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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB90

Common Crop Insurance Regulations; Processing Tomato Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes amendments to the Processing Tomato Crop Insurance Provisions. The intended effects of this action are to clarify that producers who have production contracts with tomato brokers are eligible for insurance, allow the Special Provisions statements to provide a replant payment amount that more adequately reflects the regional cost of tomatoes, and restrict the effect of the current Processing Tomato Crop Provisions to the 2004 and prior crop years.

DATES: This rule is effective August 26, 2004.

FOR FURTHER INFORMATION CONTACT: John McDonald, Risk Management Specialist, Research and Development, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 426 Kansas City, MO, 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be Not-Significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through February 28, 2005.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees, and compute premium amounts, or a notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

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

Executive Order 12372

This program is not subject to the provisions of Executive Order 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 12988

This 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. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part ll and 7 CFR part 400, subpart J for the informal administrative review process of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC 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.

Background

On November 14, 2003, FCIC published a notice of proposed rulemaking in the **Federal Register** at 68 FR 64570–64571 to revise 7 CFR 457.160, Processing Tomato Crop Insurance. Following publication of the

proposed rule the public was afforded 60 days to submit written comments and opinions. A total of fifteen comments were received from an insurance service organization. Twelve of the comments received were minor editorial changes and were not considered a part of the proposed rule. However, FCIC will consider the comments when the rule is re-opened. The remaining three comments received and responses are as follows:

Comment. An insurance service organization stated that the phrase "selling and buying" in the new "broker" definition should be changed to "buying and selling" to reflect the usual sequence of events and the normal use of the phrase.

Response. FCIC agrees with the insurance service organization and has revised the provisions accordingly.

Comment. An insurance service organization stated that FCIC should consider deleting the "good farming practices" definition from the processing tomato crop provisions so it would not supersede the definition in the Basic Provisions.

Response. FCIC does not agree with the insurance servicing organization that the definition for "good farming practice" should be deleted from the processing tomato crop provisions. The current definition states that good farming practices also include the cultural practices contained in the tomato processing contract. However, FCIC revised the definition to eliminate any conflict with the Basic Provisions.

Comment. An insurance service organization questioned whether it's FCIC's intent that paragraph 12(b)(1) allow a regional maximum replanting payment to be the amount shown in the Special Provisions. As written, the regional maximum amount would not be limited by the insured share unless such a limit is included in the Special Provisions statement.

Response. It is FCIC's intent to allow a regional maximum amount of replanting payment and it will be limited by the insured share. FCIC agrees with the commenter and will revise section 12(b)(1) accordingly to add insured share.

List of Subjects in 7 CFR Part 457

Crop insurance, Tomato reporting and recordkeeping requirements.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 for the 2005 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

■ 2. Amend the crop insurance provisions in § 457.160 as follows:
■ a. Revise the introductory text;
■ b. Amend section 1 of the crop provisions by adding a definition for "Broker" in alphabetical order and revising the definitions of "good farming practices" and "processor contract";
■ c. Revise section 8(c); and
■ d. Revise section 12(b).

§ 457.160 Processing tomato crop insurance provisions.

The Processing Tomato Crop Insurance Provisions for the 2005 and succeeding crop years are as follows:

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1. Definitions

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Broker. An enterprise in the business of buying and selling tomatoes possessing all the licenses and permits required by the state in which it operates, and that has a written contract with a processor to purchase processing tomatoes on behalf of the processor and to deliver such tomatoes to the processor.

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Good Farming Practices. In addition to the definition of "good farming practices" contained in section 1 of the Basic Provisions, good farming practices include the cultural practices required under the processor contract.

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Processor Contract. A written agreement between the producer and a processor, or between the producer and a broker, containing at a minimum:

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

(b) The processor's, or broker'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.

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8. Insured Crop

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

(1) The processor or broker, as applicable, must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the

processor or the broker must execute and adopt a resolution that contains the same terms as an acceptable processor contract. (Such resolution will be considered a processor contract under this policy); and

(3) As applicable, our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

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12. Replanting Payment

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

(1) The amount shown on the Special Provisions multiplied by your share; or

(2) If an amount is not contained in the Special Provisions, the lesser of 20 percent of the production guarantee or three tons, multiplied by your third stage (final) price election, multiplied by your share; and

(3) In no event will the replanting payment per acre exceed your actual cost of replanting.

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Signed in Washington, DC, on July 22, 2004.

Ross J. Davidson, Jr.,
Manager, Federal Crop Insurance Corporation.
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BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

RIN 0560–AG53

Guaranteed Loans—Rescheduling Terms and Loan Subordinations

AGENCY: Farm Service Agency, USDA.
ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is amending its regulations governing servicing of loans made under the guaranteed farm loan program. FSA is making these changes as a result of input from program participants and problems in the administration of current provisions. This rule will allow loans to be rescheduled with balloon payments under certain circumstances and allow the approval of certain low-risk subordinations at the field office level instead of the National Office. It will also allow lenders to make debt installment payments in accordance with lien priorities, payment due dates, and clarify that packager and consultant