

Agricultural Marketing Service, USDA

§ 82.8

that, regardless of actual 2005 deliveries, growers will receive a minimum of \$500 per acre and a maximum of \$1,700 per acre.

(b) Payment under paragraph (a) of this section will only be made after tree removal has been verified by the staff of the CCPA.

(c) The \$100 per ton payment is intended to cover the costs of tree removal. USDA will not make any other payment with respect to such removals. The grower will be responsible for arranging, requesting, and paying for the tree removal in the specified acreage.

(d) Total payments under this program are limited to not more than \$5,000,000 of Section 32 funds. No additional expenditures shall be made unless the Administrator or delegatee in their sole and exclusive discretion shall, in writing, declare otherwise.

§ 82.7 Eligibility for payment.

(a) If total applications for payment do not exceed \$5,000,000, less administration costs, payments, as set forth in § 82.6, will be made under this program to any grower of clingstone peaches who complies with the requirements in § 82.8 and all other terms and conditions in this part.

(b) If applications for participation in the program authorized by this part exceed \$5,000,000, less administration costs, the CCPA will approve the applications (subject to the requirements in § 82.8) in the order in which the completed applications are received in the CCPA office to the extent that funds are available. Applications received after total outlays exceed the amount of money available will be denied.

§ 82.8 Application and approval for participation.

(a) Applications will be reviewed for program compliance and approved or disapproved by CCPA office personnel.

(b) Applications for participation in the Clingstone Peach Diversion Program can be obtained from the CCPA office at 2300 River Plaza Drive, Suite 110, Sacramento, CA 95833; Telephone: (916) 925-9131; Fax: (916) 925-9030; at 335 Teegarden Avenue, Suite A, Yuba City, CA 95991; Telephone: (530) 673-8526; Fax: (530) 673-2673; or at 1704 Herndon Road,

Ceres, CA 95307; Telephone: (209) 537-0715; Fax: (209) 537-1043.

(c) Any grower desiring to participate in the Clingstone Peach Diversion Program must file an application with the CCPA prior to November 30, 2005. The application shall be accompanied by a copy of any two of the following four documents: Plot Map from the County Hall of Records; Irrigation Tax Bill; County Property Tax Bill; or any other documents containing an Assessor's Parcel Number. Such application shall include at least the following information:

(1) The name, address, telephone number, and tax identification number or social security number of the grower;

(2) The location and amount of acreage to be diverted;

(3) The 2005 clingstone peach production from the acreage to be diverted;

(4) If the land with respect to which the clingstone peach trees will be destroyed is subject to a mortgage, statutory lien, or other equity interest, the grower must obtain from the holder of such interest a written statement that such party agrees to the enrollment of such land in this program to the extent determined necessary by AMS. Obtaining such assent shall be the responsibility of the applicant who shall alone bear any responsibilities which may extend to such third parties;

(5) A statement that the applicant agrees to comply with all of the regulations established for the clingstone peach diversion program;

(6) The applicant shall sign the application certifying that the information contained in the application is true and correct;

(7) The year that the clingstone peach acreage to be diverted was planted;

(8) The names of the processors who received the clingstone peaches from the grower in 2005.

(d) After the CCPA receives the applications, it shall review them to determine whether all the required information has been provided and that the information is correct.

(e) If the deliveries off the acreage to be removed in such applications, multiplied by \$100 per ton (for actual 2005 deliveries on these acres, but within the

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constraints of a minimum payment of \$500 per acre and a maximum payment of \$1,700 per acre), exceed the amount of funds available for the diversion program, each grower's application will be considered in the order in which they are received at the CCPA offices.

(f) After the application reviews and confirmation of eligible trees are completed, the CCPA shall notify the applicant, in writing, as to whether or not the application has been approved and the tonnage approved for payment after removal. If an application is not approved, the notification shall specify the reason(s) for disapproval.

§ 82.9 Inspection and certification of diversion.

When the removal of the clingstone peach trees is complete, the grower will notify the CCPA on a form provided by the CCPA. The CCPA will certify that the trees approved for removal from the acreage have been removed, and notify AMS.

§ 82.10 Claim for payment.

To obtain payment for the trees removed, the grower must submit to the CCPA by July 31, 2006, a completed form provided by the CCPA. Such form shall include the CCPA's certification that the qualifying trees from the acreage have been removed. AMS will then issue a check to the grower in the amount of \$100 per eligible ton removed consistent with the minimum and maximum payments per acre earlier specified in this part.

§ 82.11 Compliance with program provisions.

If USDA or the CCPA determines that any provision of this part have not been complied with by the grower, the grower will not be entitled to diversion payments in connection with tree removal. If a grower does not comply with all the terms of this part, including the requirement specified in § 82.5(b), the grower must refund any payment made in connection with this program, and will also be liable for any other damages incurred as a result of such failure. The USDA may deny any grower the right to participate in this program or the right to receive payments in connection with any diversion

previously made under this program, or both, if the USDA determines that:

(a) The grower has failed to properly remove the clingstone peach trees from the applicable acreage, regardless of whether such failure was caused directly by the grower or by any other person or persons;

(b) The grower has not acted in good faith, or has engaged in a scheme, fraud, or device, in connection with any activity under this program; or

(c) The grower has failed to discharge fully any obligation assumed by him or her under this program.

§ 82.12 Inspection of premises.

The grower must permit authorized representatives of USDA or the CCPA, at any reasonable time, to have access to their premises to inspect and examine the acreage where the trees were removed as well as any records pertaining to that acreage to determine compliance with the provisions of this part.

§ 82.13 Records and accounts.

(a) The growers participating in this program must keep accurate records and accounts showing the details relative to the clingstone peach tree removal, including the contract entered into with any firm removing the trees, as well as the invoices.

(b) The growers must permit authorized representatives of USDA, the CCPA, and the Government Accountability Office at any reasonable time to inspect, examine, and make copies of such records and accounts to determine compliance with provisions of this part. Such records and accounts must be retained for ten years after the date of payment to the grower under the program, or for ten years after the date of any audit of records by USDA, whichever is later. Any destruction of records by the grower at any time will be at the risk of the grower when there is reason to know, believe, or suspect that matters may be or could be in dispute or remain in dispute.

§ 82.14 Offset, assignment, and prompt payment.

(a) Any payment or portion thereof due any person under this part shall be allowed without regard to questions of