

§ 457.155

7 CFR Ch. IV (1–1–12 Edition)

(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;

(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 pro-

duction 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, as amended at 76 FR 4804, Jan. 27, 2011]

§ 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

Federal Crop Insurance Corporation, USDA

§ 457.155

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 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 bean processor contract with the processing company, and recognized by the National Institute of Food and Agriculture as compatible with agronomic and weather conditions in the county.

Harvest. The mechanical picking of bean pods from the vines.

Planted acreage. In addition to the definition contained in the Basic Provisions, beans must initially be placed in rows far enough apart to permit mechanical cultivation 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, 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.

Processing beans. Lima, snap, or other bean types identified in the Special Provisions that are grown under a processor contract to be canned or frozen and sold for human consumption.

Processor. Any business enterprise regularly engaged in canning or freezing processing beans for human consumption, that possesses all licenses and permits for processing beans 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 the contracted beans 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 beans, and to deliver the bean 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 base contract price.

Multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract unless the contracts are for different types of processing beans.

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

Type. A category of processing beans identified as a type in the Special Provisions.

2. Unit Division

(a) For any processor contract that stipulates 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. Optional units will not be established.

(b) For any processor contract that stipulates the number of acres to be planted, in addition to or instead of, establishing optional units by section, section equivalent or

§ 457.155

7 CFR Ch. IV (1-1-12 Edition)

FSA farm serial number, or irrigated and non-irrigated acreage, optional units may be established by type if acreage of one type does not continue into acreage of another type in the same rows or planting pattern.

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

(c) 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 beans in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are grown under, and in accordance with, the requirements of a processor contract executed on or before the acreage reporting date and are not excluded from the processor contract at any time during the crop year; and

(3) That are 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 processing beans are grown, you are at risk of loss, and the processor

contract provides for delivery of the processing beans under specified conditions and at a stipulated base contract price.

(c) A commercial processing bean producer who is also a processor or broker 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 or the broker 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 acreage that does not meet any 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 processing beans:

(1) Were destroyed;

(2) Should have been harvested but were not harvested;

(3) Were abandoned; or

(4) Were 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) The date shown below for the end of the insurance period in the calendar year in which the processing beans would normally be harvested, unless otherwise agreed to in writing, as follows:

(1) October 30 for all processing beans in the state of Arkansas;

(2) October 15 for all processing beans in the states of Delaware, Maryland, and New Jersey;

(3) October 5 for all processing beans in the states of Idaho, Oregon, and Washington;

(4) September 30 for snap beans in the state of New York;

(5) September 20 for snap beans in all other states; or

(6) October 5 for lima beans 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 the 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 on acreage not planted to processing beans the previous crop year. (In certain instances, contained in the Special Provisions or in a written agreement, acreage planted to processing beans the previous year may be covered. Damage due to insufficient or improper application of disease control measures is not covered);

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss contained 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 notice required by section 14 of the Basic Provisions, you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the processing beans 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. 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 snap type processing beans in the unit, with

§ 457.155

7 CFR Ch. IV (1-1-12 Edition)

a guarantee of 3.0 tons per acre and a price election of \$110.00 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 × \$110.00 price election = \$33,000.00 value of guarantee;
- (3) 200 tons × \$110.00 price election = \$22,000.00 value of production to count;
- (4) \$33,000.00 - \$22,000.00 = \$11,000.00 loss; and
- (5) \$11,000.00 × 100 percent = \$11,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of lima type processing beans in the same unit, with a guarantee of 1.0 ton per acre and a price election of \$225.00 per ton. You are only able to harvest 75 tons. Your total indemnity for both snap and lima types processing beans would be calculated as follows:

- (1) 100 acres × 3.0 tons = 300 tons guarantee for the snap type, and 100 acres × 1.0 ton = 100 tons guarantee for the lima type;
- (2) 300 tons × \$110.00 price election = \$33,000.00 value of guarantee for the snap type, and 100 tons × \$225.00 price election = \$22,500.00 value of guarantee for the lima type;
- (3) \$33,000.00 + \$22,500.00 = \$55,500.00 total value of guarantee;
- (4) 200 tons × \$110.00 price election = \$22,000.00 value of production to count for the snap type, and 75 tons × \$225.00 price election = \$16,875.00 value of production to count for the lima type;
- (5) \$22,000.00 + \$16,875.00 = \$38,875.00 total value of production to count;
- (6) \$55,500.00 - \$38,875.00 = \$16,625.00 loss; and
- (7) \$16,625.00 loss × 100 percent = \$16,625.00 indemnity payment.

(c) The total production to count, specified in tons, 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 bean production from the insurable acreage. The amount of such production will be:

(i) The usable tons of processing beans 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 quality and quantity of beans to be delivered to the processor by the base contract price per ton; and

(3) All harvested processing bean production from any other insurable units that have been used to fulfill your processor contract for this unit.

13. Late Planting

A late planting period is not applicable to processing beans 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 a level specified in the actuarial documents.

[62 FR 58625, Oct. 30, 1997, as amended at 62 FR 65176, Dec. 10, 1997; 76 FR 4805, Jan. 27, 2011]