

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

[Docket No. FCIC-11-0006]

RIN 0563-AC32

#### Common Crop Insurance Regulations; Fresh Market Tomato (Dollar Plan) Crop Provisions

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

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Fresh Market Tomato (Dollar Plan) Crop Provisions. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The proposed changes will be effective for the 2013 and succeeding crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business December 19, 2011 and will be considered when the rule is to be made final.

**ADDRESSES:** FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC-11-0006, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205.

All comments received, including those received by mail, will be posted without change to <http://www.regulations.gov>, including any personal information provided, and can be accessed by the

public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823-4694 or by email at [rmaweb.content@rma.usda.gov](mailto:rmaweb.content@rma.usda.gov).

*Privacy Act:* Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/#/privacyNotice>.

**FOR FURTHER INFORMATION CONTACT:** Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141-6205, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be non-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 provisions of 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.

##### E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen

access to Government information and services, and for other purposes.

##### 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 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.

##### Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

##### 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, and all producers are required to submit a notice of loss and production information to determine the amount of 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 that small entities are given the same opportunities as large entities 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 requires 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 proposed 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 or to require the insurance provider to take specific action under the terms of the crop insurance policy, 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 economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### **Background**

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising § 457.139 Fresh Market Tomato (Dollar Plan) Crop Provisions, to be effective for the 2013 and succeeding crop years. Several requests have been made for changes to improve the coverage offered, address program integrity issues, simplify program

administration, and improve clarity of the policy provisions.

The proposed changes are as follows:

1. FCIC proposes to remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of a conflict. This same information is contained in the Common Crop Insurance Policy Basic Provisions (Basic Provisions). Therefore, it is duplicative and no longer necessary in the Crop Provisions. Also FCIC proposes to remove all references to section titles of the Basic Provisions. This information is currently contained in parenthesis following references to section numbers of the Basic Provisions throughout the Crop Provisions. The section numbers should provide sufficient guidance to locate the applicable provision.

2. *Section 1*—FCIC proposes to add a new definition of “allowable cost” to specify the dollar amount per carton for harvesting, packing and handling costs (as shown in the Special Provisions) for the purpose of computing the total value of production to be counted. The allowable cost per carton contained in the Special Provisions will be subtracted from the price received for each carton of sold harvested production to obtain the value of production to count.

FCIC proposes to add a new definition of “amount of insurance per acre” because the term is currently used in the Crop Provisions but was not previously defined. The definition specifies the dollar amount of coverage per acre is obtained by multiplying the reference maximum dollar amount shown in the actuarial documents by the coverage level percentage you elect. In the settlement of claim section, the amount of insurance per acre minus the total dollar value of production to count per acre determines if an indemnity is payable to the insured.

FCIC proposes to add a new definition of “fresh market tomatoes” because the term is currently used in the Crop Provisions but was not previously defined. The definition specifies they are field grown mature green or ripe fresh market tomatoes that meet the Agricultural Marketing Service United States Standards for Grades of Fresh Tomatoes; and the applicable Florida Federal Marketing Order and Florida Tomato Committee Regulations, or their successors. The above Florida Federal Marketing Order and Florida Tomato Committee rules and regulations that currently apply to these field grown fresh market tomato types and varieties do not include “greenhouse”, “hydroponic”, “heirloom” and other varieties of tomatoes that are not field

grown and do not comply with these rules and regulations.

FCIC proposes to add a new definition of “minimum value” because the minimum value amount shown in the Special Provisions and used in the Settlement of Claim provisions was not previously defined. Minimum value is used to value appraised and unsold harvested production to count. In calculating the total value of all sold harvested production to count, the price received for each carton of fresh market tomatoes minus the allowable costs per carton cannot be less than the minimum value, unless the Minimum Value Option is elected.

FCIC proposes to add a new definition of “penhookers” because these are individuals who purchase the right to salvage fresh market tomatoes remaining in the field after the insureds complete their harvests on the unit. Any salvage value paid to the insured will be added to the final dollar value of the production to count.

FCIC proposes to add a new definition of “price received” to clarify that it is the gross dollar amount per carton received by the producer before deductions for allowable costs.

FCIC proposes to add a new definition of “registered handler” to identify those individuals who are specifically certified by the Florida Tomato Committee or successor entity to inspect and enforce all the handling regulations for shipment of fresh market tomatoes.

FCIC proposes to revise and clarify the definition of “acre” by removing the phrase “43,560 square feet of land” and replacing it with the phrase “43,560 square feet of planted acreage.” This change helps clarify that substantial square footage being used for other purposes such as roadways or irrigation canals should not be included in the calculation of planted acreage.

FCIC proposes to revise the definition of “direct marketing” to include “registered handler” in the list of examples of an intermediary.

FCIC proposes to revise the definition of “harvest” by replacing the phrase “on the unit” with the phrase “from the plants” and clarifying that any fresh market tomatoes salvaged by penhookers is not considered a harvest since the grower does not incur any picking or harvesting costs. However, any salvage value paid to the producer by the penhooker will be included in the total dollar value of production to count.

FCIC proposes to revise and clarify the definition of “plant stand” by replacing the word “insurable” with the word “insured”.

FCIC proposes to revise and clarify the definition of “potential production” by removing paragraphs (a) and (b) in the current policy definition. The current crop provisions use the terminology “classification size” and “6 x 7 (2–8/32 inch minimum diameter) or larger” which excludes all other size classifications under the Agricultural Marketing Service United States Standards for Grades of Fresh Tomatoes, the Florida Federal Marketing Order, and the Florida Tomato Committee Regulations. FCIC also proposes to replace the phrase “mature green or ripe tomatoes” with the phrase “field grown mature green or ripe fresh market tomatoes” to clarify this is the primary growing practice recognized and governed by the Florida Tomato Committee Regulations, or successor entity. FCIC proposes to revise section 8 to limit insurability to field grown tomatoes.

FCIC proposes to remove the definition of “planted acreage” because this definition is contained in the Basic Provisions. Therefore, this definition is duplicative and no longer necessary in the Crop Provisions.

FCIC proposes to remove the definition of “practical to replant” because this definition is contained in the Basic Provisions. Therefore, this definition is duplicative and no longer necessary in the Crop Provisions.

3. *Section 3*—FCIC proposes to revise the table under section (3)(d) by removing the column “Length of time if Direct Seeded” because the use of transplanted tomatoes is now the primary planting method being used in the Florida Tomato Committee regulated area. FCIC historical data indicates only one “direct seeded” policy was insured in the regulated area in the last decade. However, a new provision is being proposed in section 8(c)(4) for direct seeded tomatoes to be insured by written agreement only. FCIC proposes to remove all other references to direct seeded from the policy.

FCIC proposes to revise section 3(e) to clarify any acreage of fresh market 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 the crop, the indemnity payable for such acreage will be based on the stage guarantee the plants achieved when the insured cause of loss occurred, even if the producer continues to care for the damaged tomatoes. This is consistent with the provisions of other similar crops policies. If the producer continues to care for the damaged tomato acreage, any appraised or harvested production

will be included in the dollar value of production to count.

4. *Section 8*—FCIC proposes to revise the introductory paragraph to clarify only field grown mature green or ripe fresh market tomato types and varieties will be insurable as specified in the Special Provisions for which a premium rate is provided in the actuarial documents, and allowed by the Florida Tomato Committee.

Also, FCIC proposes to remove the current language in section 8(c)(4) because cherry, grape and plum field grown fresh market tomatoes will now be insurable if allowed by Special Provisions and premium rates are listed in the actuarial documents.

FCIC also proposes adding new language in section 8(c)(4) allowing direct seeded field grown fresh market tomatoes to be insured by written agreement.

5. *Section 9*—FCIC proposes to revise section 9(b)(1)(iii) by removing the direct seeded reference “or 60 days of direct seeding” because such tomatoes are only insurable by written agreement, which will contain the terms and conditions of insurance.

FCIC also proposes to add “strawberries” in section 9(b)(3) to the list of crops that require soil fumigation before planting fresh market tomatoes. Strawberries are susceptible to nematode damage and pose the same risk of nematodes to new fresh market tomato planted acreage as these other crops.

6. *Section 10*—FCIC proposes to clarify section 10(e) by stating “Final harvest on the unit” since this policy allows additional basic units by planting period and some counties have multiple planting periods.

FCIC also proposes to revise section 10(f) to remove the reference to direct seeding since the practice is proposed to be only insurable by written agreement.

7. *Section 11*—FCIC proposes to revise and clarify section 11(b)(2) by revising the current language to clarify that insurance will not be provided against any loss of production due to the failure to harvest in a timely manner or failure to market the tomatoes, unless such failure is due to an insured cause of loss that occurs during the insurance period. For example, the policy does not cover the inability to market the insured crop due to quarantine, boycott, or refusal of any person to accept production.

8. *Section 14(b)(4)(ii)*—FCIC proposes to remove the provisions pertaining to the 1998 and 1999 crop years because they are obsolete. This change allows the catastrophic risk percentage of coverage to be changed if necessary.

FCIC proposes to add an example of a claim for indemnity after section 14(b)(5).

FCIC proposes to revise the language in section 14(c)(2)(i) to explain appraised potential production will be determined for claim purposes on any fresh market tomato acreage that has not been harvested the required number of times as specified in the Special Provisions. FCIC also proposes removing the reference to “ground-culture” tomato planting since this planting practice is no longer used.

FCIC proposes to revise section 14(c)(3) by adding a new section 14(c)(4) to separate and clarify the settlement of claims procedures for sold harvested and unsold harvested production. Section 14(c)(3) describes the total value of all sold harvested production and the use of allowable costs in determining the total dollar value of production to count. The last sentence currently in section (14)(c)(3) is now the last sentence in section (14)(c)(4). Section 14(c)(4) as proposed will describe the total value of all unsold harvested production and using the minimum value shown in the Special Provisions in determining the total dollar value of production to count.

FCIC proposes adding a new section 14(c)(5) to clarify any salvage value paid to the insured by penhookers will be added to the total dollar value of production to count.

9. *Section 16*—FCIC proposes revising section 16(a)(1) and 16(b)(2) of the current policy Minimum Value Option by removing the Minimum Value Option II. Allowing the Minimum Value Option II price to go down to zero has resulted in unfavorable loss experience and program abuse. This change will improve the integrity of the Minimum Value Option benefit.

FCIC also proposes revising section (16)(b)(1)(ii) by changing the phrase “For marketable production that is not sold,” to “For unsold harvested production,”. The new wording is consistent with the wording in section (14)(c)(4).

FCIC proposes to add an example of a claim for indemnity after paragraph 16(c).

Other minor changes have been made to make the provisions more effective and consistent with other similar Crop Provisions.

#### List of Subjects in 7 CFR Part 457

Crop insurance, Fresh market tomato (dollar plan), Reporting and recordkeeping requirements.

**Proposed Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2013 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), 1506(o).

2. Amend § 457.139 as follows:

- a. Revise the introductory text;
- b. Remove the paragraph immediately preceding section 1;
- c. Amend section 1 by:
  - i. Adding definitions for “allowable cost,” “amount of insurance per acre,” “fresh market tomatoes,” “minimum value,” “penhookers,” “price received,” and “registered handler;”
  - ii. Removing the definitions of “planted acreage” and “practical to replant;”
  - iii. Revising the definitions of “acre,” “direct marketing,” “harvest,” “plant stand,” and “potential production;” and
  - iv. Amending the definition of “crop year” by removing the phrase “of ‘crop year’ contained in section 1 (Definitions) of the Basic Provisions (§ 457.8)” and adding the phrase “contained in the Basic Provisions” in its place.
- d. Amend section 3 by:
  - i. Removing the phrases “(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)” and “(§ 457.8)” in paragraphs (a) and (c);
  - ii. Revising the table in paragraph (d); and
  - iii. Revising paragraph (e).
- e. Amend section 4 by removing the phrases “(Contract Changes)” and “(§ 457.8).”
- f. Amend section 5 by removing the phrases “(Life of Policy, Cancellation, and Termination)” and “(§ 457.8).”
- g. Amend section 6 introductory text by removing the phrases “(Report of Acreage)” and “(§ 457.8).”
- h. Amend section 7 by:
  - i. Removing the phrases “(Annual Premium)” and “(§ 457.8);” and
  - ii. Removing the phrase “(e.g., fall direct-seeded irrigated)” and adding the phrase “(e.g., fall transplanted irrigated)” in its place.
- i. Amend section 8 by:
  - i. Revising the introductory text; and
  - ii. Revising paragraph (c)(4).
- j. Amend section 9 by:

- i. Removing the phrases “(Insurable Acreage)” and “(§ 457.8)” in paragraphs (a) and (b);
- ii. Removing the phrase “or 60 days of direct seeding” in paragraph (b)(1)(iii);
- iii. Removing the word “satisfied” and adding the word “met” in its place in paragraph (b)(2); and
- iv. Revising paragraph (b)(3).
- k. Amend section 10 by:
  - i. Revising the introductory paragraph;
  - ii. Revising paragraph (e); and
  - iii. Revising paragraph (f).
- l. Amend section 11 by:
  - i. Removing the phrases “(Causes of Loss)” and “(§ 457.8)” in paragraphs (a) and (b);
  - ii. Revising paragraph (b)(2).
- m. Amend section 12(a) and 12(c) by removing the phrases “(Replanting Payment)” and “(§ 457.8).”
- n. Amend section 13 by removing the phrases “(Duties in the Event of Damage or Loss)” and “(§ 457.8).”
- o. Amend section 14 by:
  - i. Revising paragraph (b)(4)(ii);
  - ii. Adding an example following paragraph (b)(5);
  - iii. Revising paragraph (c)(2)(i);
  - iv. Revising paragraph (c)(3);
  - v. Adding a new paragraph (c)(4); and
  - vi. Adding a new paragraph (c)(5).
- p. Revise section 16.
- q. Adding an example following paragraph 16(c).
 

The revised and added text reads as follows:

**§ 457.139 Fresh market tomato (dollar plan) crop insurance provisions.**

The fresh market tomato (dollar plan) crop insurance provisions for the 2013 and succeeding crop years are as follows:

\* \* \* \* \*

1. Definitions

*Acre.* 43,560 square feet of planted acreage when row widths do not exceed six feet. If row widths exceed six feet, the land area on which at least 7,260 linear feet of rows are planted.

*Allowable cost.* The dollar amount per carton for harvesting, packing, and handling as stated in the Special Provisions.

*Amount of insurance per acre.* The dollar amount of insurance per acre obtained by multiplying the reference maximum dollar amount shown in the actuarial documents by the coverage level percentage you elect.

\* \* \* \* \*

*Direct marketing.* The sale of the insured crop directly to consumers without the intervention of an intermediary such as a registered handler, 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.

\* \* \* \* \*

*Fresh Market Tomatoes.* Field grown mature green or ripe fresh market tomatoes that meet the Agricultural Marketing Service United States Standards for Grades of Fresh Tomatoes; and the applicable Federal Marketing Order and Florida Tomato Committee Regulations, or their successors.

*Harvest.* The picking of tomatoes from the plants, excluding fresh market tomatoes salvaged by penhookers.

\* \* \* \* \*

*Minimum value.* The dollar amount per carton shown in the Special Provisions we will use to value appraised and marketable production to count.

*Penhookers.* Individuals who purchase the right to salvage tomatoes remaining in the field after commercial harvests are completed.

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

\* \* \* \* \*

*Potential production.* The number of cartons of mature green or ripe field grown fresh market 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.

*Price received.* The gross dollar amount per carton received by the producer before deductions of allowable costs.

*Registered handler.* A person or entity officially certified by the Florida Tomato Committee, or successor entity, to inspect and enforce all the handling regulations for fresh market tomatoes, and report the required packout data to the Florida Tomato Committee.

\* \* \* \* \*

3. Amounts of Insurance and Production Stages

\* \* \* \* \*

(d) \* \* \*

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

(e) Any acreage of fresh market 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 the crop, the indemnity payable for such acreage will be based on the stage the plants had achieved when the insured damage occurred, even if the producer continues to care for the damaged tomatoes.  
\* \* \* \* \*

8. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all the field grown fresh market tomato types and varieties in the county as specified in the Special Provisions for which a premium rate is provided in the actuarial documents:  
\* \* \* \* \*

(c) \* \* \*

(4) Direct seeded fresh market tomatoes, unless insured by written agreement.  
\* \* \* \* \*

9. Insurable Acreage

\* \* \* \* \*

(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, strawberries or tobacco have been grown and the soil was not fumigated or otherwise properly treated before planting the insured tomatoes.

10. Insurance Period

In lieu of section 11 of the Basic Provisions, 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 on each unit at the earliest of:  
\* \* \* \* \*

(e) Final harvest on the unit; or

(f) The calendar date for the end of insurance period that is 125 days after the date of transplanting or replanting with transplants.

11. Causes of Loss

\* \* \* \* \*

(b) \* \* \*

(2) Failure to harvest in a timely manner or 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. For example, we will not pay an indemnity if you are unable to market the insured crop due to quarantine, boycott, or refusal of any person to accept production.  
\* \* \* \* \*

14. Settlement of Claim

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(ii) For catastrophic risk protection coverage, the result of multiplying the total value of production to count determined in accordance with section 14(c) by the percentage contained in the Special Provisions.

(5) \* \* \*

For Example: You have a 100 percent share in 10.0 acres of fresh market tomatoes. You select a 70% coverage level of the reference maximum dollar amount of \$7,500 per acre. The average price received is \$10.00 per carton of tomatoes. Allowable costs are \$4.25 per carton. Minimum value is \$5.00 per carton. Your total production sold is 5,000 cartons (5,000 ÷ 10.0 = 500 cartons per acre) and you have an additional 1,000 cartons of unsold harvested production (1,000 ÷ 10.0 = 100 cartons per acre). Your loss is in the final stage of production. Your indemnity per acre is calculated as follows:

14(c)(3) .....	\$7,500 × 70% = dollar amount of insurance per acre .....	\$5,250
	500 cartons × \$5.75 = value of sold production .....	2,875
	(\$10 selling price minus \$4.25 allowable cost)	
14(c)(4) .....	100 cartons of unsold harvested production × \$5 minimum value per carton .....	+500
	Value of production to count .....	3,375
14(b)(5) .....	Indemnity per acre = (\$5,250 – \$3,375) × 100% share .....	1,875
	\$1,875 × 10.0 acres = \$18,750 indemnity payment .....	18,750

(c) \* \* \*

(2) \* \* \*

(i) Potential production on any fresh market tomato acreage that has not been harvested the required number of times as specified in the Special Provisions.  
\* \* \* \* \*

(3) The total value of all sold 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 fresh market tomatoes in the load (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 fresh market tomatoes harvested.

(4) The total value of all unsold harvested production will be 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 or sold will not be counted as production to count.

(5) Any penhooker salvage value paid to you will be added to the total dollar value of production to count.  
\* \* \* \* \*

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 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 documents 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) of these Crop Provisions, the total value of harvested production will be determined as follows:

(1) For sold harvested production, the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each carton of fresh market tomatoes in the load (this result may not be less than the minimum value option

price contained in the Special Provisions for any carton of tomatoes sold), and multiplying this result by the number of cartons of fresh market tomatoes sold; and

(2) For unsold harvested production, the dollar amount obtained by multiplying the number of cartons of such fresh market 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 or sold will not be counted as production to count).

(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.

Example with Minimum Value Option: You have a 100 percent share in 10.0 acres of fresh market tomatoes. You select a 70% coverage level of the reference maximum dollar amount of \$7,500 per acre. The average price received is \$6.00 per carton of tomatoes. Allowable costs are \$4.25 per carton. Minimum value is \$5.00 per carton. The Minimum Value Option price is \$2.00 per carton. Your total production sold is 5,000 cartons (5,000 ÷ 10.0 = 500 cartons per acre) and you have an additional 1,000 cartons of unsold harvested production (1,000 ÷ 10.0 = 100 cartons per acre of unsold marketable production). Your loss is in the final stage of production. Your indemnity per acre is calculated as follows:

16(b)(1) .....	7,500 × 70% = dollar amount of insurance per acre .....	\$5,250
	500 cartons × \$2 = value of sold production (\$6 price received minus \$4.25 allowable costs = \$1.75) .....	1,000
16(b)(2) .....	\$2.00 minimum value option is greater than \$1.75) .....	
	100 cartons of unsold harvested production × \$5 minimum value per carton .....	+500
	Value of production to count .....	1,500
16(b) .....	Indemnity per acre = \$5,250 – \$1,500 = \$3,750 × 100% share .....	3,750
	\$3,750 × 10.0 acres = \$37,500 indemnity payment .....	37,500

\* \* \* \* \*

Signed in Washington, DC, on November 7, 2011.

**William J. Murphy,**  
 Manager, Federal Crop Insurance Corporation.

[FR Doc. 2011-29218 Filed 11-16-11; 8:45 am]  
 BILLING CODE 3410-08-P

**DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

**7 CFR Part 457**

[Docket No. FCIC-11-0008]

RIN 0563-AC35

**Common Crop Insurance Regulations; Pecan Revenue Crop Insurance Provisions**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Pecan Revenue Crop Insurance Provisions. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The proposed changes will be effective for the 2013 and succeeding crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business January 17, 2012 and will be considered when the rule is to be made final.

**ADDRESSES:** FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC-11-0008, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205.

All comments received, including those received by mail, will be posted without change to <http://www.regulations.gov>, including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions.

For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823-4694 or by email at [rmaweb.content@rma.usda.gov](mailto:rmaweb.content@rma.usda.gov).

*Privacy Act:* Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/#!privacyNotice>.

**FOR FURTHER INFORMATION CONTACT:** Chief, Policy Administration Branch, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141-6205, telephone (816) 926-7730.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the OMB.

**Paperwork Reduction Act of 1995**

Pursuant to the provisions of 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.