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 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.

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 green peas.

*Production guarantee (per acre).*—The number of pounds determined by multiplying the approved actual production history yield per acre by the coverage level percentage you elect. For shell type peas, the weight will be determined after shelling.

*Shell type.* Green peas genetically developed to be shelled prior to eating, canning or freezing.

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 may only be established based on shell type and pod type green peas if the shell type acreage does not continue into the pod type acreage in the same rows or planting pattern.

(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 FSA farm serial number, or irrigated and non-irrigated acreage, optional units may be established based on shell type and pod type green peas if the shell type acreage does not continue into the pod type acreage 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 green peas in the county insured under this policy unless the Special Provisions provide different price elections by type. The percentage of the maximum price election 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:

CANCELLATION AND TERMINATION

| State | Dates |
|---|---|
| Delaware and Maryland | Feb. 15. |
| All other states | Mar. 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 shell type and pod type green peas 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;

(ii) Planted into an established grass or legume; or

(iii) Planted as a nurse crop.

(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 green peas are grown, you are at risk of loss, and the processor contract provides for delivery of green peas under specified conditions and at a stipulated base contract price.

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

(1) The producer must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the processor must execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a processor contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

8. Insurable Acreage

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

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant; and

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

9. Insurance Period

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

(a) The date the green peas:

(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) September 15 of the calendar year in which the insured green peas would normally be harvested; or

(e) September 30 of the calendar year in which the insured peas would normally be harvested if you provide notice to us that the insured crop will be harvested as dry peas (see section 11(d)).

10. Causes of Loss

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

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

(1) Adverse weather conditions, including:

(i) Excessive moisture that prevents harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures that cause an unexpected number of acres over a large producing area to be ready for harvest at the same time, affecting the timely harvest of a large number of such acres or the processing of such production is beyond the capacity of the processor, either of which causes the acreage to be bypassed.

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease but only on acreage not planted to peas the previous crop year. (In certain instances, contained in the Special Provisions or in a written agreement, acreage planted to peas 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 by 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 notices 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 green peas 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;

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during the 15 day period or during harvest, so that we may inspect any damaged production. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You are not required to delay harvest; and

(d) Prior to the time the green peas would normally be harvested if you intend to harvest the green peas as dry peas.

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 shell type green peas in the unit, with a guarantee of 4,000 pounds per acre and a price election of $0.09 per pound. You are only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000 pounds guarantee;
(2) 400,000 pounds × $0.09 price election = $36,000.00 value of guarantee;
(4) 200,000 pounds × $0.09 price election = $18,000.00 value of production to count;
(6) $36,000.00 − $18,000.00 = $18,000.00 loss; and
(7) $18,000.00 × 100 percent = $18,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of pod type green peas in the same unit, with a guarantee of 5,000 pounds per acre and a price election of $0.13 per pound. You are only able to harvest 450,000 pounds. Your total indemnity for both shell type and pod type green peas would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000 pounds guarantee for the shell type, and 100 acres × 5,000 pounds = 500,000 pounds guarantee for the pod type;
(2) 400,000 pounds guarantee × $0.09 price election = $36,000.00 value of guarantee for the shell type, and 500,000 pounds guarantee × $0.13 price election = $65,000.00 value of guarantee for the pod type;
(3) $36,000.00 + $65,000.00 = $101,000.00 total value of guarantee;
(4) 200,000 pounds × $0.09 price election = $18,000.00 value of production to count for the shell type, and
4450,000 pounds × $0.13 = $58,500.00 value of production to count for the pod type;
(5) $18,000.00 + $58,500.00 = $76,500.00 total value of production to count;
(6) $101,000.00 − $76,500.00 = $24,500.00 loss; and
(7) $24,500.00 loss × 100 percent = $24,500.00 indemnity payment.

(c) The total production to count, specified in pounds, 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 green pea production from the insurable acreage. The amount of such production will be 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 the peas delivered to the processor by the base contract price per pound;

(3) All harvested green pea production from any of your other insurable units that have been used to fulfill your processor contract for this unit; and

(4) All dry pea production from the insurable acreage if you gave notice in accordance with section 11(d) for any acreage you intended to harvest as dry peas. The harvested or appraised dry pea production will be multiplied by 1.667 for shell types and 3.000 for pod types to determine the green pea production equivalent. No adjustment for quality deficiencies will be allowed for dry pea production.

13. Late Planting

A late planting period is not applicable to green peas 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 61903, Nov. 20, 1997, as amended at 62 FR 65173, Dec. 10, 1997]