

What is it?

If you commit to a Basis Price Contract (BPC) or Fixed Price Contract (FPC) before harvest you 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 you to reduce or eliminate damages for non-performance, that would otherwise be payable, if you experience substantial or total crop loss as a result of adverse weather or other event beyond your control. Force majeure can be invoked for production losses only. Quality losses are not covered by this provision.

The force majeure option is not offered for Canada Western Red Winter (CWRW) wheat FPCs. The deadline for BPCs was December 11, 2009.

For the other six classes of wheat and durum, the deadline is the earlier of April 30, 2010 at 9 p.m. CT or until the 150 000-tonne limit is reached.

There is a \$7 per tonne cost associated with this option. This cost is deducted from future CWB payments.

How does it work?

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 you anticipate production of 1 000 tonnes of Canada Western Red Spring (CWRS) wheat, a maximum of 500 tonnes would be eligible for coverage under this clause.

For assessment purposes and to determine the reasonability of your anticipated production, the CWB uses five-year average yields provided by the relevant provincial crop insurance agency.

Average yields can be found at:

Manitoba <http://masc.mb.ca/mcweb200.nsf/formSearchVariety?Openform>

Saskatchewan http://www.saskcropinsurance.com/smp/07avg_yields_variety.shtml#

Alberta <http://www.agric.gov.ab.ca/app96/loadrptinput>

Pricing contracts containing force majeure provisions take priority over all other pricing contracts including the pool, the Wheat Storage Program and the Churchill Corridor Guaranteed Delivery Contract. This means that when the CWB assesses a force majeure claim any grain you have that could be delivered against the pricing contract, whether it is carryover or new crop production, will be taken into account when determining eligibility.

To invoke the force majeure clause, the production-limiting event must occur after you commit to an FPC or BPC to be eligible for coverage. Events covered by the force majeure clause include drought, excess moisture, flood, hail, wind, fire, excess heat, insect damage, disease, winterkill, wildlife damage, frost, snow or any other event that limits production. Quality loss is not covered.

You must invoke the clause by calling the CWB within 15 days of the event. You must complete a statutory declaration detailing the loss and it may be subject to verification. It is your responsibility to provide evidence, such as a crop insurance assessment, to support the loss of production claim.

How to invoke the force majeure clause

1. You must call us at 1-800-275-4292 within 15 days of the force majeure event, with your CWB producer identification (ID) number, personal identification number (PIN) and contract number.
2. We will review your contract profile to determine potential eligibility. Once established, we will buy out the contract to the extent of the loss. We will send you a statutory declaration to complete.
3. You must return the declaration, specifying the production limiting event, contract number, amount of tonnage affected and an information release form if applicable. The release allows us to verify supporting information such as crop insurance with third parties.
4. If we are unable to verify eligibility and production loss based on the information provided or if you do not provide the required information, you will be responsible for the buyout cost on the contract.

Force majeure assessments are based on total farm production

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

- Once eligibility and production loss are verified, we will waive the buyout cost and provide you with written confirmation.

Key points to remember

Only 50 per cent of anticipated production is eligible for the force majeure option.

If you contract more than 50 per cent of anticipated production and select the force majeure clause, the provision will not apply to the excess tonnes, but you will be charged the force majeure fee on all tonnes contracted.

All grain available for delivery against contracts with the force majeure provision will be considered when assessing claim eligibility.

Deliveries made to the pool or other PPOs will be taken into account when determining eligibility for a claim. This applies to carry over grain as well as new crop production.

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

Failure to do so may invalidate the clause.

BPC contracts with a force majeure provision take priority over all other contracts. Deliveries made to the pool, other PPOs, the Wheat Storage Program or the Churchill Corridor Guaranteed Delivery Contract will be taken into account when determining eligibility for a force majeure claim.

Example

On April 14 a producer commits 300 tonnes to a CWRS BPC locking in December futures at \$235 per tonne. The producer selects the force majeure provision at sign-up. The force majeure fee is \$7 per tonne. The BPC commitment represents 30 per cent of the producer's anticipated production, based on the area's five-year crop insurance average.

On April 26 the Minneapolis futures rally and the producer enters into a second CWRS BPC for 100 tonnes locking in futures at \$245 per tonne. The force majeure provision is not selected.

On May 12, the producer locks in the basis on both contracts at \$2 per tonne.

Severe drought prevailed throughout the growing season, limiting production to 200 tonnes of CWRS wheat. The producer also has 50 tonnes of CWRS wheat carried over from the previous crop year. On August 20 the producer calls the CWB to invoke the force majeure clause taken on the first contract.

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

Because the producer has 250 tonnes that could be applied against the April 14 BPC, the tonnage eligible for force majeure is reduced by that amount. The CWB releases the producer from his contractual obligations for the remaining 50 tonnes. The \$2,100 charge (300 tonnes x \$7) will be deducted from future CWB payments.

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.