

### § 441.3

elect a coverage level and price at which indemnities will be computed from among those levels and prices set by the actuarial table for the crop year.

### § 441.3 OMB control numbers.

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

### § 441.4 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.

### § 441.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the table grape crop 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.

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Requests for relief under this section must be submitted to the Corporation in writing.

### § 441.6 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 table grape crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. 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.

### § 441.7 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 table grape crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. 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 1987 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a table grape contract issued under such prior

regulations, without the filing of a new application.

(d) The application for the 1987 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 Table Grape Insurance Policy for the 1987 through 1997 crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

*Table Grape—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) 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 subsection 9.e.(6).

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 table grape management practices;
- (3) The failure or breakdown of irrigation equipment or facilities;
- (4) The failure to follow recognized good table grape irrigation practices;
- (5) The impoundment of water by any governmental, public, or private dam or reservoir project; or
- (6) Any cause not specified in subsection 1.a. as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be any insurable variety of grapes grown for harvest as table

grapes, grown on insured acreage on which the cultural practices to produce table grapes are carried out, and for which a guarantee and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be grapes 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 grapes 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:

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

d. We do not insure any acreage:

- (1) On which the vines, after being set out, have not reached the number of growing seasons designated by the actuarial table;
- (2) Which has not produced an average of 150 lugs of table grapes per acre;
- (3) Which does not have acceptable records of acreage and production unless we agree, in writing, to insure acreage; or
- (4) With less than a 90 percent stand of bearing vines based on the original planting pattern, unless we agree, in writing, to insure such acreage.

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 grape 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, and Practice

You must report on our form:

a. All the acreage of grapes in the county on which cultural practices to produce table grapes are carried out and in which you have a share;

b. The practice;

c. Your share on the date insurance attaches; and

d. The number of bearing vines (if less than 90 percent of a stand based on the original planting pattern).

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any grapes grown in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report

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submitted by you may be revised only upon our approval.

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

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

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

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

d. You must report production to us for the prior crop year before the sales closing date 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 insured crop year. The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the prior crop year as adjusted for crop and vineyard conditions. 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-fourth percent (1-¼%) 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 on February 1 and ends on the earliest of:

- a. Total destruction of the grapes on the unit;
- b. Discontinuance of cultural practices to produce table grapes;
- c. The date harvest would normally start on the unit on any acreage which will not be harvested as table grapes;
- d. Harvest;

e. Discontinuance of harvesting of table grapes on the unit;

f. Final adjustment of a loss; or

g. The following applicable date of the calendar year in which the grapes are normally harvested:

State and county(ies)	Variety	Date
Arizona:		
All counties .....	Perlette .....	June 15.
	Flame Seedless .....	July 15.
	All others .....	July 31.
California:		
Fresno, Kern, Kings, Madera, and Tulare.	Perlette .....	August 15.
	Cardinal .....	August 15.
	Exotic .....	August 31.
	Flame Seedless .....	August 31.
	Superior Seedless .....	August 31.
	Red Malaga .....	September 15.
	Queen .....	September 15.
	Thompson Seedless.	September 15.
	Black Rose .....	September 30.
	Italia .....	September 30.
	White Malaga .....	October 15.
	Ribier .....	October 15.
	Ruby Seedless .....	October 15.
	All others .....	October 31.
Merced, Stanislaus, and San Joaquin.	Flame Seedless .....	September 15.
	Thompson Seedless.	September 30.
	Ribier .....	October 15.
	Flame Tokay .....	October 31.
	All others .....	October 31.
Riverside, and San Bernardino.	Beauty Seedless .....	July 15
	Perlette .....	July 15
	All others .....	July 31.

**8. Notice of Damage or Loss**

a. In case of damage or probable loss:

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

(2) You must give us notice:

(a) At least 15 days before the beginning of harvest if you anticipate a loss on any unit; or

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

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

(a) Total destruction of the grapes on the unit;

(b) Discontinuance of cultural practices to produce table grapes;

(c) Discontinuance of harvest of any acreage on the unit; or

(d) The date harvest would normally start if any acreage on the unit is not to be harvested as table grapes.

(4) Unless notice has been given under subsection (3) above, and in addition to the other notices required by this subsection, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earlier of:

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- (a) Harvest of the unit; or
  - (b) The calendar date for the end of the insurance period (Subsection 7.g.).
- b. You must obtain written consent from us before you destroy any of the grapes 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 end of the insurance period (see section 7).

b. We will not pay any indemnity unless you:

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

(2) Furnish all information we require concerning the loss.

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

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of grapes to be counted (see subsection 9.3.);

(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 (in lugs) to be counted for a unit will include all production harvested as table grapes and all appraised production, that meets the California Department of Food and Agriculture minimum standards.

(1) Table grape production damaged by insurable causes within the insurance period that could be marketed for any use as other than table grapes will be determined by multiplying the greater of the total value of the grapes per ton or \$50 times the number of tons and dividing that result by the highest price election available for the insured unit. This result will be the number of lugs to count.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and any change in management practices (cluster thinning and removal);

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

(c) Any unharvested production where table grape cultural practices were discontinued following an appraisal; and

(d) Any appraised production on unharvested acreage.

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

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

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

(c) Harvested.

(4) If any grapes are harvested before normal maturity, the production of such grapes will be increased by the factor obtained by dividing the price per lug received for such grapes by the price per lug for fully matured grapes.

(5) We may determine the amount of production of any unharvested grapes on the basis of field appraisals conducted after discontinuance of harvest or the end of the insurance period.

(6) If you elect to exclude hail and fire as insured causes of loss and the grapes 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. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

h. An indemnity will not be paid unless you comply with all policy provisions.

i. We have a policy of 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

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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 an individual and such entity is dissolved after the date 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 subsection, 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 person your right to an indemnity for the crop year, only in writing 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

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you plus our expenses, the excess will be paid to you.

### 14. Records and Access to Farm

You must keep, for 2 years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all grapes 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, will be the date you sign the claim; or

(2) 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. Acceptance of change will be conclusively presumed in the absence of notice from you to cancel the contract.

## 17. Meaning of Terms

For the purposes of table grape crop insurance:

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

b. *Cluster thinning and removal* means removing parts of a cluster or the entire cluster of grapes.

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 also 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 normal harvest time and is designated by the calendar year in which the grapes are normally harvested.

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

g. *Harvest* means picking the grapes from the vines.

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

k. *Lug* means 22 pounds of table grapes in the Coachella Valley, California district, and 23 pounds in all other California districts.

l. *Person* means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable,

a State or a political subdivision or agency of a State.

m. *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.

n. *Table grapes* means the grapes which are grown for commercial sales as fresh grapes, on acreage which the cultural practices to produce fresh marketable grapes were carried out.

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

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

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the grapes 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 the Appeal Regulations, (7 CFR part 400, subpart J).

## 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 37893, Oct. 27, 1986; 51 FR 41757, Nov. 19, 1986; 52 FR 3214, Feb. 3, 1987; 53 FR 46848, Nov. 21, 1988; 55 FR 35888, Sept. 4, 1990; 62 FR 47747, Sept. 11, 1997]

## PART 442 [RESERVED]

### PART 443—HYBRID SEED CROP INSURANCE REGULATIONS FOR THE 1986 THROUGH 1997 CROP YEARS

Sec.

- 443.1 Availability of hybrid seed crop insurance.
- 443.2 Premium rates, coverage levels, and amounts of insurance.
- 443.3 OMB control numbers.
- 443.4 Creditors.
- 443.5 Good faith reliance on misrepresentation.
- 443.6 The contract.
- 443.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506(1), 1506(p).

SOURCE: 51 FR 5697, Feb. 18, 1986, unless otherwise noted.

#### § 443.1 Availability of hybrid seed crop insurance.

Insurance shall be offered under the provisions of this subpart on hybrid seed in counties within 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.

#### § 443.2 Premium rates, coverage levels, and amounts of insurance.

(a) The Manager shall establish premium rates, coverage levels, and amounts of insurance for hybrid seed which will be included in the actuarial table in 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 an amount of insurance per acre and a coverage level from among those

levels and amounts shown on the actuarial table for the crop year.

#### § 443.3 OMB control numbers.

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

#### § 443.4 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 benefits under the contract.

#### § 443.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the Hybrid Seed insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation of 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.