

## § 457.138

(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 quan-

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tity 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]

## § 457.138 Grape crop insurance provisions.

The grape crop insurance provisions for the 2000 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:

### Grape 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

*Graft.* To unite a shoot or bud (scion) with a rootstock or an existing vine in accordance

with recommended practices to form a living union.

*Harvest.* Picking the clusters of grapes from the vines either by hand or machine.

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

*Set out.* Physically planting the desired variety of grape plant in the ground in a desired planting pattern.

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

*Varietal group.* Grapes with similar characteristics that are grouped for insurance purposes as specified in the Special Provisions.

## 2. Unit Division

(a) In California only, a basic unit, as defined in section 1 of the Basic Provisions will be divided into additional basic units by each variety that you insure.

(b) In California only, provisions in the Basic Provisions that provide for optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

(c) In all states except California, in addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions a separate optional unit may be established if each optional unit:

(1) Is located on non-contiguous land; or

(2) Consists of a separate varietal group when separate varietal groups are specified in the Special Provisions.

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

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) In California, you may select only one price election and coverage level for each grape variety in the county specified in the Special Provisions.

(b) In Idaho, Oregon, and Washington, you may select only one price election and coverage level for each grape varietal group specified in the Special Provisions.

(c) In all states except California, Idaho, Oregon, and Washington, you may select only one price election and coverage level for all the grapes in the county insured under this policy unless the Special Provisions provide different price elections by varietal group, in which case you may select one price election for each varietal group designated in the Special Provisions. The price

elections you choose for each varietal group must have the same percentage relationship to the maximum price offered by us for each varietal group. For example, if you choose 100 percent of the maximum price election for one varietal group, you must also choose 100 percent of the maximum price election for all other varietal groups.

(d) In California only, if the Special Provisions do not provide a price election for a specific variety you wish to insure, you may apply for a written agreement to establish a price election. Your application for the written agreement must include:

(1) The number of tons sold for at least the two most recent crop years; and

(2) The price received for all production of the variety in the years for which production records are provided.

(e) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by variety or varietal group, if applicable:

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

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

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

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

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

(ii) The planting pattern; and

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

We will reduce the yield used to establish your production guarantee, based on our estimate of the effect of the following: Interplanted perennial crop; removal of vines; damage; change in practices and any other circumstance that may affect the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee at any time we become aware of the circumstance.

(f) In California, Idaho, Mississippi, Oregon, Texas, and Washington, you may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§457.8), the contract change date is August 31 preceding the cancellation date for all states except California, and October 31 preceding the cancellation date for California.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§457.8), the cancellation and termination dates are January 31 in California and November 20 in all other states.

6. Report of Acreage

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§457.8), you must report your acreage by each grape variety you insure in California, or by varietal group in all other states.

7. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§457.8), the crop insured will be any insurable variety that you elect to insure in California or all insurable varieties in all other states in the county for which a premium rate is provided by the actuarial documents:

- (a) In which you have a share;
- (b) That are grown for wine, juice, raisins, or canning;
- (c) That are grown in a vineyard that, if inspected, is considered acceptable by us;
- (d) That, after being set out or grafted, have reached the number of growing seasons designated by the Special Provisions; and
- (e) That have produced an average of two tons of grapes per acre during at least one of the three crop years immediately preceding the insured crop year, unless we inspect and allow insurance on such acreage.

8. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§457.8) that prohibit insurance attaching to a crop planted with another crop, grapes interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

9. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§457.8):

- (1) Coverage begins on February 1 in California and November 21 in all other states of each crop year. Notwithstanding the previous sentence, for the year of application, if your application is received after January 22 but prior to February 1 in California, or after

November 11 but prior to November 21 in all other states, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the vineyard.

(2) In California, Idaho, Mississippi, Oregon, Texas, and Washington, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) The calendar date for the end of the insurance period for each crop year is the date during the calendar year in which the grapes are normally harvested, as follows:

- (i) October 10 in Mississippi and Texas;
- (ii) November 1 in Idaho, Oregon, and Washington;
- (iii) November 10 in California; and
- (iv) November 20 in all other states.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins, but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period. Acreage acquired after the acreage reporting date will not be insured.

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

- (i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;
- (ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and
- (iii) The transferee is eligible for crop insurance.

10. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

- (1) Adverse weather conditions;
- (2) Fire, unless weeds and other forms of undergrowth have not been controlled or

pruning debris has not been removed from the vineyard;

(3) Insects, except as excluded in 10(b)(1), but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§457.8), we will not insure against damage or loss of production due to:

(1) Phylloxera, regardless of cause; or

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

#### 11. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§457.8), the following will apply:

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

(b) If the crop has been damaged during the growing season and you previously gave notice in accordance with section 14 of the Basic Provisions (§457.8), you must also provide notice at least 15 days prior to the beginning of harvest if you intend to claim an indemnity as a result of the damage previously reported. You must not destroy the damaged crop that is marketed in normal commercial channels, until after we have given you written consent to do so. If you fail to meet the requirements of this section, all such production will be considered undamaged and included as production to count.

#### 12. Settlement of Claim

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

(2) Multiplying each result in section 12(b)(1) by the respective price election you selected for each variety or varietal group;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production to count of each variety or varietal group, if applicable, (see section 12 (c) through (e)) by the respective price election you selected;

(5) Totaling the results in section 12(b)(4);

(6) Subtracting the result in section 12(b)(5) from the result in section 12(b)(3); and

(7) Multiplying the result in section 12(b)(6) by your share.

(c) The total production to count (in tons) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

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

(A) That is abandoned or destroyed by you without our consent;

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

(C) For which you fail to provide production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies in accordance with subsection 12 (e)); and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the 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. Grape production that is harvested and dried for raisins will be converted to a fresh weight basis by multiplying the number of tons of raisin production by 4.5.

(d) If any grapes are harvested before normal maturity or for a special use (such as Champagne or Botrytis-affected grapes), the production of such grapes will be increased by the factor obtained by dividing the price per ton received for such grapes by the price per ton for fully matured grapes of the type for which the claim is being made.

(e) Mature marketable grape production may be adjusted for quality deficiencies as follows:

(1) Production will be eligible for quality adjustment if, due to insurable causes, it has

a value of less than 75 percent of the average market price of undamaged grapes of the same or similar variety. The value per ton of the qualifying damaged production and the average market price of undamaged grapes will be determined on the earlier of the date the damaged production is sold or the date of final inspection for the unit. The average market price of undamaged production will be calculated by averaging the prices being paid by usual marketing outlets for the area during the week in which the damaged grapes were valued.

(2) Grape production that is eligible for quality adjustment, as specified in subsection 12(e)(1) will be reduced by:

(i) Dividing the value per ton of the damaged grapes by the maximum price election available for such grapes to determine the quality adjustment factor; and

(ii) Multiplying this result (not to exceed 1.000) by the number of tons of the eligible damaged grapes.

13. Late and Prevented Planting

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

[62 FR 33741, June 23, 1997, as amended at 62 FR 65173, Dec. 10, 1997; 63 FR 31338, June 9, 1998; 64 FR 24932, May 10, 1999]

**§ 457.139 Fresh market tomato (dollar plan) crop insurance provisions.**

The fresh market tomato (dollar plan) crop insurance provisions for the 1999 and succeeding crop years are as follows:

FCIC Policies

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

*Reinsured Policies*

(Appropriate title for insurance provider)

Both FCIC and Reinsured Policies

*Fresh market tomato (dollar plan) crop provisions*

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

1. Definitions

*Acre*—43,560 square feet of land when row widths do not exceed six feet, or if row widths exceed six feet, the land area on which at least 7,260 linear feet of rows are planted.

*Carton*—Twenty-five (25) pounds of the insured crop.

*Crop year*—In lieu of the definition of “crop year” contained in section 1 (Definitions) of the Basic Provisions (§457.8), crop year is a period of time that begins on the first day of the earliest planting period for fall planted tomatoes and continues through the last day of the insurance period for spring planted tomatoes. The crop year is designated by the calendar year in which spring planted tomatoes are harvested.

*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 picking all or a portion of the crop.

*Excess rain*—An amount of precipitation sufficient to directly damage the crop.

*Freeze*—The formation of ice in the cells of the plant or its fruit, caused by low air temperatures.

*Harvest*—The picking of tomatoes on the unit.

*Mature green tomato*—A tomato that:

(1) Has a glossy waxy skin that cannot be torn by scraping;

(2) Has well-formed, jelly-like substance in the locules;

(3) Has seeds that are sufficiently hard so as to be pushed aside and not cut by a sharp knife in slicing; and

(4) Shows no red color.

*Plant stand*—The number of live plants per acre prior to the occurrence of an insurable cause of loss.

*Planted acreage*—In addition to the definition contained in the Basic Provisions, for each planting period, tomato seed or transplants must initially be planted in rows, unless otherwise provided by Special Provisions, actuarial documents, or by written agreement.

*Planting period*—The period of time designated in the actuarial documents in which the tomatoes must be planted to be considered fall, winter or spring-planted tomatoes.

*Potential production*—The number of cartons of mature green or ripe tomatoes that the tomato plants will or would have produced per acre, assuming normal growing conditions and practices, by the end of the insurance period:

(a) With a classification size of 6x7 (2<sup>3</sup>/<sub>32</sub> inch minimum diameter) or larger for all types except cherry or plum tomatoes; or

(b) With a classification size as allowed by written agreement for cherry or plum tomatoes.

*Practical to replant*—In lieu of the definition of “Practical to replant” contained in section 1 of the Basic Provisions (§457.8), practical to replant is defined as our determination, after loss or damage to the insured