

**§ 457.159**

**7 CFR Ch. IV (1–1–12 Edition)**

(iv) Fresh apple production to count with 65 percent or more damaged apple production will not be considered production to count.

(v) Notwithstanding sections 14(b)(5)(i) through (iv), if you sell any of your fresh apple production as U.S. Fancy or better, all such sold production will be included as production to count under this option.

(c) Any apple production not graded or appraised prior to the earlier of the time apples are placed in storage or the date the apples are delivered to a packer, processor, or other handler will not be considered damaged apple production and will be considered production to count under this option.

(d) Any adjustments that reduce your production to count under this option will not be applicable when determining production to count for APH purposes.

**Optional Coverage for Fresh Fruit Quality Adjustment Example:**

You have a 100 percent share in 10 acres of fresh apples designated on your acreage report, with a 600 bushel per acre guarantee, and you select 100 percent of the price election on a price election of \$9.10 per bushel. You harvest 5,000 bushels of apples from your designated fresh apple acreage, but only 2,650 of those bushels grade U.S. Fancy or better. Assuming you do not sell any of your fresh apple production as U.S. Fancy or better, your indemnity would be calculated as follows:

A. 10 acres × 600 bushels per acre = 6,000-bushel production guarantee of fresh apples;

B. 6,000-bushel production guarantee of fresh apples × \$9.10 price election × 100 percent of price election = \$54,600 value of production guarantee for fresh apple acreage;

C. The value of the fresh apple production to count is determined as follows:

i. 5,000 bushels harvested – 2,650 bushels that graded U.S. Fancy or better = 2,350 bushels of fresh apple production not grading U.S. Fancy or better;

ii. 2,350/5,000 = 47 percent of fresh apple production not grading U.S. Fancy or better;

iii. In accordance with section 14(b)(5)(ii): 47 percent – 40 percent = 7 percent in excess of 40 percent;

iv. 7 percent × 3 = 21 percent;

v. 40 percent + 21 percent = 61 percent;

vi. 5,000 bushels harvested × .61 (61 percent) = 3,050 bushels of fresh apple production not grading U.S. Fancy or better;

vii. 5,000 bushels harvested – 3,050 bushels of fresh apple production not grading U.S. Fancy or better = 1,950 bushels of adjusted fresh apple production to count;

viii. 1,950 bushels of adjusted fresh apples production to count × \$9.10 price election × 100 percent of price election = \$17,745 value of fresh apple production to count;

D. \$54,600 value of production guarantee for fresh apples – \$17,745 value of fresh apple production to count = \$36,855 value of loss;

E. \$36,855 value of loss × 100 percent share = \$36,855 indemnity payment.

[End of Example]

[63 FR 17054, Apr. 8, 1998, as amended at 65 FR 47839, Aug. 4, 2000; 69 FR 52591, Aug. 27, 2004; 69 FR 53500, Sept. 1, 2004; 69 FR 62803, Oct. 28, 2004; 75 FR 52231, Aug. 25, 2010]

**§ 457.159 Stonefruit crop insurance provisions.**

The Stonefruit Crop Insurance Provisions for the 2011 and succeeding crop years are as follows:

FCIC Policies

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

*Reinsured Policies*

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

*Stonefruit Crop Insurance Provisions*

1. Definitions

*Direct marketing.* Sale of the insured crop directly to consumers without the intervention of an intermediary such as 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.

*Grade standards.* The United States Standards for Grades of Peaches, the United States Standards for Grades of Nectarines, the United States Standards for Grades of Apricots, and the United States Standards for Grades of Fresh Plums and Prunes, or other such standards specified in the Special Provisions.

*Graft.* To unite a shoot or bud with a rootstock in accordance with recommended practices to form a living union.

*Harvest.* The physical removal of mature stonefruit from the tree either by hand or machine.

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

*Lug.* A container of fresh stonefruit of specified weight. Lugs of varying sizes will be converted to standard lug equivalents on the basis of the following average net pounds of packed fruit, or as specified in the Special Provisions:

Crop	Pounds per lug
Fresh Apricots .....	24
Fresh Nectarines .....	25

Crop	Pounds per lug
Fresh Freestone Peaches .....	25
Fresh Plums .....	28

Weight for Processing Apricots, Processing Cling Peaches, and Processing Freestone Peaches is specified in tons.

*Marketable.* Stonefruit production that meets or exceeds the quality standards for U.S. No. 1 in accordance with the applicable grade standards or other standards as specified in the Special Provisions, or if stonefruit production fails to meet the applicable grade standards, stonefruit production that is accepted by a packer, processor or other handler.

*Processor.* A business enterprise regularly engaged in processing fruit for human consumption that possesses all licenses and permits for processing fruit 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 fruit within a reasonable amount of time after harvest.

*Stonefruit.* Any of the following crops grown for fresh market or processing:

- (a) Fresh Apricots;
- (b) Fresh Freestone Peaches;
- (c) Fresh Nectarines;
- (d) Fresh Plums;
- (e) Processing Apricots;
- (f) Processing Cling Peaches;
- (g) Processing Freestone Peaches; and
- (h) Other crops listed in the Special Provisions.

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

*Type.* A category of a stonefruit crop with similar characteristics that are grouped for insurance purposes, as listed in the Special Provisions.

2. Unit Division

In lieu of the provisions of section 34 of the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices, optional units will only be allowed as stated herein or by written agreement.

(a) *Optional Units on Acreage Located on Non-contiguous Land:* Optional units may be established if each optional unit is located on non-contiguous land.

(b) *Optional Units by Type:* Optional units may be established by type if allowed 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 may select only one price election and coverage level for each crop grown in the

county and listed in the Special Provisions that is insured under this policy. If separate price elections are available by type of a crop, the price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type of cling peach, you must choose 100 percent of the maximum price election for all other types of cling peaches.

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type, if applicable, for each stonefruit crop:

(1) Any damage, removal of trees, 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 trees on insurable and uninsurable acreage;

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

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

(i) The age of the interplanted crop, and type if applicable;

(ii) The planting pattern; and

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

(c) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any situation listed in sections 3(b)(1) through (b)(4). If the situation occurred:

(1) Before the beginning of the insurance period, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the situation was due to an insured or uninsured cause of loss. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce the yield used to establish your production guarantee at any time we become aware of the circumstance;

(2) Or may occur after the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) Or may occur after the beginning of the insurance period and you fail to notify us by the production reporting date, production lost due to uninsured causes equal to the amount of the reduction in yield used to establish your production guarantee will be applied in determining any indemnity (see section 11(c)(1)(ii)). We will reduce the yield used to establish your production guarantee for the subsequent crop year.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 for California and August 31 preceding the cancellation date for all other states, or as specified in the Special Provisions.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31 for California and November 20 for all other states, or as specified in the Special Provisions.

6. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all acreage of each stonefruit crop you elect to insure, that is grown in the county, and for which premium rates are provided in the actuarial documents:

- (a) In which you have a share;
- (b) That is grown on trees that:
  - (1) Were commercially available when the trees were set out or have subsequently become commercially available;
  - (2) Are adapted to the area;
  - (3) Are grown on root stock that is adapted to the area;
  - (4) Are in compliance with the applicable State's Tree Fruit Agreement or related crop advisory board for the state (for each insured crop and type), when such regulations exist;
  - (5) Have produced at least 200 lugs of fresh market production per acre, or at least 2.2 tons per acre for processing crops, in at least one of the four most recent actual production history crop years, unless we inspect such acreage and give our approval in writing;
  - (6) Have, after being set out or grafted, reached at least the fifth growing season. However, we may give our approval in writing to insure acreage that has not reached this age if it meets the requirements of 6(b)(5); and
  - (7) Are grown in an orchard that, if inspected, is considered acceptable by us.

7. Insurable Acreage

In lieu of the provisions of section 9 of the Basic Provisions that prohibit insurance attaching to a crop planted with another crop, stonefruit interplanted with another perennial crop is insurable unless we inspect the acreage and determine that it does not meet the requirements for insurability contained in your policy.

8. Insurance Period

- (a) In accordance with the provisions of section 11 of the Basic Provisions:
  - (1) Coverage begins on February 1 in California and November 21 for all other states of each crop year, except that 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 orchard.

(2) The calendar date for the end of the insurance period for each crop year is:

- (i) July 31 for all apricots; and
  - (ii) September 30 for all nectarines and peaches;
  - (iii) In all states except California, September 30 for all fresh plums;
  - (iv) In California only, October 20 for all fresh plums; or
  - (v) As otherwise provided for specific counties or types in the Special Provisions.
- (b) In addition to the provisions of section 11 of the Basic Provisions:

- (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 of acquisition.
- (2) If you lose or relinquish your insurable share on any insurable acreage of stonefruit on or before the acreage reporting date for the crop year and if the acreage was insured by you the previous 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.

(c) 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.

(d) If your stonefruit policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates, whichever is the later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

## 9. Causes of Loss

(a) 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:

- (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 orchard;
- (3) Wildlife;
- (4) Earthquake;
- (5) Volcanic eruption; or
- (6) Failure of the irrigation water supply, if due to a cause of loss contained in sections 9(a)(1) through (5) 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 against damage or loss of production due to:

- (1) Disease or insect infestation, unless adverse weather:
  - (i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or
  - (ii) Causes disease or insect infestation for which no effective control mechanism is available;
- (2) Split pits regardless of cause; or
- (3) Inability to market the insured crop for any reason other than actual physical damage from an insurable cause of loss 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.

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

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

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

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) In addition to section 14 of the Basic Provisions, if you intend to claim an indemnity on any unit, you must give us notice at least 15 days prior to the beginning of har-

vest. You must not destroy the damaged crop until after we have given you written consent to do so. If you fail to notify us and such failure results in our inability to inspect the damaged production, we may consider all such production to be undamaged and include it as production to count.

## 11. 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 for each type by its respective production guarantee;

(2) Multiplying each result of section 11(b)(1) by the respective price election for the type and by the percent of the price election;

(3) Totaling the results of section 11(b)(2) (if there is only one type, the result of (3) will be the same as the result of (2));

(4) Multiplying the total production to count (see section 11(c)), for each type, by the respective price election and by the percent of the price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting the result of section 11(b)(5) from the result of section 11(b)(3) (if there is only one type, the result of (6) will be the same as the result of (5)); and

(7) Multiplying the result of section 11(b)(6) by your share.

## Scenario 1:

You select 75 percent coverage level and 100 percent of the price election on 50.0 acres of Type A stonefruit with 100 percent share in the unit. The production guarantee is 500.0 lugs per acre and the price election is \$6.00 per lug. You harvest 5,000 lugs. Your indemnity would be calculated as follows:

(1) 50.0 acres × 500.0 lugs = 25,000-lug production guarantee;

(2) 25,000 lugs × \$6.00 price election × 100 percent of the price election = \$150,000 value of production guarantee;

(4) 5,000 harvested lugs × \$6.00 price election × 100 percent of the price election = \$30,000 value of production to count;

(6) \$150,000 - \$30,000 = \$120,000 loss; and

(7) 120,000 × 1.000 share = \$120,000 indemnity payment.

## Scenario 2:

In addition to the above information in Scenario 1, you have an additional 50.0 acres of Type B stonefruit with 100 percent share in the unit. The production guarantee is 300.0 lugs per acre and the price election is \$3.00

## § 457.160

## 7 CFR Ch. IV (1–12 Edition)

per lug. You harvest 3,000 lugs. Your indemnity would be calculated as follows:

(1) 50.0 acres × 500.0 lugs Type A = 25,000-lug guarantee; and 50.0 acres × 300.0 lugs Type B = 15,000-lug guarantee;

(2) 25,000 lugs × \$6.00 price election × 100 percent of the price election = \$150,000 value of guarantee for Type A; and 15,000 lugs × \$3.00 price election × 100 percent of the price election = \$45,000 value of guarantee for Type B;

(3) \$150,000 + \$45,000 = \$195,000 total value of production guarantee;

(4) 5,000 harvested lugs Type A × \$6.00 price election × 100 percent of the price election = \$30,000 value of production to count; and 3,000 harvested lugs Type B × \$3.00 price election × 100 percent of the price election = \$9,000 value of production to count;

(5) \$30,000 + \$9,000 = \$39,000 total value of production to count;

(6) \$195,000–\$39,000 = \$156,000 total loss; and

(7) \$156,000 loss × 1.000 share = \$156,000 indemnity payment.

(c) The total production to count (in lugs or tons) from all insurable acres on a unit will include:

(1) All appraised production as follows:

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

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements contained in section 10;

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

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

(ii) Production lost due to uninsured causes;

(iii) Unharvested production that would be marketable if harvested; 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 insured crop. We will then make another appraisal when you notify us if any further damage or that harvest is general in the area unless you harvested the crop. If you harvest the crop 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.

(3) The quantity of harvested production will be reduced if the following conditions apply:

(i) The value of the damaged production is less than 75 percent of the marketable value

of undamaged production due to an insured cause of loss; and

(ii) For stonefruit insured as fresh fruit only, the stonefruit either is packed and sold as fresh fruit and meets only the utility grade requirements of the applicable grade standards, or fails to meet the applicable grade standards but is or could be sold for any use other than fresh packed stonefruit.

(4) Harvested fresh or processing stonefruit production that is eligible for quality adjustment as specified in section 11(c)(3) will be reduced as follows:

(i) When packed and sold as fresh fruit or when insured as a processing crop, by dividing the value per lug or ton of marketable production by the highest price election for the same type and multiplying the result (not to exceed 1.00) by the quantity of such production; or

(ii) For all other fresh stonefruit, by multiplying the number of tons that could be marketed by the value per ton and dividing that result by the highest price election available for the same type.

### 12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions (§ 457.8) are not applicable.

[63 FR 29935, June 2, 1998, as amended at 65 FR 47840, Aug. 4, 2000; 75 FR 44717, July 29, 2010]

### § 457.160 Processing tomato crop insurance provisions.

The Processing Tomato Crop Insurance Provisions for the 2005 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:

*Processing Tomato 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 on which row widths do not exceed 6 feet, or the land on which at least 7,260 linear feet rows are planted if row widths exceed 6 feet.

*Broker.* An enterprise in the business of buying and selling tomatoes possessing all