

§ 457.139

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

(2) Multiplying each result in section 12(b)(1) by the respective price election you selected for each type or variety;

(3) Totaling the results in section 12(b)(2);
(4) Multiplying the total production to count of each type or variety, if applicable, (see section 12 (c) through (e)) by the respective price election you selected;

(5) Totaling the results in section 12(b)(4);
(6) Subtracting the result in section 12(b)(5) from the result 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 tons) 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 or destroyed by you without our consent;

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

(C) For which you fail to provide production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies in accordance with subsection 12 (e)); and

(iv) Potential 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 production from the insurable acreage:

(i) Grape production that is harvested and dried for raisins will be converted to a fresh weight basis by multiplying the number of tons of raisin production by 4.5.

(ii) Grapes grown for wine, juice, raisins or canning and put to another use, will be counted as production to count on a tonnage basis. No quality adjustment other than that specifically provided for in your policy is available.

(d) If any grapes are harvested before normal maturity or for a special use (such as Champagne or Botrytis-affected grapes), the production of such grapes will be increased by the factor obtained by dividing the price per ton received for such grapes by the price

per ton for fully matured grapes of the type for which the claim is being made.

(e) Mature marketable grape production may be adjusted for quality deficiencies as follows:

(1) Production will be eligible for quality adjustment if, due to insurable causes, it has a value of less than 75 percent of the average market price of undamaged grapes of the same or similar variety. The value per ton of the qualifying damaged production and the average market price of undamaged grapes will be determined on the earlier of the date the damaged production is sold or the date of final inspection for the unit. The average market price of undamaged production will be calculated by averaging the prices being paid by usual marketing outlets for the area during the week in which the damaged grapes were valued.

(2) Grape production that is eligible for quality adjustment, as specified in subsection 12(e)(1) will be reduced by:

(i) Dividing the value per ton of the damaged grapes by the value per ton for undamaged grapes (the value of undamaged grapes will be the lesser of the average market price or the maximum price election for such grapes); and

(ii) Multiplying this result (not to exceed 1.000) by the number of tons of the eligible damaged grapes.

13. Late and Prevented Planting

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

[62 FR 33741, June 23, 1997, as amended at 62 FR 65173, Dec. 10, 1997; 63 FR 31338, June 9, 1998; 64 FR 24932, May 10, 1999; 74 FR 32055, July 7, 2009]

§ 457.139 Fresh market tomato (dollar plan) crop insurance provisions.

The fresh market tomato (dollar plan) crop insurance provisions for the 1999 and succeeding crop years are 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 tomato (dollar plan) 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—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—Twenty-five (25) pounds of the insured crop.

Crop year—In lieu of the definition of “crop year” contained in section 1 (Definitions) of the Basic Provisions (§457.8), crop year is a period of time that begins on the first day of the earliest planting period for fall planted tomatoes and continues through the last day of the insurance period for spring planted tomatoes. The crop year is designated by the calendar year in which spring planted tomatoes are 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.

Excess rain—An amount of precipitation sufficient to directly damage the crop.

Freeze—The formation of ice in the cells of the plant or its fruit, caused by low air temperatures.

Harvest—The picking of tomatoes on the unit.

Mature green tomato—A tomato that:

(1) Has a glossy waxy skin that cannot be torn by scraping;

(2) Has well-formed, jelly-like substance in the locules;

(3) Has seeds that are sufficiently hard so as to be pushed aside and not cut by a sharp knife in slicing; and

(4) Shows no red color.

Plant stand—The number of live plants per acre prior to the occurrence of an insurable cause of loss.

Planted acreage—In addition to the definition contained in the Basic Provisions, for each planting period, tomato seed or transplants must initially be planted in rows, unless otherwise provided by Special Provisions, actuarial documents, or by written agreement.

Planting period—The period of time designated in the actuarial documents in which the tomatoes must be planted to be considered fall, winter or spring-planted tomatoes.

Potential production—The number of cartons of mature green or ripe tomatoes that the tomato plants will or would have produced per acre, assuming normal growing

conditions and practices, by the end of the insurance period:

(a) With a classification size of 6×7 (2 $\frac{3}{32}$ inch minimum diameter) or larger for all types except cherry or plum tomatoes; or

(b) With a classification size as allowed by written agreement for cherry or plum tomatoes.

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, marketing windows, and time to crop maturity, that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period (inability to obtain plants or seed will not be considered when determining if it is practical to replant).

Ripe tomato—A tomato that has a definite break in color from green to tannish-yellow, pink or red.

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

Tropical depression—A system identified by the U.S. Weather Service as a tropical depression, and for the period of time so designated, including tropical storms, gales, and hurricanes.

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by planting period.

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

3. Amounts of Insurance and Production Stages

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§457.8), you may select only one coverage level (and the corresponding amount of insurance designated in the actuarial documents for the applicable planting period and practice) for all the tomatoes in the county insured under this policy.

(b) The amount of insurance you choose for each planting period and practice must have the same percentage relationship to the maximum price offered by us for each planting period and practice. For example, if you choose 100 percent of the maximum amount of insurance for a specific planting period and practice, you must also choose 100 percent of the maximum amount of insurance for all other planting periods and practices.

§ 457.139

7 CFR Ch. IV (1–1–10 Edition)

(c) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions

(§457.8), do not apply to fresh market dollar plan tomatoes.

(d) The amounts of insurance per acre are progressive by stages as follows:

Stage	Percent of amount of insurance per acre that you selected	Length of time if direct seeded	Length of time if transplanted
1	50	From planting through the 59th day after planting.	From planting through the 29th day after planting.
2	75	From the 60th day after planting until the beginning of stage 3.	From the 30th day after planting until the beginning of stage 3.
3	90	From the 90th day after planting until the beginning of the final stage.	From the 60th day after planting until the beginning of the final stage.
Final	100	Begins the earlier of 105 days after planting, or the beginning of harvest.	Begins the earlier of 75 days after planting, or the beginning of harvest.

(e) Any acreage of tomatoes damaged in the first, second, or third stage to the extent that the majority of producers in the area would not normally further care for it, will be deemed to have been destroyed. The indemnity payable for such acreage will be based on the stage the plants had achieved when the damage occurred.

justment factors contained in the actuarial documents.

4. Contract Changes

8. Insured Crop

In accordance with section 4 (Contract Changes) of the Basic Provisions (§457.8), the contract change date is April 30 preceding the cancellation date.

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:

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 July 31.

- (a) In which you have a share;
- (b) That are:
 - (1) Planted to be harvested and sold as fresh market tomatoes;
 - (2) Planted within the planting periods designated in the actuarial documents;
 - (3) Grown under an irrigated practice;
 - (4) Grown on acreage covered by plastic mulch except where the Special Provisions allows otherwise;
 - (5) Grown by a person who in at least one of the three previous crop years:
 - (i) Grew tomatoes for commercial sale; or
 - (ii) Participated in managing a fresh market tomato farming operation;
- (c) That are not:
 - (1) Interplanted with another crop;
 - (2) Planted into an established grass or legume;
 - (3) Grown for direct marketing; or
 - (4) Plum or cherry type tomatoes, unless allowed by written agreement.

6. Report of Acreage

9. Insurable Acreage

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§457.8), you must report on or before the acreage reporting date contained in the Special Provisions for each planting period:

- (a) All the acreage of tomatoes in the county insured under this policy in which you have a share;
- (b) The dates the acreage was planted within each planting period; and
- (c) The row width.

7. Annual Premium

In lieu of the premium amount determinations contained in section 7 (Annual Premium) of the Basic Provisions (§457.8), the annual premium amount for each cultural practice (e.g., fall direct-seeded irrigated) is determined by multiplying the final stage amount of insurance per acre by the premium rate for the cultural practice as established in the Actuarial Table, by the insured acreage, by your share at the time coverage begins, and by any applicable premium ad-

(a) In lieu of the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§457.8), that prohibit insurance attaching if a crop has not been planted in at least one of the three previous crop years, we will insure newly cleared land and former pasture land planted to fresh market tomatoes.

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

- (1) You must replant any acreage of tomatoes damaged during the planting period in which initial planting took place whenever

less than 50 percent of the plant stand remains; and

- (i) It is practical to replant;
- (ii) If, at the time the crop was damaged, the final day of the planting period has not passed; and
- (iii) The damage occurs within 30 days of transplanting or 60 days of direct seeding.

(2) Whenever tomatoes initially are planted during the fall or winter planting periods and the conditions specified in sections 9(b)(1) (ii) and (iii) are not satisfied, you may elect:

(i) To replant such acreage and collect any replant payment due as specified in section 12. The initial planting period coverage will continue for such replanted acreage.

(ii) Not to replant such acreage and receive an indemnity based on the stage of growth the plants had attained at the time of damage. However, such an election will result in the acreage being uninsurable in the subsequent planting period.

(3) We will not insure any acreage on which tomatoes (except for replanted tomatoes in accordance with sections 9(b) (1) and (2)), peppers, eggplants, or tobacco have been grown and the soil was not fumigated or otherwise properly treated before planting tomatoes.

10. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§457.8), coverage begins on each unit or part of a unit the later of the date we accept your application, or when the tomatoes are planted in each planting period. Coverage ends at the earliest of:

- (a) Total destruction of the tomatoes on the unit;
- (b) Abandonment of the tomatoes on the unit;
- (c) The date harvest should have started on the unit on any acreage which will not be harvested;
- (d) Final adjustment of a loss on the unit;
- (e) Final harvest; or
- (f) The calendar date for the end of the insurance period as follows:
 - (1) 140 days after the date of direct seeding or replanting with seed; and
 - (2) 125 days after the date of transplanting or replanting with transplants.

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) Excess rain;
- (2) Fire;
- (3) Freeze;
- (4) Hail;
- (5) Tornado;

(6) Tropical depression; or

(7) Failure of the irrigation water supply, if caused by an insured cause of loss 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 any loss of production due to:

- (1) Disease or insect infestation, unless no effective control measure exists for such disease or insect infestation; or
- (2) Failure to market the tomatoes, unless such failure is due to actual physical damage caused by an insured cause of loss that occurs during the insurance period.

12. Replanting Payments

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§457.8), a replanting payment is allowed if, due to an insured cause of loss, more than 50 percent of the plant stand will not produce tomatoes and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of your actual cost of replanting or the result obtained by multiplying the per acre replanting payment amount contained in the Special Provisions by your insured share.

(c) In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§457.8), that limit a replanting payment to one each crop year, only one replanting payment will be made for acreage planted during each planting period within the crop year.

13. Duties in the Event of Damage or Loss

In addition to the requirements contained in section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§457.8), if you intend to claim an indemnity on any unit you must also give us notice not later than 72 hours after the earliest of:

- (a) The time you discontinue harvest of any acreage on the unit;
- (b) The date harvest normally would start if any acreage on the unit will not be harvested; or
- (c) The calendar date for the end of the insurance period.

14. 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 each unit.

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

§ 457.139

7 CFR Ch. IV (1–1–10 Edition)

(1) Multiplying the insured acreage in each stage by the amount of insurance per acre for the final stage;

(2) Multiplying each result in section 14(b)(1) by the percentage for the applicable stage (see section 3(d));

(3) Total the results of section 14(b)(2);

(4) Subtracting either of the following values from the result of section 14(b)(3):

(i) For other than catastrophic risk protection coverage, the total value of production to be counted (see section 14(c)); or

(ii) For catastrophic risk protection coverage, the result of multiplying the total value of production to be counted (see section 14(c)) by:

(A) Sixty percent for the 1998 crop year; or

(B) Fifty-five percent for 1999 and subsequent crop years; and

(5) Multiplying the result of section 14(b)(4) by your share.

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

(1) Not less than the amount of insurance per acre for the stage for any acreage:

(i) That is abandoned;

(ii) Put to another use without our consent;

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

(iv) For which you fail to provide acceptable production records;

(2) The value of the following appraised production will not be less than the dollar amount obtained by multiplying the number of cartons of appraised tomatoes by the minimum value per carton shown in the Special Provisions for the planting period:

(i) Potential production on any acreage that has not been harvested the second time for ground-culture tomatoes (the third time for staked tomatoes);

(ii) Unharvested mature green tomatoes (unharvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count);

(iii) Production lost due to uninsured causes; and

(iv) 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) We may require you to continue to care for the crop so that a subsequent appraisal may be made or the crop harvested to determine actual production. (If we require you to continue to care for the crop and you do not do so, the original appraisal will be used); or

(B) You may elect to continue to care for the crop, in which case the amount of pro-

duction to count for the acreage will be the harvested production, or our reappraisal if the crop is not harvested.

(3) The total value of all harvested production from the insurable acreage will be the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each carton of tomatoes (this result may not be less than the minimum value shown in the Special Provisions for any carton of tomatoes), and multiplying this result by the number of cartons of tomatoes harvested. Harvested production that is damaged or defective due to insurable causes and is not marketable, will not be counted as production to count.

15. Late and Prevented Planting

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

16. Minimum Value Option

(a) The provisions of this option are continuous and will be attached to and made a part of your insurance policy, if:

(1) You elect *either* Option I or Option II of the Minimum Value Option on your application, or on a form approved by us, on or before the sales closing date for the initial crop year in which you wish to insure fresh market tomatoes (dollar plan) under this option, and pay the additional premium indicated in the actuarial documents for this optional coverage; and

(2) You have not elected coverage under the Catastrophic Risk Protection Endorsement.

(b) In lieu of the provisions contained in section 14(c)(3), the total value of harvested production will be determined as follows:

(1) If you selected Option I of the Minimum Value Option, the total value of harvested production will be as follows:

(i) For sold production, the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each carton of tomatoes (this result may not be less than the minimum value option price contained in the Special Provisions for any cartons of tomatoes), and multiplying this result by the number of carton of tomatoes sold; and

(ii) For marketable production that is not sold, the dollar amount obtained by multiplying the number of cartons of such tomatoes on the unit by the minimum value shown in the Special Provisions for the planting period (harvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production).

(2) If you selected Option II of the Minimum Value Option, the total value of harvested production will be as provided in section 16(b)(1), except that the dollar amount

specified in section (16)(b)(1)(i) may not be less than zero.

(c) This option may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding the crop year for which the cancellation of this option is to be effective.

[62 FR 14777, Mar. 28, 1997; 62 FR 63634, Dec. 2, 1997, as amended at 62 FR 65174, Dec. 10, 1997]

§ 457.140 Dry pea crop insurance provisions.

The dry pea crop insurance provisions for the 2009 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Dry Pea Crop Provisions

1. Definitions

Adequate stand. A population of live plants per acre that will produce at least the yield used to establish your production guarantee.

Base contract price. The price per pound stipulated in the processor/seed company contract without regard to discounts or incentives that may apply, and that will be paid to the producer for at least 50 percent of the total production under contract with the processor/seed company.

Combining. A mechanical process that separates the peas from the pods and other vegetative matter and places the peas into a temporary storage receptacle.

Conditioning. A process that improves the quality of production by screening or any other operation commonly used in the dry pea industry to remove dry peas that are deficient in quality.

Contract seed peas. Peas (*Pisum sativum L.*) grown under the terms of a processor/seed company contract for the purpose of producing seed to be used in planting a future year's crop.

Dry peas. Peas (*Pisum sativum L.*), Austrian Peas (*Pisum sativum spp arvense*), Lentils (*Lens culinaris Medik.*), Chickpeas (*Cicer arietinum L.*), and other types as listed on the Special Provisions.

Harvest. Combining of dry peas. Dry peas that are swathed prior to combining are not considered harvested.

Local market price. The cash price per pound for the U.S. No. 1 grade of dry peas as determined by us. Such price will be the pre-

vailing dollar amount these buyers are willing to pay for dry peas containing the maximum limits of quality deficiencies allowable for the U.S. No. 1 grade. Factors not associated with grading under the United States Standards for Whole Dry Peas, Split Peas and Lentils will not be considered, unless otherwise specified in the Special Provisions.

Nurse crop (companion crop). A crop planted into the same acreage as another crop to improve the growing conditions for the crop with which it is grown, and that is intended to be harvested separately.

Planted acreage. In addition to the definition contained in the Basic Provisions, dry peas must initially be planted in rows to be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Practical to replant. In addition to the definition contained in the Basic Provisions, it will not be considered practical to replant:

(a) Contract seed peas unless the processor/seed company will accept the production under the terms of the processor/seed company contract.

(b) Fall-planted dry peas more than 25 days after the final planting date for the corresponding spring-planted type of dry peas.

(c) All other dry peas more than 25 days after the final planting date unless replanting is generally occurring in the area.

Price election. In addition to the provisions of the definition contained in the Basic Provisions, the price election for contract seed peas will be the percentage you elect (not to exceed 100 percent) of the base contract price and used for the purposes of determining premium and indemnity for contract seed peas under this policy.

Processor/seed company. Any business enterprise regularly engaged in the processing of contract seed peas, that possesses all licenses and permits for marketing contract seed peas required by the state in which it operates, and that owns, or has contracted, sufficient drying, screening, and bagging or packaging equipment to accept and process the contract seed peas within a reasonable amount of time after harvest.

Processor/seed company contract. A written agreement between the producer and the processor/seed company, executed by the acreage reporting date, containing at a minimum:

(a) The producer's promise to plant and grow one or more specific varieties of contract seed peas, and deliver the production from those varieties to the processor/seed company;

(b) The processor/seed company's promise to purchase all the production stated in the contract; and

(c) A fixed price, or a method to determine such price based on published information