

§405.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the apple insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take their erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§405.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the apple crop as provided in the policy. The contract shall consist of the application, the policy, the Fresh Fruit Option, if applicable, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§405.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the apple crop as

landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of an apple contract issued under such prior regulations, without the filing of a new application.

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

DEPARTMENT OF AGRICULTURE
FEDERAL CROP INSURANCE CORPORATION
Apple Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We shall provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from

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the following causes occurring within the insurance period:

- (1) Drought;
- (2) Freeze;
- (3) Frost;
- (4) Wind;
- (5) Hail;
- (6) Fire;
- (7) Earthquake;
- (8) Volcanic eruption;
- (9) Fruit-set failure; or

(10) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are expected, excluded, or limited by the actuarial table or section 9e(4).

b. We will not insure against any loss of production due to:

- (1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
- (2) The failure to follow recognized good apple management practices;
- (3) The failure or breakdown of irrigation equipment or facilities;
- (4) The failure to follow good apple irrigation practices;
- (5) The impoundment of water by any governmental, public or private dam or reservoir project; or
- (6) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be a variety of apples established as adopted to the area, which is located on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be apples located on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured apples at the time insurance attaches.

d. We do not insure any acreage:

- (1) Which in area A has not produced a minimum of 10 bins per acre;
- (2) Which in area B has not produced a minimum of 150 bushels per acre;
- (3) Which in Colorado, has not produced a minimum of 200 bushels per acre;
- (4) Unless we agree, in writing, to insure such acreage;
- (5) Which we inspect and consider not acceptable;
- (6) The crop year the application is filed until the acreage has been inspected and accepted by us; or
- (7) Acquired for the crop year until inspected and accepted by us.

e. If insurance is provided for an irrigated practice you must report as irrigated only

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the acreage for which you have adequate facilities and water, at the time insurance attaches, to carry out a good apple irrigation practice.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the time insurance attaches.

3. Report of acreage, share, and Number of Trees

You must report on our form:

- a. All the acreage of apples in the county in which you have a share;
- b. Your share at the time insurance attaches; and
- c. The number of bearing trees.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any apples located in the county.

This report will be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and number of trees or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

d. You must furnish a report of production to us for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

5. Annual Premium

a. The annual premium is earned and payable when insurance attaches. The amount is

computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share when insurance attaches.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the Eastern or Western apple policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

- (1) No premium reduction will be retained after the 1991 crop year;
- (2) The premium reduction will not increase because of favorable experience;
- (3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;
- (4) Once the loss ratio exceeds .80, no further premium reduction will apply; and
- (5) Participation must be continuous.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance Period

Insurance attaches for each crop year on November 21 except that for the first crop year, if we accept your application for apple insurance after November 21, insurance will attach on the thirtieth day after you submit a properly completed application. Insurance ends at the earliest of:

- a. Total destruction of the apples;
- b. Harvest of the unit;
- c. Final adjustment of a loss; or
- d. The earlier of:
 - (1) The end of the normal harvest period by variety for the crop year; or
 - (2) November 5 of the crop year.

8. Notice of Damage or Loss

- a. In case of damage or probable loss:
 - (1) You must give us notice of the date and cause of damage within 10 days of such damage.
 - (2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.
 - (3) If probable loss is later determined or damage occurs during harvest, immediate notice must be given.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 10 days after the earliest of:

- (i) Total destruction of the apples on the unit;
- (ii) Harvest of the unit; or
- (iii) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the apples which are not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

- (1) Total destruction of the apples on the unit;
- (2) Harvest of the unit; or
- (3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

- (1) Establish the total production of apples on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and
- (2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

- (1) Multiplying the insured acreage by the production guarantee;
- (2) Subtracting therefrom the total production of apples to be counted (see section 9e);
- (3) Multiplying the remainder by the price election; and
- (4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production to be counted for a unit will include all harvested and appraised production determined to be marketable.

- (1) Appraised production to be counted will include:
 - (i) Unharvested marketable production, and potential production lost due to uninsured causes and failure to follow recognized good apple management practices; and
 - (ii) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent.

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(2) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Not harvested before the harvest of apples becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(3) The amount of production of any unharvested apples may be determined on the basis of field appraisals conducted after the end of the insurance period.

(4) If you elect to exclude hail and fire as insured causes of loss and the apples are damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

f. You must not abandon any acreage to us.

g. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity.

The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the FEDERAL REGISTER on or about January 1 and July 1 of each year.

The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person determined to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation (Recovery of Loss From a Third Party)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and Access to Farm

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all apples produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production

to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

- (1) If deducted from an indemnity will be the date you sign the claim; or
- (2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are November 20.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of apple crop insurance:

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

b. *Area B* includes all other states except Colorado.

c. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding apple insurance in the county.

d. *Bin* means a standard container, accepted by the industry: (1) Containing a minimum of 875 pounds of apples; or (2) as designated by the actuarial table.

e. *Bushel* means a standard container, containing 42 pounds of apples (40 pounds in Colorado).

f. *Contiguous land* means land which is touching at any point, except that land which is separated by only a public or private right-of-way will also be considered contiguous.

g. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county as shown by the actuarial table.

h. *Crop year* means the period beginning with the date insurance attaches and extending through the normal harvest time and shall be designated by the calendar year in which the apples are normally harvested.

i. *Freeze* means the condition that exists when air temperatures over a widespread area remain at or below 32 degrees (Fahrenheit).

j. *Frost* means the condition that exists when the air temperature around the plant falls to 32 degrees (Fahrenheit) or below.

k. *Fruit-set failure* means failure of the apple trees to develop blossoms or set fruit due only to adverse weather conditions, but shall not include poor pollination resulting from inadequate pollenizers in the orchard or failure to set fruit due to spray damage or other manageable causes.

l. *Harvest* means the picking of marketable apples from the trees or from the ground.

m. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

n. *Insured* means the person who submitted the application accepted by us.

o. *Loose field box* means a standard container containing: (1) 35 pounds of apples; or (2) a quantity designated by the actuarial table.

p. *Loss ratio* means the ratio of indemnity to premium.

q. *Marketable* means apples which grade U.S. No. 1, 2, or Cider in accordance with the United States Standards for Apples for Processing.

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r. *Person* means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

s. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

t. *Tenant* means a person who rents land from another person for a share of the apples or a share of the proceeds therefrom.

u. *Unit* means all insurable acreage of apples in the county located on contiguous land, on the date insurance attaches for the crop year:

- (1) In which you have a 100 percent share; or
- (2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the apples on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

21. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insur-

ance policy will be effective subject to the availability of appropriations.

[50 FR 43655, Oct. 29, 1985, as amended at 51 FR 29206, 29207, Aug. 15, 1986; 51 FR 45296, Dec. 18, 1986; 52 FR 3214, Feb. 3, 1987; 55 FR 35555, Aug. 31, 1990; 55 FR 35888, Sept. 4, 1990; 63 FR 17054, Apr. 8, 1998]

§ 405.8 Apple fresh fruit option.

(a) Notwithstanding the provisions of § 405.7(d), section 9.e. of this part, an insured producer may, upon submission and approval of a Fresh Fruit Option Amendment (Amendment) elect to insure any insurable acreage or any designated portion thereof, under the provisions of the Amendment. Only apple acreage which is managed with the intent of producing fresh-market apples will be insurable under the Amendment. If management practices are carried out for the production of both fresh and processing apples on insurable acreage, and the election is made to: (1) Insure fresh market apples under the Amendment and; (2) insure those insurers intended for processing under the Apple policy; the election to insure on both a fresh and processing basis must be made when the Amendment is submitted. The Amendment is continuous until cancelled and may only be cancelled prior to the cancellation date.

(b) For those insureds who elect to insure apples under the Amendment, all provisions of the Apple crop insurance policy will apply except those provisions in conflict with the Amendment.

(c) The Option reads as follows:

DEPARTMENT OF AGRICULTURE
FEDERAL CROP INSURANCE CORPORATION
Apple Fresh Fruit Option

This is a continuous amendment (see section 15 of the basic policy).

Insured's Name _____
Contract No. _____
Address _____
Crop Year _____
Identification No. _____
SSN _____
Tax _____

It is hereby agreed to amend the basic Federal Crop Insurance Apple Policy under the following terms and conditions:

1. This Option must be submitted to us on or before the final date for accepting applications for the initial crop year in which you