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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

General Crop Insurance Regulations, Fresh Market Tomato Minimum Value Option, and Fresh Market Tomato (Dollar Plan) Endorsement; and Common Crop Insurance Regulations, Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of fresh market (dollar plan) tomatoes. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current Fresh Market Tomato (Dollar Plan) Endorsement and the Fresh Market Tomato Minimum Value Option with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Fresh Market Minimum Value Option and the Fresh Market Tomato (Dollar Plan) Endorsement to the 1997 and prior crop years.

EFFECTIVE DATE: March 28, 1997.

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

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

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

Paperwork Reduction Act of 1995

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

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) 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 large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements.

The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order No. 12372

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

Executive Order No. 12988

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, December 30, 1996, FCIC published a proposed rule in the **Federal Register** at 61 FR 68682-68688 to add to the Common Crop Insurance Regulations (7 CFR part 457) a new section, 7 CFR 457.139, Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding

crop years. These provisions will replace and supersede the current provisions for insuring fresh market tomatoes (dollar plan) found at 7 CFR 401.137 (Fresh Market Tomato Minimum Value Option) and 7 CFR 401.139 (Fresh Market Tomato (Dollar Plan) Endorsement). This rule also amends 401.137 and 401.139 to limit their effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve 401.137 and 401.139.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data and opinions. A total of 14 comments were received from the crop insurance industry and FCIC Regional Service Offices (RSO). The comments received, and FCIC's responses, are as follows:

Comment: The crop insurance industry questioned removing the term "marketable" from the definition of harvest. The commenter questioned if it was intended that the final stage of insurance on a unit would begin at such time that unmarketable tomatoes were harvested.

Response: The current regulation created confusion since it suggested that if the tomatoes were not marketable, they would not be considered as harvested for the purposes of determining the insurance period, calculation of any claims, etc. The picking of tomatoes on the unit, whether marketable or not, is considered harvested. The final stage of insurance on the unit begins when any tomatoes are harvested, whether marketable or not. Requirements of good farming practices will prevent the harvest of tomatoes before they are ready. Section 14 contains provisions to determine the amount of production to be counted for harvested and unharvested, including tomatoes that are not marketable. Therefore, no changes were made to the definition.

Comment: One comment from the crop insurance industry recommended clarifying the language in section 2(a) by stating "Basic units, as defined in section 1 (Definitions) of the Basic Provisions, will be established by planting period."

Response: FCIC agrees with the comment and has amended section 2(a) to indicate a basic unit will be established by planting period. However, the definition of "unit" is contained in the Basic Provision and no change will be made in that portion of the provision.

Comment: One comment received from the crop insurance industry stated that the references to land measurements such as leagues and

labors was unnecessary. These types of land measurement were not applicable in Florida and crop insurance for fresh market tomatoes (dollar plan) is only available in Florida.

Response: Fresh market tomato (dollar plan) insurance may be expanded into other areas where such measurements are applicable. Therefore, no change will be made.

Comment: One comment from the crop insurance industry stated that section 3 of the crop provisions contained a heading in the stage chart that was misleading. The chart heading suggested that the percentages represented coverage levels that the insured would select rather than the amount of insurance that is selected by the insured. The commenter suggested that the chart heading should state, "Percent in effect of your amount of insurance."

Response: FCIC believes the heading of the stage chart is clearly stated. Therefore, no change has been made.

Comment: One comment received from an FCIC RSO recommended adding a provision to section 6 that requires the insured to report all of the dates the insured acreage was planted within each planting period.

Response: FCIC concurs with the comment and has added a provision accordingly.

Comment: The crop insurance industry questioned if the provision in section 9(a) that states we will insure newly cleared land or former pasture land planted to fresh market tomatoes was new to the fresh market tomato (dollar plan) crop insurance policy. The commenter asked if a waiting period was applicable before insurance attached to land which had been newly cleared and, if the provision is new to the crop insurance policy, questioned why it was added.

Response: The provision for insurance on newly cleared land is not new to the fresh market tomato (dollar plan) crop insurance policy. However, FCIC has clarified the provision so that former pasture land planted to the insured crop is also insurable. It is a recommended practice for the fresh market vegetable crops to be planted on newly cleared and former pasture land so no waiting period is required prior to planting the insured crop.

Comment: One comment received from the crop insurance industry questioned if FCIC intended to liberalize the current fresh market tomato (dollar plan) crop provisions by stating in section 9(b)(3) that we will not insure any acreage which, in the preceding planting period, was planted to tomatoes, peppers, eggplants, or tobacco

unless the soil has been fumigated or properly treated.

Response: FCIC did not intend to liberalize the requirements. Tomatoes that have been replanted do not have to be fumigated or treated because nematodes will not have developed yet. However, crops previously planted on the same acreage may host nematodes that will damage the insured crop. Chemicals that are used to fumigate or treat the acreage last only two to three months. As a result, any acreage previously planted to tomatoes, peppers, eggplants and tobacco must be fumigated or treated prior to planting the insured crop. Therefore, FCIC has amended the provision.

Comment: The crop insurance industry questioned if the phrase "coverage begins * * * the later of the date we accept your application, or when the tomatoes are planted in each planting period" means that an application could be accepted after the sales closing to have coverage for subsequent planting periods in the crop year. The industry questioned the purpose of having one sales closing date for the crop.

Response: Section 10 of these provisions does not alter the requirement contained in the Basic Provisions, which states the application must be submitted by the sales closing date. The sales closing date corresponds with the earliest planting period so only one application is filed for the crop year and covers all subsequent planting periods. Since there are multiple planting periods in each crop year, the date insurance attaches in each planting period must be established. Provisions in section 10 simply clarify when insurance will attach. Therefore, no change will be made.

Comment: The crop insurance industry recommended the cause of loss due to tropical depression be changed to "excessive winds sufficient to damage the crop." The change would provide coverage for damage due to winds associated with stalled fronts, severe thunderstorms, storms or gales. The commenter indicated a stalled high and low pressure system with winds in excess of 60 mph caused damage in November, 1996, that was not covered by the current crop insurance policy.

Response: The current endorsement provides coverage against wind or excess precipitation occurring in conjunction with a cyclone. FCIC agrees that damage to the insured crop may occur from systems other than a cyclone. FCIC clarified the provision to state that a tropical depression which occurs within the insurance period is an insured cause of loss. Tropical

depression is defined as a system identified by the U.S. Weather Service, and includes tropical depressions, hurricanes, tropical storms and gales. Therefore, no change will be made.

Comment: One comment from the crop insurance industry recommended removing disease and insect infestation as uninsured causes of loss. The commenter suggested that disease and insects should be an insured cause of loss if a producer exhausts all reasonable means to protect the crop. This would provide coverage for new diseases and insects that cannot presently be controlled by the chemicals that are available.

Response: FCIC agrees that coverage should be available for damage due to disease and insect infestation for which no effective control measure exists. Therefore, FCIC has amended the provisions contained in section 11(b)(1) accordingly.

Comment: One comment from the crop insurance industry recommended raising the maximum amount of the replanting payment per acre to approximately \$265.00. The \$175.00 maximum amount provided in the current crop policy is not sufficient to cover actual costs.

Response: FCIC agrees there may be instances when replanting costs exceed \$175.00 per acre. Therefore, provisions contained in section 12(b) have been revised to state that the maximum amount of the replanting payment per acre will be the lesser of your actual cost of replanting, or the result obtained by multiplying the maximum amount of the replanting payment contained in the applicable Special Provisions by your insured share.

Comment: One comment from the crop insurance industry recommended that the allowable cost contained in section 14 be raised by \$.50.

Response: The amount of allowable costs are provided in the Special Provisions to allow the flexibility to adjust the amount at appropriate levels. Therefore, no change will be made.

Comment: The crop insurance industry suggested combining the provisions contained in section 15(e) with the provisions in section 15(a).

Response: Approval of written agreements requested after the sales closing date is the exception, not the rule. Therefore, these provisions should be kept separate and no changes have been made.

Comment: The crop insurance industry recommended that the requirement for a written agreement to be renewed each year be removed. Terms of the agreement should be stated in the agreement to fit the particular

situation for the policy, or if no substantive changes occur from one year to the next, allow the written agreement to be continuous.

Response: Written agreements are intended to change policy terms or permit insurance in unusual situations where such changes will not increase risk. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize exceptions to assure that the insured is well aware of the specific terms of the policy. Therefore, no changes will be made.

In addition to the changes described above, FCIC has made the following changes to the Fresh Market Pepper Crop Provisions:

1. Section 1—Definition of "potential production" was amended to state the classification size for cherry or plum tomatoes will be contained in the written agreement. Cherry and plum tomatoes are currently insured by written agreement.

2. Section 3(c)—Delete this provision and renumber the remaining provisions. This change is to provide consistency with other fresh market vegetable crops.

3. Section 16(b)(1)(i)—Delete \$2.00 as the specified lowest dollar amount obtained when computing the minimum value per carton of tomatoes sold. The minimum value option price will now be contained in the Special Provisions to allow FCIC to ensure that the price is correct for the county.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the fresh market tomato (dollar plan) insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The earliest contract change date that can be met for the 1998 crop year is April 30, 1997. 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 these changes. Therefore, public interest requires the agency to make the rule effective upon publication.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Fresh market (dollar plan) tomato crop insurance regulations, Fresh market (dollar plan) tomatoes.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401 and 457 effective for the 1998 and succeeding crop years to read 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. Section 401.137 introductory text is revised to read as follows:

§ 401.137 Fresh market tomato minimum value option.

The provisions of the Fresh Market Tomato Minimum Value Option for the 1991 through the 1997 crop years are as follows:

* * * * *

3. Section 401.139 introductory text is revised to read as follows:

§ 401.139 Fresh market tomato (dollar plan) endorsement.

The provisions of the Fresh Market Tomato Crop Insurance Endorsement for the 1991 through the 1997 crop years are as follows:

* * * * *

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

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

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

5. Section 457.139 is added to read as follows:

§ 457.139 Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions.

The Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

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Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Fresh market tomato (dollar plan) 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 when row widths do not exceed six feet, or if row widths exceed six feet, the land area on which at least 7,260 linear feet of rows are planted.

Carton—Twenty-five (25) pounds of the insured crop.

Crop year—In lieu of the definition of "crop year" contained in section 1 (Definitions) of the Basic Provisions (§ 457.8), crop year is a period of time that begins on the first day of the earliest planting period for fall planted tomatoes and continues through the last day of the insurance period for spring planted tomatoes. The crop year is designated by the calendar year in which spring planted tomatoes are harvested.

Days—Calendar days.

Direct marketing—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

Excess rain—An amount of precipitation sufficient to directly damage the crop.

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

Freeze—The formation of ice in the cells of the plant or its fruit, caused by low air temperatures.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity 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 picking of tomatoes on the unit.

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 for the insured crop to make normal progress toward maturity.

Mature green tomato—A tomato that:

- (1) Has a glossy waxy skin that cannot be torn by scraping;
- (2) Has well-formed, jelly-like substance in the locules;
- (3) Has seeds that are sufficiently hard so as to be pushed aside and not cut by a sharp knife in slicing; and
- (4) Shows no red color.

Plant stand—The number of live plants per acre prior to the occurrence of an insurable cause of loss.

Planted acreage—Land in which, for each planting period, transplants or seed have been placed manually or by a machine appropriate for the insured crop and planting method, at the correct depth, into soil that has been properly prepared for the planting method and production practice. For each planting period, tomatoes must initially be planted in rows. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Planting period—The period of time designated in the Actuarial Table in which the tomatoes must be planted to be considered fall, winter or spring-planted tomatoes.

Potential production—The number of cartons of mature green or ripe tomatoes that the tomato plants will or would have produced per acre, assuming normal growing conditions and practices, by the end of the insurance period:

- (a) With a classification size of 6×7 (2⁸/₃₂ inch minimum diameter) or larger for all types except cherry or plum tomatoes; or
- (b) With a classification size as allowed by written agreement for cherry or plum tomatoes.

Practical to replant—In lieu of the definition of "Practical to replant" contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, marketing windows, and time to crop maturity, that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period (inability to obtain plants or seed will not be considered when determining if it is practical to replant).

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

Ripe tomato—A tomato that has a definite break in color from green to tannish-yellow, pink or red.

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

Tropical depression—A system identified by the U.S. Weather Service as a tropical depression, and for the period of time so designated, including tropical storms, gales, and hurricanes.

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

2. Unit Division

(a) In addition to the requirements contained in section 1 (Definitions) of the Basic Provisions (§ 457.8) (basic unit), a basic unit will also be established by planting period.

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

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

for the purpose of electing optional units will be refunded to you for the units combined.

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

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

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year in which the insured crop was planted;

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

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

3. Amounts of Insurance and Production Stages

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one coverage level (and the corresponding amount of insurance designated in the Actuarial Table for the applicable planting period and practice) for all the tomatoes in the county insured under this policy.

(b) The amount of insurance you choose for each planting period and practice must have the same percentage relationship to the maximum price offered by us for each planting period and practice. For example, if you choose 100 percent of the maximum amount of insurance for a specific planting period and practice, you must also choose 100 percent of the maximum amount of insurance for all other planting periods and practices.

(c) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), do not apply to fresh market dollar plan tomatoes.

(d) The amounts of insurance per acre are progressive by stages as follows:

Stage	Percent of amount of insurance per acre that you selected	Length of time if direct seeded	Length of time if transplanted
1	50	From planting through the 59th day after planting	From planting through the 29th day after planting.
2	75	From the 60th day after planting until the beginning of stage 3.	From the 30th day after planting until the beginning of stage 3.
3	90	From the 90th day after planting until the beginning of the final stage.	From the 60th day after planting until the beginning of the final stage.
Final	100	Begins the earlier of 105 days after planting, or the beginning of harvest.	Begins the earlier of 75 days after planting, or the beginning of harvest.

(e) Any acreage of tomatoes damaged in the first, second, or third stage to the extent that the majority of producers in the area would not normally further care for it, will be deemed to have been destroyed. The indemnity payable for such acreage will be based on the stage the plants had achieved when the damage occurred.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is April 30 preceding the cancellation date.

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 July 31.

6. Report of Acreage

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report on or before the acreage reporting date contained in the Special Provisions for each planting period:

- (a) All the acreage of tomatoes in the county insured under this policy in which you have a share;
- (b) The dates the acreage was planted within each planting period; and
- (c) The row width.

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 for each cultural practice (e.g., fall direct-seeded irrigated) is determined by multiplying the final stage amount of insurance per acre by the premium rate for the cultural practice as established in the Actuarial Table, by the insured acreage, by your share at the time coverage begins, and by any applicable premium adjustment factors contained in the Actuarial Table.

8. Insured Crop

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

- (a) In which you have a share;
- (b) That are:
 - (1) Planted to be harvested and sold as fresh market tomatoes;

- (2) Planted within the planting periods designated in the Actuarial Table;
- (3) Grown under an irrigated practice;
- (4) Grown on acreage covered by plastic mulch except where the Special Provisions allows otherwise;
- (5) Grown by a person who in at least one of the three previous crop years:
 - (i) Grew tomatoes for commercial sale; or
 - (ii) Participated in managing a fresh market tomato farming operation;
- (c) That are not:
 - (1) Interplanted with another crop;
 - (2) Planted into an established grass or legume;
 - (3) Grown for direct marketing; or
 - (4) Plum or cherry type tomatoes, unless allowed by written agreement.

9. Insurable Acreage

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

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

- (1) You must replant any acreage of tomatoes damaged during the planting period in which initial planting took place whenever less than 50 percent of the plant stand remains: and
 - (i) It is practical to replant;
 - (ii) If, at the time the crop was damaged, the final day of the planting period has not passed; and
 - (iii) The damage occurs within 30 days of transplanting or 60 days of direct seeding.
- (2) Whenever tomatoes initially are planted during the fall or winter planting periods and the conditions specified in sections 9(b)(1) (ii) and (iii) are not satisfied, you may elect:
 - (i) To replant such acreage and collect any replant payment due as specified in section 12. The initial planting period coverage will continue for such replanted acreage.
 - (ii) Not to replant such acreage and receive an indemnity based on the stage of growth the plants had attained at the time of damage. However, such an election will result in the acreage being uninsurable in the subsequent planting period.
 - (3) We will not insure any acreage on which tomatoes (except for replanted tomatoes in accordance with sections 9(b) (1)

and (2)), peppers, eggplants, or tobacco have been grown and the soil was not fumigated or otherwise properly treated before planting tomatoes.

10. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), coverage begins on each unit or part of a unit the later of the date we accept your application, or when the tomatoes are planted in each planting period. Coverage ends at the earliest of:

- (a) Total destruction of the tomatoes on the unit;
- (b) Abandonment of the tomatoes on the unit;
- (c) The date harvest should have started on the unit on any acreage which will not be harvested;
- (d) Final adjustment of a loss on the unit;
- (e) Final harvest; or
- (f) The calendar date for the end of the insurance period as follows:
 - (1) 140 days after the date of direct seeding or replanting with seed; and
 - (2) 125 days after the date of transplanting or replanting with transplants.

11. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

- (1) Excess rain;
- (2) Fire;
- (3) Freeze;
- (4) Hail;
- (5) Tornado;
- (6) Tropical depression; or
- (7) Failure of the irrigation water supply, if caused by an insured cause of loss that occurs during the insurance period.

(b) In addition to section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against any loss of production due to:

- (1) Disease or insect infestation, unless no effective control measure exists for such disease or insect infestation; or
- (2) Failure to market the tomatoes, unless such failure is due to actual physical damage caused by an insured cause of loss that occurs during the insurance period.

12. Replanting Payments

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions

(§ 457.8), a replanting payment is allowed if, due to an insured cause of loss, more than 50 percent of the plant stand will not produce tomatoes and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of your actual cost of replanting or the result obtained by multiplying the per acre replanting payment amount contained in the Special Provisions by your insured share.

(c) In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), that limit a replanting payment to one each crop year, only one replanting payment will be made for acreage planted during each planting period within the crop year.

13. Duties In The Event of Damage or Loss

In addition to the requirements contained in section 14 (Duties In The Event of Damage or Loss) of the Basic Provisions (§ 457.8), if you intend to claim an indemnity on any unit you must also give us notice not later than 72 hours after the earliest of:

(a) The time you discontinue harvest of any acreage on the unit;

(b) The date harvest normally would start if any acreage on the unit will not be harvested; or

(c) The calendar date for the end of the insurance period.

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

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

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

(1) Multiplying the insured acreage in each stage by the amount of insurance per acre for the final stage;

(2) Multiplying each result in section 14(b)(1) by the percentage for the applicable stage (see section 3(d));

(3) Total the results of section 14(b)(2);

(4) Subtracting either of the following values from the result of section 14(b)(3):

(i) For other than catastrophic risk protection coverage, the total value of production to be counted (see section 14(c)); or

(ii) For catastrophic risk protection coverage, the result of multiplying the total value of production to be counted (see section 14(c)) by:

(A) Sixty percent for the 1998 crop year; or

(B) Fifty-five percent for 1999 and subsequent crop years; and

(3) Multiplying the result of section 14(b)(4) by your share.

(c) The total value of production to count from all insurable acreage on the unit will include:

(1) Not less than the amount of insurance per acre for the stage for any acreage:

(i) That is abandoned;

(ii) Put to another use without our consent;

(iii) That is damaged solely by uninsured causes; or

(iv) For which you fail to provide acceptable production records;

(2) The value of the following appraised production will not be less than the dollar amount obtained by multiplying the number of cartons of appraised tomatoes by the minimum value per carton shown in the Special Provisions for the planting period:

(i) Potential production on any acreage that has not been harvested the second time for ground-culture tomatoes (the third time for staked tomatoes);

(ii) Unharvested mature green tomatoes (unharvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count);

(iii) Production lost due to uninsured causes; and

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) We may require you to continue to care for the crop so that a subsequent appraisal may be made or the crop harvested to determine actual production. (If we require you to continue to care for the crop and you do not do so, the original appraisal will be used); or

(B) You may elect to continue to care for the crop, in which case the amount of production to count for the acreage will be the harvested production, or our reappraisal if the crop is not harvested.

(3) The total value of all harvested production from the insurable acreage will be the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each carton of tomatoes (this result may not be less than the minimum value shown in the Special Provisions for any carton of tomatoes), and multiplying this result by the number of cartons of tomatoes harvested. Harvested production that is damaged or defective due to insurable causes and is not marketable, will not be counted as production to count.

15. Written Agreements

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

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

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

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

16. Minimum Value Option

(a) The provisions of this option are continuous and will be attached to and made a part of your insurance policy, if:

(1) You elect *either* Option I *or* Option II of the Minimum Value Option on your application, or on a form approved by us, on or before the sales closing date for the initial crop year in which you wish to insure fresh market tomatoes (dollar plan) under this option, and pay the additional premium indicated in the Actuarial Table for this optional coverage; and

(2) You have not elected coverage under the Catastrophic Risk Protection Endorsement.

(b) In lieu of the provisions contained in section 14(c)(3), the total value of harvested production will be determined as follows:

(1) If you selected Option I of the Minimum Value Option, the total value of harvested production will be as follows:

(i) For sold production, the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each carton of tomatoes (this result may not be less than the minimum value option price contained in the Special Provisions for any cartons of tomatoes), and multiplying this result by the number of carton of tomatoes sold; and

(ii) For marketable production that is not sold, the dollar amount obtained by multiplying the number of cartons of such tomatoes on the unit by the minimum value shown in the Special Provisions for the planting period (harvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production).

(2) If you selected Option II of the Minimum Value Option, the total value of harvested production will be as provided in section 16(b)(1), except that the dollar amount specified in section (16)(b)(1)(i) may not be less than zero.

(c) This option may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding the crop year for which the cancellation of this option is to be effective.

Signed in Washington, DC., on March 24, 1997.

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

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