

(d) 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.

10. 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;

(2) Multiplying each result in section 10(b)(1) by the respective price election;

(3) Totaling the results in section 10(b)(2);

(4) Multiplying the total production to be counted by type, if applicable, (see subsection 10(c)) by the respective price election;

(5) Totaling the results in section 10(b)(4);

(6) Subtracting the total in section 10(b)(5) from the total in section 10(b)(3); and

(7) Multiplying the result in section 10(b)(6) by your share.

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

(1) All appraised production will be determined as follows:

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

(A) That is abandoned;

(B) From which production is sold by direct marketing if you fail to meet the requirements contained in section 9;

(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 production;

(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 adequately care for the crop, our appraisal made prior to

deferring the claim will be used to determine the production to count; and

(v) Any appraised production on insured acreage will be considered production to count unless such production is exceeded by the actual harvested production.

(2) All harvested production from the insurable acreage.

(3) Mature marketable peach production may be reduced as a result of a loss in quality due to an insured cause of loss. The amount of production to count for such peaches will be determined as follows:

(i) Peaches grown for fresh use by:

(A) Dividing the value of the damaged peaches by the actual price for undamaged peaches; and

(B) Multiplying the result of section 10(c)(3)(i)(A) by the number of bushels of the eligible damaged peaches.

(ii) Peaches grown for processing by:

(A) Dividing the value of the damaged peaches by the actual price of undamaged peaches for processing; and

(B) Multiplying the result of section 10(c)(3)(ii)(A) by the number of bushels of the eligible damaged peaches.

(4) Peaches that cannot be marketed due to insurable causes will not be considered production to count.

11. Late and Prevented Planting

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

[62 FR 39923, July 25, 1997, as amended at 62 FR 65176, Dec. 10, 1997; 65 FR 47839, Aug. 4, 2000]

§ 457.154 Processing sweet corn crop insurance provisions.

The Processing Sweet Corn Crop Insurance Provisions for the 1998 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:

Processing Sweet Corn 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

Base contract price. The price stipulated on the processor contract without regard to discounts or incentives that may apply.

Bypassed acreage. Land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those required by the sweet corn processor contract with the processing company, and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. The removal of the ears from the stalks for the purpose of delivery to the processor.

Planted acreage. In addition to the definition contained in the Basic Provisions, sweet corn must initially be placed in rows far enough apart to permit mechanical cultivation. 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 lieu of the definition of Practical to replant contained in section 1 of the Basic Provisions, 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 window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant unless the replanted acreage can produce at least 75 percent of the approved yield, and the processor agrees in writing that it will accept the production from the replanted acreage.

Processor. Any business enterprise regularly engaged in canning or freezing processing sweet corn for human consumption, that possesses all licenses and permits for processing sweet corn 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 processing sweet corn within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow sweet corn, and to deliver the sweet corn production to the processor;

(b) The processor's commitment to purchase all the production stated in the processor contract; and

(c) A base contract price.

Multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract.

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

Unhusked ear weight. Weight of the seed-bearing spike of sweet corn including the membranous or green outer envelope.

Usable tons. The quantity of sweet corn for which the producer is compensated or should have been compensated by the processor.

2. Unit Division

(a) For processor contracts that stipulate the amount of production to be delivered:

(1) In lieu of the definition contained in the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor;

(i) There will be no more than one basic unit for all production contracted with each processor contract;

(ii) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(2) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable.

(b) For any processor contract that stipulates the number of acres to be planted, the provisions contained in section 34 of the Basic Provisions will apply.

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 processing sweet corn in the county insured under this policy unless the Special Provisions provide different price elections by type. The percentage of the maximum price elections you choose for one type will be applicable to all other types insured under this policy.

(b) The insurance guarantee per acre is expressed as tons of unhusked ear weight. Any other measured production will be converted to an unhusked ear weight equivalent.

(c) The appraised production from bypassed acreage that could have been accepted by the processor will be included when determining your approved yield.

(d) Acreage that is bypassed because it was damaged by an insurable cause of loss will be considered to have a zero yield when determining your approved yield.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the processing sweet corn in the county for which a premium rate is provided by the actuarial documents:

- (1) In which you have a share;
- (2) That is grown under, and in accordance with, the requirements of a processor contract executed on or before the acreage reporting date and not excluded from the processor contract at any time during the crop year; and
- (3) That is not (unless allowed by the Special Provisions or by written agreement):
 - (i) Interplanted with another crop; or
 - (ii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the sweet corn is grown, you are at risk of loss, and the processor contract provides for delivery of sweet corn under specified conditions and at a stipulated base contract price.

(c) A commercial sweet corn producer who is also a processor may establish an insurable interest if the following requirements are met:

- (1) The producer must comply with these Crop Provisions;
- (2) Prior to the sales closing date, the Board of Directors or officers of the processor must execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a processor contract under this policy; and
- (3) Our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

- (a) Any acreage of the insured crop that is damaged before the final planting date, to

the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant; and

- (b) We will not insure any acreage that does not meet the rotation requirements, if applicable, contained in the Special Provisions.

9. Insurance Period

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases at the earlier of:

- (a) The date the sweet corn:
 - (1) Was destroyed;
 - (2) Should have been harvested but was not harvested;
 - (3) Was abandoned; or
 - (4) Was harvested;
- (b) The date you harvest sufficient production to fulfill your processor contract if the processor contract stipulates a specific amount of production to be delivered;
- (c) Final adjustment of a loss; or
- (d) Unless otherwise agreed to in writing, the calendar date for the end of the insurance period in which the sweet corn would normally be harvested as follows:
 - (1) September 30 in Malheur County, Oregon, all Idaho counties, and all Iowa counties;
 - (2) October 20 in all other Oregon counties, and in all Washington counties; or
 - (3) September 20 in all other states.

10. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions:

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

- (1) Adverse weather conditions, including:
 - (i) Excessive moisture that prevents harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and
 - (ii) Abnormally hot or cold temperatures that cause an unexpected number of acres over a large producing area to be ready for harvest at the same time, affecting the timely harvest of a large number of such acres or the processing of such production is beyond the capacity of the processor, either of which causes the acreage to be bypassed.
- (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 or as otherwise limited by the Special Provisions;
- (5) Wildlife;
- (6) Earthquake;
- (7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss listed in section 10(a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure any loss of production due to:

- (1) Bypassed acreage because of:
 - (i) The breakdown or non-operation of equipment or facilities; or
 - (ii) The availability of a crop insurance payment. We may deny any indemnity immediately in such circumstance or, if an indemnity has been paid, require you to repay it to us with interest at any time acreage was bypassed due to the availability of a crop insurance payment; or
- (2) Your failure to follow the requirements contained in the processor contract.

11. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 of the Basic Provisions, you must give us notice:

- (a) Not later than 48 hours after:
 - (1) Total destruction of the sweet corn on the unit; or
 - (2) Discontinuance of harvest on a unit on which unharvested production remains.
- (b) Within 3 days after the date harvest should have started on any acreage that will not be harvested unless we have previously released the acreage. You must also provide acceptable documentation of the reason the acreage was bypassed. Failure to provide such documentation will result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested and you wish to destroy the crop, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in each unit. The samples must not be destroyed until the earlier of our inspection or 15 days after notice is given to us; and
- (c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during the 15 day period or during harvest, so that we may inspect any damaged production. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You are not required to delay harvest.

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 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 by its respective production guarantee, by type if applicable;
- (2) Multiplying each result of section 12(b)(1) by the respective price election, by type if applicable;
- (3) Totaling the results of 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 if applicable, by its respective price election;
- (5) Totaling the results of section 12(b)(4) if there are more than one type;
- (6) Subtracting the results of section 12(b)(4) from the results of section 12(b)(2) if there is only one type or subtracting the results of section 12(b)(5) from the result of section 12(b)(3) if there are more than one type; and
- (7) Multiplying the result of section 12(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of type A processing sweet corn in the unit, with a guarantee of 3.0 tons per acre and a price election of \$50.00 per ton. You are only able to harvest 200 tons. Your indemnity would be calculated as follows:

- (1) 100 acres × 3.0 tons = 300 tons guarantee;
- (2) 300 tons × \$50.00 price election = \$15,000.00 value of guarantee;
- (4) 200 tons × \$50.00 price election = \$10,000.00 value of production to count;
- (6) \$15,000.00 - \$10,000.00 = \$5,000.00 loss;
- (7) \$5,000.00 × 100 percent = \$5,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of type B processing sweet corn in the same unit, with a guarantee of 4.0 tons per acre and a price election of \$45.00 per ton. You are only able to harvest 350 tons. Your total indemnity for both types A and B would be calculated as follows:

- (1) 100 acres × 3.0 tons = 300 tons guarantee for type A, and
100 acres × 4.0 tons = 400 tons guarantee for type B;
- (2) 300 tons × \$50.00 price election = \$15,000.00 value of guarantee for type A, and
400 tons × \$45.00 price election = \$18,000.00 value of guarantee for type B;
- (3) \$15,000.00 + \$18,000.00 = \$33,000.00 total value of guarantee;
- (4) 200 tons × \$50.00 price election = \$10,000.00 value of production to count for type A, and
350 tons × \$45.00 price election = \$15,750.00 value of production to count for type B;
- (5) \$10,000.00 + \$15,750.00 = \$25,750.00 total value of production to count;
- (6) \$33,000.00 - \$25,750.00 = \$7,250.00 loss;

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(7) \$7,250.00 loss × 100 percent = \$7,250.00 indemnity payment.

(c) The total production to count, specified in tons of unhusked ear weight, 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) That is 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) Production lost due to uninsured causes.

(iii) Production on acreage that is bypassed unless the acreage was bypassed due to an insured cause of loss which resulted in production which would not be acceptable under the terms of the processor contract.

(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) 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 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 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 processing sweet corn production from the insurable acreage. The amount of such production will be:

(i) The usable tons of processing sweet corn shown on the processor settlement sheet, if available; or

(ii) Determined by dividing the dollar amount paid, payable, or which should have been paid under the terms of the processor contract for the quantity of the sweet corn delivered to the processor by the base contract price per ton; and

(3) All harvested processing sweet corn production from any other insurable units that

have been used to fulfill your processor contract for this unit.

The total production to count will be expressed as an unhusked ear weight. Any other measure of production will be converted to an unhusked ear weight equivalent.

13. Late Planting

A late planting period is not applicable to processing sweet corn unless allowed by the Special Provisions and 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.

14. Prevented Planting

Your prevented planting coverage will be 40 percent of your production guarantee for timely planted acreage. If you have limited 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 the levels specified in the actuarial documents.

[62 FR 65342, Dec. 12, 1997]

§ 457.155 Processing bean crop insurance provisions.

The Processing Bean Crop Insurance Provisions for the 1998 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:

Processing Bean 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

Base contract price. The price stipulated in the processor contract for the grade factor or sieve size that is designated in the Special Provisions, if applicable, without regard to discounts or incentives that may apply.

Broker. A business enterprise that has all the licenses and permits required by the state in which it operates, and has a long term agreement in writing with a processor to purchase and deliver processing beans.

Bypassed acreage. Land on which production is ready for harvest but the processor