Force Majeure Clause

within Fixed Price Contracts and Basis Payment Contracts

What is it?

Producers who commit to a Fixed Price Contract (FPC) or Basis Payment Contract (BPC) before harvest are subject to both price and production risk. A force majeure clause, commonly known as an "Act of God" clause, is useful in lessening a producer's production risk. A force majeure clause will benefit producers who experience an event which is beyond their control, that greatly limits or wipes out their crop production. It can waive damages that are payable under the FPC or BPC contract as a result of non-performance, up to the extent of the loss. This clause cannot be invoked if an event occurs that results in a milling class of grain being downgraded to a feed quality.

How does it work?

The producer has the option to select the force majeure clause when committing to an FPC or BPC. Between February 27, 2006 and May 1, 2006 at 7:30 a.m. C.T., the force majeure clause will be available on all programs and will be limited to 100 000 tonnes on a first-come-first-served basis. Upon initial sign-up for these contracts, the producer may select this clause; their lock-in value will then be decreased by $3.00 per tonne, which represents the increased risk the CWB is assuming under the contract. This value will be deducted from future CWB payments made to the producer, starting with payments issued for deliveries in the 2006-07 crop year.

Only 50 per cent of the producer's anticipated production of the type and class of grain will be eligible for an FPC or BPC contract containing a force majeure provision. The producer will be charged the *Force Majeure Deduction* on all of the *Net Tonnes,* however the provision will be of no force and effect for each Net Tonne which exceeds 50 per cent of anticipated production. A producer who has entered into an FPC or BPC containing the force majeure provision must deliver against such contract first and in priority to all other deliveries of like type and class of grain. This includes both new crop and carry over grain.

Force majeure assessments based on total farm production

It is important to note that the producer can only invoke the force majeure provision if an event which is beyond the producer's control makes it impossible for the producer to deliver the contracted tonnage, regardless of the quality. Milling grades downgrading to feed do not qualify under this provision.

The production-limiting event must occur after the producer commits to an FPC or BPC containing a force majeure provision to be eligible for coverage. Examples of some of the events that would be considered force majeure events include:

- Flooding damage;
- Severe drought;
- Significant hail damage.

The force majeure clause provides protection against production risk by providing an avenue for producers to reduce the damages payable for non-delivery under the FPC or BPC. The producer will be required to complete a declaration within 15 days of the any such force majeure event. The declaration could be subject to verification, and the producer may be required to provide additional documentation to support the loss of production, at the CWB's request.

How to invoke the force majeure clause.

Producers who selected the force majeure clause at sign-up and who experience an event that limits production after making the contract commitment may invoke the force majeure clause. To invoke the clause, the producer must call the CWB at 1-800-275-4292 **within 15 days** of the force majeure event. The following steps will be taken:

1. The producer will provide the CWB with their CWB Producer Identification (ID) Number, Personal Identification Number (PIN) and FPC or BPC contract number;

2. The CWB will review the producer's overall contract profile and forward a force majeure declaration to the producer for completion;

CWB

3. The producer is required to complete the declaration, specifying the production limiting event, FPC or BPC contract and the amount of tonnage affected. The producer must return the completed declaration to the CWB for verification;

4. The CWB will verify the producer's initial eligibility based on the information provided on the declaration. The CWB may require the producer to provide additional information in its sole discretion; and

5. Based on the verification process, the CWB will release the producer from their contract obligations to the extent of the loss, and provide the producer written confirmation.

Example

On April 14, 2006, a producer commits 300 tonnes to a CWRS FPC at $215.00 per tonne in store Vancouver or St. Lawrence based on the value posted on the CWB pricing schedule. The producer selects the force majeure provision upon sign-up, which reduces the FPC contract value by $3.00 per tonne ($215.00 -$3.00 = $212.00). The FPC commitment represents 30 per cent of the producer's anticipated production, based on a seeding intention of 1000 acres.

On April 26, 2006, the Minneapolis futures rally and the producer enters into a second CWRS FPC for 100 tonnes at $225.00 per tonne, but does not select the force majeure provision.

On August 20, 2006, the producer calls the CWB to invoke the force majeure clause contained in the April 14 CWRS FPC as a result of severe drought conditions that prevailed throughout the growing season and limited his or her production. The producer was only able to harvest 250 tonnes of No. 4 CWRS.

Upon review and verification, the producer is not responsible for the specified contract damages for non-performance on 50 tonnes, as a result of the force majeure provision in their contract.

Contract date	Contract type	Force majeure option selected	Contracted tonnes	Production available for delivery against contract	Force majeure eligible tonnes
April 14, 2006	CWRS FPC	Yes	300	250	50
April 26, 2006	CWRS FPC	No	100	0	0
Total			400	250	50

The force majeure clause of an FPC or BPC contract **can not be assigned to another producer.** Assignment of all other obligations under the contract can be completed upon payment of the $3.00 per tonne cost.

The producer's April 14, 2006, CWRS FPC will be reduced by 50 tonnes and $900.00 (300 tonnes x $3.00) will be deducted from future CWB payments. The producer will be required to apply all 250 tonnes against the FPC containing the force majeure clause. The producer must assess their buyout and assignment options on the remaining 100 tonnes contracted. If the producer had selected the force majeure clause on the April 26 contract, the producer would not have been responsible for the specified contract damages on an additional 100 tonnes. The producer would also have the option to apply 100 tonnes against the CWRS FPC signed on April 26.

Producers are required to read and familiarize themselves with the details of the terms and conditions of the contract, and specifically the force majeure clause, before entering into the contract.