

found free from spores. If spores are found, the grain will be eligible for movement only under a limited permit issued in accordance with paragraph (c) of this section.

\* \* \* \* \*

#### §§ 301.89–7 and 301.89–9 [Amended]

6. In §§ 301.89–7 and 301.89–9, footnotes 5 and 6 and their references in the text are redesignated as footnotes 4 and 5, respectively.

#### Appendix to Subpart—Karnal Bunt [Removed]

8. The “Appendix to Subpart—Karnal Bunt” is removed.

Done in Washington, DC, this 25th day of April 1997.

**Charles P. Schwalbe,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97–11357 Filed 4–30–97; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 340

[Docket No. 95–040–4]

RIN 0579–AA73

#### Genetically Engineered Organisms and Products; Simplification of Requirements and Procedures for Genetically Engineered Organisms

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule; withdrawal.

**SUMMARY:** This document withdraws the final rule pertaining to genetically engineered plants introduced under notification and to the petition process for the determination of nonregulated status that was published in the **Federal Register** on April 24, 1997, and that was scheduled to become effective on May 27, 1997. The published document was an incorrect version of the final rule and contained errors in the text. The correct version of the final rule will be published in the **Federal Register** as soon as possible.

**DATES:** This withdrawal is effective May 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Payne, Director, Biotechnology and Scientific Services, PPQ, APHIS, 4700 River Road Unit 98, Riverdale, MD 20737–1237; (301) 734–7602. For technical information, contact Dr. Michael Schechtman, Domestic

Programs Leader, Biotechnology and Scientific Services, PPQ, APHIS; (301) 734–7601.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 7 CFR part 340 (referred to below as the regulations) pertain to the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are derived from known plant pests (regulated articles). Before introducing a regulated article, a person is required under § 340.0 of the regulations to either (1) notify the Animal and Plant Health Inspection Service (APHIS) in accordance with § 340.3 or (2) obtain a permit in accordance with § 340.4. Introductions under notification must meet specified eligibility criteria and performance standards. Under § 340.4, a permit is granted when APHIS has determined that the conduct of the trial, under the conditions specified by the applicant or stipulated by APHIS, does not pose a plant pest risk. The regulations also provide that petitions may be submitted to APHIS seeking a determination that an article should not be regulated under 7 CFR 340.

On April 24, 1997 (62 FR 19903–19917, Docket No. 95–040–2), APHIS published in the **Federal Register** a final rule to amend, and thereby simplify, the notification and petition provisions of the regulations. The final rule was scheduled to become effective on May 27, 1997. The published document was an incorrect version of the final rule and contained errors in the text. Therefore, we are withdrawing the final rule and will publish the correct version of the final rule in the **Federal Register** as soon as possible.

**Authority:** 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 28th day of April 1997.

**Donald W. Luchsinger,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97–11358 Filed 4–30–97; 8:45 am]

BILLING CODE 3410–34–U

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Parts 454 and 457

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

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes 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, include 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, and to restrict the effect of the current Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations to the 1997 and prior crop years.

**EFFECTIVE DATE:** June 2, 1997.

**FOR FURTHER INFORMATION CONTACT:** Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order No. 12866

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

##### Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit comments, data, and opinions on information collection requirements previously approved by OMB under OMB control number 0563–0003 through September 30, 1998. No public comments were received.

##### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates 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) of 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 the 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, if adequate records are available to support the certification or receive a transitional yield. The producer must maintain the production records to support the certified information for at least three 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. 12988**

This final rule has been reviewed in accordance with Executive Order No. 12988. 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 part 11 must be exhausted before any 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**

On Friday, September 13, 1996, FCIC published a proposed rule in the **Federal Register** at 61 FR 48423-48428 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 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring fresh market tomatoes found at 7 CFR part 454 (Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations). FCIC also amends 7 CFR part 454 to limit its effect to the 1997 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 34 comments were received from congressional offices, the crop insurance industry and FCIC. The comments received, and FCIC's responses are as follows:

*Comment:* One representative of FCIC indicated that the definition of "Acre" was confusing and recommended it be defined similar to the procedure contained in the loss handbook which states "Divide 43,560 (the number of square feet in one acre) by the row width for any row width below 6 feet.

If the row width is 6 feet or more, divide by 6 feet. (You now have the lineal feet of beds (rows) in one acre. The lineal feet of rows per acre cannot be less than 7,260 feet regardless of the row width.)" Another representative of FCIC stated that acreage in California is based solely on land area, not on row spacing. All acreage in California is planted to 60 inch (5 foot) beds and 43,560 should not be divided by 5 foot beds.

*Response:* The definition will not be changed because it will work for all areas of the country as it is now stated.

*Comment:* A representative of FCIC recommended a definition for "first fruit set" be added since it is referenced in the stage guarantee.

*Response:* FCIC agrees and has added a definition for "first fruit set."

*Comment:* The crop insurance industry recommended that the definition of "irrigated practice" should also address the quality of the water being applied.

*Response:* FCIC disagrees. There are no clear criteria regarding the quality of water necessary to produce a crop. Such criteria would be difficult to develop and administer due to the complex interactions of various factors. No change has been made to the definition.

*Comment:* The crop insurance industry recommended that the definition of "replanting" be revised because the phrase "replace the tomato plants and then replacing the tomato plants" was confusing and awkward. They suggested "plant the tomato plants and then replacing the tomato plants."

*Response:* FCIC agrees that the wording is awkward and has amended the definition for clarification.

*Comment:* The crop insurance industry stated that: (1) The definition of "ripe tomato" is not clear because it does not specify how much red color is allowable in determining production to count. The packer dictates to the producer what can be packed in terms of color. Packers will not allow any red tomatoes to be shipped. (2) The definition of "potential production" suggests that the insurance provider will count green and red tomatoes to determine the amount of production. Without a clear definition loss adjusters will not know which tomatoes to count when appraising tomatoes. (3) They have a legal interpretation that mature green and ripe tomatoes are one and the same. Based on the policy language in the proposed rule it is difficult to determine which tomatoes are production to count.

*Response:* The definition of "ripe tomato" has been revised. It now states "A tomato that meets the definition of a mature green tomato, except the

tomato shows some red color and can still be packed for fresh market under the agreement or contract with the packer." This permits the loss adjuster to know that only tomatoes that could be packed will be considered production to count.

*Comment:* The crop insurance industry questioned whether the phrase "all optional units established for a crop year must be identified on the acreage report for that crop year" could cause problems if the production reporting date and acreage reporting date do not coincide. They stated that policyholders may read this to mean that they can change their units at acreage reporting time, even if not supported by the production reports submitted by the earlier production reporting date.

*Response:* Production reports must be filed by the producer the earlier of the acreage reporting date or 45 calendar days after the cancellation date for the crop and any optional units that the producer will select and enter on the acreage report must be determined at that time. The provision has been clarified by stating "all optional units you selected for the crop year must be identified on the acreage report for that crop year."

*Comment:* Representatives of FCIC recommended that optional unit division by irrigated and non-irrigated acreage be deleted. In most of the counties it is a requirement that the acreage be irrigated to be insurable.

*Response:* This provision has been deleted.

*Comment:* The crop insurance industry suggested that section 3(a) begin with the phrase "You may select only one price percentage \*\*\*." It would not then be necessary to include complex provisions regarding different varieties with different maximum prices.

*Response:* Methods used to select price elections vary among insurance providers. While some require selection of a percentage, others require selection of a specific dollar amount. The suggested change will not work in all circumstances. No change has been made to the provisions.

*Comment:* Representatives of FCIC stated that the stage guarantees should be revised for California because the input costs do not follow the existing guidelines. A major expense of growing fresh tomatoes in California is harvesting and packing the crop. Tomatoes in California are not tied and staked so the stage guarantees should be similar to those of canning and processing tomatoes.

*Response:* FCIC agrees and has made the recommended change.

*Comment:* The crop insurance industry and FCIC requested that cherry, roma and plum type tomatoes be insurable.

*Response:* FCIC generally does not offer insurance for cherry, roma, or plum type tomatoes because there are no uniform standards for marketability. However, in areas where such standards exist, insurance may be offered. No acreage of cherry, roma, or plum type tomatoes should be included in the guarantee or the production to count, unless coverage is provided in the Special Provisions for that type.

*Comment:* The crop insurance industry questioned whether the provision excluding tomatoes grown for direct marketing from being insurable should be under the section for "Insured Crop" rather than the section for "Insurable Acreage."

*Response:* FCIC agrees and has changed the location of this provision to "Insured Crop."

*Comment:* Representatives of FCIC recommended deleting the phrase "or by written agreement" from section 8(d), so that only the Special Provisions would permit insurance to attach to tomatoes grown for direct marketing, interplanted with another crop, or planted into an established grass or legume.

*Response:* FCIC agrees. This section has been revised and now includes the provision to exclude cherry, roma, and plum type tomatoes unless allowed by the Special Provisions, to ensure that proper standards exist.

*Comment:* Representatives of FCIC recommended that a provision be added to allow tomatoes to be insured when grown on acreage that has not been in annual production for several years. It is a recommended practice to grow tomatoes on acreage that has been newly cleared, formerly served as pasture land, etc., to eliminate some of the risk of disease and insect damage.

*Response:* A new section 9(b) has been added to incorporate this suggestion.

*Comment:* The crop insurance industry stated that section 9(b)(4) in the proposed rule (redesignated as section 9(a)(2)(iii)) was difficult to understand and opposed the change that would not require the application of a fumigant or nematicide if the tomatoes were destroyed prior to reaching the second stage. They also stated that nematodes are such a problem in some areas that fumigation prior to replanting possibly should be required.

*Response:* FCIC agrees that these provisions were confusing and that a fumigant or nematicide may be needed even if the tomatoes are destroyed prior

to reaching the second stage. These provisions have been modified accordingly, clarified and re-designated.

*Comment:* The crop insurance industry questioned whether section 9(b)(5) of the proposed rule should be moved under the section for "Insured Crop" rather than remaining in the section for "Insurable Acreage." Some representatives of FCIC stated that producer and packer agreements are not needed because a majority of the growers own the packing facilities in their region. They recommended that this section be deleted. Other representatives stated that without this provision growers might plant acreage after normal dates with the hopes of filling a market void.

*Response:* This section has been moved under "Insured Crop" but has not been deleted in order to ensure that those producers who do not have their own packing facilities have a market for the crop and to prevent producers from planting after normal dates. FCIC cannot offer insurance when there is only speculation that a market may exist.

*Comment:* Representatives of FCIC and congressional offices requested that disease and insect infestation be insurable causes of loss according to the provisions for annual crops. They did not agree with the limitations that cover these perils only 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. They stated that changing the provision would simplify the rule by dispensing with the requirement for a weather determination and more closely matches coverage for other crops under the program.

*Response:* FCIC agrees and section 11 has been revised accordingly.

*Comment:* The crop insurance industry stated that language should be added to indicate that quality deductions are not allowed for unharvested production.

*Response:* The provisions have been amended to specify that unharvested production of mature green and ripe tomatoes remaining after harvest has ended with a classification size of 6×7 (2<sup>3</sup>/<sub>32</sub> inch minimum diameter) or larger; or that grade in accordance with the requirements specified in the Special Provisions for cherry, roma, or plum types will be production to count. If the tomato would not have met classification size or grade requirements whether harvested or not, such tomatoes should not be included as production to count.

*Comment:* Representatives of FCIC recommended that a provision be added specifying that only that amount of appraised production in excess of the difference between the final stage guarantee and the stage guarantee applicable to acreage that does not qualify for the final stage guarantee will be considered production to count.

*Response:* FCIC agrees and has amended the provisions accordingly.

*Comment:* The crop insurance industry stated that they believe the written agreement should be continuous if no substantive changes occur from one year to the next.

*Response:* Written agreements are, by design, temporary and intended to address unusual circumstances. If the condition for which a written agreement is needed exists each crop year, the Special Provisions should be amended to reflect this condition. No change has been made to these provisions.

*Comment:* The crop insurance industry suggested combining the provisions contained in section 14(e) with the provisions in section 14(a).

*Response:* Section 14(e) is intended to be a limited exception, not the rule, in those cases where conditions are discovered after the sales closing date, which make written agreements necessary. The provisions are clearly stated and have not been combined.

*Comment:* The crop insurance industry recommended that the tomato program be added to several areas to cover fall planted tomato acreage in northern Florida, southern Georgia, and Virginia. Specifically, they suggested that insurance be available beginning with the 1998 crop year in Cook, Colquitt, Tift, Lowndes, and Echols Counties, Georgia, and Hamilton County, Florida. They also suggested coverage in North Hampton and Accomack Counties, Virginia.

*Response:* Recommendations for program expansion must be made to the appropriate Regional Service Office within FCIC. Adding coverage in the requested areas will not require changes to these provisions.

*Comment:* Congressional offices stated that it is crucial that this new policy be available for the 1997 crop year in Arkansas.

*Response:* To be effective for the 1997 crop year, this rule had to be published as a final rule by November 30, 1996. Since that date has passed the rule cannot be effective until the 1998 crop year.

In addition to the changes described above, FCIC has made the following changes to the Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions:

1. Section 1—Changed the definition of “carton,” “good farming practices,” “planting period,” “practical to replant,” “potential production,” “production guarantee (per acre),” and “row width” for clarification. Deleted the definition of “prevented planting” because prevented planting coverage is not provided for this crop.

2. Section 3—Added section 3(d) to specify that production guarantees will be contained in the Special Provisions for cherry, roma, or plum type tomatoes if these types are insurable.

3. Section 10—Clarified when coverage begins. Added the provision from the current policy that specifies the end of the insurance period is “November 20 of the crop year in California and September 20 in all other states.” This will prevent the provision of “120 days after the date of transplanting or replanting” from extending the insurance period past November 20 in California or September 20 in all other states.

4. Section 12—Added a provision to specify that the maximum amount of replanting payment per acre for cherry, pear, or plum types will be contained in the Special Provisions.

5. Section 13—Added provisions regarding production to count for cherry, roma and plum type tomatoes if authorized by the Special Provisions.

#### **List of Subjects in 7 CFR Parts 454 and 457**

Crop insurance, Fresh market tomato (guaranteed production plan) crop insurance regulations, guaranteed production plan of fresh market tomato.

#### **Final Rule**

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 454 and 457 as follows:

#### **PART 454—FRESH MARKET TOMATO (GUARANTEED PRODUCTION PLAN) CROP INSURANCE REGULATIONS FOR THE 1987 THROUGH 1997 CROP YEARS**

1. The authority citation for 7 CFR part 454 continues to read as follows:

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

2. The part heading is revised to read as set forth above.

3. Subpart heading “Subpart—Regulations for the 1987 and Succeeding Crop Years” is removed.

4. Section 454.7 is amended by revising the introductory text of paragraph (d) to read as follows:

#### **§ 454.7 The application and policy.**

\* \* \* \* \*

(d) The application is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations for the 1987 through 1997 crop years are as follows:

\* \* \* \* \*

#### **PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS**

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

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

5. Section 457.128 is added 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 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Guarantee 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**—Forty-three thousand five hundred sixty (43,560) square feet of land when row widths do not exceed six feet, or if row widths exceed six feet, the land area on which at least 7,260 linear feet of rows are planted.

**Carton**—A 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.

**First fruit set**—The date when 30 percent of the plants on the unit have produced fruit that has reached a minimum size of one inch in diameter.

**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 are those 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 a 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 time period designated in the Special Provisions during which the tomatoes must be planted to be insured as either 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 that the tomato plants would have produced by the end of the insurance period:

- (a) With a classification size of 6 x 7 (2–8/32 inch minimum diameter) or larger for all types except cherry, roma, or plum; or
- (b) Meeting the criteria specified in the Special Provisions for cherry, roma, or plum types.

**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, time to crop maturity, and marketing windows 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.

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

**Replanting**—Performing the cultural practices necessary to prepare the land 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 the tomato shows some red color and can still be packed for fresh market under the agreement or contract with the packer.

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

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

## 2. Unit Division

(a) In addition to the requirements for a unit, as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) basic units will be provided by planting period if spring and fall planting periods are provided for in the Special Provisions.

(b) Unless limited by the Special Provisions, basic units may be divided into optional units only if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(c) 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.

(d) 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 additional premium paid for the optional units that have been combined will be refunded to you.

(e) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(f) 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;

(3) Records of current year's marketed production or measurement of stored production from each optional unit must be 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; and

(4) Optional units may be established by section, section equivalent, or FSA Farm Serial Number 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.

## 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 election 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, you must also choose 100 percent 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:

### (1) For California:

Stage	Percent of stage 3 (final stage) production guarantee	Length of time
1 .....	50	From planting until first fruit set.
2 .....	70	From first fruit set until harvested.
3 .....	100	Harvested acreage.

### (2) For all other states, except California:

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.

(d) Any production guarantees for cherry, roma, or plum type tomatoes will be specified in the Special Provisions.

#### 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:

#### CANCELLATION AND TERMINATION

State	Dates
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.

(b) If spring and fall planting periods are allowed in the Special Provisions you must report all the information required by section 6 (Report of Acreage) of the Basic Provisions (§ 457.8) and these Crop Provisions 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 that have been planted for harvest as fresh market tomatoes;

(c) That are planted within the spring or fall planting periods, as applicable, specified in the Special Provisions;

(d) That, on or before the acreage reporting date, are subject to any agreement in writing (packing contract) executed between you and a packer, whereby the packer agrees to accept and pack the production specified in the agreement, unless you control a packing

facility or an exception exists in the Special Provisions; and

(e) That are not (unless allowed by the Special Provisions):

(1) Grown for direct marketing;

(2) Interplanted with another crop;

(3) Planted into an established grass or legume; or

(4) Cherry, roma, or plum type tomatoes.

#### 9. Insurable Acreage

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

(1) 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.

(2) We do not insure any acreage of tomatoes:

(i) Grown by any person if the person had not previously:

(A) Grown fresh market tomatoes for commercial sales; or

(B) Participated in the management of a fresh market tomato farming operation, in at least one of the three previous years.

(ii) That does not meet the rotation requirements contained in the Special Provisions;

(iii) 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 to a first planting in Pennsylvania or if otherwise specified in the Special Provisions; or

(b) In lieu of the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance from attaching if a crop has not been planted and harvested in at least one of the three previous calendar years, we will insure newly cleared land or former pasture land planted to fresh market tomatoes.

#### 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 on the later of the date you submit your application or 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 that was not harvested;

(4) 120 days after the date of transplanting or replanting;

(5) Completion of harvest;

(6) Final adjustment of a loss; or

(7) November 20 of the crop year in California and September 20 in all other states.

#### 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) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) 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 that occurs or becomes evident after the tomatoes have been harvested.

#### 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 50 percent of the plant stand.

(b) The maximum amount of the replanting payment per acre will be:

(1) Seventy (70) cartons multiplied by your price election, multiplied by your insured share for all insured tomatoes except cherry, roma or plum types; and

(2) As specified in the Special Provisions for cherry, roma, or plum types.

(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 both 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 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, if applicable, by its respective production guarantee for the stage in which the damage occurred;

(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) That is 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 remaining after harvest has ended:

(A) With a classification size of 6 x 7 (2<sup>8</sup>/<sub>32</sub> inch minimum diameter) or larger for types other than cherry, roma, or plum; or

(B) That grade in accordance with the requirements specified in the Special Provisions for cherry, roma or plum types.

(iv) Potential production on unharvested acreage and potential production on acreage when final 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:

(A) That grades eighty-five percent (85%) or better U.S. No. 1 with a classification size of 6 x 7 (2-8/32 inch minimum diameter) or larger for all types except cherry, roma, or plum; or

(B) That grade in accordance with the requirements specified in the Special Provisions for cherry, roma, or plum types.

(d) Only that amount of appraised production that exceeds the difference between the final stage guarantee and the stage guarantee applicable to the acreage will be production to count.

#### 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 April 25, 1997.

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 97-11351 Filed 4-30-97; 8:45 am]

BILLING CODE 3410-FA-P

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 292

[EOIR No. 115F; A.G. Order No. 2081-97]

RIN 1125-AA16

#### Executive Office for Immigration Review; Representation and Appearances: Law Students and Law Graduates

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises two of the current restrictions on supervising and compensating law students and law graduates who wish to represent aliens before the Immigration and Naturalization Service and the Executive Office for Immigration Review, including the Board of Immigration Appeals and the Immigration Courts. The number of immigration cases, and thus the number of representatives needed, has increased in recent years. This revision will expand the pool of law students and law graduates eligible to represent aliens in such hearings.

**EFFECTIVE DATE:** This final rule is effective June 2, 1997.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

On October 15, 1996, the Executive Office for Immigration Review (EOIR) and the Immigration and Naturalization Service (INS) published and interim rule with request for comments in the Federal Register (61 FR 53609) amending 8 CFR part 292 by revising two of the current restrictions on law students and law graduates who wish to represent aliens before the INS and EOIR, including the Board of Immigration Appeals and the Immigration Courts. This final rule expands the pool of competent, properly supervised representatives for individuals who might otherwise be unable to obtain legal representation by removing these two restrictions upon law students and law graduates. The number of immigration cases completed in fiscal year 1995 totaled more than 168,000, and the need for individuals to represent these aliens has increased. Under this revised regulation, more law students and law graduates will be available to represent aliens in immigration proceedings because participants in legal aid clinics or programs sponsored by both law schools and non-profit organizations will be eligible. These law students and law graduates will also be able to accept compensation for their work so long as they are not paid, either directly or indirectly, by the alien whom they represent. This will allow law students and law graduates to work through legal aid clinics or programs which provide representation to aliens in immigration proceedings on a pro bono basis.

In response to the above rulemaking, EOIR and INS received one public comment. The commenter noted that the interim rule required law students to be supervised by a faculty member or an attorney, but did not provide for their supervision by an accredited representative. The commenter pointed out that limiting law students' supervision to faculty members or attorneys would limit the availability of law students for pro bono representation, since many non-profit organizations are staffed by accredited representatives and not licensed attorneys.