

# Proposed Rules

**Federal Register**

Vol. 62, No. 120

Monday, June 23, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Parts 401 and 457

#### General Crop Insurance Regulations, Canning and Processing Tomato Endorsement; and Common Crop Insurance Regulations, Processing Tomato 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 processing 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 Canning and Processing Tomato Endorsement and the late planting agreement option with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Canning and Processing Tomato Endorsement to the 1997 and prior crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business July 23, 1997, and will be considered when the rule is to be made final.

**ADDRESSES:** Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131.

**FOR FURTHER INFORMATION CONTACT:** Richard Brayton, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, 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 12866, and, therefore, this rule has not been reviewed by OMB.

##### Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations are being reviewed by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563-0053. The processing tomatoes are described in the background.

The title of this information collection is "Multiple Peril Crop Insurance."

The burden associated with the processing tomatoes is estimated at 19 minutes per response from approximately 1,112 respondents each year for a total number of 364 hours.

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. 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. 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.

FCIC is requesting comments on 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 on 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, DC 20503.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

##### 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) 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 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 larger entities. 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 proposed rule has been reviewed under Executive Order 12988. The provision 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**

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.160, Processing 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 canning and processing tomatoes found at 7 CFR 401.114 (Canning and Processing Tomato Endorsement). FCIC also proposes to amend 401.114 to limit its effect to the 1997 and prior crop years.

This rule makes minor editorial and format changes to improve the Canning and Processing Tomato Endorsement's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the

provisions for insuring processing tomatoes as follows:

1. Remove the word "canning" from the title of the policy.

2. Section 1—Add definitions for the terms "acre," "bypassed acreage," "days," "FSA," "final planting date," "good farming practices," "interplanted," "irrigated practice," "planted acreage," "practical to replant," "processor," "processor contract," "production guarantee (per acre)," "replanting," "timely planted," "ton," and "written agreement" for clarification.

3. Section 2(a)—For California only, eliminate unit division for acreage that is owned by one entity and operated by another entity on a share basis. This change, in conjunction with other optional unit structure changes proposed herein, (see item 4 below) will provide an insurance product that is more flexible for insureds and is easier to administer. Current provisions that require unit division by share arrangement are difficult to administer in California because shareholder arrangements vary a great deal from year to year.

4. Section 2(f)(4)(iii)—In California only, allow optional units to be established if acreage planted to tomatoes is separated by a field that is not planted to tomatoes or by a permanent boundary such as a permanent waterway, fence, public road or woodland. Such optional units must consist of the minimum number of acres specified in the Special Provisions. Optional units will only be allowed where the processor contract is acreage based as opposed to production based. This change provides a unit structure that is less complex to administer, and is compatible with the land location and landowner changes that occur on an annual basis in California.

5. Section 3(a)—Specify that an insured may select only one price election for all the processing tomatoes planted in the county that are 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 specified in the Special Provisions. The price election the producer chooses for each type must have the same percentage relationship to the maximum price available. This will help to protect against adverse selection and simplifies administration of the program.

6. Section 3(b)—Specify the liability under this policy will not exceed the number of tons under a processor contract in effect on or before the earlier of August 20 or the date of damage to

the insured crop in all counties with an acreage reporting date of 7/15, or on or before the acreage reporting date or the date of damage in all other counties. (Exclude damage that occurs in stage one or damage that results in a replant payment.)

7. Section 3 (c) and (d)—Specify: (c) The price elections used to determine the amount of indemnity are progressive by stages and increase, at specified intervals, to the price used for final stage losses; and (d) Any acreage of tomatoes damaged to the extent that the majority of producers in the area would not normally further care for the tomatoes, will be deemed to have been destroyed even though you may continue to care for it. The price election used to determine the amount of indemnity will be that applicable to the stage in which the tomatoes were destroyed.

8. Sections 4—Change the contract change date from November 30 to August 31 preceding the cancellation date for California, and from December 31 to November 30 preceding the cancellation date for all other states. This will maintain an adequate time period between the contract change date and the revised cancellation date.

9. Section 5—Change the cancellation and termination dates from February 15 to January 15 in California, and from April 15 to March 15 for all other states. This change is necessary to standardize the cancellation and termination dates with the sales closing dates. Sales closing dates were changed to comply with requirements of the Federal Crop Insurance Reform Act of 1994.

10. Section 6—Require the producer to provide a copy of the processor contract to the insurance provider on or before August 20 in all counties with an acreage reporting date of 7/15, or on or before the acreage reporting date in all other counties. In some instances contracts are not completed prior to August 20 in counties with a 7/15 acreage reporting date.

11. Section 8(a)(3)—Specify that the crop insured will be tomatoes that are grown under and in accordance with the requirements of a processor contract executed on or before August 20 for all counties with an acreage reporting date of 7/15, or on or before the acreage reporting date in all other counties, and are not excluded from the processor contract for or during the crop year.

12. Section 8(b)—Specify that if the processor contract under which the insured retains control of the acreage on which the tomatoes are grown and that provides for delivery of the tomatoes under certain conditions and at a stipulated price, the insured will be

considered to have a share in the insured crop if the insured retains the risk of loss.

13. Section 8(c)—Specify the requirements under which the tomato producer who is also a processor may establish an insurable interest in the insured crop.

14. Section 9(a)—Require that any acreage damaged prior to 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 the insurer agrees that replanting is not practical.

15. Section 9(b)—Specify that rotation requirements shown in the Special Provisions must be met for acreage to be insured.

16. Section 10—Add provisions stating that the insurance period will end when the amount of tomatoes delivered equals the amount of production under contract.

17. Section 11(a)(1)—Clarify that adverse weather conditions include: (1) Excessive moisture that prevents harvesting equipment from entering the field or prevents timely operation of harvesting equipment; and (2) abnormally hot or cold temperatures that cause acreage to be bypassed.

18. Section 11(a)(3) and (4)—Clarify that insect and disease damage as a cause of loss does not include damage due to insufficient or improper application of insect and disease control measures.

19. Section 11(b)—Clarify that the insurance provider will not cover loss of production: (1) On bypassed acreage if the acreage is bypassed due to the breakdown or non-operation of equipment or facilities; (2) on bypassed acreage if acreage to be bypassed is selected based on the availability of a crop insurance payment; (3) due to processing tomatoes not being timely harvested, unless the delay in harvesting is directly due to an insured cause of loss; (4) due to failure to follow the requirements contained in the processor contract; (5) due to damage that occurs to unharvested production after the producer delivers the production required by the processor contract; and (6) due to failure to market the tomatoes unless such failure is due to actual physical damage due to a specified cause of loss.

20. Section 12—Add provisions to provide a replanting payment. The current tomato policy does not allow a replanting payment. A replanting payment will be allowed only if the crop sustained a loss in excess of 50 percent of the plant stand. This change is consistent with replanting payment provisions contained in the Fresh Market Tomato (Guaranteed Production

Plan) Crop Provisions and Fresh Market Tomato (dollar plan) Crop Provisions. The replant provisions were requested by tomato growers and insurance providers.

21. Section 13(a)(2)—Clarify that the producer must give notice on or before the date the tomatoes should be harvested if any acreage on a unit will not to be harvested.

22. Section 14(c)(1)(i)(E)—Clarify that the total production to count will include appraised production on bypassed acreage, unless adequate evidence is provided to show the acreage was bypassed for insurable reasons.

23. Section 14(d)—Specifies that once harvest has begun on any acreage covered by a processor contract that specifies the number of tons to be delivered, the total indemnities payable will be limited to an amount based on the number of tons of production necessary to fulfill the quantity of production remaining to be delivered under the processor contract consistent with the number of acres planted.

24. Section 15—Provide insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications 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.

Good cause is shown to allow 30 days for comments after this rule is published in the **Federal Register**. This rule improves processing tomato crop insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The earliest contract change date required for new policies is August 31. It is therefore imperative that these provisions be made final before that date so that the reinsured companies and insureds may have sufficient time to implement the new provisions. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

#### **List of Subjects in CFR Parts 401 and 457**

Canning and processing tomato endorsement, Crop insurance, Processing tomato.

#### **Proposed Rule**

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 401 and 457 as follows:

#### **PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS**

1. The authority citation for 7 CFR part 401 continues to read as follows:

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

2. The introductory text of § 401.114 is revised to read as follows:

#### **§ 401.114 Canning and processing tomato endorsement.**

The provisions of the Canning and Processing Tomato Crop Insurance Endorsement for the 1988 through the 1997 crop years are as follows:

\* \* \* \* \*

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

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

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

4. 7 CFR part 457 is amended by adding a new § 457.160 to read as follows:

#### **§ 457.160 Processing tomato crop insurance provisions.**

The Processing Tomato Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

#### **United States Department of Agriculture**

Federal Crop Insurance Corporation  
Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

#### **Processing 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 row widths do not exceed 6 feet, of if row width exceeds 6 feet, the land on which at least 7260 linear feet rows are planted.

**Bypassed acreage**—Land on which production is ready for harvest but is not harvested.

**Days**—Calendar days.

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

**Final planting date**—The date contained in the Special Provisions for the insured crop by which must initially be planted in order to be insured for the full production guarantee.

**First fruit set**—The reproductive stage of the plant when 30 percent of the plants have

produced a fruit that has reached a minimum of one inch in diameter.

**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 required by the tomato processor contract with the processing company, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

**Harvest**—The severance of tomatoes from the vines.

**Interplanted**—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

**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.

**Planted acreage**—Land in which seed or plants have been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Tomatoes must initially be placed in rows far enough apart to permit cultivation to be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

**Plant stand**—The number of plants per acre that is considered to be the normal plants per acre for the applicable tomato variety and growing area.

**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, marketing window, 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. It will not be considered practical to replant, unless production from the replanted acreage can be delivered under the terms of the processor contract.

**Processor**—Any business enterprise regularly engaged in processing tomatoes for human consumption, that possesses all licenses and permits for processing tomatoes required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted processing tomatoes within a reasonable amount of time after harvest.

**Processor contract**—A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow processing tomatoes, and to deliver the tomato production to the processor;

(b) The processor's commitment to purchase all the production stated in the contract; and

(c) A price per ton that will be paid for the production.

**Production guarantee (per acre)**—The number of tons 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 seed or plants and then replacing the tomato seed or plants in the insured acreage with the expectation of growing a successful crop.

**Timely planted**—Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

**Ton**—Two thousand (2,000) pounds avoirdupois.

**USDA**—United States Department of Agriculture.

**Written agreement**—A written document that alters designated terms of this policy in accordance with section 15.

## 2. Unit Division

(a) For California only, in lieu of the unit definition contained in section 1 (Definitions) of the Basic Provisions (§ 457.8), basic units will consist of all insurable acreage in the county in which you have a share.

(b) Unless limited by the Special Provisions, a basic unit as defined in section 2(a) for California only, or in section 1 (Definitions) of the Basic Provisions (§ 457.8) for all states except California, may be divided into optional units if, for each optional unit, you meet all the conditions of this section. Optional units will be available only if the processor contract stipulates the number of acres that are under contract and not a specific amount of production.

(c) Basic units may not be divided into optional units on any basis 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 provided records by the production reporting date, 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) For each crop year, records of 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) Each optional unit must meet one or more of the following criteria, as applicable, unless otherwise specified by written agreement:

(i) **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.

(ii) **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 and non-irrigated acreage (in those counties where "non-irrigated" practice is allowed in the actuarial table) 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. 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 other requirements of this section are met.

(iii) **Optional Units on Separate Acreage Planted to Tomatoes.** In California only, in addition to or instead of establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be established if acreage planted to tomatoes is separated by a field that is not planted to tomatoes or by a permanent boundary, such as, a permanent waterway, fence, public road or woodland. Such optional unit must consist of the minimum number of acres stated in the Special Provisions. Acreage planted to tomatoes that is less than the minimum number of acres required will attach to the closest unit within the section, section equivalent or 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 processing 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 processing 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 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) Liability under this policy will not exceed the number of tons under a processor contract in effect on or before the earlier of: (1) August 20 or the date of damage to the insured crop in all counties with an acreage reporting date of 7/15; or (2) The acreage reporting date or the date of damage in all other counties. (Exclude damage that occurs in stage one or damage that results in a replant payment.)

(c) The price election used to determine the amount of an indemnity are progressive by stages and increase, at specified intervals, to the price used for final stage losses. Stages will be determined on an acre basis. The stages and production guarantees are:

(1) First stage is from planting until first fruit set. If any acreage of the insured crop is destroyed in this stage, the price used to determine whether or not an indemnity is owed for such acreage will be 50 percent of your price election;

(2) Second stage is from the first fruit set until harvest. If any acreage of the insured crop is destroyed in this stage, the price used to determine whether or not an indemnity is owed for such acreage will be 80 percent of your price election; and

(3) Third stage (final stage) is harvested acreage. The price election used in this stage to determine whether or not an indemnity is due will be 100 hundred percent of your price election.

(d) Any acreage of tomatoes damaged to the extent that the majority of producers in the area would not normally further care for the tomatoes, will be deemed to have been destroyed even though you may continue to care for it. The price election used to determine the amount of an indemnity will be that applicable to the stage in which the tomatoes were destroyed.

### 4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is August 31 preceding the cancellation date for California and November 30 preceding the cancellation date for all other states.

### 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 January 15 in California and March 15 in all other states.

### 6. Report of Acreage

In addition to the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must provide a copy of all processor contracts to us on or before August 20 in all counties with an acreage reporting date of 7/15, or on or before the acreage reporting date in all other counties.

### 7. Annual Premium

In lieu of the premium amount determinations contained in section 7 (Annual Premium) of the Basic Provisions (§ 457.8), the annual premium amount is determined by multiplying the production guarantee per acre by the price election for unharvested acreage, by the premium rate, by the insured acreage, by the applicable share at the time of planting, and ultimately by any applicable premium adjustment factors contained in the Actuarial Table.

### 8. Insured Crop

(a) 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:

(1) In which you have a share;

(2) That are planted for harvest as processing tomatoes;

(3) That are grown under and in accordance with the requirements of a processor contract executed on or before August 20 in all counties and states with an acreage reporting date of 7/15, or on or before the acreage reporting date in all other counties, and are not excluded from the processor contract for or during the crop year; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Grown where tomatoes have been grown in either of the two previous years, except in California;

(ii) Interplanted with another crop; or

(iii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain possession of the acreage on which the tomatoes are grown, you are at risk of loss for failure to deliver, and the processor contract provides for delivery of tomatoes under specified conditions and at a stipulated price per unit of delivery.

(c) A tomato producer who is also a processor may establish an insurable interest if the following requirements are met:

(1) The processor must meet the requirements as defined in these crop provisions;

(2) The Board of Directors or officers of the processor must have executed a resolution that sets forth essentially the same terms as a processor contract. Such resolution will be considered a contract under the terms of the processing tomato crop insurance policy; and

(3) Our inspection of the processing facilities determines that they satisfy the definition of a processor contained in section 1 of these crop provisions.

### 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 that is 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;

(b) We will not insure any acreage that does not meet the rotation requirements contained in section 8 of these crop provisions or in the Special Provisions.

### 10. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), regarding the end of the insurance period, insurance ceases at the earlier of the date:

(a) The production delivered to the processor equals the amount of production under contract, if the processor contract stipulates a specific amount of production to be delivered;

(b) The number of tons delivered to the processor equals the number of insured contracted acres multiplied by the approved yield, if the processor contract stipulates a specific number of acres from which all production is to be delivered;

(c) The tomatoes were totally destroyed;

(d) The tomatoes should have been harvested;

(e) The tomatoes were abandoned;

(f) Harvest was completed;

(g) Final adjustment of a loss was completed; or

(h) The following calendar date for the end of the insurance period:

(1) October 20 in California; and

(2) October 10 in all other states.

### 11. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8):

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions, including but not limited to:

(i) Excessive moisture that prevents the harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures that cause insured acreage to be bypassed because an unexpected number of acres over a large producing area are ready for harvest at the same time, and the total production is beyond the normal capacity of the processor to timely harvest or process;

(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, unless appropriate control measures have not been taken;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if caused by an insured cause of loss that occurs during the insurance period; or

(9) Physical damage to the production to the extent that the processor is unable to utilize it, if caused by an insured cause of loss 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 any loss of production:

(1) On bypassed acreage, if the acreage is bypassed due to the breakdown or non-operation of equipment or facilities;

(2) On bypassed acreage, if acreage to be bypassed is selected based on the availability of a crop insurance payment;

(3) Due to the processing tomatoes not being timely harvested, unless such delay in harvesting is solely and directly due to an insured cause of loss;

(4) Due to your failure to follow the requirements contained in the processor contract;

(5) Due to damage that occurs to unharvested production after you deliver the production required by the processor contract; or

(6) Due to failure to market the tomatoes unless such failure is due to actual physical damage from a cause specified in section 11(a).

#### 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 sustained a loss exceeding 50 percent of the plant stand and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 3 tons, multiplied by your price election, multiplied by your share.

#### 13. 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), you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the tomatoes in the unit; or

(2) Discontinuance of harvest on a unit on which production remains;

(b) Within 3 days of the date harvest should have started on any acreage that will not be harvested and document why the acreage was bypassed. Failure to provide such information may result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit and must not be destroyed until the earlier of our inspection or 15 days after notice is given to us; and

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during harvest. If you fail to notify us we may consider all such production to be undamaged and include it as production to count.

#### 14. 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 by its respective production guarantee, by type if applicable;

(2) Multiplying each result in section 14(b)(1) by the respective price election by type, if applicable;

(3) Totaling the results in section 14(b)(2);

(4) Multiplying the total production to be counted, by type if applicable, (see subsection 14(c)) by the respective price election;

(5) Totaling the results in section 14(b)(4);

(6) Subtracting the result in section 14(b)(5) from the result in section 14(b)(3); and

(7) Multiplying the result in section 14(b)(6) by your share.

(c) The total production to count, specified in tons, 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;

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

(E) That is bypassed unless the acreage was bypassed due to a cause of loss stated in section 11(a).

(ii) Production lost due to uninsured causes;

(iii) Potential production on insured acreage that you intend to put to another use or abandoned, 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.

(2) All harvested production (in tons) delivered to the processor which meets the quality requirements of the processor

contract (expressed as usable or payable weight).

(3) All harvested tomato production delivered to processor which does not meet the quality requirements of the processor contract due to not being timely delivered.

(d) Once harvest has begun on any acreage covered by a processor contract that specifies the number of tons to be delivered, the total indemnity payable will be limited to an amount based on the number of tons of production necessary to fulfill the quantity of production remaining to be delivered under the processor contract consistent with the number of acres planted.

#### 15. Written Agreements

Terms of this policy which are specifically designated for the use of written agreements 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 15(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 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, DC, on June 16, 1997.

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

[FR Doc. 97-16273 Filed 6-20-97; 8:45 am]

BILLING CODE 3410-08-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

[Docket No. 970404078-7078-01]

RIN 0648-AE41

### Proposed Thunder Bay National Marine Sanctuary

**AGENCY:** Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National