

§ 457.159

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

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

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

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

[End of Example]

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

§ 457.159 Stonefruit crop insurance provisions.

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

FCIC Policies

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Stonefruit Crop Insurance Provisions

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

1. Definitions

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

Grading standards. As specified in the Special Provisions.

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

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

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

7 CFR Ch. IV (1–1–10 Edition)

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

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

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

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

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

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

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

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

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

Varietal group. A subclass of type.

2. Unit Division

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

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

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

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

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

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

that is insured under this policy. If separate price elections are available by type or varietal group of a crop, the price elections you choose for each type or varietal group must have the same percentage relationship to the maximum price offered by us for each type or varietal group. For example, if you choose 100 percent of the maximum price election for one type of cling peaches, you must choose 100 percent of the maximum price election for all other types of cling peaches.

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type or varietal group, if applicable, for each stonefruit crop:

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

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

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

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

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

(ii) The planting pattern; and

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

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of interplanting a perennial crop, removal of trees, damage, change in practice, and any other circumstance that could affect the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

4. Contract Changes

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

5. Cancellation and Termination Dates.

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

6. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all of each stonefruit crop you elect to insure, that is grown in the county, and for which premium rates are provided in the actuarial documents:

(a) In which you have a share;

(b) That is grown on trees that:

(1) Were commercially available when the trees were set out;

(2) Is adapted to the area; and

(3) Is grown on a root stock that is adapted to the area;

(c) That is irrigated;

(d) That have produced at least 200 lugs of fresh market production per acre, or at least 2.2 tons per acre for processing crops, in at least 1 of the 3 most recent actual production history crop years, unless we inspect such acreage and give our approval in writing;

(e) That are regulated by the applicable state's Tree Fruit Agreement or related crop advisory board for the state (for applicable crop or type);

(f) That are grown in an orchard that, if inspected, is considered acceptable by us; and

(g) That have reached at least the fifth growing season after set out. However, we may agree in writing to insure acreage that has not reached this age if it meets the requirements of subsection (d) of this section.

7. Insurable Acreage

In lieu of the provisions of section 9 of the Basic Provisions that prohibit insurance attaching to a crop planted with another crop, stonefruit interplanted with another perennial crop is insurable unless we inspect the acreage and determine that it does not meet the requirements for insurability contained in your policy.

8. Insurance Period

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

(1) Coverage begins on February 1 in California and November 21 for all other states of each crop year, except that for the year of application, if your application is received after January 22 but prior to February 1 in California or after November 11 but prior to November 21 in all other states, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is:

(i) July 31 for all apricots; and

(ii) September 30 for all nectarines and peaches; and

(iii) As otherwise provided for specific counties or types in the Special Provisions.

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

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date of acquisition.

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

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

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

(iii) The transferee is eligible for crop insurance.

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

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

9. Causes of Loss

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

- (1) Adverse weather conditions;
- (2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the orchard;
- (3) Wildlife;
- (4) Earthquake;
- (5) Volcanic eruption; or
- (6) Failure of the irrigation water supply, if due to a cause of loss contained in sections 9(a)(1) through (5) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available;

(2) Split pits regardless of cause; or

(3) Inability to market the insured crop for any reason other than actual physical damage from an insurable cause of loss specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Duties in the Event of Damage or Loss

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

(a) You must notify us within 3 days after the date harvest should have started if the insured crop will not be harvested.

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) In addition to section 14 of the Basic Provisions, if you intend to claim an indemnity on any unit, you must give us notice at least 15 days prior to the beginning of harvest. You must not destroy the damaged crop until after we have given you written consent to do so. If you fail to notify us and such failure results in our inability to inspect the damaged production, we may consider all such production to be undamaged and include it as production to count.

11. 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 or varietal group by its respective production guarantee;

(2) Multiplying each result of section 11(b)(1) by the respective price election for the type or varietal group;

(3) Totaling the results of section 11(b)(2). (If there is only one type or varietal group, the result of (3) will be the same as the result of (2));

(4) Multiplying the total production to count (see section 11(c)), for each type or varietal group, by the respective price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting the result of section 11(b)(5) from the result of section 11(b)(2). (If there is only one type or varietal group, the result of (6) will be the same as the result of (5)); and

(7) Multiplying the result of section 11(b)(6) by your share.

For example:

You have a 100 percent share in 50 acres of varietal group A stonefruit in the unit, with a guarantee of 500 lugs per acre and a price election of \$6.00 per lug. You are only able to harvest 5,000 lugs. Your indemnity would be calculated as follows:

(1) 50.0 acres × 500 lugs = 25,000 lugs guarantee;

(2) and (3) 25,000 lugs × \$6.00 price election = \$150,000.00 value of guarantee;

(4) 5,000 lugs × \$6.00 price election = \$30,000.00 value of production to count;

(5) and (6) \$150,000.00—\$30,000.00 = \$120,000.00 loss; and

(7) \$120,000.00 × 100 percent = \$120,000 indemnity payment.

You also have a 100 percent share in 50 acres of varietal group B stonefruit in the unit, with a guarantee of 300 lugs per acre and a price election of \$3.00 per lug. You are only able to harvest 3,000 lugs. Your indemnity would be calculated as follows:

(1) 50.0 acres × 300 lugs varietal group A = 25,000 lugs guarantee; and 50.0 acres × 300 lugs varietal group B = 15,000 lugs guarantee;

(2) 25,000 lugs × \$ 6.00 price election = \$150,000.00 value of guarantee for varietal group A; and 15,000 lugs × \$3.00 price election = \$45,000.00 value of guarantee for varietal group B;

(3) \$150,000.00 + \$45,000.00 = \$195,000.00 total value of guarantee;

(4) 5,000 lugs varietal group A × \$6.00 price election = \$30,000.00 value of production to count; and 3,000 lugs varietal group B × \$3.00 price election = \$9,000.00 value of production to count; and

(5) \$30,000.00 + \$9,000.00 = \$39,000.00 total value of production to count;

(6) \$195,000.00—\$39,000.00 = \$156,000.00 loss

(7) \$156,000.00 loss × 1.000 = \$156,000 indemnity payment.

(c) The total production to count (in lugs or tons) from all insurable acres on a unit will include:

(1) All appraised production as follows:

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

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements contained in section 10;

(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 that would be marketable if harvested; 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 insured crop. We will then make another appraisal when you notify us if any further damage or that harvest is general in the area unless you harvested the crop. If you harvest the crop 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.

(3) The quantity of harvested production will be reduced if the following conditions apply:

(i) The value of the damaged production is less than 75 percent of the marketable value of undamaged production due to an insured cause of loss; and

(ii) For stonefruit insured as fresh fruit only, the stonefruit either is packed and sold as fresh fruit and meets only the utility grade requirements of the applicable grading standards, or fails to meet the applicable grading standards but is or could be sold for any use other than fresh packed stonefruit.

(4) Harvested production of stonefruit that is eligible for quality adjustment as specified in section 11(c)(3) will be reduced as follows:

(i) When packed and sold as fresh fruit or when insured as a processing crop, by dividing the marketable value per lug or ton by the highest price election (for the applicable coverage level) and multiplying the result (not to exceed 1.00) by the quantity of such production; or

(ii) For all other fresh stonefruit, multiplying the number of tons that could be marketed by the value per ton (for the applicable coverage level) and dividing that result by the highest price election available for that type.

§457.160

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

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions (§457.8) are not applicable.

[63 FR 29935, June 2, 1998, as amended at 65 FR 47840, Aug. 4, 2000]

§457.160 Processing tomato crop insurance provisions.

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

FCIC Policies

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Processing 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. 43,560 square feet of land on which row widths do not exceed 6 feet, or the land on which at least 7,260 linear feet rows are planted if row widths exceed 6 feet.

Broker. An enterprise in the business of buying and selling tomatoes possessing all the licenses and permits required by the state in which it operates, and that has a written contract with a processor to purchase processing tomatoes on behalf of the processor and to deliver such tomatoes to the processor.

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

First fruit set. The reproductive stage of the plant at which 30 percent of the plants have produced a fruit that has reached a minimum of one inch in diameter.

Good Farming Practices. In addition to the definition of "good farming practices" contained in section 1 of the Basic Provisions, good farming practices include the cultural practices required under the processor contract.

Harvest. The severance of tomatoes from the vines.

Plant stand. The number of plants per acre considered to be normal for the applicable tomato variety and growing area.

Planted acreage—In addition to the definition contained in the Basic Provisions, to-

matoes must initially be placed 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 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, marketing window, condition of the field, and time to crop maturity, 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% 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 processing tomatoes for human consumption, that possesses all licenses and permits for processing tomatoes 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 tomatoes within a reasonable amount of time after harvest.

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

(a) The producer's commitment to plant and grow processing tomatoes, and to deliver the tomato production to the processor or broker;

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

(c) A price per ton that will be paid for the production.

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

2. Unit Division

(a) Notwithstanding the provisions of this section or any unit division provisions contained in the Basic Provisions, no indemnity will be paid for any loss of production on any unit if the insured produced a crop sufficient to fulfill the processor contracts forming the basis for the guarantee, and any indemnity will be limited to the amount necessary to compensate for loss in yield at the price elected between production to count and the contract requirements.

(b) In California only, in addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions, optional units may be established if acreage