, as follows:

PART 405—APPLE CROP INSURANCE REGULATIONS FOR THE 1986 THROUGH THE 1997 CROP YEARS

1. The authority citation for 7 CFR part 405 is amended as follows:

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

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

3. Subpart Heading "Subpart—Regulations for the 1986 through the 1997 Crop Years" is removed.

§ 405.7 [Amended]

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

* * * * *

(d) The application for the 1986 and subsequent crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Apple Insurance Policy for the 1986 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

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

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

5. Section 457.158 is added to read as follows:

§ 457.158 Apple crop insurance provisions.

The Apple Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

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Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Apple Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, and the Special Provisions; the Special Provisions will control these Crop Provisions and the Basic Provisions; and these Crop Provisions will control the Basic Provisions.

1. Definitions

Adapted. (For the purpose of determining varieties adapted to the area), varieties that are recognized by Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

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

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

Area C. Colorado.

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

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

Bushel. 42 pounds of apples in all states except Colorado. In Colorado, a bushel equals 40 pounds of apples.

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

Days. Calendar days.

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper, or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, or a farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

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

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

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

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

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

Non-contiguous. Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Pound. Sixteen (16) ounces avoirdupois.

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

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

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

Ton. Two thousand (2,000) pounds avoirdupois.

USDA. United States Department of Agriculture.

Written agreement. A written document that alters designated terms of this policy in accordance with section 12.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) may be divided into optional units if, for each optional unit you meet all the conditions of this section.

(b) Basic units may not be divided into optional units on any basis other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you for the units combined.

(d) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) For each crop year, records of marketed production or measurement of stored production from each optional unit must be maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(3) Each optional unit must meet one or more of the following criteria unless otherwise specified by written agreement, as applicable:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage and non-irrigated acreage (in those counties where "non-irrigated" practice is allowed in the actuarial table) if both are located in the same section, section equivalent, or FSA Farm Serial Number. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, and you may not continue into non-irrigated acreage in the same rows or planting pattern.

(iii) *Optional Units on Acreage Located on Non-Contiguous Land:* In addition to, or instead of, establishing optional units by section, section equivalent, FSA Farm Serial Number, or irrigated and non-irrigated practices, optional units may be established if each optional unit is located on non-contiguous land.

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

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the apples in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each apple type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) You must report, by the production reporting date designated in section 3

(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by type if applicable:

(1) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

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

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

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

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

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield. We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: interplanted perennial crop; removal of trees; damage; change in practices and any other circumstance on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are November 20.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the apples in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown on tree varieties that:

(1) Are adapted to the area;

(2) Are in area A and have produced at least an average of 10 bins per acre;

(3) Are in area B and have produced at least an average of 150 bushels per acre;

(4) Are in Area C and have produced at least an average of 200 bushels per acre; and

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

7. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, apples interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the insurability requirements contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on November 21 of each crop year, notwithstanding the previous sentence for the year of application, if your application is received after November 11 but prior to November 21 insurance will attach on the 10th day after your properly completed application is received in our local office unless we inspect the acreage during the 10-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 orchard.

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

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

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

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

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

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

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Earthquake;

(6) Volcanic eruption;

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

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

(9) Wildlife, unless appropriate control measures have not been taken.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

- (1) Failure of the fruit to size, shape, or color properly; or
- (2) Inability to market the apples for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.
- (3) Mechanical damage including, but not limited to, limb rubs, scars, and punctures; or

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the following will apply:

- (a) You must notify us within three 3 days of the date harvest should have started if the crop will not be harvested.
- (b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.
- (c) If the crop has been damaged during the growing season and you previously gave notice in accordance with section 14 of the Basic Provisions (§ 457.8), you must also provide notice at least 15 days prior to the beginning of harvest if you intend to claim an indemnity as a result of the damage previously reported. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section all such production will be considered undamaged and included as production to count.

(c) If the crop has been damaged during the growing season and you previously gave notice in accordance with section 14 of the Basic Provisions (§ 457.8), you must also provide notice at least 15 days prior to the beginning of harvest if you intend to claim an indemnity as a result of the damage previously reported. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section all such production will be considered undamaged and included as production to count.

11. Settlement of Claim

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

- (1) For any optional units, we will combine all optional units for which such production records were not provided; or
- (2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.
- (b) In the event of loss or damage covered by this policy, we will settle your claim by:
 - (1) Multiplying the insured acreage by its respective production guarantee;
 - (2) Multiplying each result in section 11(b)(1) by the respective price election for each type, if applicable;
 - (3) Totaling the results in section 11(b)(2);

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

- (5) Totaling the results in section 11(b)(4);
- (6) Subtracting the total in section 11(b)(5) from the total in section 11(b)(3); and
- (7) Multiplying the result in section 11(b)(6) by your share.

(c) The total production to count (boxes or bushels) from all insurable acreage on the unit will include:

- (1) All appraised production as follows:
 - (i) Not less than the production guarantee per acre for acreage:
 - (A) That is abandoned;
 - (B) That is sold by direct marketing if you fail to meet the requirements contained in section 10;
 - (C) That is damaged solely by uninsured causes; or
 - (D) For which you fail to provide acceptable production records;
 - (ii) Production lost due to uninsured causes;
 - (iii) Unharvested production; and
 - (iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and
- (2) All marketable harvested production from the insurable acreage.
- (3) Mature marketable apple production may be reduced as a result of loss in quality due to hail, wind, freeze, or sunburn in accordance with section 13 of these provisions, if you elect one or more of these coverages.

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

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

12. Written Agreements

Terms of this policy which are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

- (a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 12(e);
- (b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;
- (c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;
- (d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and
- (e) An application for a written agreement submitted after the sales closing date may be

approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

13. Optional Coverage for Quality Adjustment

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

- (1) You have not elected to insure your apples under the Catastrophic Risk Protection (CAT) Endorsement.
- (2) You elected the Fresh Fruit Option A or the Fresh Fruit Option B; or you elected both the Fresh Fruit Option B and the Sunburn Option on your application or other form approved by us, and did so on or before the sales closing date for the initial crop year for which you wish it to be effective. By doing so, you agreed to pay the additional premium designated in the actuarial table for this optional coverage; and
- (3) You or we did not cancel the option in writing on or before the cancellation date. Your election of CAT coverage for any crop year after this endorsement is effective will be considered as notice of cancellation by you.

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

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

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

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

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

(1) Fresh Fruit Option A—In addition to section 11(c) of these provisions and notwithstanding the definition of “marketable” in section 1 of these provisions, your production to count for any acreage designated for processing or fresh-market will be adjusted when your apples are damaged by hail to the extent that such apples will not grade U.S. No. 1 (processing). The adjustment factor (not to exceed 1.00) will be the ratio of the average market price (received by you or determined by us, whichever is larger) for the damaged production to the average market price for U.S. No 1 (processing) apples. There will be no adjustment for quality if the apples do not grade U.S. No. 1 due to size, color, or russetting.

(2) Fresh Fruit Option B—Notwithstanding section 11(c) and the definitions of “harvest” and “marketable” in section 1 of these provisions, the total production to count for a unit must include all harvested and appraised production. Harvested apple production which is damaged by hail to the extent that it does not grade 80 percent U.S. Fancy or better, in accordance with

applicable USDA Standards for Grades of Apples, will be adjusted as follows:

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

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

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

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

(v) The difference between the reduced production and the total production will be considered cull production.

(3) Apples that are knocked to the ground by wind or frozen to the extent that they can be harvested but not packed or marketed as fresh apples will be considered 100 percent cull production.

(4) Thirty (30) percent of all cull production will be considered production to count.

(5) No reduction in grade will be applied to any apple grading less than U.S. Fancy due solely to shape, russetting, or color.

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

(g) Sunburn Option

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

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

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

(ii) Production with 41 through 50 percent not grading U.S. Fancy or better due solely to excessive sun or excessive sun along with hail damage, will be reduced 40 percent plus an additional 3 percent for each percent in excess of 40 percent.

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

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

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

(vi) Thirty (30) percent of all cull production will be considered as production to count.

Signed in Washington, D.C., on May 2, 1997.

Suzette M. Dittrich,

Deputy Manager, Federal Crop Insurance Corporation.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

RIN 3150-AF59

Requirements for Shipping Packages Used To Transport Vitrified High-Level Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to remove canisters containing vitrified high-level waste (HLW) containing plutonium from the packaging requirement for double containment. This amendment is being proposed in response to a petition for rulemaking (PRM-71-11) submitted by the Department of Energy (DOE). This proposed rule would also make a minor correction to the usage of metric and English units to be consistent with existing NRC policy.

DATE: The comment period expires July 22, 1997. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Attention: Rulemakings and Adjudications Staff.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

For information on submitting comments electronically, see the discussion under Electronic Access in the **SUPPLEMENTARY INFORMATION Section**.

Certain documents related to this rulemaking, including comments received and the environmental assessment and finding of no significant impact, may be examined at the NRC

Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking as discussed under Electronic Access in the **SUPPLEMENTARY INFORMATION Section**.

FOR FURTHER INFORMATION CONTACT: Earl Easton, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-8520, e-mail EXE@nrc.gov or Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6196, e-mail MFH@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

In 10 CFR 71.63, the NRC imposed special requirements on licensees who ship plutonium in excess of 0.74 terabecquerels (20 curies). These requirements specify that plutonium must be in solid form and that packages used to ship plutonium must provide a separate inner containment (the "double containment" requirement). In adopting these requirements, the NRC specifically excluded plutonium in the form of reactor fuel elements, metal or metal alloys, and, on a case-by-case basis, other plutonium-bearing solids that the NRC determines do not require double containment.

On November 30, 1993, the DOE petitioned the NRC to amend § 71.63 to add a provision that would specifically remove canisters containing plutonium-bearing vitrified waste from the packaging requirement for double containment. The NRC published a notice of receipt for the petition, docketed as PRM-71-11, in the **Federal Register** on February 18, 1994 (59 FR 8143), requesting public comment by May 4, 1994. On May 23, 1994 (59 FR 26608), the public comment period was extended to June 3, 1994, at the request of the Idaho National Engineering Laboratory (INEL) Oversight Program of the State of Idaho.

Pursuant to the Nuclear Waste Policy Act of 1982, as amended, the DOE is the Federal agency responsible for developing and administering a geologic repository for the deep disposal of HLW and spent nuclear fuel. In the petition, the DOE proposes to ship the HLW from each of its three storage locations at Aiken, South Carolina; Hanford, Washington; and West Valley, New York; directly to the geologic repository in casks certified by the NRC. Currently, this HLW exists mostly in the form of