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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: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes 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 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.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Brayton, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 6413, 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

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions on information collection requirements currently being reviewed by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under OMB control number 0563–0053. 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) for State, local, and tribal governments or the private sector. Therefore, 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 economic impact on a substantial number of small entities. The amount of work required of insurance companies will not increase because the information used to determine eligibility is already maintained at their office and the other information required is already being gathered as a result of the present policy. No additional actions are required as a result of this action on the part of either the producer or the reinsured company. Additionally, the regulation does not require any action on the part of the small entities than is required on the part of large entities. 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 12988 on civil justice reform. 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 Monday, June 23, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 33763–33768 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 part 401 (Canning and Processing Tomato Endorsement). FCIC

also amends 7 CFR 401.114 to limit its effect to the 1997 and prior crop years.

Following publication of that proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 62 comments were received from an insurance service organization, reinsured companies, agents, a California Tomato Growers Association, and tomato growers. The comments received, and FCIC's responses are as follows:

Comment: An insurance service organization recommended that a number of definitions common to most crops be removed from the crop provisions and placed into the Basic Provisions.

Response: FCIC agrees and is currently in the regulatory review process that will move commonly used definitions from the crop provisions to the Basic Provisions and this rule will be revised to delete the definitions when the Basic Provisions are published as a final rule.

Comment: A reinsured company and a crop insurance agent recommended changing the sales closing date in California from January 15 to February 28. The commenter indicated that the sales closing date of January 15 causes inefficiency because it differs from the February 28 sales closing date for most other spring crops.

Response: The Federal Crop Insurance Reform Act of 1994 required the sales closing date to be moved from February 15 to January 15. This date cannot be extended without appropriate legislative changes. Therefore, no change has been made.

Comment: An insurance service organization recommended changing the definition of ''bypassed acreage'' to read as follows: ''Land on which production is ready for harvest but is left unharvested in favor of harvesting other fields.''

Response: The definition of *bypassed acreage* has been revised to clarify that land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

Comment: An insurance service organization expressed concern with the definition of ''good farming practice,'' which makes reference to cultural practices generally in use in the county and that are recognized by the Cooperative State Research, Education, and Extension Service (CSREES) as compatible with agronomic and weather conditions in the county. The comment questioned whether cultural practices exist that are not necessarily recognized (or possible known) by the CSREES. The comment suggested changing the term ''county'' to ''area.''

Response: FCIC believes that the CSREES recognizes farming practices that are considered acceptable for producing processing tomatoes. If a producer is following practices not recognized as acceptable by the CSREES, such recognition can be sought by interested parties. Although cultural practices recognized by the CSREES may only pertain to specific areas within a county, the actuarial documents are on a county basis. No change has been made.

Comment: An insurance service organization recommended changing the definition of ''planted acreage'' so that either initially or replanted acreage must be planted in rows to be considered planted.

Response: FCIC agrees and has amended the definition as suggested. The definition of replanting has also been changed accordingly.

Comment: An insurance service organization recommended that the definition of ''replanting'' be clarified by inserting ''processing tomato'' between the last two words (''successful'' and ''crop'') in the sentence.

Response: To be consistent with language contained in the proposed rule of the Basic Provisions, FCIC has revised the definition to clarify that ''replanting'' is performing the cultural practices necessary to prepare the land to replace the seed or plants of the damaged or destroyed crop and then replacing the seed or plants in the insured acreage.

Comment: An insurance service organization recommended that the definition of ''timely planted'' be clarified by inserting the word ''initially'' at the beginning of the definition.

Response: To be consistent with language contained in the proposed rule of the Basic Provisions, FCIC believes the definition is clearly stated. Therefore, no change has been made.

Comment: An insurance service organization, a reinsured company, insurance agents, a tomato growers association, and a tomato grower disagreed with the provisions that remove ''units by share'' in California (section 2(a.). The comments indicated that: (1) Unit division by share is no more difficult to administer for tomatoes than it is for other crops in California; (2) The change will give producers a greater incentive to purchase CAT than buy-up, since the CAT Endorsement allows basic units by share; and (3) Inequitable loss payments between tenants and landlords would result.

Response: FCIC agrees that optional units based on share should be provided. Section 2(a) has been deleted and the remaining sections have been redesignated accordingly. The language in 8(b) is intended to cover a producer who has a crop share agreement, who rents, or who owns acreage. This should be separate from the unit issue.

Comment: An insurance service organization, reinsured companies, a grower association, insurance agents, and tomato producers stated that section 2(b) eliminates optional units for nearly all California producers since most contracts are written for a specific amount of production. Removal of this benefit will have a detrimental impact on producers who had optional units in the past. For example: A producer with 6,000 contracted tons, 200 acres of land, an approved yield of 30 tons per acre, and a production guarantee of 22.5 tons per acre, receives no benefit if only one unit is allowed and 4,500 tons of tomatoes are produced. However, if two 100 acre units are allowed, the first unit produces 3,000 tons and the second unit produces 1,500 tons (4,500 total tons), an indemnity based on 750 tons would be allowed on the second unit.

Response: FCIC agrees that optional units should remain available in California and has amended section 2(b) (redesignated 2(a)) accordingly. Premium rates also will reflect adoption of this change.

Comment: An insurance service organization and reinsured companies indicated that the ''earlier of'' * * * aspect of section 3(b) eliminates the need for item (1). Item (2), the acreage reporting date, will always be earlier than item (1) (August 20). One comment questioned why the provision allows until August 20 to obtain signed contracts in all but a few counties in California.

Response: Section 3(b) was not intended to indicate the earlier of item (1) or (2). It was intended to indicate the earlier of August 20 or the date of damage only in those counties with a July 15 acreage reporting date, and the earlier of the acreage reporting date or the date of damage in all other counties. In years of high production, it is common for contracts in northern California counties to be signed as late as August 20. The provision was designed to accommodate this practice and permit insurance to continue for all contracted tonnage. The provision has been clarified accordingly.

Comment: Five comments from reinsured companies asked why section 3(c) was changed to reduce the price election rather than the production guarantee.

Response: The Federal Crop Insurance Act authorizes FCIC to reduce the payment to producers who elect catastrophic coverage for acreage that is not harvested or for any other costs that are not incurred if the crop is lost prior to harvest. The change is in compliance with this provision of law.

Comment: An insurance service organization and a reinsured company stated that provisions in section 6 that require the producer to provide a copy of the processor contract no later than the acreage reporting date: (1) Could allow producers to wait until the acreage reporting date to decide if they want coverage; and (2) will be nearly impossible to implement since processor contracts will not be finalized by the dates specified in section 3.

Response: Virtually all processor contracts should be completed within the time frame provided for in the policy. Production covered by contracts completed after these time frames will not be insured. Therefore, no change has been made.

Comment: A reinsured company questioned why the price election for unharvested acreage is used in the premium calculations in section 7.

Response: The provision should have referred to the price election for the third (final) stage. The provision has been revised accordingly.

Comment: An insurance service organization and a reinsured company stated that section 8(b) is confusing and seems to indicate that the landlord does not have a share unless the landlord's name is written on the tomato contract. Another reinsured company interpreted the provision to mean that a tenant cannot have a share since that person does not retain possession of the acreage.

Response: The language in 8(b) is intended to cover a producer who has a crop share arrangement, who rents, or who owns acreage. The provision has been clarified by indicating that control of the acreage is retained rather than possession.

Comment: An insurance service organization stated that section 8(a)(4) would allow coverage by written agreement or Special Provisions on tomatoes following tomatoes in either of the two previous years, interplanted with another crop or planted into an established grass or legume and asked if these practices would ever be allowed by the processor contract. The comment indicated that consideration should be given to inserting some of this language into the Basic Provisions since it is duplicated in most Crop Provisions.

Response: Some processor contracts may not stipulate rotation or planting practices. Therefore, the provisions have been retained to limit insurance when a crop is interplanted, planted into a grass or legume, or is planted in an unusual rotation. These provisions vary among Crop Provisions and therefore, should not be moved to the Basic Provisions. Therefore, no change has been made.

Comment: An insurance service organization and a reinsured company questioned whether the provisions in sections 10(a) and (b) that end the insurance period on the date sufficient production is harvested to fulfill the producers processor contract: (a) Eliminate unit division benefits or (b) conflict with the provision in section 12(a) that states ''We will determine your loss on a unit basis.'' The commenters questioned whether production to count from an appraisal prior to harvest would be included when determining fulfillment of the processor contract. The insurance service organization questioned whether the insured would know when enough production is harvested to fulfill the processor contract. This commenter asked if production exceeding the contracted amount is considered production to count for APH or loss adjustment or whether the processor settlement sheet is the only acceptable record. One commenter also questioned whether ''delivered to'' is the same as ''acceptable by'' the processor.

Response: Sections 10(a) and (b) do not eliminate unit division provisions or conflict with section 14(a). All indemnities will be paid on a unit basis. Once acreage is harvested and the processor contract is fulfilled, the insurance period ends. If there is unharvested production and the processor contract has not been fulfilled, due to an insured cause of loss is still covered. Appraised acreage will not be used to determine whether the contract has been fulfilled and the insurance period ends, although it will be used to determine production to count and in determining the producer's APH. When determining production to count, only the harvested production shown on the settlement sheet or rejected as a result of uninsured cause of loss will be used. FCIC has revised section 10(a) to clarify that insurance ceases ''the date you harvest sufficient production to fulfill your processor contract if your processor contract stipulates a specific amount of production to be delivered.'' The contract is not fulfilled if the production is not accepted by the processor. However, rejected production maybe considered as production to count unless damaged by an insurable cause of loss occurring during the insurance period. Further, records are maintained as production is delivered to the processor. Therefore, the insured should know when the contract is fulfilled.

Comment: An insurance service organization questioned the summary of changes to the proposed rule in section 13(a)(2). The commenter stated the summary of changes says ''the producer must give notice on or before the date the tomatoes should be harvested if any acreage on a unit will not be harvested,'' but the provision states the producer must give notice ''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.

Response: FCIC agrees that the summary was in error and the provisions as proposed are correct.

Comment: An insurance service organization questioned the notification requirement in section 13(b), which states that the insured must notify the insurance provider ''within 3 days of the date harvest should have started on any acreage that will not be harvested...'' The commenter stated there is a difference between notice ''within 3 days'' as the policy provision indicates and ''on or before'' as item 21 of the summary of changes indicates. The commenter also asked how the date tomatoes should have been harvested will be determined.

Response: The summary of changes was not correct. It should have indicated ''within 3 days after the date harvest should have started....'' The insured is best able to assess the date tomatoes should be harvested based on the maturity of the crop. Therefore, no change has been made.

Comment: An insurance service organization stated that the language in 13(c) does not address timely notice if damage is discovered less than 15 days prior to harvest.

Response: The notice requirement in section 13 are in addition to the requirements in section 14 of the Basic Provisions that require notice of loss within 72 hours of initial discovery of damage. Notice within this time period would be required if damage is discovered less than 15 days before harvest. If damage is discovered during harvest, notice must be given immediately. FCIC believes that these provisions, as a whole, are adequate. Therefore, no change has been made.

Comment: An insurance service organization stated that section 14(c)(1)(iii) should not allow the insured to defer settlement and wait for a later, generally lower appraisal, especially on crops that have a short ''shelf life.''

Response: A later appraisal will only be necessary if the insurance provider agrees that such an appraisal would result in a more accurate determination and if the producer continues to care for the crop. If the producer does not continue to care for the crop, the original appraisal will be used. Therefore, no change has been made.

Comment: A reinsured company recommended removal of the requirement to renew written agreements each year if there are no significant changes to the farming operation.

Response: Written agreements are intended to supplement policy terms or permit insurance in unusual situations that require modification of the otherwise standard insurance provisions. If such practices continue from year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize written agreement exceptions to assure that the insured is well aware of the specific terms of the policy. FCIC has proposed that the written agreement provision be included in the Basic Provisions. Therefore, no change has been made.

In addition to the changes described above, FCIC has made minor editorial changes and has amended the following Processing Tomato Provisions:

1. The paragraph preceding section 1 is amended to include the Catastrophic Risk Protection Endorsement.

2. Section 1—Added a definition of ''approved yield''. The definitions of ''bypassed acreage,'' ''planted acreage'' ''practical to replant'' ''production guarantee (per acre)'' and ''replanting'' have been revised for clarification.

3. Removed the reference to ''written agreement'' in section 2(a) of the proposed rule and added it to section 2(e)(4) of the final rule to clarify which provisions may be revised by written agreement.

4. Section 2(a)—Added provisions to clarify that no indemnity will be paid for any loss of production on any unit if the insured produced a crop sufficient to fulfill the processor contracts forming the basis for the guarantee, and any indemnity will be limited to the amount necessary to compensate for loss in yield at the price elected between production to count and the contract requirements.

5. Section 3(b)—Has been revised for clarification.

6. Section 3(e)—Added provisions to clarify when appraised production on bypassed acreage not bypassed due to an insurable cause of loss will be used when determining the producer's approved yield.

7. Section 3(f)—Added provisions to clarify when acreage is bypassed because it was damage by an insurable cause of loss to the extent that the processor cannot use the product will be considered to have a zero yield when determining your approved yield.

8. Section 6—Clarify a producer must provide a copy of all processor contracts to us on or before the acreage reporting date in all counties, unless otherwise specified in the Special Provisions.

9. Sections 8(b), (c)(1), (2), and (3)—Have been revised for clarification.

10. Section 10(a)—Revised to conform this provision with other processing crop provisions, which specify that once the processor contract has been fulfilled, the insurance period will end if the processor contract stipulates a specific amount of production.

11. Section 10(b)—Clarify that the insurance period will end when the crop should have been harvested.

12. Section 11(a)(5)—Clarified the wildlife cause of loss by deleting the language ''unless proper measures to control wildlife have not been taken'' to be consistent with other crop provisions.

13. Section 11(a)(ii)—Has been revised for clarification.

14. Section 11(a)(9)—Deleted this provision because it is unnecessary since other listed causes of loss are what results in physical damage.

15. Section 11(b)(4)—Deleted this provision since such damage would occur outside the insurance period specified in section 10.

16. Section 13(b)—Clarified that the insured must give notice of loss within 3 days after the date harvest should have started is the acreage will not be harvested. The insured must also provide documentation stating why the acreage was bypassed.

17. Section 14(b)(1) thru (7)—Revised and added an example of settlement of claim.

18. Section 14(c)(E)—Deleted this provision as proposed.

19. Section 14(c)(iii)—Added provisions to clarify production on acreage that is bypassed unless the acreage was bypassed due to an insured cause of loss which resulted in production which would not be acceptable under the terms of the processor contract. 14(c)(iii) as proposed has been redesignated as 14(c)(iv).

20. Section 14(d)—Clarified that once harvest has begun on 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 lesser of the guaranteed tons, or the tons remaining unfulfilled under the processor contract.

21. Section 15—Added statement that late and prevented planting is not applicable to processing tomatoes.

22. Section 16—Written agreements had been redesignated. Clarify when provisions of the policy may be altered by written agreement.

List of Subjects in CFR Parts 401 and 457

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

Final Rule

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

PART 401—GENERAL CROP INSURANCE REGULATIONS

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

Authority: 7 U. S. C. 1506(1), 1506(p).

2. Section 401.114 introductory text 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. Section 457.160 is added 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 polices:

Processing Tomato Crop Provisions

If a conflict exists among the policy provisions the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions (§ 457.8) with (1) controlling (2) etc.

1. Definitions

Acre. 43,560 square feet of land on which row widths do not exceed 6 feet, or the land on which at least 7,260 linear feet rows are planted if row widths exceed 6 feet.

Approved yield. The yield determined in accordance with 7 CFR part 400, subpart (g).

Bypassed acreage. Land on which production is ready for harvest but the processor elects not to accept such production so it 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 the crop must initially be planted in order to be insured for the full production guarantee.

First fruit set. The reproductive stage of the plant at which 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.

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

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 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.

Practical to replant. In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions, 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 the replanted acreage can produce at least 75% of the approved yield, and the processor agrees in writing that it will accept the production from the replanted acreage.

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 processor 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 yield per acre by the coverage level percentage you elect.

Replanting. Performing the cultural practices necessary to prepare the land to replace the seed or plants of the damaged or destroyed crop and then replacing the seed or plants in the insured acreage.

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 16.

2. Unit Division

(a) Unless limited by the Special Provisions, a basic unit, as defined in section in section 1 of the Basic Provisions, may be divided into optional units if, for each optional unit, you meet all the conditions of this section. Notwithstanding the provisions of this section on unit division, no indemnity will be paid for any loss of production on any unit if the insured produced a crop sufficient to fulfill the processor contracts forming the basis for the guarantee, and any indemnity will be limited to the amount necessary to compensate for loss in yield at the price elected between production to count and the contract requirements.

(b) Basic units may not be divided into optional units on any basis other than as described in this section.

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

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

(e) 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, such as Spanish grants, as the equivalent of their sections for unit purposes. In areas that have not been surveyed using sections are equivalent systems, 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 of the Basic Provisions:

(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. The percentage of the maximum price election you choose for one type will be applicable to all other types insured under this policy. 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 required to be accepted by the processor under a processor contract in effect on or before:

(1) The earlier of August 20 or the date of damage to the insured crop in all counties with an acreage reporting date of July 15; or

(2) The earlier of the acreage reporting date or the date of damage in all other counties. (Exclude indemnities that occur in stage one and replant payments.)

(c) The price election used to determine the amount of an indemnity is progressive by stage and increases, at specified intervals, to the price used for final stage losses. Stages will be determined on an acre basis. The stages and applicable price elections 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 establish the amount of any indemnity 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 establish the amount of any indemnity 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 establish the amount of any indemnity owed will be 100 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.

(e) The appraised production from bypassed acreage that could have been accepted by the processor will be included when determining your approved yield.

(f) Acreage that is bypassed because it was damaged by an insurable cause of loss to the extent that the processor cannot use the product will be considered to have a zero yield when determining your approved yield.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, 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 of the Basic Provisions, 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 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date in all counties, unless otherwise specified in the Special Provisions.

7. Annual Premium

In lieu of the premium amount determinations contained in section 7 of the Basic Provisions, the annual premium amount per acre is determined by multiplying the production guarantee per acre by the price election for the third (final) stage; 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 of the Basic Provisions, 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 with an acreage reporting date of July 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 on acreage on which tomatoes were 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 control of the acreage on which the tomatoes are grown, you are at risk of loss, and the processor contract provides for delivery of processing tomatoes under specified conditions and at a stipulated price.

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

(1) The processor must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the processor must execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a contract under this policy; and

(3) Our inspection provides that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

9. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure any acreage that does not meet the rotation requirements, if applicable, contained in the Special Provisions.

10. Insurance Period

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases at the earlier of the date:

(a) You harvest sufficient production to fulfill your processor contract if the processor contract stipulates a specific amount of production to be delivered;

(b) The tomatoes should have been harvested but was not harvested;

(c) The tomatoes were abandoned;

(d) Harvest was completed;

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

(f) 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 of the Basic Provisions:

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

(1) Adverse weather conditions, including:

(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 an unexpected number of acres over a large producing area to be ready for harvest at the same time, affecting the timely harvest of a large number of such acres or the processing of such production being beyond the capacity of the processor, either of which causes the acreage to be bypassed;

(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 the irrigation water supply, if due to a cause of loss contained in sections

11(a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we will not insure against any loss of production due to:

(1) Acreage being bypassed, if the acreage is bypassed because:

(i) The breakdown or non-operation of equipment or facilities; or

(ii) The availability of a crop insurance payment. We may deny any indemnity immediately in such circumstance or, if an indemnity has been paid, require you to repay it to us with interest at any time acreage was bypassed due to the availability of a crop insurance payment;

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

(3) Your failure to follow the requirements contained in the processor contract.

12. Replanting Payment

(a) In accordance with section 13 of the Basic Provisions, 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 three tons, multiplied by your third stage (final) price election, multiplied by your share.

13. Duties in the Event of Damage or Loss

In addition to the notice required by section 14 of the Basic Provisions, 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 unharvested production remains;

(b) Within 3 days after the date harvest should have started on any acreage that will not be harvested. You must also provide acceptable documentation of the reason the acreage was bypassed. Failure to provide such documentation will result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested and you wish to destroy the crop, 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. The samples 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 the 15 day period or during harvest, so that we may inspect the damaged production. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You are not required to delay harvest.

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 of section 14(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results of section 14(b)(2) if there are more than one type;

(4) Multiplying the total production to counted (see section 14(c)), for each type if applicable, by its respective price election;

(5) Totaling the results of section 14(b)(4) if there are more than one type;

(6) Subtracting the result of section 14(b)(4) from the result of section 14(b)(2) if there is only one type or subtracting the result of section 14(b)(5) from the result of section 14(b)(3) if there are more than one type; and

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

For example:

You have a 100 percent share in 50 acres of type A processing tomatoes in the unit, with a guarantee of 18.8 tons per acre and a price election of $50.00 per ton. You are only able to harvest 10.0 tons. Your indemnity would be calculated as follows:

(1) 50.0 acres × 18.8 tons = 940.0 tons guarantee;

(2) 940.0 tons × $50.00 price election = $47,000.00 value guarantee;

(4) 10.0 tons × $50.00 price election = $500.00 value of production to count;

(6) $47,000.00 − $500.00 = $46,500.00 loss; and

(7) $46,500 × 100 percent = $46,500.00 indemnity payment.

You also have a 100 percent share in 50 acres of type B processing tomatoes in the same unit, with a guarantee of 15.0 tons per acre and a price election of $35.00 per ton. You are only able to harvest 5.0 tons. Your total indemnity for both types A and B would be calculated as follows:

(1) 50.0 acres × 18.8 tons = 940.0 ton guarantee for type A and 50.0 acres × 15.0 tons = 750.0 ton guarantee for type B;

(2) 940.0 ton guarantee × $50.00 price election = $47,000.00 value of guarantee for type A and 750.0 ton guarantee × $35.00 = $26,500.00 value of guarantee for type B;

(3) $47,000.00 + $26,500.00=$72,500.00 total value of guarantee;

(4) 10.0 tons × $50.00 price election=$500.00 value of production to count for type A and 5.0 tons × $35.00 price election=$175.00 value of production to count for type B;

(5) $500.00 + $175.00=$675.00 total value of production to count;

(6) $72,500.00 − $675.00=$71,575.00 loss; and

(7) $71,575 loss × 100 percent=$71,575.00 indemnity payment.

(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; or

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

(ii) Production lost due to uninsured causes;

(iii) Production on acreage that is bypassed unless the acreage was bypassed due to an insured cause of loss which resulted in production which would not be acceptable under the terms of the processor contract;

(iv) 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 lesser of the guaranteed tons, or the tons remaining unfulfilled under the processor contract.

15. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

16. 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 16(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, D.C., on October 10, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–27652 Filed 10–17–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 213a and 299

[INS No. 1807–96]

RIN 1115–AE58

Affidavits of Support on Behalf of Immigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by establishing that an individual (the sponsor) who files an affidavit of support under section 213A of the Immigration and Nationality Act (the Act) on behalf of an intending immigrant incurs an obligation that may be enforced by a civil action. This rule also specifies the procedures that Federal, State, or local agencies or private entities must follow to seek reimbursement from the sponsor for provision of means-tested public benefits, and provides procedures of imposing the civil penalty provided for under section 213A of the Act, if the sponsor fails to give notice of any change of address. This rule is necessary to ensure that sponsors of aliens meet their obligations under section 213A of the Act.

DATES: *Effective Date:* This interim rule is effective on December 19, 1997.

Comment Date: Written comments must be submitted on or before February 17, 1998.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1807–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Miriam J. Hetfield, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536; telephone (202) 514–5014; or Lisa S. Roney, Office of Policy and Planning, 425 I Street NW., Room 6052, Washington, DC 20536; telephone (202) 514–3242.

SUPPLEMENTARY INFORMATION: On September 30, 1996, the President approved enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208. Section 531(a) of IIRIRA amends section 212(a)(4) of the Act to provide that an alien is inadmissible as an alien likely to become a public charge if the alien is seeking an immigrant visa, admission as an immigrant, or adjustment of status as: (a) An immediate relative, (b) a family-based immigrant, or (c) an employment-based immigrant, of a relative if the alien is the petitioning employer or owns a significant ownership interest in the entity that is the petitioning employer. To overcome this ground of inadmissibility, the alien must be the beneficiary of an affidavit of support filed under the new section 213A of the Act. Section 213A of the Act specifies the conditions that must be met in order for an affidavit of support to be sufficient to overcome the public charge inadmissibility ground.

Under 531(b) of IIRIRA, the new affidavit of support will be required for all applications for immigrant visas or for adjustment of status filed on or after December 19, 1997. Section 531(b) of IIRIRA excuses an applicant for admission from the affidavit of support requirement if the applicant had ''an official interview with an *immigration* officer'' before December 19, 1997. Because of the massive administrative burden that would result from requiring aliens who obtain immigrant visas before December 19, 1997, but do not apply for admission until on or after December 19, 1997, this interim rule designates Consular Officers as Immigration Officers, solely for purposes of section 531 of IIRIRA and this new part 213a. Thus, an alien who is issued an immigrant visa before December 19, 1997 will not be required to present an affidavit of support that complies with the requirements of section 213A of the Act, even if the alien does not apply for admission until December 19, 1997, or later.

Under section 213A of the Act, Form I–864, Affidavit of Support Under Section 213A of the Act, is a legally enforceable contract between the sponsor and the Federal Government, for the benefit of the sponsored immigrant and of any Federal, State, or local government agency or private entity that provides the sponsored immigrant with any means-tested public benefit. The sponsor must sign the Form I–864 before a notary public or a United States Immigration Officer or Consular Officer. By executing Form I–864, the sponsor agrees to provide the financial support necessary to maintain the sponsored immigrant at an income that is at least 125 percent of the Federal poverty line, unless the obligation has terminated. The sponsor also agrees to reimburse any agencies which provide means-tested public benefits to a sponsored immigrant. The sponsor must, under civil penalty, notify the Service and the State(s) in which the sponsored immigrant(s) reside of any change in the sponsor's address. Should the sponsored immigrant obtain any means-tested public benefit, with certain exceptions, the agency that provides the means-tested public benefit may, after first making a written request for reimbursement, sue the sponsor in Federal or State court to recover the unreimbursed costs of the means-tested public benefit, including costs of collection and legal fees. This interim rule implements section 213A of the Act by adding a new 8 CFR part 213a. Intending immigrants who require an affidavit of support under section 213A of the Act

Under section 212(a)(4)(C) of the Act, all family-sponsored immigrants, including immediate relatives, are inadmissible unless the petitioner has executed an affidavit of support under section 213A of the Act. Aliens who immigrate under the classification for battered spouses and children and widow/widowers (see sections 204(a)(1)(A) (ii), (iii), or (iv) and 204(a)(1)(B) (ii) or (iii) of the Act) do not require a Form I–864 to overcome the public charge ground of inadmissibility.

The Act also provides that certain employment-based immigrants under section 203(b) of the Act are