

(1) Coverage begins on November 21 of each crop year, except that for the first crop year, if the application is accepted by us after November 20, insurance will attach on the 10th day after the application is received in your insurance provider's local office.

(2) The calendar date for the end of the insurance period for each crop year is November 20.

(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.

(2) If you relinquish your insurable share on any insurable acreage of cranberries on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium 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; and

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date.

#### 8. 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 bog;
- (3) Wildlife;
- (4) Earthquake;
- (5) Volcanic eruption;
- (6) 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 (Cause of Loss) of the Basic Provisions (§ 457.8), 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; or
- (2) Inability to market the cranberries 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 the cranberries due to quarantine, boycott, or refusal of any person to accept production.

#### 9. 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):

(a) If you discover any insured units damaged, of if you intend to claim an

indemnity on any unit, you must give us notice of probable loss:

(1) At least 15 days before the beginning of any harvesting, or

(2) Immediately if probable loss is discovered after harvesting has begun.

(b) You must not sell or dispose of the damaged crop until after the earlier of 15 days from request or when we give you written consent to do so.

(c) If you fail to meet the requirements of this section, all such production will be considered undamaged and included as production to count.

#### 10. Settlement of Claim

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

(1) For any optional unit, we will combine all optional units for which acceptable production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Multiplying this product by the price election;

(3) Subtracting from this total, the dollar amount obtained by multiplying the total production to count (see subsection 10(c)) by the price election; and

(4) Multiplying this result by your share.

(c) The total production to count (in barrels) 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;
    - (B) Damaged solely by uninsured causes; or
    - (C) For which you fail to provide production records that are acceptable to us;
  - (ii) Production lost due to uninsured causes;
  - (iii) Unharvested production; 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 to 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.

(3) Harvested production and potential unharvested production which, due to insurable causes, does not meet, or would not if properly handled meet, the United States Standards for Fresh Cranberries for Processing, and has a value of less than 75 percent of the market price for cranberries meeting the minimum requirements will be adjusted by:

(i) Dividing the market value per barrel of such cranberries by the market price per barrel for cranberries meeting the minimum requirements; and

(ii) Multiplying the result by the number of barrels of such cranberries.

#### 11. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 11(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on September 9, 1996.

Kenneth D. Ackerman,  
*Manager, Federal Crop Insurance Corporation.*

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BILLING CODE 3410-FA-P

#### 7 CFR Part 457

#### Common Crop Insurance Regulations; Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of fresh market tomatoes. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and combine the current Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations with the Common Crop Insurance Policy for ease of use and consistency of terms.

**DATES:** Written comments, data, and opinions on this proposed rule will be accepted until close of business October 15, 1996, and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through November 12, 1996.

**ADDRESSES:** Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC, 8:15 a.m.–4:45 p.m., est Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Louise Narber, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926-7730.

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Order No. 12866**

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 15, 2001.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

##### **Paperwork Reduction Act of 1995**

The information collection requirements contained in these regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563-0003 through September 30, 1998.

The amendments set forth in this proposed rule do not contain additional information collections that require clearance by the OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Guaranteed Production Plan of Fresh

Market Tomato Crop Insurance Provisions." The information to be collected includes: a crop insurance application and an acreage report. Information collected from the application and acreage report and is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of fresh market tomatoes that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

Comments should be submitted for the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information of respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Bonnie Hart, United States Department of Agriculture, Farm Service Agency, Advisory and Corporate Operations Staff, Regulatory Review Group, P.O. Box 2145, STOP 0572, Washington, D.C. 20013-2415, telephone (202) 690-2857. Copies of the information collection may be obtained from Bonnie Hart at the above address.

##### **Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local,

and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

##### **Executive Order No. 12612**

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among various levels of Government.

##### **Regulatory Flexibility Act**

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must also annually certify to the previous years production or receive an assigned yield. The producer must maintain the production records to support the certified information for at least 3 years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

##### **Federal Assistance Program**

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

##### **Executive Order No. 12372**

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

**Executive Order No. 12778**

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before action for judicial review may be brought.

**Environmental Evaluation**

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

**National Performance Review**

This regulatory action is being taken as part of the National Performance Review initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

**Background**

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.128, Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions. The new provisions will be effective for the 1997 and succeeding crop years. These provisions will supersede and replace the current provisions for insuring fresh market tomatoes found at 7 CFR part 454 (Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations).

By separate rule, FCIC will revise 7 CFR part 454 to restrict its effect through the 1997 crop year and later remove that part.

This rule makes minor editorial and format changes to improve the Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations' compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring fresh market tomatoes as follows:

1. Section 1—Add definitions for the terms "carton," "days," "direct marketing," "FSA," "good farming practices," "irrigated practice," "planting period," "practical to replant," "production guarantee (per acre)," "row width," and "written agreement" for clarification. Delete the definition of "county" so that the definition of "county" contained in the

Basic Provisions (§ 457.8) will be applicable for fresh market tomatoes. The definition of county in part 454 includes additional land located in a local producing area bordering on the county. The current definition will require such land to be insured using the actuarial materials for the county where the land is located.

2. Section 2—Add a provision for dividing a basic unit by planting period if spring and fall planting periods are provided in the Special Provisions.

3. Section 3—Specify that the insured may select only one price election for all the tomatoes in the county insured under the policy, unless the Special Provisions provide different price elections by type, in which case the insured may select one price election for each tomato type designated in the Special Provisions. Each price election chosen for each type must have the same percentage relationship to the maximum price offered by the insurance provider.

4. Section 4—Change the contract change date from November 30 to September 30 for counties with the new January 15 cancellation date to assure adequate time for producers to become familiar with any policy changes.

5. Section 5—Change the cancellation and termination dates from February 15 to January 15 and from April 15 to March 15 to be consistent with the movement of the sales closing dates as required by the Federal Crop Insurance Reform Act.

6. Section 6—Add a provision to specify that the insured must report all the information required in section 6 of the Basic Provisions by the acreage reporting date for each planting period, if spring and fall planting periods are allowed in the Special Provisions.

7. Section 7—Add a provision to specify that when computing the premium, the share at the time of each planting will be used in the premium calculation.

8. Section 8—Add a provision to specify that plum type tomatoes are not insurable. Cherry type tomatoes are already excluded from insurance coverage. The current provisions are not compatible with the characteristics of these types of tomatoes. Also add a provision to require that the tomato crop be planted within the applicable spring or fall planting periods to be insurable.

9. Section 9(b)(4)—Add a provision to specify that we will not require the soil to be fumigated or nematicide applied to acreage on which tomatoes were planted within the last 2 years as long as the tomatoes were destroyed prior to reaching the 2nd stage or if otherwise specified in the Special Provisions.

Fumigation or application of a nematicide is not necessary if the crop was destroyed prior to reaching the stage when such problems would be apparent.

10. Section 10—Add a provision to specify that coverage begins when the tomatoes are planted in each planting period if spring and fall planting periods are authorized in the Special Provisions.

11. Section 11(b)(2)—Amend the provision specifying that loss of production due to disease or insect infestation is not insurable, to make these causes of loss insurable if adverse weather prevents the proper application of control measures; causes properly applied control measures to be ineffective; or causes disease or insect infestation for which no effective control mechanism is available in order to provide coverage in those circumstances when such damage is legitimately beyond the control of the insured.

12. Section 12—Add a provision permitting one replanting payment per planting period instead of one replanting payment per crop year since the crop planted in each planting season is effectively considered as a separate crop.

13. Section 14—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modification of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover the procedures for, and duration of, written agreements.

**List of Subjects in 7 CFR Part 457**

Crop Insurance, tomato.

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations, (7 CFR part 457), effective for the 1997 and succeeding crop years, to read as follows:

**PART 457—[AMENDED]**

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p)

2. 7 CFR part 457 is amended by adding a new § 457.128 to read as follows:

### § 457.128 Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions

The Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions for the 1997 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Guaranteed Production Plan of Fresh Market Tomato Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

#### 1. Definitions

**Acre**—43,560 square feet of land on which the row width does not exceed six feet, or; if the row width exceeds six feet, the land area on which at least 7,260 linear feet of tomato plants are planted.

**Carton**—A standard container that contains 25 pounds of fresh tomatoes unless otherwise provided in the Special Provisions.

**Days**—Calendar days.

**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.

**FSA**—The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

**Good farming practices**—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and generally recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

**Harvest**—Picking of marketable tomatoes.

**Irrigated practice**—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

**Mature green tomato**—A tomato that:

- (a) Has a heightened gloss due to a waxy skin that cannot be torn by scraping;
- (b) Has well formed jelly-like substance in the locules;
- (c) Has seeds that are sufficiently hard so they are pushed aside and not cut by a sharp knife in slicing; and
- (d) Shows no red color.

**Planting**—Transplanting the tomato plants into the field.

**Planting period**—The period of time designated in the Special Provisions during

which the tomatoes must be planted to be considered spring or fall planted tomatoes.

**Plant stand**—The number of live plants per acre before any damage occurs.

**Potential Production**—The number of cartons per acre of mature green or ripe tomatoes with classification size of 6 × 7 (2⅞ inch minimum diameter) or larger which the tomato plants would have produced by the end of the insurance period.

**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 crop, based on factors, including but not limited to moisture availability, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. In counties that do not have both spring and fall planting periods, it will not be considered practical to replant after the final planting date unless replanting is generally occurring in the area. In counties that have spring and fall planting periods, it will not be considered practical to replant after the final planting date for the planting period in which the crop was initially planted.

**Prevented planting**—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

**Production guarantee (per acre)**—The number of cartons determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

**Replanting**—Performing the cultural practices necessary to replace the tomato plants and then replacing the tomato plants in the insured acreage with the expectation of growing a successful crop.

**Ripe tomato**—A tomato that meets the definition of a mature green tomato, except that the tomato shows some red color.

**Row width**—The widest distance from the center of one row of plants to the center of an adjacent row of plants.

**Written agreement**—A written document that alters designated terms of this policy in accordance with section 14.

#### 2. Unit Division

(a) A unit, as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), may be divided into basic units by planting period if spring and fall planting periods are provided for in the Special Provisions. Unless limited by the Special Provisions, these basic units may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(b) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, variety, and planting period, other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional

units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(d) All optional units established for a crop year must be identified on the acreage report for that crop year.

(a) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit; and

(3) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us.

(b) Each optional unit must meet one or more of the following criteria, as applicable:

(1) **Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:** Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(2) **Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:** In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except the corners of a field in which a center-pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated

optional unit, they will be a part of the unit containing the irrigated acreage. However, non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all requirements of this section are met.

### 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) You may select only one price election for all the tomatoes in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each tomato type designated in the Special Provisions. 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 one hundred percent (100%) of the maximum price election for one type, you must also choose one hundred percent (100%) of the maximum price election for all other types.

(b) The production guarantees per acre are progressive by stages and increase, at specified intervals, to the final stage production guarantee. The stages and production guarantees are as follows:

Stage	Percent of stage 4 (final stage) production guarantee	Length of time
1 .....	50	From planting until qualifying for stage 2.
2 .....	75	From the earlier of stakes driven, one tie and pruning, or 30 days after planting until qualifying for stage 3.
3 .....	90	From the earlier of the end of stage 2 or 60 days after planting until qualifying for stage 4.
4 .....	100	From the earlier of 75 days after planting or the beginning of harvest.

(c) Any acreage of tomatoes damaged to the extent that producers in the area generally would not further care for the tomatoes will be deemed to have been destroyed even though you continue to care for the tomatoes. The production guarantee for such acreage will be the guarantee for the stage in which such damage occurs.

### 4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is September 30 preceding the cancellation date for counties with a January 15 cancellation date and December 31 preceding the cancellation date for all other counties.

### 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:

State	Cancellation and termination date
California, Florida, Georgia, and South Carolina.	January 15.
All other states .....	March 15.

### 6. Report of Acreage

(a) In addition to the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report the row width of all the tomatoes grown in the county.

(b) If spring and fall planting periods are allowed in the Special Provisions you must report all the information required by section 6 of the Basic Provisions (§ 457.8) by the acreage reporting date for each planting period.

### 7. Annual Premium

In lieu of provisions contained in the Basic Provisions (§ 457.8), for determining premium amounts, the annual premium is determined by multiplying the final stage production guarantee by the price election, by the premium rate, by the insured acreage, by your share at the time coverage begins,

and by any applicable premium adjustment factor contained in the Special Provisions.

### 8. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the tomatoes in the county for which a premium rate is provided by the actuarial table:

- (a) In which you have a share;
- (b) That are transplanted tomatoes planted for harvest as fresh market tomatoes (cherry and plum types are excluded);
- (c) That are planted within the spring or fall planting dates, as applicable, specified in the Special Provisions; and
- (d) That are not (unless allowed by the Special Provisions or by written agreement):
  - (1) Interplanted with another crop; or
  - (2) Planted into an established grass or legume.

### 9. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

- (a) Any acreage of the insured crop damaged before the final planting date, to the extent that the majority of growers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant. Unavailability of plants will not be considered a valid reason for failure to replant.
- (b) We do not insure any acreage of tomatoes:
  - (1) Grown by any person if the person had not previously:
    - (i) Grown fresh market tomatoes for commercial sales; or
    - (ii) Participated in the management of a fresh market tomato farming operation, in at least one of the three previous years.
  - (2) Grown for direct marketing;
  - (3) That does not meet the rotation requirements contained in the Special Provisions;
  - (4) On which tomatoes, peppers, eggplants, or tobacco have been grown within the previous two years unless the soil was fumigated or nematicide was applied before planting the tomatoes, except that this

limitation does not apply in Pennsylvania, to acreage planted to tomatoes within the last 2 years when the tomatoes were destroyed prior to reaching the 2nd stage, or if otherwise specified in the Special Provisions;

(5) That are not subject to an agreement (packing contract) between you and a packer unless you have access to packing facilities. Such agreement must be executed before the acreage reporting date.

### 10. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

- (a) Coverage begins on each unit, or part of a unit for units with spring and fall planting periods, when the tomatoes are planted.
- (b) Coverage will end on any insured acreage at the earliest of:
  - (1) Total destruction of the tomatoes;
  - (2) Discontinuance of harvest;
  - (3) The date harvest should have started on any acreage which was not harvested;
  - (4) 120 days after the date of transplanting or replanting;
  - (5) Completion of harvest; or
  - (6) Final adjustment of a loss.

### 11. 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;
- (3) Wildlife;
- (4) Earthquake;
- (5) Volcanic eruption;
- (6) 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) Damage that occurs or becomes evident after the tomatoes have been harvested; or
- (2) 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.

#### 12. Replanting Payment

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment is allowed if the crop is damaged by an insurable cause of loss and the acreage to be replanted has sustained a loss in excess of fifty percent (50%) of the plant stand.

(b) The maximum amount of the replanting payment per acre will be 70 cartons multiplied by your price election, and by your insured share.

(c) In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§ 457.8) that permit only one replanting payment each crop year, when spring and fall planting periods are contained in the Special Provisions, you may be eligible for one replanting payment for acreage planted during each planting period within the crop year.

#### 13. 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 unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(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, if applicable by its respective production guarantee and by the factor for the applicable stage;

(2) Multiplying the results of section 13(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results of section 13(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 13(c)) by the respective price election;

(5) Totaling the results of section 13(b)(4);

(6) Subtracting this result of section 13(b)(5) from the results in section 13(b)(3); and

(7) Multiplying the result of section 13(b)(6) by your share.

(c) The total production to count (in cartons) 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) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

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

(ii) Potential production lost due to uninsured causes;

(iii) Unharvested production of mature green and ripe tomatoes with classification size of  $6 \times 7$  ( $2\frac{3}{32}$  inch minimum diameter) or larger remaining after harvest is discontinued;

(iv) Potential production on unharvested acreage and potential production on acreage when harvest has not been completed;

(v) 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 you 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; and

(2) All harvested production from the insurable acreage:

(i) That is marketed, regardless of grade; and

(ii) That is unmarketed and grades eighty-five percent (85%) or better U.S. No. 1 with classification size of  $6 \times 7$  ( $2\frac{3}{32}$  inch minimum diameter) or larger.

#### 14. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 14(e);.

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on September 4, 1996.

Kenneth D. Ackerman,  
Manager, Federal Crop Insurance  
Corporation.

[FR Doc. 96-23455 Filed 9-12-96; 8:45 am]

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## Agricultural Marketing Service

### 7 CFR Part 981

[Docket No. FV-96-981-4PR]

### Almonds Grown in California; Interest and Late Payment Charges on Past Due Assessments

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposal invites comments on implementing interest and late payment charges on past due assessments owed under the almond marketing order. The marketing order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). This rule would allow the Board to implement authority contained in the marketing order to impose late payment and interest charges for past due assessments owed the Board by handlers, and should contribute to the efficient administration of the program.

**DATES:** Comments must be received by October 15, 1996.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456, Fax # (202) 720-5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-1509, Fax # (202) 720-5698; or Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487-5901, Fax # (209) 487-5906. Small businesses may request information on