

§ 457.134

- (A) That is abandoned;
 - (B) That is sold by direct marketing or sold as fresh fruit 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 acceptable production records;
 - (ii) Production lost due to uninsured causes;
 - (iii) Unharvested production; and
 - (iv) Potential production on insured acreage 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.
- (d) Any prune production harvested for fresh fruit will be converted to a dried prune weight basis by dividing the total amount (in tons) of fresh fruit production by 3.0.
 - (e) Any production of substandard prunes resulting from damage by insurable causes will be adjusted based on the average size count as indicated on the applicable Dried Fruit Association (DFA) Inspection Report and Certification Form. Any insurable damage will be adjusted by:
 - (1) Dividing the value per ton of such substandard prunes by the market price per ton for standard prunes (of the same size count); and
 - (2) Multiplying the result by the number of tons of such prunes.

12. Late and Prevented Planting

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

[62 FR 58630, Oct. 30, 1997, as amended at 62 FR 65172, Dec. 10, 1997; 65 FR 47839, Aug. 4, 2000]

§ 457.134 Peanut crop insurance provisions.

The Peanut Crop Insurance Provisions for the 2007 and succeeding crop years are as follows:

7 CFR Ch. IV (1–1–11 Edition)

FCIC policies: United States Department of Agriculture, Federal Crop Insurance Corporation.

Reinsured policies: (Appropriate title for insurance provider).

Both FCIC and reinsured policies.

Peanut Crop Insurance Provisions.

1. Definitions

Base contract price. The price for farmers' stock peanuts stipulated in the sheller contract, without regard to discounts or incentives that may apply, not to exceed the price election times the price factor specified in the Special Provisions.

Farmers' stock peanuts. Picked or threshed peanuts produced in the United States, which are not shelled, crushed, cleaned, or otherwise changed (except for removal of foreign material, loose shelled kernels and excess moisture) from the condition in which peanuts are customarily marketed by producers.

Green peanuts. Peanuts that are harvested and marketed prior to maturity without drying or removal of moisture either by natural or artificial means.

Handler. A person who is a sheller, a buying point, a marketing association, or has a contract with a sheller or a marketing association to accept all of the peanuts marketed through the marketing association for the crop year. The handler acquires peanuts for resale, domestic consumption, processing, exportation, or crushing through a business involved in buying and selling peanuts or peanut products.

Harvest. The completion of digging and threshing and removal of peanuts from the field.

Marketing association. A cooperative approved by the Secretary of the United States Department of Agriculture to administer payment programs for peanuts.

Planted acreage. In addition to the requirement in the definition in the Basic Provisions, peanuts must initially be planted in a row pattern which permits mechanical cultivation, or that allows the peanuts to be cared for in a manner recognized by agricultural experts as a good farming practice. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Price election. In addition to the definition in the Basic Provisions, the price election for peanuts insured in accordance with a sheller contract will be the base contract price specified in the sheller contract.

Price factor. The factor specified in the Special Provisions that places limits on the base contract price.

Sheller. Any business enterprise regularly engaged in processing peanuts for human consumption; that possesses all licenses and permits for processing peanuts 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 peanuts within a reasonable amount of time after harvest.

Sheller contract. A written agreement between the producer and a sheller, or the producer and a handler, containing at a minimum:

- (a) The producer's commitment to plant and grow peanuts, and to deliver the peanut production to the sheller or handler;
- (b) The sheller's or handler's commitment to purchase all the production stated in the sheller contract (an option to purchase is not a commitment); and
- (c) A base contract price.

If the agreement fails to contain any of these terms, it will not be considered a sheller contract.

2. Unit Division

In accordance with the Basic Provisions, basic and optional units are applicable, unless limited 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) The price election percentage you choose for peanuts which are not insured in accordance with a sheller contract (may also include peanuts in excess of the amount required to fulfill your sheller contract) and for peanuts insured in accordance with a sheller contract must have the same percentage relationship to the maximum price election offered by us for peanuts not insured in accordance with a sheller contract. For example, if you choose 100 percent of the maximum price election for peanuts not insured in accordance with a sheller contract, you

must also choose 100 percent of the applicable price election for peanuts insured in accordance with a sheller contract.

- (b) You may not insure more pounds of peanuts than your production guarantee (per acre) multiplied by the number of acres that will be planted to peanuts. For the purposes of determining the guarantee, premiums, indemnities, replant payments, and prevented planting payments:

(1) Where all production of peanuts is grown under one or more sheller contracts, you may elect a price election to cover all insurable peanuts that is the base contract price contained in such sheller contracts or the price contained in the Special Provisions.

(2) Where some peanuts are grown under one or more sheller contracts but some peanuts are not grown under a sheller contract, you may elect:

- (i) The price election contained in the Special Provisions to cover all insurable peanuts; or
- (ii) The price election using the base contract price for peanuts grown under a sheller contract and the price contained in the Special Provisions for peanuts not grown under a sheller contract.

(3) Where none of the peanuts are grown under a sheller contract, the price election will be the price contained in the Special Provisions.

- (c) Any peanuts excluded from the sheller contract at any time during the crop year will be insured at the price election specified in the Special Provisions.

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:

State and county	Dates
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas and all Texas Counties lying south, thereof.	January 15.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties south and east thereof; and all other states, except New Mexico, Oklahoma, and Virginia.	February 28.
New Mexico; Oklahoma; Virginia; and all other Texas counties	March 15.

6. Report of Acreage

In addition to the requirements of section 6 of the Basic Provisions, you must provide a copy of all sheller contracts to us on or before the acreage reporting date if you wish to insure your peanuts in accordance with your sheller contract.

7. [Reserved]

8. Insured Crop

- (a) In accordance with section 8 of the Basic Provisions, the crop insured will be all

§ 457.134

the peanuts in the county for which a premium rate is provided by the actuarial documents:

- (1) In which you have a share;
- (2) That are planted for the purpose of marketing as farmers' stock peanuts;
- (3) That are a type of peanut designated in the Special Provisions as being insurable;
- (4) That are not (unless allowed by the Special Provisions or by written agreement):
 - (i) Planted for the purpose of harvesting as green peanuts;
 - (ii) Interplanted with another crop; or
 - (iii) Planted into an established grass or legume; and
- (5) Whether or not the peanuts are grown in accordance with a sheller contract (if not grown in accordance with the sheller contract, the peanuts will be valued at the price election issued by FCIC for the purposes of determining the production guarantee, premium, and indemnity).

(b) You will be considered to have a share in the insured crop if, under the sheller contract, you retain control of the acreage on which the peanuts are grown, you are at risk of a production loss, and the sheller contract provides for delivery of the peanuts to the sheller or handler and for a stipulated base contract price.

(c) A peanut producer who is also a sheller or handler 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 sheller or handler must execute and adopt a resolution that contains the same terms as a sheller contract. Such resolution will be considered a sheller contract under this policy; and
- (3) Our inspection reveals that the processing facilities comply with the definition of a sheller contained in these Crop Provisions.

9. Insurable Acreage

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

- (a) Any acreage of the insured crop 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 replanting is not practical.
- (b) We will not insure any acreage:
 - (1) On which peanuts are grown using no-till or minimum tillage farming methods unless allowed by the Special Provisions or written agreement; or
 - (2) Which does not meet the rotation requirements, if any, contained in the Special Provisions.

7 CFR Ch. IV (1-1-11 Edition)

10. Insurance Period

In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows:

- (a) November 30 in all states except New Mexico, Oklahoma, and Texas; and
- (b) December 31 in New Mexico, Oklahoma, and Texas.

11. Causes of Loss

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:

- (a) Adverse weather conditions;
- (b) Fire;
- (c) Insects, but not damage due to insufficient or improper application of pest control measures;
- (d) Plant disease, but not damage due to insufficient or improper application of disease control measures;
- (e) Wildlife;
- (f) Earthquake;
- (g) Volcanic eruption; or
- (h) Failure of the irrigation water supply, if due to a cause of loss contained in section 11(a) through (g) that occurs during the insurance period.

12. Replanting Payments

(a) A replanting payment is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these Crop Provisions;

(2) Except as specified in section 12(a)(1), you must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions; and

(3) The insured crop must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

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

(1) 20.0 percent of the production guarantee, multiplied by your price election, multiplied by your share; or

(2) \$80.00 multiplied by your insured share.

(c) If there are different base contract prices or you also have insurable peanuts not grown under a contract:

(1) If the sheller contracts are for different types of peanuts or one type of peanut is grown under a sheller contract and another is not, replanting payments will be valued using the price election elected by you for the planted acreage, as applicable (For an example, you have two sheller contracts and

the base contract price is \$0.23 per pound for Runner type peanuts, then \$0.23 per pound will be used for the value of any replanted Runner type peanut acreage. If the base contract price is \$0.21 per pound for Spanish type peanuts, then \$0.21 per pound will be used for the value of any replanted Spanish type peanut acreage.

(2) If the sheller contracts are for the same type of peanuts but they have different base contract prices:

(i) If the peanuts under each sheller contract are insured in separate optional units, each respective price election from each sheller contract will apply to each respective unit; or

(ii) If all or some of peanuts under both sheller contracts are insured in the same unit, then the replanted acreage will be prorated to each contract based on the number of acres needed to fulfill each contract (For example, if there are 20 acres in the unit and 10 were replanted, the production guarantee per acre for the unit is 2,000 pounds per acre, and the contract for \$0.23 was for 25,000 pounds and the contract for \$0.21 was for 15,000 pounds, then the acreage under the \$0.23 contract constitutes 62.5 percent of the acreage in the unit (25,000/40,000) and the other sheller contract 37.5 percent of the acreage (15,000/40,000). Of the 10 acres replanted, 6.25 acres ($10 \times .625$) would be paid at the \$0.23 price election and 3.75 acres ($10 \times .375$) would be paid at the \$0.21 price election).

(3) If the peanuts are not grown under a contract, the replanting payments will be valued using the price election as specified in the Special Provisions. If the unit has peanuts grown under a sheller contract and peanuts not grown under a sheller contract, the replanted acreage must be prorated between the contract and non-contract acreage by determining the acreage grown under a contract and the remaining acreage in the unit (For example, if there are 20 acres in the unit and 10 were replanted, the production guarantee per acre for the unit is 2,000 pounds per acre, there is a sheller contract for \$0.23 for 25,000 pounds, the remaining peanuts are not grown under a sheller contract, and the price election in the Special Provisions is for \$0.20. The peanuts under the sheller contract constitute 62.5 percent (25,000/40,000) of the acreage in the unit and remaining peanuts constitute 37.5 percent (40,000 - 25,000/40,000) of the acreage. Of the 10 acres replanted, 6.25 acres ($10 \times .625$) would be paid with the liability based on the \$0.23 price election and 3.75 acres ($10 \times .375$) would be paid with the liability based on the \$0.20 price election).

(d) When the crop is replanted using a practice that is uninsurable for an original planting, the liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

(e) Replanting payments will be calculated using your price election and production guarantee for the crop type that is replanted and insured. A revised acreage report will be required to reflect the replanted type, if applicable.

13. Duties in the Event of Damage or Loss

Representative samples are required in accordance with section 14 of the Basic Provisions.

14. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability for the harvested acreage for the unit.

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

(1) Multiplying the number of insured acres by the respective production guarantee (per acre) for peanuts insured under a sheller contract or not insured under a sheller contract, as applicable;

(2) Multiplying each result of section 14(b)(1) by the applicable price election for peanuts insured at the base contract price or the price election specified in the Special Provisions, as applicable;

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

(4) Multiplying the production to count by the respective price election (If you have one or more sheller contracts, we will value your production to count by using your highest price election first and will continue in decreasing order to your lowest price election based on the amount of peanuts insured at each price election);

(5) Totaling the results of section 14(b)(4);

(6) Subtracting the result of section 14(b)(5) from the result of section 14(b)(3); and

(7) Multiplying the result in section 14(b)(6) by your share.

Example #1 (without a sheller contract):

You have 100 percent share in 25 acres of Valencia peanuts in the unit, with a production guarantee (per acre) of 2,000 pounds, the price election specified in the Special Provisions is \$0.17 per pound, and your production to count is 43,000 pounds.

(1) 25 acres \times 2,000 pounds = 50,000 pound guarantee;

(2) 50,000 pound guarantee \times \$0.17 price election specified in the Special Provisions = \$8,500.00 guarantee;

(3) 43,000 pounds of production to count \times \$0.17 price election specified in the Special Provisions = \$7,310.00;

§ 457.134

7 CFR Ch. IV (1-1-11 Edition)

(4) \$8,500.00 guarantee - \$7,310.00 = \$1,190.00; and

(5) \$1,190.00 × 1.000 = \$1,190.00; Indemnity = \$1,190.00.

Example #2 (with a sheller contract):

You have 100 percent share in 25 acres of Valencia peanuts in the unit, with a production guarantee (per acre) of 2,000 pounds. You have two sheller contracts, the first is for 25,000 pounds, price election (contract) is \$0.23 per pound, and the second is for 10,000 pounds, price election (contract) is \$0.21 per pound. The price election (non-contract) specified in the Special Provisions is \$0.17 per pound, and your production to count is 43,000 pounds.

(1) 25 acres × 2,000 pounds = 50,000 pound guarantee;

(2) 25,000 pounds contracted × \$0.23 price election (contract) = \$5,750.00;

10,000 pounds contracted × \$0.21 price election (contract) = \$2,100.00;

50,000 pound guarantee - 25,000 pounds contracted - 10,000 pounds contracted = 15,000 pounds not contracted;

15,000 pounds not contracted × \$0.17 price election (non-contract) specified in the Special Provisions = \$2,550.00;

(3) \$5,750.00 + \$2,100.00 + \$2,550.00 = \$10,400.00 guarantee;

(4) 43,000 pounds of production to count: 25,000 pounds contracted × \$0.23 price election (contract) = \$5,750.00;

10,000 pounds contracted × \$0.21 price election (contract) = \$2,100.00;

43,000 pounds of production to count - 25,000 pounds contracted (at \$0.23 per pound) - 10,000 pounds contracted (at \$0.21 per pound) = 8,000 pounds;

8,000 pounds × \$0.17 price election (non-contract) specified in the Special Provisions = \$1,360.00;

(5) \$5,750.00 + \$2,100.00 + \$1,360.00 = \$9,210.00;

(6) \$10,400.00 guarantee - \$9,210.00 = \$1,190.00; and

(7) \$1,190.00 × 1.000 = \$1,190.00; Indemnity = \$1,190.00.

(c) The total production to count (in pounds) from all insurable acreage on the unit will include all appraised and harvested production.

(d) All appraised production will include:

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

(i) That is abandoned;

(ii) Put to another use without our consent;

(iii) Damaged solely by uninsured causes; or

(iv) For which you fail to provide production records that are acceptable to us.

(2) Production lost due to uninsured causes;

(3) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 14(e));

(4) 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 the 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:

(i) 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

(ii) 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

(5) All harvested production from the insurable acreage.

(e) Mature peanuts may be adjusted for quality when production has been damaged by an insured cause of loss.

(1) To enable us to determine the number of pounds, price per pound, and the quality of production for any peanuts that qualify for quality adjustment, we must be given the opportunity to have such peanuts inspected and graded before you dispose of them.

(2) If you dispose of any production without giving us the opportunity to have the peanuts inspected and graded, the gross weight of such production will be used in determining total production to count unless you submit a marketing record satisfactory to us which clearly shows the number of pounds, price per pound, and quality of such peanuts.

(3) Such production to count will be reduced if the price per pound received for damaged peanuts is less than 85 percent of the price election by:

(i) Dividing the price per pound for the damaged peanuts, as determined by us in accordance with section 14(e)(1), received for the insured type of peanuts by the applicable price election; and

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

15. Prevented Planting

(a) Your prevented planting coverage will be 50 percent of your production guarantee for timely planted acreage. If you have 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.

(b) In addition to the provisions of section 17(i) of the Basic Provisions, if there are different base contract prices or you also have insurable peanuts not grown under a contract:

(1) If the sheller contracts are for different types of peanuts or one type of peanut is grown under a sheller contract and another is not, the liability will be determined using the price election elected by you for planted acreage, as applicable (For an example, you have two sheller contracts and the base contract price is \$0.23 per pound for Runner type peanuts, then \$0.23 per pound will be used for the value of any prevented planting Runner type peanut acreage. If the base contract price is \$0.21 per pound for Spanish type peanuts, then \$0.21 per pound will be used for the value of any prevented planting Spanish type peanut acreage.

(2) If the sheller contracts are for the same type of peanuts but they have different base contract prices:

(i) If the peanuts grown under each sheller contract are insured in separate optional units, the liability will be determined using each respective price election for the prevented planting acreage in each respective unit; or

(ii) If all or some of the peanuts grown under the sheller contracts are insured in the same unit, then the liability for each contract must be determined separately using the respective price election and the number of eligible prevented planting acres to which the liability applies and will be determined by prorating prevented planting acreage to each contract based on the number of acres needed to fulfill each contract (For example, if there are 20 acres in the unit and 10 were prevented from planting, the production guarantee per acre for the unit is 2,000 pounds per acre, and the contract for \$0.23 was for 25,000 pounds and the contract for \$0.21 was for 15,000 pounds, then the acreage under the \$0.23 contract constitutes 62.5 percent (25,000/40,000) of the acreage in the unit and the other contract 37.5 percent (15,000/40,000) of the acreage. Of the 10 acres prevented from planting, 6.25 acres (10 × .625) would be paid with the liability based on the \$0.23 price election and 3.75 acres (10 × .375) would be paid with the liability based on the \$0.21 price election).

(3) If the peanuts are not grown under a contract, the liability for such peanuts will be based on the price election as specified in the Special Provisions. If the unit has peanuts grown under a sheller contract and peanuts not grown under a sheller contract, the eligible prevented planting acreage must be determined by determining the acreage grown under a contract and the remaining

acreage in the unit (For example, if there are 20 acres in the unit and 10 were prevented from planting, the production guarantee per acre for the unit is 2,000 pounds per acre, there is a sheller contract for \$0.23 for 25,000 pounds, the remaining peanuts are not grown under a sheller contract, and the price election in the Special Provisions is for \$0.20. The peanuts under the sheller contract constitute 62.5 percent (25,000/40,000) of the acreage in the unit and remaining peanuts constitute 37.5 percent (40,000–25,000/40,000) of the acreage. Of the 10 acres prevented from planting, 6.25 acres (10 × .625) would be paid with the liability based on the \$0.23 price election and 3.75 acres (10 × .375) would be paid with the liability based on the \$0.20 price election).

[71 FR 55997, Sept. 26, 2006]

§ 457.135 Onion crop insurance provisions.

The onion crop insurance provisions for the 2011 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:

Onion Crop Provisions

1. Definitions

Damaged onion production. Storage type onions that do not grade U.S. No. 1 or do not satisfy any other standards that may be contained in the Special Provisions; or non-storage type onions which do not satisfy standards contained in any applicable marketing order or other standards that may be contained 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 harvesting all or a portion of the crop.

Direct seeded. Placing onion seed by machine or by hand at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

Harvest. Removal of the onions from the field after topping and lifting or digging.

Hundredweight. 100 pounds avoirdupois.

Lifting or digging. A pre-harvest process in which the onion roots are severed from the