

(d) Mature green weight will be multiplied by the recovery percentage subject to the following:

(1) We may obtain samples of the production to determine the recovery percentage.

(2) The determined recovery percentage will be used to calculate your loss only if:

(i) All determined recovery percentages are established using samples of green weight production obtained by us or by the processor for sold or processed production; and

(ii) The samples are analyzed by an approved laboratory.

(3) If the conditions of section 11(d)(2) are not met, the standard recovery percentage will be used.

12. Late Planting

The provisions of section 16 of the Basic Provisions are not applicable.

13. Prevented Planting

The provisions of section 17 of the Basic Provisions are not applicable.

Signed in Washington, DC on February 21, 2008.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563-AC04

Common Crop Insurance Regulations; Mustard Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations; Mustard Crop Insurance Provisions to convert the mustard pilot crop insurance program to a permanent insurance program for the 2009 and succeeding crop years.

DATES: *Effective Date:* April 2, 2008.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Risk Management Specialist, USDA Risk Management Agency-PASD, Beacon Facility-Mail Stop 0812, P.O. Box 419205, Kansas City, MO 64141-6205, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by 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 through June 30, 2008.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, 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) 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, 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 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 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:

On Thursday, November 16, 2006, FCIC published a notice of proposed rulemaking in the **Federal Register** at 71 FR 6016-6021 to add 7 CFR 457.168 Mustard crop insurance provisions.

The public was afforded 60 days to submit written comments and opinions. The e-mail address listed on the proposed rule and the Federal eRulemaking Portal address were not operational during that time period, therefore, FCIC published a notice in the **Federal Register** at 71 FR 14828 on March 24, 2006, extending the comment period for an additional 30 days, until April 24, 2006.

A total of 21 comments were received from 3 commenters. The commenters were an insurance services organization, one insurance provider, and one producer. The comments received and FCIC's responses are as follows:

Comment: Two commenters have concerns whether a processor contract can be accepted by the insurance provider if the processor is located in Canada. The commenters asked whether it is the insurance provider's responsibility to perform the monetary conversion of the contract price from Canadian dollars to U.S. dollars.

Response: A contract can be accepted if the processor is located in Canada. It would be preferable if the contract expressed the base contract price in U.S. dollars. However, if the base contract price is expressed in Canadian dollars the insurance provider must convert it to United States dollars based upon the monetary exchange rate on the date the contract was signed by the mustard producer.

Comment: One commenter suggested adding the definition for "windrow" since windrow is used in the definition for swathed.

Response: FCIC has added a definition for "windrow."

Comment: Two commenters expressed concerns with section 3(c) where it states "that for processor contracts that stipulate the amount of production to be delivered, the number of acres is determined by dividing the amount of production to be delivered by the approved yield." The commenters questioned what happens if the producer's approved yield is so low that when you divide the amount of production to be delivered by the approved yield more acres are needed to be planted than were actually planted to produce the amount of production stated in the contract.

Response: FCIC has removed language in section 3(c) and added a new section 3(d) and revised section 8(c) to explain how to determine the total production guarantee and insurable acreage. As added in section 3(d), the total production guarantee will be based on the lesser of the contracted acreage multiplied by the production guarantee per acre, the planted acreage multiplied

by the production guarantee per acre, the total production stated in the processor contract, or, for acreage and production processor contracts, the contracted acres multiplied by the contracted production per acre. As revised in section 8(c), insured acreage for acreage and production based processor contracts is based on the lesser of the planted acres or the maximum acres stated in the processor contract. Insured acreage for production based processor contracts will be based on the lesser of the number of acres determined by dividing the production stated in the processor contract by the approved yield or the planted acres. These revisions will ensure that the policy does not provide over-insurance.

Comment: One commenter suggested in section 3(c) that in the parenthetical phrase the term "stipulates" be changed to "stipulate."

Response: FCIC has revised the language in section 3(c) in response to other comments and the term "stipulates" is no longer used in section 3(c).

Comment: One commenter expressed concern regarding the removal of the provision "to be processed into products for human consumption" in section 7(a)(2).

Response: FCIC removed the language to allow maximum flexibility in providing coverage for mustard used for other uses. In addition, only mustard that is produced under a processor contract is insurable. Therefore, it is unlikely that the processor will contract for the mustard unless the processor has a use for it.

Comment: Two commenters expressed concerns with the provisions in section 8(c) that indicate the maximum insurable acreage will be determined by the acreage amount stated in the processor contract(s), if applicable. The commenters asked what the maximum insurable acreage would be if the processor contract(s) do not state acreage amounts.

Response: As stated above, FCIC has added language in section 8(c) explaining how to determine insurable acreage. For processor contracts that specify acreage only and processor contracts that are acreage and production based the insurable acreage will be the lesser of the planted acres or the acreage specified in the contract. For processor contracts that are production only based the insurable acreage will be the lesser of the number of acres determined by dividing the production stated in the processor contract by the approved yield or the planted acreage.

Comment: One commenter recommended that section 10(b) be

clarified as "Fire, due to natural causes" or "Fire, if caused by lighting" as is in the proposed revision to the Tobacco Crop Provisions.

Response: Section 12 of the Basic Provisions states all specified causes of loss must be due to a naturally occurring event. Further, if the requirement for natural causes was only included with regard to fire, it may create the mistaken impression that fire is the only cause of action that must be from natural causes. Therefore, no change has been made.

Comment: One commenter stated the provision in section 13(a)(1)(ii) that states "For any processor contract that stipulates the amount of production to be delivered, and notwithstanding the provisions of this section or any unit division provisions contained in the Basic Provisions or these Crop Provisions" should have been included in section 13(a)(2).

Response: FCIC moved the provision to section 13(a)(2) accordingly.

Comment: One commenter suggested FCIC add a hyphen between 650-pound production guarantee in Example #1 in section 13(b).

Response: FCIC has made the correction accordingly.

Comment: One commenter suggested FCIC change 13,000 pounds production guarantee to 13,000 pound production guarantee in the Example #1 in section 13(b).

Response: FCIC has made the correction accordingly.

Comment: One commenter suggested FCIC change the wording in the first sentence from "with 650 pound production guarantee" to "with a 650-pound production guarantee" in Example #2 in section 13(b).

Response: FCIC has made the correction accordingly.

Comment: One commenter suggested FCIC add a hyphen between 6,500 pound production guarantee in Example #2 in section 13(b).

Response: FCIC has made the correction accordingly.

Comment: One commenter suggested FCIC delete the space after the "\$" sign in "\$0.15" in Example #2 in section 13(b).

Response: FCIC has made the correction accordingly.

Comment: One commenter stated in section 13(b)(1) that "mustard type" does not need to be specified since type is defined in section 1.

Response: FCIC has revised section 13(b)(1) accordingly.

Comment: One commenter expressed concern regarding section 13(b)(1) stating that when the contract states the total production to be delivered with no reference to acres.

Response: FCIC has added language in section 8(c) explaining how insurable acreage is determined. In addition, FCIC has added the cross reference to section 8(c) in section 13(b)(1) and changed the reference to “insurable acreage” to be consistent with section 8(c).

Comment: One commenter suggests that the “and” at the end of section 13(c)(1)(iv)(B) should be moved to the end of section 13(c)(2).

Response: FCIC has revised the provision accordingly.

Comment: Two commenters expressed concern regarding section 13(c)(3). The commenters concern was with contracts that state the total production to be delivered with no reference to acres. The commenters asked if the insurance provider determines the insured has planted more acres than what is necessary to fulfill the contract does that production on that over planted acreage count at the time of loss, or are all the acres considered insured.

Response: FCIC has added language in section 8(c) explaining how insurable acreage is determined. The insurance provider should make this determination before issuing the Schedule of Insurance to ensure that the premium and liability are correctly stated.

Comment: One commenter expressed concern with the provisions in section 13(d)(2) that state “mustard production will be eligible for quality adjustment if.” The commenter asked if contracts are going to be honored from a processor in Canada and whether there is any concern on getting samples to determine the quality adjustment.

Response: The quality adjustment can be done by a Canadian grader as long as U.S. grading standards are used, or the sample can be pulled and brought to a U.S. grading facility. No change has been made.

Comment: One commenter suggested in section 13(d)(4) moving the phrase “if the quality adjustment factors are not contained in the Special Provisions” to the beginning of the parenthetical phrase.

Response: FCIC has changed section 13(d)(4) accordingly.

Comment: One commenter recommended eliminating the option to increase prevented planting coverage levels in section 15 Prevented Planting.

Response: Since the recommended change was not proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated

in the final rule. No change has been made.

Comment: One commenter asked why mustard must be grown under contract.

Response: There is a very limited market for mustard. Therefore, this requirement ensures there is a market for the mustard crop and that the market is not distorted by an over-production of mustard.

List of Subjects in 7 CFR Part 457

Crop insurance, Mustard, 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 2009 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(p).

■ 2. Section 457.168 is added to read as follows:

§ 457.168 Mustard crop insurance provisions.

The Mustard Crop Insurance Provisions for the 2009 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Mustard Crop Insurance Provisions.

1. Definitions

Base contract price. The price per pound (U.S. dollars) stipulated in the processor contract (without regard to discounts or incentives) that will be used to determine your price election.

Harvest. Combining or threshing for seed. A crop that is swathed prior to combining is not considered harvested.

Mustard. A crop of the family *Cruciferae*, genus.

Planted acreage. In addition to the definition contained in the Basic Provisions, mustard seed must be planted in rows. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Processor. Any business enterprise regularly engaged in buying and processing mustard, that possesses all licenses and permits for processing

mustard required by the State in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted mustard within a reasonable amount of time after harvest.

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

(a) The producer's commitment to plant and grow mustard of the types specified in the Special Provisions and to deliver the production to the processor;

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

(c) A base contract price (U.S. dollars).

Salvage price. The cash price per pound (U.S. dollars) for mustard qualifying for quality adjustment in accordance with section 13 of these Crop Provisions.

Swathed. Severance of the stem and seed pods from the ground and placing into windrows without removal of the seed from the pod.

Type. A category of mustard identified as a type in the Special Provisions.

Windrow. Mustard that is swathed and placed in a row.

2. Unit Division

In addition to the requirements of section 34 of the Basic Provisions, optional units may also be established by type, if types are designated on the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one base contract price percentage for all the mustard in the county insured under this policy unless the Special Provisions allow different base contract prices by type.

(b) If base contract prices are allowed by type, you can select one base contract price for each type designated in the Special Provisions. The base contract prices you choose must have the same percentage relationship to the base contract price (maximum price) offered for each type. For example, if you choose 100 percent of the maximum price for a specific type, you must also choose 100 percent of the maximum price for all other types.

(c) If there are multiple base contract prices within the same unit, each will be considered a separate price election that will be multiplied by the number of insurable acres under applicable

processor contract. These amounts will be totaled to determine the premium, liability, and indemnity for the unit.

(d) To determine the total production guarantee, apply the lesser of the:

(1) Contracted acres multiplied by the production guarantee (per acre);

(2) Planted acres multiplied by the production guarantee (per acre);

(3) Total production stated in the contract; or

(4) For acreage and production contracts only, the contracted acres multiplied by the contracted production (per acre).

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage

In addition to the provisions in section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all mustard in the county for which a premium rate is provided by the actuarial table:

(1) In which you have a share;

(2) That is planted for harvest as seed;

(3) That is grown under, and in

accordance with, the requirements of a processor contract executed on or before the acreage reporting date and is not excluded from the processor contract at any time during the crop year; and

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

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume; or

(iii) Planted following the harvest of any other crop in the same crop year.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acres on which the mustard is grown, your income from the insured crop is dependent on the amount of production delivered, and the processor contract provides for delivery of the mustard under specified conditions and at a stipulated base contract price.

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

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

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

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

8. Insurable Acreage

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

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

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

(c) Insurable acreage will be:

(1) For acreage only based processor contracts and acreage and production based processor contracts which specify a maximum number of acres, the lesser of:

(i) The planted acres; or

(ii) The maximum number of acres specified in the contract;

(2) For production only based processor contracts, the lesser of:

(i) The number of acres determined by dividing the production stated in the processor contract by the approved yield; or

(ii) The planted acres.

9. Insurance Period

In accordance with the provisions of section 11 of the Basic Provisions, the end of the insurance period is October 31 of the calendar year in which the crop is normally harvested unless otherwise stated in the Special Provisions.

10. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss which occur during the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; and

(h) Failure of the irrigation water supply, if applicable, caused by a cause of loss specified in section 10(a) through (g) that occurs during the insurance period.

11. Replanting Payment

(a) In accordance with section 13 of the Basic Provisions, a replanting payment is allowed if the insured crop is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage, and it is practical to replant or we require you to replant in accordance with section 8(a).

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee (per acre) or 175 pounds, multiplied by the base contract price applicable to the acreage to be replanted, multiplied by your insured share.

(c) When the mustard is replanted using a practice that is uninsurable as an original planting, the liability for the unit will be reduced by the amount of the replanting payment that is attributable to your share. The premium amount will not be reduced.

12. Duties In The Event of Damage or Loss

In accordance with the requirements of section 14 of the Basic Provisions, the representative samples of the unharvested crop that we may require must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

13. Settlement of Claim

(a) We will determine your loss on a unit basis.

(1) In the event you are unable to provide separate acceptable production records:

(i) For any optional units, we will combine all optional units for which acceptable production records were not provided; or

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

(2) For any processor contract that stipulates only the amount of production to be delivered, and not withstanding the provisions of this section or any unit division provisions contained in the Basic Provisions, no

indemnity will be paid for any loss of production on any unit if the insured produced a crop sufficient to fulfill the processor contract(s) forming the basis of the insurance guarantee

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

(1) Multiplying the insurable acreage of each type, if applicable, determined in accordance with section 8(c), by its respective production guarantee (per acre);

(2) Multiplying each result in section 13(b)(1) by the respective base contract price for each type, if applicable;

(3) Totaling the results in section 13(b)(2);

(4) Multiplying the production to be counted for each type, if applicable (see section 13(c), by its respective base contract price (If you have multiple processor contracts with varying base contract prices within the same unit, we will value your production to count by using your highest base contract price first and will continue in decreasing order to your lowest base contract price based on the amount of production insured at each base contract price);

(5) Totaling the results in section 13(b)(4);

(6) Subtracting the total in section 13(b)(5) from the total in section 13(b)(3); and

(7) Multiplying the result in section 13(b)(6) by your share.

Example # 1 (with one base contract price for the unit):

You have 100 percent share in 20 acres of mustard in a unit with a 650-pound production guarantee (per acre) and a base contract price of \$0.15 per pound. Due to insurable causes, you are only able to harvest 10,000 pounds and there is no appraised production. Your indemnity would be calculated as follows:

(1) 20 acres \times 650 pounds = 13,000 pound production guarantee;

(2) 13,000 pounds \times \$0.15 base contract price = \$1,950 value of guarantee;

(3) \$1,950 total value of guarantee;

(4) 10,000 pounds \times \$0.15 base contract price = \$1,500 value of production to count;

(5) \$1,500 total value of production to count;

(6) \$1,950 – \$1,500 = \$450 loss; and

(7) \$450 \times 100 percent = \$450 indemnity payment.

Example # 2 (with two base contract prices for the same unit):

You have 100 percent share in 20 acres of mustard in a unit with a 650-pound production guarantee (per acre), 10 acres with a base contract price of \$0.15 per pound, and 10 acres with a

base contract price of \$0.10 per pound. Due to insurable causes, you are only able to harvest 8,500 pounds and there is no appraised production. Your indemnity would be calculated as follows:

(1) 10 acres \times 650 pounds = 6,500-pound production guarantee \times \$0.15 base contract price = \$975 value guarantee;

(2) 10 acres \times 650 pounds = 6,500-pound production guarantee \times \$0.10 base contract price = \$650 value guarantee;

(3) \$975 + \$650 = \$1,625 total value guarantee;

(4) 6,500 pounds of production to count \times \$0.15 base contract price (higher base contract price) = \$975 value of production to count;

(5) 2,000 pounds of production to count \times \$0.10 base contract price (lower base contract price) = \$200 value of production to count;

(6) \$975 + \$200 = \$1,175 total value of production to count;

(7) \$1,625 total value guarantee — \$1,175 total value of production to count = \$450 loss; and

(8) \$450 \times 100 percent = \$450 indemnity payment.

(c) The total production to count (in pounds) from all insurable acreage in the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee (per acre) for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

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

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

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 13(d)); 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) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount

of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count.); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested;

(2) All harvested production from the insurable acreage; and

(3) Any other uninsurable mustard production that is delivered to fulfill the processor contract.

(d) Mature mustard may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Mustard production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 10.0 percent. We may obtain samples of the production to determine the moisture content.

(2) Mustard production will be eligible for quality adjustment only if:

(i) Deficiencies in quality result in the mustard not meeting the requirements for acceptance under the processor contract because of damaged seeds (excluding heat damage), or a musty, sour, or commercially objectionable foreign odor; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss in mustard production only if:

(i) The deficiencies, substances, or conditions specified in section 13(d)(2) resulted from a cause of loss specified in section 10 that occurs within the insurance period; and

(ii) The deficiencies, substances, or conditions specified in section 13(d)(2) result in a salvage price less than the base contract price; and

(iii) All determinations of these deficiencies, substances, or conditions specified in section 13(d)(2) are made using samples of the production obtained by us, by the processor identified in the processor contract for the insured acreage, or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader in accordance with the Directive for Inspection of Mustard Seed, provided by the Federal Grain Inspection Service or such other directive or standards that may be issued by FCIC.

(4) Mustard production that is eligible for quality adjustment, as specified in sections 13(d)(2) and (3), will be reduced by multiplying the quality adjustment factors contained in the Special Provisions (if quality adjustment factors are not contained in the Special Provisions, the quality adjustment factor is determined by dividing the salvage price by the base contract price (not to exceed 1.000)) by the number of pounds remaining after any reduction due to excessive moisture (the moisture-adjusted gross pounds) of the damaged or conditioned production.

(i) The salvage price will be determined at the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit subject to the following conditions:

(A) Discounts used to establish the salvage price will be limited to those that are usual, customary, and reasonable.

(B) The salvage price will not include any reductions for:

- (1) Moisture content;
- (2) Damage due to uninsured causes;
- (3) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the mustard; except, if the salvage price can be increased by conditioning, we may reduce the salvage price, after the production has been conditioned, by the cost of conditioning but not lower than the salvage price before conditioning; and

(i) We may obtain salvage prices from any buyer of our choice. If we obtain salvage prices from one or more buyers located outside your local market area, we will reduce such price by the additional costs required to deliver the mustard to those buyers.

(ii) Factors not associated with grading under the Directive for Inspection of Mustard Seed, provided by the Federal Grain Inspection Service or such other directive or standards that may be issued by FCIC including, but not limited to, protein and oil will not be considered.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on an unadjusted weight basis.

14. Late Planting

In lieu of section 16(a) of the Basic Provisions, the production guarantee (per acre) for each acre planted to the

insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date, unless otherwise specified in the Special Provisions.

15. Prevented Planting

In addition to the provisions contained in section 17 of the Basic Provisions, your prevented planting coverage will be 60 percent of your production guarantee (per acre) for timely planted acreage. When a portion of the insurable acreage within the unit is prevented from being planted, and there is more than one base contract price applicable to acreage in the unit, the lowest base contract price will be used in calculating any prevented planting payment. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to the levels specified in the actuarial documents.

Signed in Washington, DC, on February 20, 2008.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

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BILLING CODE 3410-08-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AMS-FV-07-0119; FV07-930-3 FR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2007-2008 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes final free and restricted percentages for 2007-2008 crop year tart cherries covered under the Federal marketing order regulating tart cherries grown in seven states (order). The percentages are 57 percent free and 43 percent restricted and will establish the proportion of cherries from the 2007 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body that locally administers the order. The order regulates the handling

of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: *Effective Date:* March 4, 2008. This final rule applies to all 2007-2008 crop year restricted cherries until they are properly disposed of in accordance with marketing order requirements.

FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; telephone: (301) 734-5243, Fax: (301) 734-5275; e-mail Patricia.Petrella@usda.gov or Kenneth.Johnson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This final rule establishes final free and restricted percentages for tart cherries for the 2007-2008 crop year, beginning July 1, 2007, through June 30, 2008. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection