

§ 451.7 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 canning and processing peach crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable sales 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 sales 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 a canning and processing peach contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Canning and Processing Peach Crop Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Canning and Processing Peach Crop Insurance Policy

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

AGREEMENT TO INSURE: We will 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 the following causes occurring within the insurance period:

- (1) Adverse weather conditions;
- (2) Fire;
- (3) Wildlife;
- (4) Earthquake;
- (5) Volcanic eruption;
- (6) Direct Mediterranean Fruit Fly damage; or
- (7) Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(3).

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

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

2. Crop, Acreage, and Share Insured

a. The crop insured will be any of the varieties of clingstone peaches ("peaches") which are grown for the production of canning or processing peaches 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 peaches grown 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 peaches at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

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- (1) The time of loss; or
 - (2) The beginning of harvest.
- d. We do not insure any acreage:

(1) Which is not irrigated or for which adequate facilities and water are not available at the time insurance attaches to carry out a good peach irrigation practice;

(2) On which the trees have not reached the fifth growing season after being set out unless we agree in writing to insure such acreage;

(3) Planted with a vine or tree crop other than peaches;

(4) Which we inspect and consider not acceptable; or

(5) A variety of peaches not established as adapted to the area or excluded by the actuarial table.

e. 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 date insurance attaches.

3. Report of Acreage, Share, and Practice

You must report on our form:

a. All the acreage of peaches in the county in which you have a share;

b. The practice; and

c. Your share at the time insurance attaches.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any peaches grown in the county. This report must be submitted annually on or before March 1. 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 practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval. By applying for peach crop insurance, you authorize us to examine records maintained by the Cling Peach Advisory Board for the purpose of determining or verifying your production and acreage.

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. If the number of bearing trees (fifth growing season and older) is reduced more than 10 percent from the preceding calendar year as a result of damage occurring within that year, the production guarantee will be reduced 1 percent (through adjustment to your average yield) for each 1 percent reduction in excess of 10 percent.

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

d. You may change the coverage level and price election on or before the sales closing

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date as established by the actuarial table for submitting applications for the crop year.

5. Annual Premium

a. The annual premium is earned and payable on the date 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 on the date insurance attaches.

b. Interest will accrue at the rate of one and one-quarter percent (1¼%) 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.

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 March 1 and ends at the earliest of:

- a. Total destruction of the peaches;
- b. The date harvest of the peaches (by variety) should have started;
- c. Harvest of the peaches;
- d. Final adjustment of a loss; or
- e. September 15.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us written notice of:

- (a) The dates of damage; and
- (b) The causes of damage.

(2) You must give us written notice if during the period before harvest, the peaches on any unit are damaged and you decide not to further care for or harvest any part of them.

(3) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(4) If probable loss or damage is determined within 15 days of or during harvest, immediate notice must be given.

(5) If you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours:

- (a) After total destruction of the peaches;
 - (b) Discontinuance of harvest on the unit;
- or

(c) Before harvest would normally start if any acreage on the unit is not to be harvested.

(6) Unless notice has been given under subsection (5) above, and in addition to the other notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

- (a) Harvest of the unit; or
- (b) September 15 of the crop year.
- b. You must obtain written consent from us before you destroy any of the peaches which are not to be harvested.
- c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

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 peaches on the unit;
- (2) Harvest of the unit; or
- (3) September 15 of the crop year.

b. We will not pay any indemnity unless you:

(1) Establish the total production of peaches 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;

(2) Authorize us in writing to examine and obtain any records pertaining to the production and marketing of the insured peaches under this contract from the peach canner or Cling Peach Advisory Board; and

(3) 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 peaches to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result 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 which the California State Inspection Service grades No. 2 or better.

(1) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good peach farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent; and

(c) Any unharvested production.

(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 peaches becomes general in the county;

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

(c) Harvested.

(3) If you elect to exclude hail and fire as insured causes of loss and the peaches 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 semiannually on or about January 1 and July 1. 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 persons we determine 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

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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 peaches 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 if deducted from:

(1) An indemnity claim will be the date you sign the claim; or

(2) A 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 January 31.

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 October 31 preceding the cancellation date (November 31 for the 1988 crop year only). Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of peach crop insurance:

a. *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

canning and processing peach insurance in the county.

b. *Average yield* means the yield established from your production records, which is approved by us and shown on our form.

c. *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 be considered contiguous.

d. *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.

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

f. *Direct Mediterranean Fruit Fly damage* means the actual physical damage to the peaches on the unit which causes such peaches to be unmarketable and will not include unmarketability of such peaches as a direct result of a quarantine, boycott, or refusal to accept the peaches by any entity without regard to actual physical damage to such peaches.

g. *Harvest* means picking of the peaches from the trees either by hand or machine for the purpose of removal from the orchard.

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

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

j. *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.

k. *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.

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

m. *Unit* means all insurable acreage of peaches 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, fixed commodity payment, or any consideration other than a share in the peaches 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 insurance policy will be effective subject to the availability of appropriations.

[51 FR 5697, Feb. 18, 1986, as amended at 51 FR 29205, 29207, Aug. 15, 1986; 51 FR 45296, Dec. 18, 1986; 52 FR 3214, Feb. 3, 1987; 52 FR 41692, Oct. 30, 1987; 53 FR 46850, Nov. 21, 1988; 55 FR 35888, Sept. 4, 1990]

PARTS 452-453 [RESERVED]

PART 454—FRESH MARKET TOMATO (GUARANTEED PRODUCTION PLAN) CROP INSURANCE REGULATIONS FOR THE 1987 THROUGH 1997 CROP YEARS

Sec.

454.1 Availability of guaranteed plan of fresh market tomato crop insurance.

454.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

454.3 OMB control numbers.

454.4 Creditors.

454.5 Good faith reliance on misrepresentation.

454.6 The contract.

454.7 The application and policy.