

§ 457.127

based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested;

(2) All harvested production from the insurable acreage in the unit;

(3) All harvested and appraised production lost or damaged by uninsured causes; and

(4) For processor contracts that stipulate the amount of production to be delivered, all harvested popcorn production from any other insurable unit that has been used to fulfill your processor contract applicable to this unit.

(5) Any production from yellow or white dent corn will be counted as popcorn on a weight basis and any production harvested from plants growing in the insured crop may be counted as popcorn production on a weight basis.

(6) Any ear production for which we cannot determine a shelling factor will be considered to have an 80 percent shelling factor.

(d) Mature popcorn may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point for moisture in excess of 15 percent. We may obtain samples of the production to determine the moisture content.

(2) Popcorn production will be eligible for quality adjustment if, due to an insurable cause of loss that occurs within the insurance period, it is not merchantable popcorn and is rejected by the processor. The production will be adjusted by:

(i) Dividing the value per pound of the damaged popcorn by the base contract price per pound for undamaged popcorn; and

(ii) Multiplying the result by the number of pounds of such popcorn.

14. Late Planting

Late planting provisions in the Basic Provisions are applicable for popcorn if you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest.

15. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited

7 CFR Ch. IV (1–1–10 Edition)

or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[63 FR 33833, June 22, 1998]

§ 457.127 [Reserved]

§ 457.128 Guaranteed production plan of fresh market tomato crop insurance provisions.

The Guaranteed Production Plan of Fresh Market Tomato Crop Insurance FCIC Policies

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Guarantee Production Plan of Fresh Market Tomato Crop 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

Acre—Forty-three thousand five hundred sixty (43,560) square feet of land when row widths do not exceed six feet, or if row widths exceed six feet, the land area on which at least 7,260 linear feet of rows are planted.

Carton—A container that contains 25 pounds of fresh tomatoes unless otherwise provided in the Special Provisions.

Direct marketing—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a 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.

First fruit set—The date when 30 percent of the plants on the unit have produced fruit that has reached a minimum size of one inch in diameter.

Harvest—Picking of marketable tomatoes.

Mature green tomato—A tomato that:

(a) Has a heightened gloss due to a waxy skin that cannot be torn by scraping;

(b) Has a well-formed jelly-like substance in the locules;

(c) Has seeds that are sufficiently hard so they are pushed aside and not cut by a sharp knife in slicing; and

(d) Shows no red color.

Planting—Transplanting the tomato plants into the field.

Planting period—The time period designated in the Special Provisions during which the tomatoes must be planted to be insured as either spring-or fall-planted tomatoes.

Plant stand—The number of live plants per acre before any damage occurs.

Potential production—The number of cartons per acre of mature green or ripe tomatoes that the tomato plants would have produced by the end of the insurance period:

(a) With a classification size of 6x7 (2-8/32 inch minimum diameter) or larger for all types except cherry, roma, or plum; or

(b) Meeting the criteria specified in the Special Provisions for cherry, roma, or plum types.

Practical to replant—In lieu of the definition of “Practical to replant” contained in section 1 of the Basic Provisions (§457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, and marketing windows that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. In counties that do not have both spring and fall planting periods, it will not be considered practical to replant after the final planting date unless replanting is generally occurring in the area. In counties that have spring and fall planting periods, it will not be considered practical to replant after the final planting date for the planting period in which the crop was initially planted.

Ripe tomato—A tomato that meets the definition of a mature green tomato, except the tomato shows some red color and can still be packed for fresh market under the agreement or contract with the packer.

Row width—The distance in feet from the center of one row of plants to the center of an adjacent row.

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by planting period, if separate planting periods are provided for in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

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

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§457.8):

(a) You may select only one price election for all the tomatoes 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 tomato type designated in the Special Provisions. The price election 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) The production guarantees per acre are progressive by stages and increase at specified intervals to the final stage production guarantee. The stages and production guarantees are as follows:

(1) For California:

Stage	Percent of stage 3 (final stage) production guarantee	Length of time
1	50	From planting until first fruit set.
2	70	From first fruit set until harvested.
3	100	Harvested acreage.

(2) For all other states, except California:

Stage	Percent of stage 4 (final stage) production guarantee	Length of time
1	50	From planting until qualifying for stage 2.
2	75	From the earlier of stakes driven, one tie and pruning, or 30 days after planting until qualifying for stage 3.
3	90	From the earlier of the end of stage 2 or 60 days after planting until qualifying for stage 4.
4	100	From the earlier of 75 days after planting or the beginning of harvest.

(c) Any acreage of tomatoes damaged to the extent that producers in the area generally would not further care for the tomatoes will be deemed to have been destroyed even though you continue to care for the tomatoes. The production guarantee for such acreage will be the guarantee for the stage in which such damage occurs.

(d) Any production guarantees for cherry, roma, or plum type tomatoes will be specified in the Special Provisions.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§457.8), the

§ 457.128

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

contract change date is September 30 preceding the cancellation date for counties with a January 15 cancellation date and December 31 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§457.8), the cancellation and termination dates are:

CANCELLATION AND TERMINATION	
State	Dates
California, Florida, Georgia, and South Carolina.	January 15.
All other states	March 15.

6. Report of Acreage

(a) In addition to the provisions of section 6 (Report of Acreage) of the Basic Provisions (§457.8), you must report the row width.

(b) If spring and fall planting periods are allowed in the Special Provisions you must report all the information required by section 6 (Report of Acreage) of the Basic Provisions (§457.8) and these Crop Provisions by the acreage reporting date for each planting period.

7. Annual Premium

In lieu of provisions contained in the Basic Provisions (§457.8), for determining premium amounts, the annual premium is determined by multiplying the final stage production guarantee by the price election, by the premium rate, by the insured acreage, by your share at the time coverage begins, and by any applicable premium adjustment factor contained in the Special Provisions.

8. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§457.8), the crop insured will be all the tomatoes in the county for which a premium rate is provided by the actuarial documents:

- (a) In which you have a share;
- (b) That are transplanted tomatoes that have been planted for harvest as fresh market tomatoes;
- (c) That are planted within the spring or fall planting periods, as applicable, specified in the Special Provisions;
- (d) That, on or before the acreage reporting date, are subject to any agreement in writing (packing contract) executed between you and a packer, whereby the packer agrees to accept and pack the production specified in the agreement, unless you control a packing facility or an exception exists in the Special Provisions; and
- (e) That are not (unless allowed by the Special Provisions):

- (1) Grown for direct marketing;
- (2) Interplanted with another crop;
- (3) Planted into an established grass or legume; or
- (4) Cherry, roma, or plum type tomatoes.

9. Insurable Acreage

(a) In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§457.8):

(1) Any acreage of the insured crop damaged before the final planting date, to the extent that the majority of growers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant. Unavailability of plants will not be considered a valid reason for failure to replant.

(2) We do not insure any acreage of tomatoes:

- (i) Grown by any person if the person had not previously:
 - (A) Grown fresh market tomatoes for commercial sales; or
 - (B) Participated in the management of a fresh market tomato farming operation, in at least one of the three previous years.
 - (ii) That does not meet the rotation requirements contained in the Special Provisions;
 - (iii) On which tomatoes, peppers, eggplants, or tobacco have been grown within the previous two years unless the soil was fumigated or nematicide was applied before planting the tomatoes, except that this limitation does not apply to a first planting in Pennsylvania or if otherwise specified in the Special Provisions; or
- (b) In lieu of the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§457.8), that prohibit insurance from attaching if a crop has not been planted and harvested in at least one of the three previous calendar years, we will insure newly cleared land or former pasture land planted to fresh market tomatoes.

10. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§457.8):

- (a) Coverage begins on each unit or part of a unit on the later of the date you submit your application or when the tomatoes are planted.
- (b) Coverage will end on any insured acreage at the earliest of:
 - (1) Total destruction of the tomatoes;
 - (2) Discontinuance of harvest;
 - (3) The date harvest should have started on any acreage that was not harvested;
 - (4) 120 days after the date of transplanting or replanting;
 - (5) Completion of harvest;
 - (6) Final adjustment of a loss; or

(7) October 15 of the crop year in Delaware, Maryland, New Jersey, North Carolina, and Virginia; October 31 of the crop year in California; November 10 of the crop year in Florida, Georgia, and South Carolina; and September 20 of the crop year in all other States.

11. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

- (1) Adverse weather conditions;
- (2) Fire;
- (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) Wildlife;
- (6) Earthquake;
- (7) Volcanic eruption; or
- (8) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§457.8), we will not insure against damage or loss of production that occurs or becomes evident after the tomatoes have been harvested.

12. Replanting Payment

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§457.8), a replanting payment is allowed if the crop is damaged by an insurable cause of loss and the acreage to be replanted has sustained a loss in excess of 50 percent of the plant stand.

(b) The maximum amount of the replanting payment per acre will be:

(1) Seventy (70) cartons multiplied by your price election, multiplied by your insured share for all insured tomatoes except cherry, roma or plum types; and

(2) As specified in the Special Provisions for cherry, roma, or plum types.

(c) In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§457.8) that permit only one replanting payment each crop year, when both spring and fall planting periods are contained in the Special Provisions, you may be eligible for one replanting payment for acreage planted during each planting period within the crop year.

13. 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 units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, 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 by:

(1) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee for the stage in which the damage occurred;

(2) Multiplying the results of section 13(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results of section 13(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 13(c)) by the respective price election;

(5) Totaling the results of section 13(b)(4);

(6) Subtracting this result of section 13(b)(5) from the results in section 13(b)(3); and

(7) Multiplying the result of section 13(b)(6) by your share.

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

(1) All appraised production as follows:

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

(A) That is abandoned;

(B) Put to another use without our consent;

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

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

(ii) Potential production lost due to uninsured causes;

(iii) Unharvested production of mature green and ripe tomatoes remaining after harvest has ended:

(A) With a classification size of 6×7 ($2\frac{3}{32}$ inch minimum diameter) or larger and that would grade eighty-five percent (85%) or better U.S. No. 1 for types other than cherry, roma, or plum; or

(B) That grade in accordance with the requirements specified in the Special Provisions for cherry, roma or plum types.

(iv) Potential production on unharvested acreage and potential production on acreage when final harvest has not been completed;

(v) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to

§ 457.129

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

leave intact, and provide sufficient care for representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage:

(i) That is marketed, regardless of grade; and

(ii) That is unmarketed and:

(A) That grades eighty-five percent (85%) or better U.S. No. 1 with a classification size of 6x7 (2-8/32 inch minimum diameter) or larger for all types except cherry, roma, or plum; or

(B) That grade in accordance with the requirements specified in the Special Provisions for cherry, roma, or plum types.

(d) Only that amount of appraised production that exceeds the difference between the final stage guarantee and the stage guarantee applicable to the acreage will be production to count.

14. Late and Prevented Planting

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

[62 FR 23631, May 1, 1997; 62 FR 33539, June 20, 1997, as amended at 62 FR 65171, Dec. 10, 1997; 63 FR 36157, July 2, 1998; 63 FR 50753, Sept. 23, 1998]

§ 457.129 Fresh market sweet corn crop insurance provisions.

The fresh market sweet corn crop insurance provisions for the 2008 and succeeding crop years for all counties with a contract change date on or after the effective date of this rule and for the 2009 and succeeding crop years for all counties with a contract change date prior to the effective date of this rule, as follows:

FCIC Policies

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and Reinsured Policies

Fresh Market Sweet Corn Crop Provisions

1. Definitions

Allowable cost.—The dollar amount per container for harvesting, packing, and handling as shown in the Special Provisions.

Amount of insurance (per acre).—The dollar amount of coverage per acre obtained by multiplying the reference maximum dollar amount shown on the actuarial documents by the coverage level percentage you elect.

Average net value per container.—The dollar amount obtained by totaling the net values of all containers of sweet corn sold and dividing the result by the total number of containers of all sweet corn sold.

Container.—The unit of measurement for the insured crop as specified in the Special Provisions.

Crop year.—In lieu of the definition of “crop year” contained in section 1 of the Basic Provisions, for counties with fall, winter, and spring planting periods or counties with fall and spring planting periods, the period of time that begins on the first day of the earliest planting period for fall planted sweet corn and continues through the last day of the insurance period for spring planted sweet corn. For counties with only spring planting periods, the period of time that begins on the earliest planting period for spring planted sweet corn and continues through the last day of the insurance period for spring planted sweet corn. The crop year is designated by the calendar year in which spring planted sweet corn is harvested.

Direct marketing.—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a 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.

Harvest.—Separation of ears of sweet corn from the plant by hand or machine.

Marketable sweet corn.—Sweet corn that is sold for any purpose or grades U.S. No. 1 or better in accordance with the requirements of the United States Standards for Grades of Sweet Corn.

Minimum value.—The dollar amount per container shown in the Special Provisions we will use to value marketable production to count.

Net value.—The dollar value of packed and sold sweet corn obtained by subtracting the