

eligibility for any emergency crop loss assistance in connection with the crop to remain eligible for the USDA program benefits specified in subsection (e). However, if, after the sales closing date, you plant that crop, you will be unable to obtain insurance for that crop and you must execute a waiver of your eligibility for emergency crop loss assistance in connection with the crop to remain eligible for the USDA program benefits specified in section 12(e). Failure to execute such a waiver will require you to refund any benefits already received under a program specified in section 12(e).

(b) You are initially responsible to determine the crops of economic significance in the county. The insurance provider may assist you in making these initial determinations. However, these determinations will not be binding on the insurance provider. To determine the percentage value of each crop:

(1) Multiply the acres planted to the crop, times your share, times the approved yield, and times the price;

(2) Add the values of all crops grown by the producer in the county; and

(3) Divide the value of the specific crop by the result of section 12(b)(2).

(c) You may use the type of price such as the current local market price, futures price, established price, highest amount of insurance, etc., for the price when calculating the value of each crop, provided that you use the same type of price for all crops in the county.

(d) You may be required to justify the calculation and provide adequate records to enable the insurance provider to verify whether a crop is of economic significance.

(e) You must obtain at least catastrophic coverage for each crop of economic significance in the county in which you have an insurable share, if insurance is available in the county for the crop, unless you execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop to be eligible for:

(1) Benefits under the Agricultural Market Transition Act;

(2) Loans or any other USDA provided farm credit, including: guaranteed and direct farm ownership loans, operating loans, and emergency loans under the Consolidated Farm and Rural Development Act provided after October 13, 1994; and

(3) Benefits under the Conservation Reserve Program derived from any new or amended application or contracts executed after October 13, 1994.

(f) Failure to comply with all provisions of the policy constitutes a breach of contract and may result in ineligibility for certain other farm program benefits for that crop year and any benefit already received must be refunded. If you breach the insurance contract, the execution of a waiver of any eligibility for emergency crop loss assistance will

not be effective for the crop year in which the breach occurs.

[61 FR 42985, Aug. 20, 1996, as amended at 63 FR 40631, July 30, 1998; 64 FR 40740, July 28, 1999; 65 FR 40484, June 30, 2000]

PART 403—GENERAL CROP INSURANCE REGULATION

Sec.

403.1 Availability of peach crop insurance.

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

403.3 OMB control numbers.

403.4 Creditors.

403.5 Good faith reliance on misrepresentation.

403.6 The contract.

403.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506(l), 1506(p).

SOURCE: 50 FR 43648, Oct. 29, 1985, unless otherwise noted.

§ 403.1 Availability of peach crop insurance.

Insurance shall be offered under the provisions of this subpart on peaches in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

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

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for peaches which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

Federal Crop Insurance Corporation, USDA

§ 403.7

§ 403.3 OMB control numbers.

The OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§ 403.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 403.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the peach 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 other 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. Requests for relief under this section must be submitted to the Corporation in writing.

§ 403.6 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 peach crop as provided in the policy. The contract shall consist of the application, the policy, 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.

§ 403.7 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 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 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 a peach insurance 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). The provisions of the Peach Insurance Policy for the 1986 through 1997 crop years are as follows:

DEPARTMENT OF AGRICULTURE
FEDERAL CROP INSURANCE CORPORATION

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 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) Frost;
- (2) Freeze;
- (3) Hail;
- (4) Tornado;
- (5) Cyclone;
- (6) Drought;
- (7) Wind;
- (8) Lightning;
- (9) Flood;
- (10) Fire;
- (11) Earthquake;
- (12) Volcanic eruption;
- (13) An insufficient number of chilling hours to effectively break the dormant period for the crop year; or
- (14) If applicable, 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 9f(5).

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

- (1) Disease or insect infestation;
- (2) The neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants, or employees;
- (3) The failure to follow recognized good peach farming practices;
- (4) The failure or breakdown of irrigation equipment or facilities;
- (5) The failure to follow good peach irrigation practices;
- (6) The impoundment of water by any governmental, public or private dam or reservoir project;
- (7) Split pits regardless of cause; or
- (8) 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 types or varieties of peaches which are grown for

the production of Fresh or Processing Peaches (except processing peaches in California) 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, for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

- (1) The time of loss; or
- (2) The beginning of harvest.

d. We do not insure any acreage:

- (1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
- (2) From which the peaches are harvested by the public;
- (3) On which the trees have not reached the fourth growing season after being set out unless such acreage has produced at least 100 bushels of peaches per acre;
- (4) Planted with a vine or tree crop other than peaches;
- (5) Which we inspect and consider not acceptable; or
- (6) Of a type or variety of peaches not established as adapted to the areas or excluded by the actuarial table.

e. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water, at the time insurance attaches, to carry out a good peach 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 date insurance attaches.

3. Report of Acreage, Share, Practice, and Number of Bearing Trees

You must report on our form:

- a. All the acreage of peaches in the county in which you have a share;
- b. The practice;
- c. Your share on the date insurance attaches; and
- d. 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 peaches grown in the county. This report must be submitted annually on or before January 10. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by January 10, we may elect to determine by unit the insured acreage, share, practice, and number of bearing trees or we may deny liability on any

Federal Crop Insurance Corporation, USDA

§ 403.7

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. If the number of bearing trees (fourth growing season and older) is reduced more than 10 percent from the preceding calendar year, the production guarantee may 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 closing date for submitting applications for the crop year as established by the actuarial table.

e. You must furnish a report of production to use 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 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.

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 peach 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. Deduction 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 December 1 and ends at the earliest of:

- a. Total destruction of the peaches;
- b. The date harvest of the peaches (by variety) should have ended;
- c. Harvest of the peaches;
- d. Final adjustment of a loss; or
- e. September 30 of the crop year.

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) If you are going to claim an indemnity on any unit, you must give us notice:

(a) At least 15 days before the beginning of harvest;

(b) Immediately, if damage occurs within the 15 days prior to harvest or during harvest; or

(c) By September 30, if harvest will not begin by this date.

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 30 of the crop year.

b. We will not pay any indemnity unless you:

- (1) Establish the total production of peaches on the unit at the time of harvest and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

§ 403.7

7 CFR Ch. IV (1-1-02 Edition)

(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) Multiplying this result by the price election;

(3) Subtracting therefrom the dollar amount obtained by multiplying the total production of peaches to be counted (see section 9f) by the larger of the price election or the actual price per bushel of peaches; and

(4) Multiplying this result by your share.

d. If a unit contains insured acreage of both fresh and processing type peaches, the dollar amounts of insurance and production to count as established in 9.c. above will be determined separately for each type and then added together to determine the total amounts for the unit.

e. 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.

f. The total production to be counted for a unit will include all appraised production plus any production harvested prior to appraisal.

(1) Mature peach production may be adjusted downward as a result of a loss in quality because of hail, wind and misshapen fruit. Any production which is disposed of without being inspected by us will be considered undamaged. The amount of production will be determined for:

(a) Peaches grown for fresh use by:

(i) Dividing the value per $\frac{3}{4}$ -bushel carton of the damaged peaches by the price per $\frac{3}{4}$ -bushel carton of U.S. Extra No. 1 two-inch peaches; and

(ii) Multiplying this result by the number of bushels of such peaches.

The applicable price per $\frac{3}{4}$ -bushel carton of U.S. Extra No. 1 two-inch peaches (if not available, the next larger size for which a price is available) will be the applicable average F.O.B. shipping point price reported by the Market News Service of the United States Department of Agriculture for 7 consecutive days commencing with the day harvest of the variety begins.

(b) Peaches grown for processing by:

(i) Dividing the value per bushel of the damaged peaches by the price per bushel of undamaged peaches; and

(ii) Multiplying this result by the number of bushels of such peaches.

The applicable price per bushel of undamaged peaches will be the average price for processing peaches determined for 7 con-

secutive days commencing with the day harvest of the variety begins.

(2) Appraised production to be counted will include:

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

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, destroyed by you without our consent or not inspected by us prior to the completion of harvest; and

(c) All unharvested production.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is exceeded by the actual harvested production.

(4) We reserve the right to delay any appraisal of damage until the extent of damage can be determined.

(5) 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".

g. You must not abandon any acreage to us.

h. You may not sue 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.

i. 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.

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

k. 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 peaches produced on each unit, including separate records showing the same information for production from any uninsured acre-

age. 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 applied, 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. Therefore, 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 30.

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 peach crop insurance:

a. *Actual price per bushel* for:

(1) "Fresh peaches" means the average price per bushel for U.S. Extra No. 1 two-inch peaches (if not available, the next larger size for which a price is available) determined from applicable prices reported by the Market News Service of the United States Department of Agriculture for 7 consecutive days commencing with the day harvest of the variety begins less the allowable cost designated by the actuarial table; and

(2) "Processing peaches" means the average price per bushel for processor peaches determined for 7 consecutive days commencing with the day harvest of the variety begins less the allowable cost designated by the actuarial table.

b. *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, uninsurable types or varieties, insurable and uninsurable acreage, and related information regarding peach insurance in the county.

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

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 will be designated by the calendar year in which the peaches are normally harvested.

f. *Cyclone* means only a large-scale, atmospheric wind-and-pressure system characterized by low pressure at its center and counterclockwise circular wind motion which has been named by the United States Weather Service and which has sustained winds in excess of 58 miles per hour at the nearest U.S. Weather Service reporting station to the crop damage at the time of the crop damage.

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

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

i. *Harvest* means the picking of mature peaches from the trees either by hand or machine.

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

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

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

m. *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.

n. *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.

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

p. *Unit* means all insurable acreage of peaches in the county 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 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.

[50 FR 43648, Oct. 29, 1985, as amended at 51 FR 29205—29207, Aug. 15, 1986; 51 FR 45296, Dec. 18, 1986; 52 FR 3214, Feb. 3, 1987; 52 FR 6775, Mar. 5, 1987; 54 FR 24320, June 7, 1989; 55 FR 35888, Sept. 4, 1990; 62 FR 39923, July 25, 1997]

PART 404 [RESERVED]

PART 405—APPLE CROP INSURANCE REGULATIONS FOR THE 1986 THROUGH THE 1998 CROP YEARS

Sec.

- 405.1 Availability of apple crop insurance.
- 405.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
- 405.3 OMB control numbers.
- 405.4 Creditors.
- 405.5 Good faith reliance on misrepresentation.
- 405.6 The contract.
- 405.7 The application and policy.
- 405.8 Apple fresh fruit option.
- 405.9 Apple sunburn option.

AUTHORITY: 7 U.S.C. 1506(l), 1506(p).

SOURCE: 50 FR 43655, Oct. 29, 1985, unless otherwise noted.

§ 405.1 Availability of apple crop insurance.

Insurance shall be offered under the provisions of this subpart on apples in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

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

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for apples which will be included in the actuarial table on file in the applicable service

offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 405.3 OMB control numbers.

The OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§ 405.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 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