

# Rules and Regulations

Federal Register

Vol. 72, No. 85

Thursday, May 3, 2007

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563-AC03

#### Common Crop Insurance Regulations; Mint 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; Mint Crop Insurance Provisions to convert the mint pilot crop insurance program to a permanent insurance program for the 2008 and succeeding crop years.

**EFFECTIVE DATE:** June 4, 2007.

#### FOR FURTHER INFORMATION CONTACT:

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#### 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 November 30, 2007.

### 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) 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 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 Monday, February 6, 2006, FCIC published a notice of proposed rulemaking in the **Federal Register** at 71 FR 6016-6021 to add 7 CFR 457.169 Mint crop insurance provisions effective for the 2008 and succeeding crop years.

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 20 comments were received from 3 commenters. The commenters were an insurance services organization and 2 approved insurance providers. The comments received and FCIC's responses are as follows:

*Comment:* Two commenters recommended adding a definition for "sales closing date" to these provisions which would define the rules when a county has two sales closing dates similar to what has been done in the Small Grains Crop Provisions. The definition in the Basic Provisions assumes a single sales closing date for the crop.

*Response:* Neither the Small Grains Crop Provisions or the Mint Crop Provisions assume a single sales closing date. With respect to the actual sales closing date, both state that it is the dates contained in the Special Provisions. Therefore, the Special Provisions can have separate sales closing dates for the Winter Coverage Option and the spring insurance period. FCIC agrees that there is some confusion regarding when application must be made and is adding a definition of "sales closing date" to make it clear that if the Winter Coverage Option is selected, applications for both the Winter Coverage Option and the spring insurance period must be submitted by the sales closing date for the Winter Coverage Option and coverage may not be changed between the winter and the spring coverage periods. If the producer only wants coverage for the spring insurance period, application must be made by the spring sales closing date and changes to the policy can be made for the following crop year by the next spring sales closing date.

*Comment:* Two commenters recommended the definition of "type" should be retained in the provisions because the term "type" is used frequently in the policy. Both commenters recommended revising the definition to include all insurable mint types. One commenter questioned if a definition of "type" would also have an effect on the definition of "mint," which refers to spearmint or peppermint.

*Response:* FCIC agrees with the recommendation to include the definition of "type." Section 1 of the Crop Provisions has been revised accordingly. It is not appropriate to

include all the insurable mint types in the definition because certain types may only be insurable in certain counties. For this reason the definition refers to the categories of mint designated as a type in the Special Provisions. The definition of "type" does not have any effect on the definition of "mint." The definition of "type" refers to the categories of mint designated as types. Since mint is defined as spearmint or peppermint, type would refer to the designation of different types of peppermint and spearmint. No change to the definition of "mint" has been made.

*Comment:* Two commenters stated in regards to section 2, producers use "still" records to separate types (basic units) and optional units. They asked whether pre-authorization is required for commingled production as with other crops such as corn and soybeans.

*Response:* Section 2 of the Mint Crop Provisions states basic units will be established for each mint type listed in the Special Provisions. As provided in the Basic Provisions, producer's verifiable "still" records may be used to establish basic units. However, oil derived from peppermint and spearmint types would not be commingled together. Oil from each mint type, for example, two different types of spearmint, are not supposed to be commingled because each is a separate unit. According to section 11(a)(2) of the Mint Crop Provisions, if production is commingled between basic units, any commingled production will be allocated to such units in proportion to the liability on the harvested acreage for the units.

*Comment:* One commenter questioned whether the term "stand age" belongs in section 3(b)(2) which lists various things that " \* \* \* may reduce the expected yield below the yield upon which the insurance guarantee is based \* \* \* ". The commenter recommended the term "stand age" could be combined with the reporting of the planting dates for new and existing mint acreage currently listed in sections 3(b)(3) and (4).

*Response:* FCIC agrees that the stand age is not something that would necessarily reduce the yield below the yield upon which the guarantee is based. Therefore, FCIC has removed the term "stand age" from section 3(b)(2). The stand age reporting requirement is now contained in section 3(b)(3).

*Comment:* One commenter recommended changing " \* \* \* deemed to not have attached \* \* \* " in section 5 to " \* \* \* deemed not to have attached \* \* \* ".

*Response:* FCIC agrees with the commenter and has made the revision accordingly.

*Comment:* Two commenters expressed concerns regarding the added language in sections 6(a)(4)(i) and (ii) that indicates an inspection is required not only the initial year insured but also any "subsequent crop year following an indemnified loss" or when "an indemnity was paid the previous crop year." The commenters questioned if mint is the second crop on the acreage, and a loss is incurred but the producer elects not to accept the loss payment on the mint whether an inspection is necessary the subsequent crop year. They also stated if a claim was filed the preceding crop year and it was determined there was an adequate stand as a result, another inspection should not be necessary because there was not a payable loss. One commenter indicated with this additional requirement, approved insurance providers would have to do what they could to complete claims and inspections for acreage insured under the Winter Coverage Option before the mint was plowed down for the winter.

*Response:* The provisions contained in section 6(a)(4)(i) and (ii) were added to the crop provisions as a result of the FCIC Board of Directors' (Board) approval to convert the mint pilot crop insurance program to a permanent program. The Board's decision was based on an independent contractor's recommendation to modify the self-certification program to reduce the program integrity problem caused by insuring acreage that did not have an adequate stand at the time insurance attached. The Board's Final Resolution specified that when an indemnity was paid the previous year's approved insurance providers must conduct a crop inspection to determine if the crop has an adequate stand.

However, in response to the commenters, FCIC has revised the provisions in sections 6(a)(4) and 13(e) to not require an inspection for the following year in situations where a notice of loss has been filed, but it is determined that there is an adequate stand on the mint acreage. If there has been an indemnity paid or a notice of loss filed and the approved insurance provider determined there was not an adequate stand, the acreage must be inspected before insurance will attach for the next insurance period. For example, in those cases where a producer receives an indemnity payment for spring mint, or claims a loss and the approved insurance provider determines there is not an adequate stand, an inspection of the

acreage insured under the Winter Coverage Option must be conducted before coverage begins in October or November.

*Comment:* One commenter recommended rewording the phrase in section 6(c) “\* \* \* which provides coverage for mint that is damaged after the date coverage ends in the fall and before the date coverage begins in the spring \* \* \*” The phrase could be misleading to new producers since they had no previous coverage that ended in the fall.

*Response:* The provision in section 6(c) merely notifies producers that winter coverage for mint is available. However, the provision referred to is duplicative of the provisions in section 13. Therefore, to avoid any potential conflicts or ambiguity between sections 6(c) and section 13, FCIC is revising section 6(c) to state that winter coverage is available in accordance with section 13. Section 13 states when coverage is provided under the Winter Coverage Option.

*Comment:* Two commenters recommended the reference to actuarial documents in sections 7(b)(1) and (2) be changed back to refer to the Special Provisions as this is where the rotation and age limitation statements are located. One commenter suggested since mint will no longer be a pilot program, exceptions to the provisions should be made to allow coverage by written agreement.

*Response:* FCIC agrees section 7(b)(1) and (2) should reference the Special Provisions. FCIC also agrees with the comment and has revised the provisions to allow rotation requirements and age limitations to be modified by written agreement.

*Comment:* Two commenters questioned whether a two-week period is sufficient to complete inspections on all new mint policies as required in section 8(b). Both commenters recommended changing it to a 30-day period to provide adequate time to do the inspection. This would be consistent with the 30-day period for many other crops (*i.e.* Nursery). One commenter questioned whether the inspection time period in section 8(b) also applies to the subsequent crop year following an indemnified loss and should it be referenced in this provision as well. One commenter also expressed concerns that the second sentence in section 8(b) could be confusing and lead to the impression that coverage starts after the application is received in the local office.

*Response:* Mint is similar to other perennial crops and must be inspected to determine if the mint stand is capable

of producing the yield used to establish the production guarantee.

Unfortunately, it is not possible to change the period for a crop inspection for the spring insurance period because the mint plants will not be out of dormancy 30 days before the start of the insurance period. Therefore, it cannot be determined if there is an adequate stand earlier than two weeks before the start of the insurance period.

FCIC agrees the provisions should include the requirement that an inspection must be made before the next insurance period following a notice of loss for which an indemnity was paid or the approved insurance provider determined there was not an adequate stand to determine if the mint acreage has an adequate stand for the next insurance period. FCIC also agrees the second sentence in section 8(b) could be confusing. Therefore, section 8(b) has been revised to specify that for the year of application and for the crop year following a loss, insurance will attach on the date coverage begins unless insurability requirements are not met.

*Comment:* Three commenters stated section 8(c)(3) references that coverage ends at the harvest for each cutting. The reference should be revised since mint has multiple cuttings each crop year, and coverage does not end until the final cutting of the crop year, as was done in the pilot program.

*Response:* FCIC agrees and has revised section 8(c)(3) to specify coverage ends at final cutting of the crop for the crop year.

*Comment:* Two commenters suggested revising section 9(a)(2) to state “Fire, due to natural causes” would clarify when fire is an insured cause of loss consistent with the Federal Crop Insurance Act and the Crop Insurance Handbook.

*Response:* In addition to the Mint Crop Provisions, the Common Crop Insurance Policy, Basic Provisions are applicable for mint. Section 12 of the Basic Provisions states all specified causes of loss must be due to a naturally occurring event. Adding the suggested language would be redundant and could cause confusion by suggesting that the other listed causes of loss do not have to be due to natural causes. Therefore, no change has been made.

*Comment:* One commenter suggested “marketable” should be added to section 11(d)(2). For example, a sample was distilled on a 7 acre unit that was cut but not distilled because of rain over a 3–4 day period. The sample distilled was a bronze color when it should have been clear. It was determined the oil from the sample was not a marketable product and thus had no value. Mint oil

is either marketable or not, there is no middle ground.

*Response:* Adding “marketable” to section 11(d)(2) would effectively add quality adjustment to the policy. Quality adjustment can only be added to the policy if there is an objective grading standard upon which to base the quality. There are no objective grading standards for mint oil. In many instances different qualities of mint oil (such as smell and taste) are blended by buyers for varying uses such as gum, toothpaste, etc. This means it would be up to the buyer to determine what is “marketable,” which would add a significant vulnerability to the policy because the buyer could elect not to purchase the mint for reasons other than the quality and shift the loss to the government. Further, without a consistent standard, it would be possible for some producers to be indemnified under the policy while others are not based on the subjective decision of the buyer. No change has been made.

*Comment:* One commenter suggested for section 13(a), deleting the comma before “\* \* \* if”.

*Response:* FCIC agrees with the suggestion and has revised section 13(a).

*Comment:* Two commenters asked if any new mint acreage planted after the applicable acreage reporting date as stated in section 13(d) is to be reported as insurable or uninsurable. A final planting date for mint covered under the Winter Coverage Option cannot be found in the actuarial documents. The commenters questioned whether there is any time between the fall acreage reporting date and the spring final planting date that mint should not be planted for insurance. The commenter also questioned if they should be providing the Winter Coverage Option for mint planted past a certain date.

*Response:* Mint is a perennial crop and producers will plant it, depending upon the region and weather conditions, during late fall, winter, or early spring. Therefore, there is no final planting date because FCIC does not want to dictate to the producer when the crop must be planted. However, all acreage of mint in the county must be reported on the acreage report. Therefore, mint planted after the acreage reporting date must be reported within two weeks of planting. FCIC recognizes that, depending on when it is planted, newly planted mint may not have attained an adequate stand by the date coverage begins. FCIC is revising the provisions to clarify that all mint must have attained an adequate stand by the date coverage begins before it can be reported as insurable. Mint that does not have an adequate stand on the

date coverage began, or that was planted after coverage began, must be reported as uninsured.

*Comment:* Two commenters stated section 13(e)(4) of the proposed rule referenced new mint acreage that is planted during the Winter Coverage Option insurance period but a final planting date could not be found for the Winter Coverage Option.

*Response:* It is not practical to specify a final planting date under the Winter Coverage Option for new mint acreage because mint is usually planted at any time throughout the Winter Coverage Option insurance period, depending on conditions. However, as stated above, FCIC has revised the provisions to make it clear that before it is insured, the new mint acreage must have attained an adequate stand. Therefore, mint acreage planted during the Winter Coverage Option insurance period must be reported as uninsured.

*Comment:* Two comments were received regarding the provisions contained in section 13(e)(4)(i), which requires that new mint acreage planted during the Winter Coverage Option be inspected and accepted for the first crop year. Insurance providers must notify the producer of acceptance or rejection of the application no later than November 15 adding that failure to notify by then will indicate acceptance. They questioned how the November 15 deadline fits with the December 15 acreage reporting date for acreage insured under the Winter Coverage Option. They also questioned how it works for new mint acreage planted after the Winter Coverage Option acreage reporting date. They asked whether it is covered by section 13(e)(4)(iv), allowing certification by the producer in place of the insurance provider's inspection for any mint acreage planted after the initial inspection. They asked what happens if additional acreage is planted after the inspection as there does not seem to be a final plant date for mint under the option.

*Response:* There were no subparagraphs (i) and (iv) in section 13(e)(4) of the proposed rule as indicated by the commenters. FCIC believes the commenters unintentionally combined proposed section 13(e)(4) with subparagraphs (i) and (iv) from proposed section 13(e)(5). Section 13(e)(4) pertained to new mint planted after the acreage reporting date, and section 13(e)(5)(i) and (iv) pertained to all mint, including newly planted and established, for which a premium rate is provided for the Winter Coverage Option. As stated above, FCIC has revised section 13(e) to require that all

mint have an adequate stand at the time coverage begins to be insured. Mint planted during the Winter Coverage Option insurance period cannot meet this requirement and, therefore, must be reported as uninsured. This will eliminate any confusion regarding the insurability of mint planted after the date coverage begins and no additional inspection will be required of such acreage until the start of the next insurance period. However, FCIC has added provisions to section 8(b) requiring that mint acreage reported as being planted during the Winter Coverage Option insurance period be inspected to determine whether it has attained an adequate stand before the date coverage begins for the spring insurance period.

*Comment:* Two commenters stated sections 13(e)(4)(ii) and (iii) do not appear to apply to "new mint acreage" since they address inspection or certification in subsequent crop years. These should remain separate subparagraphs (5) and (6) as in the current pilot Crop Provisions.

*Response:* Section 13(e)(4) of the proposed rule did not contain subparagraphs (ii) and (iii) as indicated by the commenters. FCIC believes the commenters unintentionally combined proposed section 13(e)(4) with subparagraphs (ii) and (iii) from proposed section 13(e)(5). The requirement that mint acreage must be inspected and accepted for the crop year following a loss that caused an inadequate stand or certified as having an adequate stand after the first year of coverage was contained in section 13(e)(5), which pertains to all mint types in the county. As stated above, FCIC has clarified that all mint must have an adequate stand to be insured and mint planted during the Winter Coverage Option insurance period must be reported as uninsured. Therefore, section 13(e) was correct in not making paragraph (5) applicable to new mint acreage. No change has been made in response to this comment.

*Comment:* One commenter questioned if the "after" should be deleted from section 13(e)(5)(iii) so it would read "\* \* on the date coverage begins the first crop year \* \* \*".

*Response:* Section 13(e)(5)(i) of the proposed rule required all mint types to be inspected and accepted the first crop year of insurance. Therefore, there is no need for the producer to provide such a certification in the first year and the provisions have been so revised. In addition, as stated above, the provision has been revised to require inspection the year after a reported loss that has caused an inadequate stand. Therefore, section 13(e)(4)(iii) will now require

producers to certify to an adequate stand each crop year unless there was a reported loss that has caused an inadequate stand.

*Comment:* One commenter stated section 13(e)(5)(iv) seems to indicate the producer could plant throughout the winter coverage insurance period and obtain coverage on new mint acreage provided the two week notice of planting was met.

*Response:* As stated above, because mint is a perennial crop, producers will plant, depending upon the region and weather conditions, during late fall, winter, or early spring. However, the requirement that mint must have an adequate stand at the time coverage begins to be insurable applies to mint under the Winter Coverage Option. Since mint planted during the Winter Coverage Option insurance period could never have an adequate stand before coverage begins, it must be reported as uninsurable. Therefore, FCIC has removed section 13(e)(5)(iv) because it suggests that mint planted during the Winter Coverage Option insurance period is insurable as long as it is certified on the acreage report and this is not correct.

*Comment:* Regarding section 13(i), three commenters asked if since this provision is only applicable to the Winter Coverage Option, should the correct production to count be 60 percent of the production guarantee as indicated in sections 13(b) and (l)(1).

*Response:* Section 13(i) was added to address those instances when a producer wishes to destroy a portion of mint acreage during the Winter Coverage Option insurance period and before it can be determined if there is an adequate stand on the acreage. The producer must agree in writing that no indemnity will be paid for the acreage destroyed with consent. The total production to be counted for those acres destroyed with consent will not be less than the approved yield. Section 13(b) states the guarantee under the Winter Coverage Option is "equal to 60 percent of the guarantee determined under section 3 of the Crop Provisions."

In addition to the changes described above, FCIC has modified section 11(c) to clarify the claim for indemnity calculation when more than one mint type is insured.

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

Crop insurance, Mint, 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 2008 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 457.169 is added to read as follows:

##### **§ 457.169 Mint crop insurance provisions.**

The Mint Crop Insurance Provisions for the 2008 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:  
Mint Crop Insurance Provisions

##### **1. Definitions**

**Adequate Stand.** A population of live mint plants that equals or exceeds the minimum required number of plants or percentage of ground cover, as specified in the Special Provisions.

**Appraisal.** A method of determining potential production by harvesting and distilling a representative sample of the mint crop.

**Cover crop.** A small grain crop seeded into mint acreage to reduce soil erosion and wind damage.

**Cutting.** Severance of the upper part of the mint plant from its stalk and roots.

**Distillation.** A process of extracting mint oil from harvested mint plants by heating and condensing.

**Existing mint.** Mint planted for harvest during a previous crop year.

**Ground cover.** Mint plants, including mint foliage and stolons, grown on insured acreage.

**Harvest.** Removal of mint from the windrow.

**Mint.** A perennial spearmint or peppermint plant of the family Labiatae and the genus *Mentha* grown for distillation of mint oil.

**Mint oil.** Oil produced by the distillation of harvested mint plants.

**New mint.** Mint planted for harvest for the first time.

**Planted acreage.** In addition to the definition in the Basic Provisions, land in which mint stolons have been placed in a manner appropriate for the planting method and at the correct depth into a seedbed that has been properly prepared.

**Pound.** 16 ounces avoirdupois.

**Sales closing date.** In lieu of the definition contained in the Basic

Provisions, if you select the Winter Coverage Option, application for the Winter Coverage Option will include application for the spring insurance period and must be submitted by the sales closing date for the Winter Coverage Option contained in the Special Provisions. Coverage may not be changed between the end of the Winter Coverage Option insurance period and the beginning of the spring insurance period. If you do not elect the Winter Coverage Option, application must be made by the spring sales closing date contained in the Special Provisions and all policy changes must be made by that date. If you later elect the Winter Coverage Option, you may select your coverage under the Winter Coverage Option.

**Stolon.** A stem at or just below the surface of the ground that produces new mint plants at its tips or nodes.

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

**Windrow.** Mint that is cut and placed in a row.

##### **2. Unit Division**

A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each mint type designated in 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 only select one price election for all the mint in the county insured under this policy unless the actuarial documents provide different price elections by type, in which case you may only select one price election for each type designated in the actuarial documents. The price elections you choose for each type must have the same percentage relationship to the maximum price election offered by us for each type. For example, if you choose 100 percent of the maximum price election for one specific type, you must also choose 100 percent of the maximum price election for other types.

(b) In addition to the provisions in section 3 of the Basic Provisions, you must report:

(1) The total amount of mint oil produced from insured acreage for all cuttings for each unit;

(2) Any damage to or removal of mint plants or stolons; any change in practices; or any other circumstance that may reduce the expected yield below the yield upon which the production guarantee is based, and the number of affected acres;

(3) The stand age;

(4) The date existing mint acreage was planted;

(5) The date new mint acreage was initially planted; and

(6) The type of mint.

(c) If you fail to notify us of any circumstance that may reduce your yields or insurable acres from previous levels, we will reduce your production guarantee and insurable acres at any time we become aware of the circumstance based on our estimate of the effect of damage to or removal of mint plants or stolons; stand age; change in practices; and any other circumstance that may affect the yield potential or insurable acres of the insured crop.

##### **4. Contract Changes**

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

##### **5. Cancellation and Termination Dates**

In accordance with section 2 of the Basic Provisions, the cancellation date is September 30 and the termination date is November 30. If your policy is terminated after insurance has attached for the subsequent crop year, coverage will be deemed not to have attached to the acreage for the subsequent crop year.

##### **6. Insured Crop**

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

(1) In which you have a share;

(2) That are planted for harvest and distillation for mint oil;

(3) That have an adequate stand by the date coverage begins; and

(4) That have been:

(i) Inspected and accepted by us for the first crop year you are insured; or

(ii) Certified by you as having an adequate stand on the date coverage begins after the first crop year you are insured unless an inspection is required under section 8(b).

(b) In lieu of the provisions of section 8 of the Basic Provisions that prohibit insurance of a second crop harvested following the same crop in the same crop year, multiple harvests of mint on the same acreage will be considered as one mint crop.

(c) In addition to the coverages provided in these Crop Provisions, you may also elect the Winter Coverage Option in accordance with section 13.

## 7. Insurable Acreage

(a) Mint interplanted with a cover crop will not be considered interplanted for the purposes of section 9 of the Basic Provisions if the cover crop is destroyed prior to its maturity and is not harvested as grain.

(b) In addition to the provisions of section 9 of the Basic Provisions, unless allowed by written agreement, we will not insure any acreage that:

(1) Does not meet rotation requirements contained in the Special Provisions; or

(2) Exceeds existing mint age limitations contained in the Special Provisions.

## 8. Insurance Period

In lieu of the provisions of section 11 of the Basic Provisions:

(a) Coverage begins on each unit or part of a unit for acreage with an adequate stand on the following calendar dates:

(1) June 16 in Indiana, Montana, and Wisconsin;

(2) May 16 in Washington; and

(3) For all other states, the date as provided in the Special Provisions.

(b) For the year of application, for when you have reported planting mint during the Winter Coverage Option insurance period, or for any insurance period following the payment of an indemnity or a reported loss where the crop was determined to not have an adequate stand, we will inspect all mint acreage within the two-week period before coverage begins (If you have elected the Winter Coverage Option, such inspection will occur not later than November 15).

(1) Insurance will attach on the date coverage begins, as specified in section 8(a), unless we inspect the acreage during the two-week period and determine it does not meet insurability requirements as specified in section 2 of the Basic Provisions, the application, or these Crop Provisions.

(2) You must provide any information we require for the crop or to determine the condition of the crop.

(c) Coverage ends for each unit or part of a unit at the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Final adjustment of a loss;

(3) The final cutting for the crop year;

(4) Abandonment of the crop; or

(5) The following calendar date:

(i) September 30 in Indiana and Wisconsin;

(ii) October 15 in Montana;

(iii) October 31 in Washington; and

(iv) For all other states, the date as provided in the Special Provisions.

## 9. Causes of Loss

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

(1) Adverse weather conditions;

(2) Fire;

(3) Insects or plant disease (except Verticillium Wilt disease), but not damage due to insufficient or improper application of control measures;

(4) Wildlife;

(5) Earthquake;

(6) Volcanic eruption; or

(7) Failure of the irrigation water supply, if caused by an insured cause of loss listed in sections 9(a)(1) through (6) that occurs during the insurance period.

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

(1) Occurs after harvest;

(2) Is due to your failure to distill the crop, unless such failure is due to actual physical damage to the crop caused by an insured cause of loss that occurs during the insurance period; or

(3) Is due to Verticillium Wilt disease.

## 10. Duties In The Event of Damage or Loss

In addition to your duties contained in section 14 of the Basic Provisions, if you discover that any insured mint is damaged, or if you intend to claim an indemnity on any unit:

(a) You must give us notice of probable loss at least 15 days before the beginning of any cutting or immediately if probable loss is discovered after cutting has begun or when cutting should have begun; and

(b) You must timely harvest and completely distill a sample of the crop on any acreage you do not intend to harvest, as designated by us, to determine if an indemnity is due.

## 11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate, acceptable production records:

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

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

(b) We may defer appraisals until the crop reaches maturity or the date mint harvest is general in the area.

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

(1) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee;

(2) Multiplying the result of section 11(c)(1) by the respective price election for each type, if applicable;

(3) Totaling the results of section 11(c)(2);

(4) Multiplying the total production to be counted (see section 11(d)) of each type, if applicable, by its respective price election;

(5) Totaling the results of section 11(c)(4);

(6) Subtracting the result in section 11(c)(5) from the result of section 11(c)(3); and

(7) Multiplying the result in section 11(c)(6) by your share.

For example:

Assume that you have a 100 percent share in 100 acres of peppermint in the unit, with a production guarantee of 50 pounds of oil per acre and a price election of \$12 per pound. Because an insured cause of loss has reduced production, you only harvest and distill 2,500 pounds of peppermint oil. Your indemnity would be calculated as follows:

(1) 100 acres x 50 pounds = 5,000 pound production guarantee;

(2) 5,000 pound production guarantee x \$12 price election = \$60,000 value of production guarantee;

(3) 2,500 pounds production to count x \$12 price election = \$30,000 value of production to count;

(4) \$60,000 - \$30,000 = \$30,000 loss; and

(5) \$30,000 x 100 percent share = \$30,000 indemnity payment.

(d) The total production to count (in pounds of oil) from all insurable acreage on 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) For which you fail to meet the requirements contained in section 10 of these Crop Provisions;

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

(E) For which you fail to provide production records that are acceptable to us;

(ii) All production lost due to uninsured causes;

(iii) All unharvested production;

(iv) All potential production on insured acreage that you intend to put to another use or abandon with our consent:

(A) If you do not elect to continue to care for the crop, we may give you our

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 fail to provide sufficient care for the samples, the amount of production to count will be not less than the production guarantee per acre); 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 the appraised production at the time the crop reaches maturity.

(2) All harvested production from the insurable acreage.

(e) Harvested production must be distilled to determine production to count.

(f) Any oil distilled from plants growing in the mint will be counted as mint oil on a weight basis.

(g) You are responsible for the cost of distilling samples for loss adjustment purposes.

## 12. Late and Prevented Planting.

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

## 13. Winter Coverage Option

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

(1) You elect the Winter Coverage Option on your application, or on a form approved by us, on or before the fall sales closing date for the crop year in which you wish to insure mint 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) This option provides a production guarantee equal to 60 percent of the production guarantee determined under section 3 of these Crop Provisions.

(c) If you elect this option, all of the insurable acreage in the county will be insured by this option.

(d) In addition to the requirements of section 6 of the Basic Provisions, any acreage of new mint planted after the applicable acreage reporting date must be certified by you and reported to us within two weeks of planting.

(e) In lieu of section 6(a) of these Crop Provisions, the crop insured will be all

mint types in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are planted for harvest and distillation as mint oil;

(3) That have an adequate stand on the date coverage begins (newly planted mint types must be reported in accordance with section 8(d) but they must be reported as uninsured unless they have an adequate stand by the date coverage begins); and

(4) That has been:

(i) Inspected and accepted by us for the first crop year you are insured (We will inspect all mint acreage and will notify you of the acceptance or rejection of your application not later than November 15. If we fail to notify you by that date, your application will be accepted unless other grounds exist to reject the application, as specified in the Basic Provisions, the application, or these Crop Provisions);

(ii) Inspected and accepted by us not later than November 15 for the crop year following the payment of an indemnity or a reported loss unless the crop was determined to have an adequate stand (If we determined there was an adequate stand after the loss was reported, no inspection is necessary); or

(iii) Certified by you as having an adequate stand on the date coverage begins unless an inspection is required under section 13(e)(4)(ii).

(f) Coverage under this option begins:

(1) On existing mint acreage with an adequate stand at 12:01 a.m. on the calendar date listed below:

(i) October 1 in Indiana and Wisconsin;

(ii) October 16 in Montana;

(iii) November 1 in Washington; and

(iv) For all other states, the date as provided in the Special Provisions.

(2) On new mint acreage, that has an adequate stand by the date coverage begins as specified in section 13(f)(1).

(g) Coverage under this option ends on the unit or part of the unit at 11:59 p.m. on the calendar date listed below:

(1) June 15 in Indiana, Montana, and Wisconsin;

(2) May 15 in Washington; and

(3) For all other states, the date as provided in the Special Provisions.

(h) In lieu of section 10(a) of these Crop Provisions, you must give notice of probable loss within 72 hours after you discover any insured mint is damaged and does not have an adequate stand, but no later than the date coverage ends for this option.

(i) In addition to the requirements of section 10 of these Crop Provisions, you must give us notice if you want our consent to put any mint acreage to

another use before a determination can be made if there is an adequate stand on the acreage. We will inspect the acreage and you must agree in writing no payment or indemnity will be made for the acreage put to another use. The total production to be counted for acreage put to another use with our consent in accordance with this section will not be less than the approved yield.

(j) In addition to section 11(a) of these Crop Provisions we will make a Winter Coverage Option payment only on acreage that had an adequate stand on the date that insurance attached if the adequate stand was lost due to an insured cause of loss occurring within the Winter Coverage Option insurance period and the acreage consists of at least 20 acres or 20 percent of the insurable planted acres in the unit.

(k) In lieu of section 11(b) of these Crop Provisions, we may defer appraisals until the date coverage ends under this option.

(l) In lieu of section 11(c) of these Crop Provisions, in the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying 60 percent by your production guarantee per acre;

(2) Multiplying the result in section 13(l)(1) by the number of acres that do not have an adequate stand;

(3) Multiplying the result in section 13(l)(2) by the price election; and

(4) Multiplying the result in section 13(l)(3) by your share.

For example:

Assume that you have a 100 percent share in 100 acres of mint with a production guarantee of 50 pounds of oil per acre and a price election of \$12 per pound. Also assume that you do not have an adequate stand on 50 acres by the date coverage ends for this option because an insured cause has damaged the stand. Your Winter Coverage Option payment would be calculated as follows:

(1) 60 percent x 50 pound production guarantee = 30 pound production guarantee per acre;

(2) 30 pound production guarantee per acre x 50 acres without an adequate stand = 1,500 pounds;

(3) 1,500 pounds x \$12 price election = \$18,000; and

(4) \$18,000 x 100 percent share = \$18,000 Winter Coverage Option payment.

(m) In lieu of section 11(d) of these Crop Provisions, the population of live mint plants to be counted from insurable acreage on the unit will be not less than the population of live mint plants in an adequate stand for acreage:

(1) That is abandoned;

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

(3) For which you fail to meet the requirements contained in section 13(h); or

(4) That is damaged solely by uninsured causes.

(n) Acreage for which a Winter Coverage Option payment has been made is no longer insurable under the Crop Provisions for the current crop year. Any mint production subsequently harvested from uninsured acreage for the crop year and not kept separate from production from insured acreage will be considered production to count.

(o) Acreage for which a Winter Coverage Option payment has been made will receive an amount of production of zero when computing subsequent year's approved yield.

(p) Sections 11(e), (f), and (g) of these Crop Provisions do not apply to this option.

Signed in Washington, DC, on April 25, 2007.

**Eldon Gould,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. E7-8340 Filed 5-2-07; 8:45 am]

BILLING CODE 3410-08-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 966

[Docket No. AMS-FV-06-0208; FV07-966-1 FIR]

#### Tomatoes Grown in Florida; Change in Handling Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule changing the handling requirements currently prescribed under the Florida Tomato marketing order (order). The order regulates the handling of tomatoes grown in Florida, and is administered locally by the Florida Tomato Committee (Committee). This rule continues in effect the action that limited the use of inverted lids on tomato containers to the handler whose information initially appeared on the lid. This rule helps ensure that lids do not contain the information for more than one active handler and aids in maintaining the positive identification and traceability of Florida tomatoes.

**EFFECTIVE DATE:** June 4, 2007.

**FOR FURTHER INFORMATION CONTACT:**

William Pimental, Marketing Specialist; or Christian Nissen, Regional Manager,

Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or E-mail: [William.Pimental@usda.gov](mailto:William.Pimental@usda.gov) or [Christian.Nissen@usda.gov](mailto:Christian.Nissen@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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, 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."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This 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 USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that changed the handling requirements currently prescribed under the order. This rule continues to limit the use of inverted lids on tomato containers to the handler whose information initially appeared on the lid. This rule helps ensure that lids do not contain the information for more

than one active handler and aids in maintaining the positive identification and traceability of Florida tomatoes. This action was unanimously recommended by the Committee at a meeting on October 4, 2006.

Section 966.52 of the order provides the authority to establish pack and container requirements for tomatoes grown under the order. This includes fixing the size, weight, capacity, dimensions, markings, or pack of the container or containers which may be used in the handling of tomatoes.

Section 966.323 of the order's administrative rules prescribes the handling regulations for Florida tomatoes. Section 966.323(a)(3) delineates the requisite container requirements for weight, markings, and appearance. The section specifies, in part, that each container or lid must show the name and address of the registered handler.

The majority of Florida tomatoes are packed in containers that have a separate lid. Most lids are preprinted with the handler's name and address. In addition, most lids can be inverted by reversing the lid so the blank side is on the outside, and the preprinted information is flipped to the underside of the lid. This is done so new information can be printed on the lid. This rule amends § 966.323(a)(3) by limiting the use of inverted lids on tomato containers to the handler whose information first appeared on the lid.

Inverted lids have been used in minimal quantities in past seasons, usually when a tomato packing operation was purchased by another entity. Any containers included in the purchase could be used by the purchasing handler by inverting the lids so the purchaser's information could be affixed on the clean side. Usually there were not many containers remaining, so the containers requiring inverted lids were fairly limited in quantity.

Recently, container sales companies have started offering their container overruns at discounted prices to tomato handlers. These containers usually have preprinted handler and product information on the lids. The Committee is concerned this could significantly increase the number of inverted lids being used by the industry and could pose problems with the positive identification and traceability of tomatoes.

In their discussion of this issue, the Committee agreed the ability to positively identify product is a necessity in today's marketplace. The Committee expressed concern that the practice of