

13. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide production records:

(1) For any optional units, we will combine all optional units for which acceptable 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;

(2) Multiplying each result of section 13(b)(1) by the respective price election;

(3) Totaling the results in section 13(b)(2);

(4) Multiplying the total production to be counted (see section 13(c)) by the respective price elections you chose;

(5) Totaling the results of section 13(b)(4);

(6) Subtracting the result in section 13(b)(5) from the result in 13(b)(3); and

(7) Multiplying the result in section 13(b)(6) by your share.

(c) The total production (in hundredweight) to count 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 direct marketed to consumers if you fail to meet the requirements contained in section 12;

(C) Put to another use without our consent;

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

(E) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested onion production (mature unharvested production may be adjusted based on the percent of damaged onion production in accordance with section 13(d));

(iv) The appraised production that exceeds the difference between the first or second stage (as applicable) and the final stage production guarantee for acreage that does not qualify for the final stage guarantee, if such acreage is not subject to section 13(c)(1) (i) and (ii); and

(v) 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 if you put the acreage to another use or abandon the crop.

(vi) 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 onion 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 onion production, or our reappraisal if additional damage occurs and the crop is not harvested.

(2) All harvested onion production from the insurable acreage.

(d) If the damage to harvested or unharvested onion production exceeds the percentage shown in the Special Provisions for the type, no production will be counted for that unit or portion of a unit unless such damaged onion production from that acreage is sold. If sold, the hundredweight of production to be counted will be adjusted by dividing the price received for the damaged onion production by the price election and multiplying the resulting factor times the hundredweight sold.

(e) The extent of any damaged onion production must be determined not later than the time onions are placed in storage if the production is stored prior to sale, or the date the onions are delivered to a packer, processor, or other handler if production is not stored.

14. Prevented Planting

Your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. Additional prevented planting coverage levels are not available for onions.

[62 FR 28613, May 27, 1997, as amended at 62 FR 65173, Dec. 10, 1997; 64 FR 33385, June 23, 1999]

§ 457.136 Guaranteed tobacco crop insurance provisions

The Guaranteed Tobacco Crop Insurance Provisions for the 1999 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:

Guaranteed Tobacco 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

Adequate stand. A population of live plants per unit of acreage that can be expected to produce at least your production guarantee.

Approved yield. The yield calculated in accordance with 7 CFR part 400, subpart G, if required by section 3(b) of these provisions.

Average value. For appraised production, the estimated value of all such production divided by the appraised pounds. For harvested production, the total value of such production divided by the harvested pounds.

Basic unit. In lieu of the definition in the Basic Provisions, a basic unit is all insurable acreage of an insurable type of tobacco in the county in which you have a share on the date of planting for the crop year and that is identified by a single FSA farm serial number at the time insurance first attaches under these provisions for the crop year.

Carryover tobacco. Any tobacco produced on the FSA farm serial number in previous years that remained unsold at the end of the most recent marketing year.

Discount variety. Tobacco defined as such under the provisions of the United States Department of Agriculture tobacco price support program.

Fair market value. The current year's tobacco season average market price for the applicable type of tobacco obtained from the average sale of tobacco through a market other than an auction warehouse.

Harvest. Cutting or priming and removing all insured tobacco from the field in which it was grown.

Hydroponic plants. Seedlings grown in liquid nutrient solutions.

Late planting period. In lieu of the definition in section 1 of the Basic Provisions, the period that begins the day after the final planting date for the insured crop and ends 15 days after the final planting date, unless otherwise specified in the Special Provisions.

Market price.

(a) For types 11, 12, 13, 14, 21, 22, 23, 31, 35, 36, 37, 42, 44, 54, and 55:

(1) The support price per pound for the insured type of tobacco as announced by the USDA for its tobacco price support program; or

(2) The current year's season average market price, when available; if not available because the insured type of tobacco has not been marketed in the area, the previous year's season average market price for the applicable insured type tobacco grown in the

area for any crop year a tobacco price support program is not in effect.

(b) For types 32, 41, 51, 52, and 61, the current year's season average market price, when available; if not available because the insured type of tobacco has not been marketed in the area, the previous year's season average market price for the applicable insured type of tobacco grown in the area.

Planted acreage. Land in which tobacco seedlings, including hydroponic plants, have been transplanted by hand or machine from the tobacco bed to the field.

Pound. Sixteen ounces avoirdupois.

Priming. A method of harvesting tobacco by which each leaf is severed from the stalk as it matures.

Production guarantee (per acre). Either the number of pounds of tobacco for the tobacco type and classification shown on the county actuarial table, or the approved yield as provided in the Special Provisions, multiplied by the coverage level percentage you elect.

Replanting. In lieu of the definition in section 1 of the Basic Provisions, performing the cultural practices necessary to replace the tobacco plant, and then replacing the tobacco plant in the insured acreage with the expectation of producing at least the guarantee.

Season average market price. The simple average price paid by buyers for a tobacco type for all days sales occur at public markets during the tobacco sales season in the area in which the farm is located.

Support price. The average price per pound for the type of tobacco as announced by the USDA under its tobacco price support program, or, if there is no such program, as announced by FCIC.

Tobacco bed. An area protected from adverse weather in which tobacco seeds are sown and seedlings are grown until transplanted into the tobacco field by hand or machine.

2. Unit Division

A unit will be determined in accordance with the definition of basic unit contained in section 1 of these Crop Provisions. The provision in the Basic Provisions regarding optional units are not applicable, unless specified 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 must select only one price election and coverage level for each guaranteed tobacco type designated in the Special Provisions that you elect to insure.

(b) A production report, if required by the Special Provisions, must be filed in accordance with section 3(c) of the Basic 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 March 15.

6. Report of Acreage

In addition to the requirements of section 6 of the Basic Provisions, you must report any carryover tobacco from previous years on the acreage report.

7. Insured Crop

In accordance with section 8 of the Basic Provisions, the insured crop will be any of the tobacco types designated in the Special Provisions, in which you have a share, that you elect to insure, and for which a premium rate is provided by the actuarial documents.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage under these crop provisions that is:

- (a) Planted to a discount variety;
- (b) Planted to a tobacco type for which no premium rate is provided by the actuarial documents;
- (c) Planted in any manner other than as provided in the definition of "planted acreage" in section 1 of these Crop Provisions, unless otherwise provided by the Special Provisions or by written agreement; or
- (d) Damaged before the final planting date to the extent that most producers of tobacco acreage with similar characteristics in the area would normally not further care for the crop, unless such crop is replanted or we agree that replanting is not practical.

9. Insurance Period

In accordance with the provisions of section 11 of the Basic Provisions, insurance ceases at the earliest of:

- (a) Total destruction of the tobacco on the unit;
- (b) Weighing-in at the tobacco warehouse;
- (c) Removal of the tobacco from the field where grown except for curing, grading, packing, or immediate delivery to the tobacco warehouse; or
- (d) The calendar date for the end of the insurance period, which is:
 - (i) Types 11 and 12—November 30;
 - (ii) Type 13—October 31;
 - (iii) Type 14—October 15;
 - (iv) Types 31 and 36—February 28;
 - (v) Types 21, 35 and 37—March 15;
 - (vi) Types 22 and 23—April 15;
 - (vii) Type 32—May 15;
 - (viii) All other types—April 30.

10. 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 caused by a peril specified in section 10(a) through (g) that occurs during the insurance period.

11. Duties In The Event of Damage or Loss

(a) In accordance with the requirements of section 14 of the Basic Provisions, any representative samples we may require of each unharvested tobacco type must be at least 5 feet wide (at least two rows), and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until after our inspection.

(b) If tobacco types 11, 12, 13, or 14 are insured and you have filed a notice of damage, you also must leave all tobacco stalks and stubble intact for our inspection. The stalks and stubble must not be destroyed until we give you written consent to do so or until 30 days after the end of the insurance period, whichever is earlier.

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 unit, 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 in 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 100 percent share in 1 acre of type 35 (dark air cured) guaranteed tobacco in the unit, with a 2,000 pounds per acre guarantee and a price election of \$2.00 per pound. You are only able to harvest 500 pounds. Your indemnity would be calculated as follows:

(1) 1.0 acre × 2,000 pounds = 2,000 pounds guarantee;

(2) 2,000 pounds × \$2.00 price election = \$4,000.00 value of guarantee;

(4) 500 pounds × \$2.00 price election = \$1,000.00 value of production to count;

(6) \$4,000.00 – \$1,000.00 = \$3,000.00 loss; and

(7) \$3,000 × 100 percent = \$3,000 indemnity payment.

(c) The total production to count (pounds of appraised or harvested production multiplied by the applicable price) for all insurable acreage on the unit will include:

(1) All appraised production as follows:

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

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes;

(D) For which you fail to provide production records, if required by the Special Provisions, that are acceptable to us; or

(E) Of types 11, 12, 13, or 14 when the stalks and stubble have been destroyed without our consent;

(ii) Production lost due to uninsured causes.

(iii) Potential production on insured acreage that you intend to put to another use or abandon with our consent, 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 value of production to count for such acreage will be the number of pounds harvested or appraised production multiplied by the support price taken 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; and

(2) All harvested production from insurable acreage.

(d) Mature tobacco production that is damaged by insurable causes will be adjusted for quality based on the USDA Official Standard Grades for the insured type if it has an average value less than the market price, as follows:

(1) Divide the average value of the damaged appraised and/or harvested production by the market price;

(2) Multiply the result in section 12(d)(1) (not to exceed 1.0) by the number of pounds of damaged appraised and/or harvested tobacco; and

(3) Multiply the product by your price election.

If no market price has been established for the grade of the damaged tobacco, a market price will be imputed by reducing the lowest available market price by 20 percent for each grade that the production falls below the grade for which such lowest market price is available.

(e) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be given the opportunity to inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed. Failure to provide us the opportunity to inspect such tobacco may result in rejection of any claim for indemnity.

(f) If we consider the best offer you receive for any such tobacco to be inadequate, we may obtain additional offers on your behalf.

(g) Once we agree that any carryover or current year's tobacco has no market value due to insured causes, you must destroy it and it will not be considered production to count. If you refuse to destroy such tobacco, we will include it as production to count and value it at the support price.

13. Late Planting

In lieu of late planting provisions in the Basic Provisions regarding acreage initially planted after the final planting date, insurance will be provided for acreage planted to the insured crop after the final planting date as follows:

(a) The production guarantee (per acre) for each type planted during the late planting period will be reduced by:

(1) One percent (1%) for the 1st through the 10th day; and

(2) Two percent (2%) for the 11th through the 15th day;

(b) The premium amount for insurable acreage planted to the insured crop after the final planting date will be the same as that

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for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for acreage planted after the final planting date exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage).

14. Prevented Planting

The prevented planting provisions in the Basic Provisions are not applicable to guaranteed tobacco.

[63 FR 34552, June 25, 1998]

§ 457.137 Green pea crop insurance provisions.

The Green Pea 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

Green Pea 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 tenderometer reading, grade factor, or sieve size that is designated in the Special Provisions, if applicable, 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.

Combining (vining). Separating pods from the vines and, in the case of shell peas, separating the peas from the pod for delivery to the processor.

Dry peas. Green peas that have matured to the dry form for use as food, feed, or seed.

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 green pea 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.

Green peas. Shell type and pod type peas that are grown under a processor contract to be canned or frozen and sold for human consumption.

Harvest. Combining (vining) of the peas.

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

Peas. Green or dry peas.

Planted acreage. In addition to the definition contained in the Basic Provisions, peas 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.

Pod type. Green peas genetically developed to be eaten without shelling (e.g., snap peas, snow peas, and Chinese peas).

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.

Price election. In lieu of the definition of "Price election" contained in section 1 of the Basic Provisions, price election is defined as the price per pound stated in the processor contract (contracted price) for the tenderometer reading, grade factor, or sieve size contained in the Special Provisions.

Processor. Any business enterprise regularly engaged in canning or freezing green peas for human consumption, that possesses all licenses and permits for processing green peas 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 green peas 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 green peas, and to deliver the green pea 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.