

(B) Multiplying the resulting factor, if less than 1.0, by the number of lugs of such plums.

(iii) That is damaged and is, or could be, marketed for any use other than fresh packed plums. Such production will be adjusted by:

(A) Multiplying the number of tons of such production by the value per ton of the damaged plums or \$50.00, whichever is greater; and

(B) Dividing that result by the highest price election available for the applicable varietal group.

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 33735, June 23, 1997, as amended at 62 FR 65177, Dec. 10, 1997; 65 FR 47839, Aug. 4, 2000]

§ 457.158 Apple crop insurance provisions.

The Apple Crop Insurance Provisions for the 2005 and succeeding crop years are as follows:

FCIC Policies

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Apple Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

1. Definitions

Apple production. All production of fresh apples and processing apples from the insurable acreage.

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

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

Area C. Colorado.

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

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

Bushel. In all states except Colorado, 42 pounds of apples. In Colorado, 40 pounds of apples.

Damaged apple production.

(1) With respect to losses calculated under section 12 only, the percentage of fresh or processing apple production that fails to grade U.S. No. 1 Processing or better in accordance with the grade standards, within each lot, bin, bushel or box, as applicable, due to an insurable cause of loss; or

(2) With respect to losses calculated under section 14, the percentage of fresh apple production that fails to grade U.S. Fancy or better in accordance with the grade standards, within each lot, bin, bushel, or box, as applicable, due to an insurable cause of loss.

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

Fresh apples. Apple production:

(1) That is sold, or could be sold, for consumption without undergoing any change in its basic form, such as peeling, juicing, crushing, etc.; and

(2) From acreage that is reported as fresh apples on the acreage report.

Grade standards. The United States Standards for Grades of Apples, the United States Standards for Grades of Apples for Processing, or such other standards contained in the Special Provisions.

Harvest. The picking of mature apples from the trees or collecting of mature apples from the ground. Apples collected from the ground that cannot be sold for human consumption will not be considered harvested.

Lot. A quantity of production that can be separated from other quantities of production by grade characteristics, load, location or other distinctive features.

Marketable. Apple production that is not damaged apple production.

Mature. Apples defined as "mature" under the applicable grade standards.

Pounds. Sixteen (16) ounces avoirdupois.

Processing apples. Apple production:

(1) That is sold after it had undergone a change to its basic structure such as peeling, juicing, crushing, etc.; and

(2) From acreage designated as processing apples on the acreage report.

Production guarantee (per acre). The quantity of apples in boxes or bushels determined by multiplying the approved APH yield per acre by the coverage level percentage you elect. If the production of apples has been measured in bins, the amount must be converted to boxes or bushels.

§ 457.158

Russetting. A defect on the surface of the apple as described in the grade standards.

Sunburn. A defect as described in the grade standards.

Type. Fresh, processing, or varietal group apples as specified in the Special Provisions.

Varietal group. Apple varieties with similar characteristics that are grouped for insurance purposes as specified in the Special Provisions.

2. Unit Division

In addition to the requirements of section 34(b) of the Basic Provisions, optional units may be established if each optional unit is:

- (a) Located on non-contiguous land; or
- (b) By varietal group.

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

In addition to the requirements of section 3 of the Basic Provisions:

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

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type, if applicable:

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

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

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

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

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

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

(c) We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: Interplanted perennial crop; removal of trees; damage; change in practices; and any other circumstance on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will re-

7 CFR Ch. IV (1-1-10 Edition)

duce your production guarantee as necessary at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 preceding the cancellation date for California and August 31 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates

(a) In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31 in California and November 20 in all other states.

(b) If your apple policy is canceled or terminated by us for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, but on or before the cancellation and termination dates whichever is later, insurance will be considered to have not attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

(c) We may not cancel your policy when an insured cause of loss has occurred after insurance attached, but prior to the cancellation date. However, your policy can be terminated if a cause for termination contained in sections 2 or 27 of the Basic Provisions exists.

6. Report of Acreage

In addition to the requirements contained in section 6 of the Basic Provisions, you must report and designate all acreage by type by the acreage reporting date. Blocks of apple acreage grown for processing are not eligible for the Optional Coverage for Fresh Quality Adjustment option contained in section 14 of these Crop Provisions.

7. Insured Crop

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

(a) In which you have a share;

(b) That are grown on tree varieties that are adapted to the area and have, in at least one of the previous four years, produced:

(1) 10 bins of apples per acre in Area A; or

(2) 150 bushels of apples per acre in Area B;

or

(3) 200 bushels of apples per acre in Area C; and

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

8. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance from attaching to a crop planted with another crop, apples interplanted with another

perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

9. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) For the year of application in California, coverage begins on February 1 of the calendar year the insured crop normally blooms. In all other states, coverage begins November 21 of the calendar year prior to the calendar year the insured crop normally blooms, except that, if your application is received by us after January 12 but prior to February 1 in California, or after November 1 but prior to November 21 in all other states, insurance will attach on the 20th day after your properly completed application is received in our local office, unless we inspect the acreage during the 20-day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the apple acreage.

(2) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring an existing policy to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) The calendar date for the end of the insurance period for each crop year is November 5, or such other date as specified in the Special Provisions.

(4) Notwithstanding the provisions in this section, coverage will not be considered to have begun for a crop year if the policy is canceled or terminated in accordance with section 5(b).

(b) In addition to the provisions of section 11 of the Basic Provisions:

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

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

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

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

(iii) The transferee is eligible for crop insurance.

(3) If you relinquish your insurable share on any insurable acreage of apples after the acreage reporting date for the crop year, insurance coverage will be provided for any loss due to an insurable cause of loss that occurred prior to the date that you relinquished your insurable share and the whole premium will be due for such acreage for that crop year.

10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period and result in damaged apple production:

(1) Adverse weather conditions;

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

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

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

(5) Earthquake;

(6) Volcanic eruption;

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

(8) Wildlife; and

(9) All other natural causes of loss that cannot be prevented, including, but not limited to, hail, wind, excess sun causing sunburn and frost and freeze causing russetting.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to your inability to market the apples for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

11. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(a) You must notify us at least 3 days prior to the date harvest should have started if the crop will not be harvested.

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is

sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest, or immediately if damage is discovered during harvest. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

12. Settlement of Claim

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

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by its respective production guarantee, by type as applicable;

(2) Multiplying each result in section 12(b)(1) by the respective price election;

(3) Totaling the results in section 12(b)(2) if there are more than one type;

(4) Multiplying the total production to count (see section 12(c)), for each type as applicable, by the respective price election;

(5) Totaling the results in section 12(b)(4), if there are more than one type;

(6) Subtracting the total in section 12(b)(5) from the total in section 12(b)(3); and

(7) Multiplying the result in section 12(b)(6) by your share.

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

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements contained in section 11;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested apple production that would be marketable if harvested; and

(iv) Potential marketable apple production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

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

Basic Coverage example:

You have 100 percent share and designated 10 acres of fresh apples and 5 acres of processing apples in the unit on the acreage report, with a 600 bushels per acre guarantee for both fresh and processing apples and a price election of \$9.10 per bushel for fresh apples and \$4.76 per bushel for processing apples. You are only able to harvest 5,000 bushels of fresh apples and 1,000 bushels of processing apples that grade at least U.S. No. 1 Processing. Your indemnity would be calculated as follows:

A. 10 acres × 600 bushels = 6,000 bushels guarantee of fresh apples; 5 acres × 600 bushels = 3,000 bushels guarantee of processing apples;

B. 6,000 bushels × \$9.10 price election = \$54,600.00 value of guarantee for fresh apples; 3,000 bushels × \$4.76 price election = \$14,280.00 value of guarantee for processing apples;

C. \$54,600.00 value of guarantee for fresh apples + \$14,280.00 value of guarantee for processing apples = \$68,880.00 total value guarantee;

D. 5,000 bushels of harvested marketable fresh apple production to count × \$9.10 price election = \$45,500.00 value of production to count for fresh apples; 1,000 bushels of harvested marketable processing apple production to count × \$4.76 price election = \$4,760.00 value of production to count for processing apples;

E. \$45,500.00 value of production to count for fresh apples + \$4,760.00 value of production to count for processing apples = \$50,260.00 total value of production to count;

F. \$68,880.00 total value guarantee – \$50,260.00 total value of production to count = \$18,620.00 value of loss; and

G. \$18,620.00 value of loss × 100 percent share = \$18,620.00 indemnity payment.

[End of Example]

(d) The production to count determined in accordance with section 12(c) will be used for APH purposes, regardless of whether there are any adjustments under section 14.

13. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

14. Optional Coverage for Fresh Fruit Quality Adjustment

(a) In the event of a conflict between the Apple Crop Insurance Provisions and this option, this option will control.

(b) In return for payment of the additional premium designated in the actuarial documents, this option provides for quality adjustment of fresh apple production as follows:

(1) To be eligible for this option, you must have elected to insure your apples at the additional coverage level. If you elect Catastrophic Risk Protection (CAT) after this option is effective, it will be considered as notice of cancellation of this option by you.

(2) You must elect this option on or before the sales closing date for the initial crop year for which you wish to insure your apples under this option. This option will continue in effect until canceled by either you or us for any succeeding crop year by written notice to the other party on or before the cancellation date.

(3) This option will apply to all your apple acreage designated in your acreage report as grown for fresh apples and that meets the insurability requirements specified in the Apple Crop Insurance Provisions, except any acreage specifically excluded by the actuarial documents. Any acreage designated in your acreage report as grown for processing apples is not eligible for coverage under this option.

(4) In lieu of sections 12(c)(1)(iii) and (iv) and (2), the production to count will include all appraised and harvested production for a unit's fresh apple acreage that grades at least U.S. No. 1 Processing, adjusted in accordance with this option.

(5) If appraised or harvested fresh apple production is damaged to the extent that 20 percent or more of the apples do not grade U.S. Fancy or better the following adjustments will apply:

(i) Fresh apple production to count with 21 percent through 40 percent damaged apple production will be reduced 2 percent for each full percent in excess of 20 percent.

(ii) Fresh apple production to count with 41 percent through 50 percent damaged apple production will be reduced 40 percent plus an additional 3 percent for each full percent in excess of 40 percent.

(iii) Fresh apple production to count with 51 percent through 64 percent damaged apple

production will be reduced 70 percent plus an additional 2 percent for each full percent in excess of 50 percent.

(iv) Fresh apple production to count with 65 percent or more damaged apple production will not be considered production to count.

(v) Notwithstanding sections 14(b)(5)(i) through (iv), if you sell any of your fresh apple production as U.S. Fancy, all such sold production will be included as production to count under this option.

The following is an example of loss under the Optional Coverage for Fresh Fruit Quality Adjustment:

You have 100 percent share and designated 10 acres of fresh apples and 5 acres of processing apples in the unit on the acreage report, with a 600 bushel per acre guarantee for both fresh and processing apples and a price election of \$9.10 per bushel for fresh apples and \$4.76 per bushel for processing apples. You harvest 5,000 bushels of apples from your designated fresh acreage that grade U.S. No. 1 Processing or better, but only 2,650 of those bushels grade U.S. Fancy or better. You also harvest from your designated processing acreage 1,000 bushels apples that grade U.S. No. 1 Processing or better. Your indemnity would be calculated as follows:

A. 10 acres × 600 bushels per acre = 6,000 bushels guarantee of fresh apples; 5 acres × 600 bushels per acre = 3,000 bushels guarantee of processing apples;

B. 6,000 bushels guarantee of fresh apples × \$9.10 price election = \$54,600.00 value of guarantee for fresh apples acreage; 3,000 bushels guarantee of processing apples × \$4.76 price election = \$14,280.00 value of guarantee for processing apple acreage;

C. \$54,600.00 value of guarantee for fresh apple acreage + \$14,280.00 value of guarantee for processing apple acreage = \$68,880.00 total value of guarantee for all apple acreage;

D. The value of the fresh apple and processing apple production to count is determined as follows:

i. 5,000 bushels of apples that graded U.S. No. 1 or better – 2,650 bushels that graded U.S. Fancy = 2,350 bushels not grading U.S. Fancy;

ii. $2,350 / 5,000 = 47$ percent of fresh apples that did not make U.S. Fancy grade;

iii. In accordance with section 14(b)(5)(ii): 47 percent – 40 percent = 7 percent in excess of 40 percent;

iv. 7 percent × 3 percent = 21 percent;

v. 40 percent + 21 percent = 61 percent;

vi. 5,000 bushels of apples that graded U.S. No. 1 or better × .61 (61 percent) = 3,050 bushels of fresh apple production to count;

vii. 5,000 bushels of apples that graded U.S. No. 1 or better minus 3,050 bushels of fresh apple production not grading U.S. Fancy or better = 1,950 bushels of fresh apple production to count.

viii. 1,950 bushels of fresh apples production to count × \$9.10 = \$17,745.00 value of the

§ 457.159

fresh apple production to count; 1,000 bushels of harvested marketable processing apple production to count × \$4.76 price election = \$4,760.00 value of the processing apple production to count;

E. \$17,745.00 value of the fresh apple production to count + \$4,760.00 value of the processing apple production to count = \$22,505.00 total value of production to count;

F. \$68,880.00 total value of guarantee for all apple acreage – \$22,505.00 total value of production to count = \$46,375.00 value of loss; and

G. \$46,375.00 value of loss × 100 percent share = \$46,375.00 indemnity payment.

[End of Example]

[63 FR 17054, Apr. 8, 1998, as amended at 65 FR 47839, Aug. 4, 2000; 69 FR 52591, Aug. 27, 2004; 69 FR 53500, Sept. 1, 2004; 69 FR 62803, Oct. 28, 2004]

§ 457.159 Stonefruit crop insurance provisions.

The Stonefruit Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

FCIC Policies

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Stonefruit Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

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

Grading standards. As specified in the Special Provisions.

Harvest. The picking of mature stonefruit either by hand or machine.

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

Lug. A container of fresh stonefruit of specified weight. Lugs of varying sizes will

7 CFR Ch. IV (1–1–10 Edition)

be converted to standard lug equivalents on the basis of the following average net pounds of packed fruit:

| Crop | Pounds per lug |
|-------------------------------|----------------|
| Fresh Apricots | 24 |
| Fresh Nectarines | 25 |
| Fresh Freestone Peaches | 22 |

Weight for Processing Apricots, Processing Cling Peaches, and Processing Freestone Peaches are specified in tons.

Marketable. Stonefruit production acceptable for processing or other human consumption, even if it fails to meet the State Department of Food and Agriculture minimum grading standard.

Processor. A business enterprise regularly engaged in processing fruit for human consumption that possesses all licenses and permits for processing fruit required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted fruit within a reasonable amount of time after harvest.

Stonefruit. Any of the following crops grown for fresh market or processing:

- (a) Fresh Apricots,
- (b) Fresh Freestone Peaches,
- (c) Fresh Nectarines,
- (d) Processing Apricots,
- (e) Processing Cling Peaches, and
- (f) Processing Freestone Peaches.

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

Type. Class of a stonefruit crop with similar characteristics that are grouped for insurance purposes.

Varietal group. A subclass of type.

2. Unit Division

Notwithstanding the provisions of section 34 of the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices, optional units will only be allowed as stated herein or by written agreement.

(a) *Optional Units on Acreage Located on Non-contiguous Land:* Optional units may be established if each optional unit is located on non-contiguous land.

(b) *Optional Units by Type or Varietal Group:* Optional units may be established by type or varietal group if allowed by the Special Provisions.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election and coverage level for each crop grown in the county and listed in the Special Provisions