CWB

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. The force majeure clause, commonly known as an "Act of God" clause, is designed to protect against production risk.The force majeure clause provides an avenue for producers to reduce or eliminate damages for non-performance that would otherwise be payable under an FPC or BPC contract if they experience substantial or total crop loss as a result of adverse weather or other event beyond their control. Force majeure can be invoked for production losses only. Quality losses are not covered by this provision.

How does it work?

Force majeure assessments based on total farm production

Producers have the option of selecting the force majeure clause when committing to an FPC or BPC until the earlier of May 1, 2007 at 7:30 a.m. Central time or until the 100,000 tonne limit is reached. Only 50 per cent of anticipated production of any given type and class of grain is eligible for the force majeure provision. For example, if the producer anticipates production of 1,000 tonnes of CWRS wheat, a maximum of 500 tonnes would be eligible for coverage under this clause. Producers must deliver against contracts containing force majeure provisions first and in priority to all other deliveries of the same type and class of grain, including the pool. This applies to carryover grain as well as new crop. There is a cost of $3.00 per tonne for this option, which is deducted from future CWB payments.

To invoke the force majeure clause, the production-limiting event must occur after the producer commits to an FPC or BPC to be eligible for coverage. Examples of some events that would be covered by the clause include flood damage, severe drought or significant hail damage.

The clause must be invoked within 15 days of the event by completing a statutory declaration. The declaration may be subject to verification and additional documentation may be required by the CWB to support the loss of production claim.

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How to invoke the force majeure clause.

1. The producer must call the CWB at 1-800-275-4292 within 15 days of the force majeure event, 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 contract profile to determine potential eligibility. Once established, a statutory declaration will be sent.

Force majeure must be invoked within 15 days of the production-limiting event

3. The producer must complete and return the declaration, specifying the production limiting event, FPC or BPC contract, amount of tonnage affected and the information release if applicable. The release allows the CWB to verify any supporting information such as crop insurance with third parties.

4. The CWB will verify the producer's initial eligibility based on the information provided in the declaration.

5. Once eligibility and production loss are verified, the CWB will release the producer from their contractual obligations to the extent of the loss and provide the producer with written confirmation.

Key points to remember

Only 50 per cent of anticipated production is eligible for the force majeure option. If a producer contracts more than 50 per cent of anticipated production and selects the force majeure clause, the $3.00 per tonne deduction will be taken on the full contracted amount. However, the provision will not apply to the excess tonnes.

Deliveries must be made against contracts with the force majeure provision first. Deliveries made to the pool or other Producer Payment Options, contrary to the terms of the force majeure option, will be taken into account when determining eligibility for a claim.

Force majeure must be invoked within 15 days of the production limiting event. Failure to do so may invalidate the clause.

The force majeure provision cannot be assigned to another producer. To assign an FPC or BPC contract with the force majeure clause, the producer must first pay the $3.00 per tonne cost. Upon payment the remaining terms and conditions of the contract can be assigned.

The $3.00 per tonne fee represents the additional risk assumed by the CWB. It is charged whether or not the clause is invoked.

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 committing to the contract.

Example

On November 26, 2006, a producer commits 300 tonnes to a CWRS BPC locking in December 2007 futures at $215.00 per tonne. The producer selects the force majeure provision at sign-up, which reduces the BPC contract value to $212.00 per tonne ($215.00-$3.00). The BPC commitment represents 30 per cent of the producer's anticipated production.

On April 26, 2007, the Minneapolis futures rally and the producer enters into a second CWRS BPC for 100 tonnes locking in futures at $225.00 per tonne. The force majeure provision is not selected.

On May 12, 2007, the producer locks in the basis on both contracts at $20.00 per tonne.

Severe drought prevailed throughout the growing season, limiting production to 250 tonnes of 4 CWRS. On August 20,2007 the producer calls the CWB to invoke the force majeure clause taken on the first contract.

Because deliveries must be made against contracts containing force majeure provisions first, the entire 250 tonnes harvested is applied against the November 26 BPC. The CWB releases the producer from his contractual obligations for the remaining 50 tonnes.The $900.00 charge (300 tonnes x $3.00) will be deducted from future CWB payments.

Contract date	Contract type	Force majeure option selected	Contracted tonnes	Production available for delivery against contract	Force majeure eligible tonnes
Nov 26, 2006	CWRS FPC	Yes	300	250	50
April 26, 2007	CWRS FPC	No	100	0	0
Total			**400**	**250**	**50**

The producer must assess buyout and assignment options on the remaining 100 tonnes contracted. Had the force majeure option been taken on the April 26 contract, the producer would not have been responsible for contract damages on those tonnes. The producer would also have had the option to apply 100 tonnes against the April 26 contract which was priced $10.00/tonne higher than the earlier contract.

Grain must be delivered against FPC or BPC contracts with a force majeure provision before all other contracts. Deliveries made to the pool or other PPOs will be taken into account when determining eligibility for a force majeure claim.