DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB80

Common Crop Insurance Regulations; Nursery Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Nursery Crop Insurance Provisions to make container and field grown practices separate crops; provide coverage for plants in containers that are equal to or greater than 1 inch in diameter; provide separate basic units by share for all coverage levels and basic units by plant type when additional coverage is purchased; permit insureds to select one coverage level for each plant type basic unit when additional coverage is purchased; allow increases to the Plant Inventory Value Report (PIVR) up to 30 days before the end of the crop year; allow acceptance of an application for insurance for any current crop year up to 30 days before the end of the crop year; change the starting and ending dates for the crop year to June 1st and May 31st, respectively; and make other policy changes to improve coverage of nursery plants. FCIC also finalizes the Nursery Peak Inventory Endorsement to reflect changes made in the Nursery Crop Provisions and adds a new Rehabilitation Endorsement to provide a rehabilitation payment for field grown plants to compensate them for rehabilitation costs for plants that will recover from an insured cause of loss.

DATES: *Effective Date:* June 28, 2005.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the Cost-Benefit Analysis, contact Stephen Hoy, Risk Management Specialist, Research and Development, Product Development Division, Risk Management Specialist, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO, 641–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, it has been reviewed by the Office of Management and Budget (OMB).

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the Kansas City address listed above. In summary, the analysis finds the expected benefits associated with this proposed rule outweigh costs to the Government. The Nursery Policy changes will likely increase sales and encourage nursery growers to purchase higher levels of additional coverage.

Government outlays were calculated based on, what were considered to be, the four most significant changes: (1) Insurability of plants in containers between 1 inch and 3 inches in diameter; (2) extension of the date for acceptance of an application for insurance; (3) extension of the date for acceptance of a revised PIVR; and (4) addition of a Rehabilitation Endorsement. The Cost-Benefit Analysis estimated, under the most likely scenario, these proposed policy changes would increase Government outlays by approximately 11.2 million dollars and would result in approximately 505 million dollars of increased liability purchased by nursery growers.

Few problems are expected in servicing insurance policies and data reporting systems due to these policy changes.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through November 30, 2007.

Government Paperwork Elimination Act (GPEA) Compliance

In its effort to comply with GPEA, FCIC requires all reinsured companies delivering the crop insurance program to make all insurance documents available electronically and to permit producers to transact business electronically. Further, to the maximum extent practicable, FCIC transacts its business with reinsured companies electronically.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

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

Regulatory Flexibility Act

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

Federal Assistance Program

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

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988

on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule preempts State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J for the informal administrative review process must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This rule finalizes changes to the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.162 (Nursery crop insurance provisions) and 7 CFR 457.163 (Nursery peak inventory endorsement) and adds a new Nursery rehabilitation endorsement at 7 CFR 457.164 as published by FCIC on August 9, 2004, at 69 FR 48166–48174.

1. Current Program

Multiple peril crop insurance (MPCI) is available to wholesale nursery growers to assist in the management of nursery plant production risks against losses from specific perils. MPCI coverage for nursery has been available since 1989 and covered wholesale nurseries that received 50 percent or more of their gross income from the wholesale marketing of plants.

The initial insurance program only covered container grown plants that were classified as woody, herbaceous, or foliage landscape plants. That program required nursery growers to provide a nursery plant inventory report with their application or prior to the start of the crop year that projected the amount of inventory in the nursery on a month-by-month basis. If an insured cause of loss occurred, the wholesale market value for the insurable plants in the unit immediately after the occurrence of a loss was subtracted from the lesser of: (1) Ninety percent of the wholesale market value for the insurable plants in the unit immediately prior to the occurrence of a loss; or (2) the highest monthly market value for the unit reported on the nursery plant inventory summary multiplied by 0.9.

Between 1989 and 1999, the nursery crop insurance program was not utilized by a large number of growers. Effective for the 1999 and subsequent crop years, a new insurance program was offered that greatly expanded and modified coverage under the nursery policy, including expanding coverage to field grown nursery crops. These changes have resulted in liabilities increasing from approximately $ 803 million in 1998 crop year to approximately $ 3.7 billion in the 2005 crop year.

The current FCIC nursery program covers field grown and containerized nursery plants. Structures, equipment, supplies, etc. are not covered under this program. In contrast to many crop insurance programs (e.g., wheat, corn, soybeans, cotton, etc), coverage is not based on a yield guarantee that is established using an historical average crop yield per acre. Likewise, the nursery program is not a form of revenue insurance coverage (e.g., Adjusted Gross Revenue and Crop Revenue Coverage). No minimum income guarantee is established. Loss of revenue due to plant price fluctuation is not a covered component under the nursery program.

The program functions as an asset-based form of insurance coverage. Each insured grower provides a plant inventory value report (PIVR) that establishes the plant inventory value for all plants in the basic unit. However, unlike the previous insurance program, nursery growers only report the plant inventory value for the plants in the unit once a year instead of projecting such values on a monthly basis. This significantly reduces the burden on growers to have to project the expected monthly values of their plants.

For the year of application, coverage begins 30 days after the reinsured company receives a signed application. However, no application is accepted after May 31st of the crop year. If an application is submitted after May 31st, coverage will begin on October 1st for the next crop year. Like other crop insurance policy, coverage is continuous from crop year to crop year, unless the coverage is cancelled or terminated, and coverage begins on October 1st.

Insurance ends at the earliest of: (1) The date of final adjustment of a loss when the total indemnities due equal the amount of insurance; (2) removal of bare root nursery plant material from the field; (3) removal of all other insured plant material from the nursery; or (4) 11:59 p.m. on September 30th. Therefore, the maximum time an insurance period can extend in a crop year is from October 1st of one calendar year to September 30th of the next calendar year. The crop year is designated by the calendar year in which it ends. Therefore, if the end of the insurance period is September 30, 2005, it is considered the 2005 crop year.

Both additional and catastrophic risk protection (CAT) coverage are available under the nursery program. Under additional coverage, the grower selects a coverage level percentage (50 percent to 75 percent in 5 percent increments) and a percentage of the insurable price. CAT coverage provides 50 percent coverage at 55 percent of the insurable price. A dollar amount of insurance coverage is calculated by multiplying the grower's plant inventory value times the selected coverage level, times the selected price election, and times ownership share. This amount determines the maximum amount of losses paid in a year and the premium. For example:

A nursery grower reports a plant inventory value on the PIVR of $1,000,000, selects the 75 percent coverage level, selects 100 percent of the insurable price, and has a 100 percent ownership share in the nursery. The amount of insurance provided would be $750,000 ($1,000,000 plant inventory value $\times$ 0.75 coverage $\times$ 1.00 price $\times$ 1.000 share), and the deductible would be $250,000 ($1,000,000 plant inventory value $\times$ (1 $-$ .75)). Accumulated insurable losses would be paid up to a maximum of $750,000 over the insurance period.

To assist in valuing the plant inventory, FCIC publishes an Eligible Plant List and Plant Price Schedule (EPLPPS) that lists all insurable plants by genus, species, subspecies, variety, or cultivar. For the 2005 crop year, there are approximately 20,500 insurable plants on the EPLPPS. The insurable price for each plant is the lesser of the catalog or price list price or the maximum insurable price in the EPLPPS. Insurable plant prices are held constant over the crop year. The maximum insurable price is used to calculate the plant inventory value for the purposes of determining the amount of insurance and the amount of indemnity at time of loss.

A maximum insurable price is established for each insurable plant to avoid the potential for large variations in price for the same plant between insured growers thereby affecting the amount of insurance provided. Establishing a maximum price also avoids potential abuse of the program through inflated plant values. For price verification purposes, two copies of the nursery's most recent wholesale catalog or price list must be submitted to the insurance agent each crop year.

All plants on the EPLPPS are categorized into one of thirteen insurable plant types for insurance pricing purposes. For each type, plants are further categorized by container size (volumetric measurement) for containerized plants, caliper size for field grown plants; or high/wide size for field grown plants. Plants not listed on the EPLPPS may be insurable under a written agreement approved by FCIC. However, bulbs, cut flowers, aquatic plants, and air plants are not insurable and written agreements are not available for these plants.

Basic and optional unit are available under the policy, depending on the coverage level selected. Growers with additional coverage are provided basic units consisting of all insurable plants in the county for each practice (containerized or field grown). For additional premium, growers can divide basic units into separate optional units by plant type. The dollar amounts of loss on optional units are accumulated and applied against the amount of insurance on the insured's basic unit.

Under CAT coverage, the basic unit is established on ownership share and not by practice; *i.e.*, field grown and containerized plants are combined into one basic unit. The basic unit cannot be subdivided into optional units.

Basic units are larger in size and usually have a reduced potential for loss. Insureds with only basic units are provided a ten percent discount to the base premium rates. Optional units are smaller and usually have a greater potential for loss due to the fact that indemnity payable is calculated independently on each optional unit.

Growers with additional coverage may purchase up to two Peak Inventory Endorsements, although more than two endorsements may be purchased if one or more losses have occurred and the nursery is restocked. A Peak Inventory Endorsement allows growers to temporarily increase the dollar amount of inventory reported on their PIVR. The premium amount for the Peak Inventory Endorsement is prorated over the specified peak period, so a full year's premium is not paid on the Peak Inventory Endorsement amount. Growers declare the dollar amount of inventory value increase and the dates the Peak Inventory Endorsement is to begin and end. Peak Inventory Endorsements must be submitted on or before May 31st of the crop year.

The nursery policy covers similar causes of loss as other crop insurance policies. However, nursery is unique in that multiple indemnity payments may be made during a crop year if there are multiple losses. This is because the plants are valued individually and plants that are not damaged in one loss occurrence may be damaged in another. However, the total amount of indemnities that can be paid in any crop year cannot exceed the amount of insurance.

While trying to optimize coverage, there were several problems that had to be resolved. The first is fluctuating plant inventories during the crop year. This means that at time of loss, the total plant inventory values in the unit could be radically different than the amount of insurance. While the policy allows for increases to the plant inventory values if requested in writing by May 31st, insurance does not attach until 30 days after the request was received, and it did not totally solve the problem of fluctuating plant inventories.

To solve this problem, like the previous nursery policy, indemnities are not established based on the amount of insurance. Indemnities are established using the total of the plant inventory values of the insurable plants in the unit immediately prior to the loss and after the loss. This ensures that indemnities are based on the actual amount of loss suffered by the grower for the plants present at the time the insurable cause of loss occurs.

Another problem is that the premium is established based on the amount of insurance while losses are not. This means growers have an incentive to under-report their plant inventory values to pay less premium. FCIC solved this problem by including an under-report factor when calculating losses. This factor was determined by taking the lesser of 1.0 or the amount determined by taking the plant inventory value reported on the PIVR and subtracting any previous losses and dividing this total by the actual value of plants in the basic unit immediately prior to the loss occurrence. Use of the under-report factor provides an incentive for growers to avoid under-reporting their plant inventory values.

An additional problem is the amount of insurance contains a reduction for the coverage level but the amount of insurance is not used to calculate losses. To remedy this situation, FCIC developed the loss occurrence deductible, which is the smaller of the crop year deducible (deductible percent times the total plant inventory values for the basic unit) or an amount determined by multiplying the deductible percent (100 percent—the coverage level selected) times the value of plants in the unit immediately prior to the loss occurrence. This allows the application of the coverage level when calculating losses.

For example, a grower with 100 percent share reports a total plant inventory value of $100,000 and chooses a 75 percent coverage level and 100 percent price election. At time of loss, the plant inventory value immediately prior to the loss is $125,000, and the plant inventory value after the loss is $80,000. The crop year deductible is $25,000 ($100,000 × 0.25). The loss would be calculated as follows:

1. The under-report factor is 0.80 ($100,000/$125,000).
2. The occurrence deductible is $25,000 ($125,000 × 0.25 × 0.80).
3. The plant inventory value immediately prior to the loss—the plant inventory value after the loss is $45,000 ($125,000 − $80,000).
4. The result of (3) multiplied by the under-report-factor = $36,000 ($45,000 × .80).
5. The result of (3)—the occurrence deductible = $11,000 ($36,000 − $25,000).
6. Indemnity = $11,000 ($11,000 × 1.00 price election × 1.000 share).

2. Major Changes

Section 1—Definitions. A definition of ''liners'' is added to provide coverage for plants in containers that are equal to or greater than one inch in diameter. Also, the definition of ''standard nursery containers'' is amended to include containers equal to or greater than one inch in diameter.

Most nursery plants are started as liners; *i.e.*, small plants produced in nursery trays or flats. As a plant matures, it is usually repotted, or upgraded, into a larger container or placed into the ground. The current nursery program only insures plant in container that are three inches or greater at the widest point of the container interior. This limitation precludes a significant segment of the nursery industry from crop insurance coverage. Insuring plants in containers down to one inch in diameter will provide coverage to the majority of liner plants produced by the nursery industry.

Section 2—Unit Division. Basic units are provided by share which may be further divided into basic units by plant type when additional coverage is purchased. Optional units are eliminated.

Under the current Nursery Crop Provisions, a grower with additional coverage may elect optional units by plant types. However, it was discovered that it was possible for growers to receive coverage in excess of the coverage level selected because most calculations still occurred at the basic unit level even though optional units were selected. In some cases, growers

were able to obtain coverage that exceeded the amount permitted in the Act.

Instead of by optional units, the new Nursery Crop Provisions allow basic units to be split into additional basic units by type if the grower has elected additional coverage. The policy now lists 14 plant types for field grown material and 15 plant types for container grown material, including liners. The number of plant types produced in most small to medium sized nursery operations is limited. However, large nursery operations often produce a number of different plant types. In meetings with FCIC, nursery growers indicated a preference to selectively insure by type, since risk of loss varies to some degree between plant types. However, insufficient data on degree of risk by plant type precluded designating the types as separate crops. This change will enhance coverage provided to growers with additional coverage and permit growers to better structure their risk management options. It will also permit FCIC to gather experience data on both the inventory and loss sides of the program, and adjust premium rate by plant type.

Section 3—Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities. Growers may select a separate coverage level for each basic unit. Under the current Nursery Crop Provisions, only one coverage level can be selected and this same coverage level is applicable to all basic and optional units. However, nursery growers have indicated a preference to selectively insure plants by type, including selecting different price elections and coverage levels by type. FCIC considered both options in the proposed rule and, as a result of comments stated below, FCIC has elected to offer only different coverage levels by type. This will still provide growers ability to select the coverage level that best meets their risk management needs for the unit.

Section 6—Plant Inventory Value Report. The provision that precludes revision of the PIVR after May 31st of the crop year is removed from these provisions, and premium will be prorated for a PIVR increase.

The starting and ending dates of the crop year are being changed in these provisions, and growers will be permitted to apply for coverage up to 31 days before the end of the insurance period. In light of these changes, FCIC believes growers should have the option of increasing the PIVR up to 30 days before the end of the crop. Unlike the current provisions, growers will be limited to two PIVR revisions to minimize any burden to reinsured companies. Additional premium for the amount of PIVR increase will be prorated based on the time period remaining in the crop year and the additional amount of inventory reported. FCIC believes allowing two PIVR increases throughout the crop year and prorating premium for the additional reported amounts over the remainder of the crop year will significantly enhance risk management options for nursery growers.

Section 8—Insured crop and Plants. The crop insured will be all insurable nursery plants in each practice; *i.e.*, container grown or field grown.

Wholesale nursery growers use specific management practices to grow container grown plants and field grown plants. Each practice is unique, requiring growers to use separate plant production methods to grow the plants to a marketable size. Because production methods vary between the two practices, risk of loss also varies accordingly. To reflect the separate and unique characteristics of each practice, FCIC has designated each practice as a separate nursery crop. This change structures the Nursery Crop Provisions to correspond with how the nursery industry views these practices. Nursery growers who utilize both practices in their operation will have the option of insuring one or both practices. Growers' risk management options will also be enhanced because of the ability to insure each practice at either the CAT level or an additional level of coverage.

Section 9—Insurance Period. The starting and ending dates for the crop year are changed from October 1st and September 31st to June 1st and May 31st, respectively. Also, the provision that precludes acceptance of an application after May 31st is removed.

The current crop year starting date of October 1st and ending date of September 30th of the next calendar year places the start and end of the crop year during the hurricane season. If a hurricane occurs in September, growers may not be able to provide an accurate PIVR for the next crop year by the October 1st due date. Since a PIVR can only be increased during the crop year, growers may be forced to under report inventory. Also, if plants are partially damaged, a grower must wait until the loss adjuster has valued these plants before reporting their value for the subsequent crop year. Changing the starting and ending dates to June 1st and May 31st, respectively, will eliminate a number of potential reporting problems for insured growers.

For these and other less significant changes, the public was initially afforded a 60-day period to submit written comments and opinions after the proposed rule was filed in the Office of the Federal Register. Based on specific requests to extend the comment period, FCIC published a notice in the **Federal Register** at 69 FR 60320 on October 8, 2004, extending the initial 60-day comment period for an additional 45 days to November 22, 2004. A total of 187 comments were received from 21 commenters. The commenters were nursery growers, reinsured companies, crop insurance agents, an insurance service organization, nursery trade associations, a State Department of Agriculture, and an interested party.

The specific comments received and FCIC's responses are as follows:

Section 1—Definitions

Comment: A nursery trade association stated the American Nursery and Landscape Association is identified by its old name, ''American Association of Nurserymen,'' in the definition of ''American Standards for Nursery Stock.''

Response: FCIC has revised the definition to reference the American Nursery and Landscape Association or a subsequent successor organization.

Comment: An insurance service organization recommended the sentences in the definition of ''container grown'' be combined to eliminate repetition.

Response: The sentences have been combined to make clear that container grown applies to both plants in standard nursery containers above ground or grown in such containers in the ground.

Comment: An insurance service organization recommended the word ''it'' in the definition of ''crop year'' be clarified.

Response: Although this provision was not included in the proposed changes, the requested change is insignificant and would provide greater clarity. Therefore, FCIC has replaced the word ''it'' with the phrase ''the insurance period'' to be consistent with other Crop Provisions.

Comment: An insurance service organization recommended the last sentence in the definition of ''eligible plant list'' that states, ''A paper copy of the eligible plant list is also available from your agent'' be deleted.

Response: Although this provision was not included in the proposed changes, the requested change is necessary because FCIC has not required agents to maintain a paper copy of the Eligible Plant List because, depending on location, the Eligible Plant List may contain from a few thousand to over

20,500 plants; therefore, size precludes use of a paper copy for distribution to insured growers. The provision is clarified to state that the Eligible Plant List is available on RMA's Web site and on compact disk from crop insurance agents.

Comment: An insurance service organization and a reinsured company stated that contradictions exist between the definitions of ''container grown,'' ''fabric grow bag,'' and ''field grown'' regarding use of a fabric grow bag.

Response: FCIC agrees a conflict exists between the definitions of ''fabric grow bag'' and ''field grown'' in the proposed provisions because the proposed definition of ''fabric grow bag'' indicates the bag is a ''root control bag.'' The term ''root control bag'' is not applicable when a bag is placed in-ground; therefore, FCIC has removed the term ''root control bag'' from the definition of ''fabric grow bag.'' FCIC does not believe a conflict exists between the definition of ''container grown'' and the definitions of ''fabric grow bag'' and ''field grown,'' because above ground fabric grow bags are considered standard nursery containers. It is only in-ground fabric grow bags that are excluded as standard nursery containers. The provisions have been clarified.

Comment: An insurance service organization asked if fabric grow bags must be porous.

Response: The definition of ''fabric grow bags'' requires there be adequate drainage. This can be accomplished through the use of porous bags or other appropriate means to permit such drainage, such as drainage holes.

Comment: An insurance service organization recommended the period following the term ''fabric grow bag'' (in that definition) be moved to follow the term ''(root control bag).'' The same commenter also recommended that the phrase ''including a woven or matted bag'' be set off in parentheses rather than commas.

Response: As stated above, FCIC has removed the phrase ''(root control bag)'' from the definition of ''fabric grown bag'' because it conflicts with the definition of ''field grown.'' FCIC has also added parentheses to set-off the phrase ''including a woven or matted bag with a plastic or fabric bottom'' in the definition of ''fabric grow bag.''

Comment: An insurance service organization and a reinsured company recommended the definitions of ''field market value A,'' ''field market value B,'' and ''field market value C'' be revised to indicate these values are based on the lesser of: 1) the prices contained in the Plant Price Schedule, or 2) the prices contained in your wholesale catalog or price list.

Response: Although this provision was not included in the proposed changes, section 6(e) of the Nursery Crop Provisions specifies that the plant values cannot be greater than those contained in the Plant Price Schedule. FCIC agrees that the policy needs to be revised to make it clearer that this means the plant values are based the lesser of the price in the Plant Price Schedule or the prices in the grower's wholesale catalog or price list and has revised the definitions accordingly.

Comment: An insurance service organization recommended the phrase ''optional or basic unit'' in the second sentence of the definition of ''field market value A'' in the proposed rule be changed to ''basic or optional unit,'' and the same phrase be changed in the definition of ''field market value B. The same commenter recommended the phrase ''for the purpose of determining'' in the last sentence of the definitions of ''field market value A'' and ''field market value C'' in the proposed rule be changed to ''to determine.''

Response: Although this provision was not included in the proposed changes, for the reasons stated more fully below, FCIC has elected to eliminate optional units to reduce the complexity of the policy and protect program integrity.

Comment: An insurance service organization recommended capitalizing the term ''plant price schedule'' in the definition of ''field market value B'' in the current provisions.

Response: Since ''plant price schedule'' is the title of a document, FCIC agrees and has capitalized this term throughout these provisions.

Comment: Two insurance service organizations and a reinsured company recommended the under report factor be determined on the basic unit instead of the crop and recommended the definition of ''field market value C'' be revised to reflect this determination. The commenters stated the amount of insurance and other calculations are at the basic unit level. They stated that determining ''field market value C'' at the crop level would be time consuming and burdensome for adjusters, because adjusters would be required to determine the value of all undamaged plants in all basic units, even if a loss is not widespread, to correctly calculate ''field market value C'' on a crop basis.

Response: Since losses are indemnified separately for each basic unit there is no need to determine the under report factor for basic units that may not involve a loss. FCIC has removed the definition of ''field market value C'' because, as stated above, optional units have been eliminated.

Comment: Three nursery trade associations recommended that the definition of ''good nursery practices'' be expanded to include ''best management practices'' for production nurseries.

Response: Use of the term ''best management practices'' would suggest there is a single management practice that is needed to be considered a good nursery practice. This is not the case; any practice that would meet the standards in the definition of ''good nursery practices'' is permitted. FCIC has changed the word ''county'' to ''area'' to correspond with language used in the definition of ''good farming practice'' in the Basic Provisions.

Comment: An insurance service organization asked if organic farming practices need to be referenced in the definition of ''good nursery practices.''

Response: FCIC has revised the definition of ''good nursery practices'' to include provisions for organic farming.

Comment: An interested party and an insurance service organization recommended the definition of ''liners'' be clarified by adding the phrase ''in diameter'' after the word ''inch'' and enclosing the phrase ''including trays containing 288 or fewer individual cells'' in parentheses.

Response: FCIC agrees and has revised the definition of ''liners'' to add the phrase ''in diameter'' after the word ''inch.'' With respect to the 288 or fewer individual cells, FCIC has discovered that the use of a one inch limitation on cell size corresponds more closely to 200 cells per tray, not 288 cells per tray. However, there may be some variability in nursery tray sizes so FCIC has revised the provisions to allow a different number of individual cells if permitted by the Special Provisions.

Comment: A nursery trade association asked if the definition of ''liners'' excluded rooted cuttings and seedlings grown in flats that have no individual cells.

Response: To be insurable, the liner must have a standard nursery container size that is greater than one inch but less than three inches in diameter. This could include individual cell in trays, pots or other appropriate containers. However, since flats or trays without individual cells are not, by definition, considered standard nursery containers, they cannot be considered liners.

Comment: A reinsured company asked if the definition of ''nursery crop'' will require the current crop code for nursery to be replaced by two crop codes.

Response: To maintain consistency in data processing and record keeping, FCIC has retained the 0073 crop code for nursery. The 007 field grown practice code and 008 container grown practice code are retained on the actuarial documents. However, now each of these practices will be treated as if it were a separate crop. To accomplish this, FCIC has: (1) Added a new section 8(a) to clarify the insured crop will be each practice in which the insured grower has a share that is insured and for which a premium rate is provided by the actuarial documents; and (2) removed the proposed definition of ''nursery crop.'' The term ''practice'' has been added back into the policy and specifies that plants grown in standard nursery containers and field grown are separate practices.

Comment: A reinsured company asked if growers will have the options of selecting insurance coverage on one or both nursery crops and choosing buy-up coverage on one crop and CAT coverage on the other crop. The commenter also asked if all plant types within the crop must be insured.

Response: As stated above, the term nursery crop is no longer used. The field grown practice and container grown practice are treated as separate crops, so the crop insured will be each practice the grower elects to insure. Because each practice is treated as a crop, a grower can select additional coverage on one practice and CAT coverage on the other practice. However, a grower that selects CAT for a practice must insure all plant types grown with that practice under such coverage. If a grower selects additional coverage for a practice, the growers must insure all plant types grown with that practice under additional coverage but the actual additional coverage level may vary by plant type.

Comment: An insurance service organization and a reinsured company stated that removal of the term ''practice'' and separation of field grown and container grown plants into separate crops could result in adverse selection. One commenter stated that container grown material will be insured at higher coverage levels, while field grown material will not be insured or insured under CAT.

Response: As stated above, the term practice has been added back to the policy but the separate practices are still considered separate crops and can be insured separately. However, the production methods and risks are considerably different between field grown and container grown plants. Because of these differences, producers must be given the option to select the coverage that best meets their risk management needs. To mitigate the potential for adverse selection, FCIC has adjusted premium rates considering the risks associated with field grown and container grown separately.

Comment: An insurance service organization asked if the phrase ''in electronic format'' in the definition of ''Plant Price Schedule'' could be removed. The same commenter suggested removal of the last sentence in this same definition.

Response: FCIC has revised the definition to eliminate the reference to electronic format but it does specify it is available on RMA's Web site and on compact disk from crop insurance agents. This provision is necessary because growers must be informed of where they can obtain the information. For clarity and consistency with the definition of ''Plant Price Schedule,'' the definition of ''Eligible Plant List'' is also revised to remove the reference to electronic format.

Comment: An insurance service organization asked if the phrase ''that is appropriate for the plant'' in the definition of ''standard nursery containers'' is intended to exclude different plant types together in one container.

Response: Nothing in this definition is intended to address the issue of insurability for containers with different types of plants. Insurability for this practice has previously been excluded in the underwriting guidelines. However, this provision is more appropriately contained in the policy and FCIC has revised section 8 to add this exclusion. The phrase ''that is appropriate for the plant'' was intended to refer to the drainage requirements and is not necessary because the term ''adequate'' is sufficient to address the drainage requirements. Therefore, the phrase has been removed.

Comment: An insurance service organization and a reinsured company recommended the term ''percentage'' in the definition of ''survival factor'' be defined in the Crop Provisions. One of the commenters asked if the survival factor will vary by region. The other commenter stated a grower may be unable to sell a flat if a certain percentage of the plants are destroyed, and a definition of ''percentage'' is needed to determine if an entire flat can be considered destroyed in order to accurately determine the survival factor.

Response: FCIC does not insure flats that do not contain individual cells. FCIC only insures liners grown in individual containers. FCIC does not agree with the recommendation to consider all liners destroyed if a certain percentage of the plants are destroyed. Such plants can still be sold and, therefore, have value. Failure to consider this value when determining losses would increase indemnity payments on liners, negatively impact premium rates, and adversely affect program integrity. Therefore, the term ''percentage'' is given its common usage meaning and a definition is not necessary. FCIC is currently evaluating information on survival factors for liners, and, if there are variations by region, they will be reflected on the Special Provisions. No change has been made in response to this comment.

Comment: An insurance service organization recommended inserting a hyphen between the words ''under'' and ''report'' or ''reporting'' or combining the two words into one word. The commenter recommended removal of the colon after the word ''of'' and removal of the semicolon after ''1.000'' for clarity.

Response: FCIC agrees the term ''under report'' should be hyphenated. FCIC agrees that the punctuation is not correct in the third sentence in the definition of ''under factor.'' However, FCIC has elected to designate the two provisions as (a) and (b) so there is a clear distinction.

Comment: A crop insurance agent recommended the definition of ''wholesale'' include growers selling large quantities of plants at a reduced price to government offices.

Response: FCIC agrees and has revised the definition of ''wholesale'' to include a plant sale to end-users, including government offices, if the sale is for a large quantity of plants at a reduced price. The purpose of the provisions is to ensure that insurance is only provided for producers of the plants. Therefore, as long as the grower produces the plants and otherwise qualifies as a wholesale marketer (*i.e.*, sells in large quantities at lower prices) there is no basis to deny insurance for such growers simply because they sell to end users.

Comment: An insurance service organization recommended the definition of ''wholesale'' be restructured so the wording is not separated into subparagraphs. If the subparagraphs are retained, the commenter recommended capitalizing the first word in subparagraphs (b) and (c).

Response: FCIC agrees and has revised the definition to eliminate the subparagraphs.

Section 2—Unit Division

Comment: An insurance service organization recommended the phrase

''if the plants are not liners'' in proposed section 2(a)(1) be changed to ''for plants that are not liners.''

Response: All references to liners are removed from section 2(a) because a type code for liners is required for reporting purposes. Instead, basic units may be established by plant type and FCIC has added liners as a plant type in section 2(c). Therefore, the recommended change is not necessary.

Comment: An insurance service organization stated the phrase ''the basic unit'' in section 2(b) reflects only one basic unit in a county. The same commenter asked if the phrase in proposed section 2(b) that states ''the basic unit will be used to establish the amount of insurance, crop year deductible, premium, and the total amount of indemnity payable under this policy'' means that all optional units within one of these basic units will have the same guarantee, rate, etc.

Response: There may be more than one basic unit in a county because basic units are now permitted by share and plant type. Section 2(b) specifies that each of these basic units may be divided into optional units as provided in section 2(d). However, FCIC agrees that it is difficult to ascertain how the amount of insurance, premium rates, deductibles determined at the basic unit level will apply to optional units. This level of complexity will make it difficult for agents to explain the policy to growers and reinsured companies to defend the policy provisions. For these reasons and those stated below, FCIC has elected to remove optional units from the policy and has redesignated the provisions in section 2 accordingly.

Comment: An insurance service organization stated that limiting optional units by location to field grown material may not preclude balled and burlapped plants from being shifted between locations.

Response: FCIC concurs that balled and burlapped plants could be shifted between locations. This would adversely affect program integrity. Because FCIC does not know of any reasonable means to eliminate this potential shifting of production, and for the other reasons stated above, FCIC has elected to eliminate optional unit.

Comment: An insurance service organization asked if the language in section 2(d) precluded insuring organic and conventional nurseries as optional units.

Response: For the reasons stated above, FCIC has elected to eliminate optional units. Therefore, this is no longer an issue.

Comment: Three nursery trade associations stated that optional units should be offered by location for plants in containers in a manner that significantly mitigates the potential for shifting of container grown plants between growing locations to facilitate losses.

Response: FCIC is not aware of any method or process that would significantly mitigate the potential for shifting plants between locations to facilitate a loss if optional units by location are offered for containerized plants. As stated above, since the risk associated with the shifting of production is so great and they add an increased level of complexity, FCIC cannot permit optional units at this time and has eliminated them from the policy. If the nursery trade associations have suggestions of how optional units may be offered without the risk of shifting production, they should provide them to their local Regional Office for future consideration.

Comment: An insurance service organization recommended the premium rates be adjusted to reflect division of basic units by share and plant type.

Response: FCIC contracted a study to evaluate the impact of these changes on the premium rates and will make appropriate adjustments. Also, as experience data are compiled for each crop, plant type, and coverage level, premium rates will be adjusted accordingly to maintain an actuarially sound program.

Comment: Two insurance service organizations and two reinsured companies expressed concern on allowing basic units by plant type and all liners. Two of the commenters stated collecting PIVRs on basic units by plant type would require more work by the reinsured company, be burdensome to administer, and could make the loss adjustment process impossible to complete. One commenter recommended plant values continue to be aggregated on all container grown plants and all field grown plants, and plant types should remain optional units. Two of the commenters stated premium rates should be adjusted to reflect these changes.

Response: Most nurseries have a limited number of plant types. Therefore, FCIC believes reporting the plant inventory value by plant type will, in most instances, not be overly burdensome to growers or reinsured companies to administer. It is true that more losses may have to be calculated. However, in some instances the amount of work required for loss adjustment will be reduced. If there are basic units by plant type, and not all types suffer a loss, field market value A and B and the under-report factors will only have to be calculated for the plant types with a loss. If there is a basic unit by container grown and field grown, field market values A and B would have to be calculated for all types in the unit, regardless of whether they had a loss. Further, reporting plant inventory values for each plant type will improve the accuracy of the PIVR, thereby increasing accuracy in determining the amount of insurance, premium owed, and indemnity payable. This will benefit growers and reinsured companies. To allow basic units by field grown and container plants and optional units by plant type would not significantly decrease the work load because field market value A and B would have done by type. As stated above, FCIC has contracted for a rate study, including units by plant type, and rates will be adjusted appropriately to reflect the risks. Section 2(a) is amended to specify that unless there is a premium rate for the type on the actuarial document, insurance is not provided. Further, as experience data are compiled for each plant type, premium rates will be adjusted to reflect the risks associated with insuring each type.

Comment: A nursery grower recommended that palms and cycads be placed in a separate plant type.

Response: FCIC agrees a separate plant type to include all plants classified as palms and cycads is appropriate because the morphological characteristics of these plants are unique and, therefore, they are more appropriately typed separately. Redesignated section 2(b) of these provisions is revised to reflect this additional plant type.

Comment: A reinsured company stated that liners are not a plant type but are listed as a type for basic unit division purposes. The commenter recommended that liners be added to the plant type list in section 2(c) (redesignated as section 2(b)).

Response: FCIC agrees that it is better to include liners as a plant type than to try to distinguish basic units by whether liners were present. Although liners may be a composite of a number of plant types, for insurance coverage and data processing purposes a single type code will be assigned for all liners. FCIC has added liners to the list of plant types in redesignated section 2(b).

Comment: An insurance service organization asked if removal of the ''other plant types listed in the Special Provisions'' from the list of plant types in section 2 would preclude using written agreements to insure plants not listed on the Eligible Plant List.

Response: Use of a written agreement to insure a plant not listed on the Eligible Plant List is not affected by the plant types listed in redesignated section 2(b) of these provisions. However, information provided to FCIC by the nursery industry, subsequent to publication of the proposed rule, suggests that FCIC may need to add one or more new plant types to redesignated section 2(b) to enhance plant pricing accuracy. To expedite possible inclusion of a new plant type, FCIC has not removed ''other plant types listed in the Special Provisions'' from redesignated section 2(b).

Section 3—Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

Comment: Two insurance service organizations, two reinsured companies, and a crop insurance agent questioned the proposed provision that allows different coverage level and price election percentage for each basic unit. These commenters stated the nursery policy should not allow a different coverage level and price election percentage for each basic unit because it would lead to adverse selection. One commenter stated allowing a separate price election percentage for each plant type would create a vast opportunity for moral hazard. One commenter stated different coverage levels and price elections would add complexity to the use of Peak Endorsements and to the loss adjustment process. One commenter indicated different coverage levels and price election percentages by plant type would create administrative burdens.

Response: FCIC agrees that different price election percentages should not be allowed by plant type. FCIC concurs with the commenter regarding the opportunity for moral hazard to increase significantly if the price election percentage is permitted to vary by plant type. Also, FCIC agrees that allowing price election to vary by plant type could increase the administrative burden on reinsured companies. Crop insurance experience data indicates insureds rarely elect less than 100 percent of the insurable plant price. During the 2004 crop year, less than one percent of insureds with additional coverage selected a price election percentage that was less than 100 percent of the insurable plant price. Therefore, to reduce administrative burden and to be consistent with the large majority of crop policies providing coverage on a dollar amount of insurance, FCIC has removed the option of selecting less than 100 percent of the insurable plant price on nursery plants. However, growers with additional coverage and basic units by plant type should be permitted to select different coverage levels for plant types. The risks with each type may be different and growers should be able to select the appropriate coverage level to meet their risk management needs. Premium rates will be established for each practice, plant type and coverage level shown on the actuarial document. As experience data are compiled for each practice, plant type, and coverage level, premium rates will be adjusted accordingly to maintain an actuarially sound program. FCIC agrees that some additional work will be required of the reinsured company and loss adjuster. However, allowing separate coverage levels is not what increases the burden. The burden is increased because separate types are considered separate basic units. Further, most growers do not produce many different types so the burden should not be substantially increased.

Comment: Three commenters stated clarification is needed to indicate whether each basic unit can have a separate coverage level and price election percentage or all basic units must have the same coverage level and price election percentage. Two commenters indicated clarity is needed regarding eligibility for the option of separate coverage level and price election percentage on an additional level of coverage and ability to vary coverage level and price election percentage on a basic unit level by share or plant type. One commenter recommended coverage level, if allowed by plant type, be identified on the application by crop or crop/type, since basic units are not identified on the application. One commenter stated establishing coverage level by plant type might be acceptable if premium rates are adequate. One commenter stated reinsured companies must be allowed to set fund designations by basic unit if insureds can select coverage level and price election by basic unit.

Response: FCIC agrees additional clarification is needed to avoid confusion on selecting coverage level on a basic unit and has revised sections 3(c) of the proposed provisions to specify that different coverage levels only apply to plant types, not other types of basic units. FCIC also agrees that coverage level must also be included on the application so FCIC has revised section 3 to require growers to list each plant type and the coverage level selected for each type on the application. The Standard Reinsurance Agreement does not permit reinsured companies to select fund designations on a basic unit level. Therefore, FCIC cannot include this provision in these Crop Provisions.

Comment: A reinsured company asked if the intent of the policy is to insure nursery crops similar to Idaho, Oregon, and Washington grapes. If this is the intent, the commenter indicated it should be stated more concisely.

Response: The Grape Crop Provisions permit insured growers in Idaho, Oregon, and Washington to select a price election and coverage level for each grape varietal group specified in the Special Provisions. As stated above, the language in proposed section 3(b) is revised to clarify that a coverage level can be selected for each plant type insured under a practice. Operationally the Nursery Crop Provisions are similar to the Grape Crop Provisions in that separate types/varieties have separate units. However, under the Grape Crop Provisions applicable to all states except California, basic units are divided into optional units by variety. Under the Nursery Crop Provisions, basic units are divided into other basic units by plant type. The provisions have been revised to clarify that the insured crop is determined by the practice and, at the election of the grower, basic units can be established by plant type if additional coverage is elected.

Comment: An insurance service organization recommended the word ''policy'' not be used in proposed section 3(b) because container and field grown plants are separate crops and the word ''policy'' could be misleading. The commenter stated FCIC needed to review the terms ''policy'' and ''crop'' in these provisions to make sure it fits the new definitions.

Response: FCIC is not sure what the issue is because each different practice is considered a different crop. This means each practice would also be considered a different policy since only one crop is insured per policy. However, references to ''policy'' have been removed from section 3(b). FCIC will review other provisions to ensure that the term ''policy'' is correctly used.

Comment: An insurance service organization and a reinsured company asked if administrative fees would be charged for each plant type.

Response: Pursuant to sections 508(b)(5) and 508(c)(10) of the Federal Crop Insurance Act, administrative fees are payable on a crop and county basis. Since different plant types are not considered different crops, separate administrative fees for each plant type would not be owed. However, each practice is considered a separate crop so section 3(b) of these provisions is revised to clarify an administrative fee

is owed for each practice (field grown and container grown) insured.

Comment: An insurance service organization stated coverage under CAT needs clarification, since the policy language appears to restrict a grower from purchasing additional coverage for the rest of the nursery if CAT coverage is chosen for one type.

Response: The policy is intended to restrict the grower from purchasing additional coverage for the rest of the practice if CAT coverage is chosen for one type. FCIC has revised proposed section 3(b) to state insureds may select either CAT or an additional level of coverage on each insured practice. This means a grower can select CAT coverage for field grown plants and additional coverage for containerized plants, or vice versa. However, growers who select CAT coverage on a practice must insure all plant types under that practice at the CAT coverage. An insured cannot select CAT for one or more plant types under a practice and select additional coverage on other plant types under the same practice.

Comment: An insurance service organization asked if any other multiple peril crop policies permit coverage level and price election percentage to vary besides those crops listed in section 4A(4) of the Crop Insurance Handbook. This commenter asked if allowing coverage level and price election percentage to vary by basic unit would establish a precedent for other crops, and recommended leaving plant types as optional units.

Response: As stated above, growers will no longer be able to select different price elections by plant type but growers will be permitted to select different coverage levels by plant type. Section 4A(4) of the Crop Insurance Handbook lists Crop Provisions with more than one insurable crop. The Grape Crop Provisions applicable to all states except California permit variation in coverage level and price election by varietal group with all insurable varieties being designated as one crop. Therefore, allowing coverage level to vary by basic units of the same crop in the Nursery Crop Provisions does not establish a precedent. Such precedent was already set.

Comment: An insurance service organization recommended language be considered to address what coverage level and price election percentage should be used for new plant types added on a revised PIVR.

Response: As stated above, price elections will not be permitted to differ between plant types but coverage levels will. Section 3(c) is revised to specify that if an insured with an additional level of coverage submits a revised PIVR or Peak Inventory Endorsement that includes a plant that is categorized under a plant type (basic unit) not on the initial PIVR, the insured must select the coverage level for insuring the new plant type. Language that precludes coverage level changes after the sales closing date is not applicable, because selecting a coverage level for a new plant type is not a change to an existing coverage level.

Comment: An insurance service organization recommended revising proposed section 3(c)(1) and (2) to read as follows:

(1)''For the initial crop year, after the date of application; and

(2) For subsequent crop years, after September 30th.''

Response: FCIC cannot accept the suggestions. Sections 3(c)(1) and (2) (now redesignated as sections 3(d)(1) and (2)) apply to the first crop year the provisions are in effect because at that time some producers will be new applicants and others will have carryover policies. Since the insurance period is changing, the first year there needs to be an interim date by which changes may be made. However, FCIC has revised redesignated section 3(d) to clarify that the September 30 date applies to the first crop year the provisions take effect and the sales closing date applies to all subsequent crop years.

Comment: An insurance service organization recommended that language in proposed section 3(f) be revised to clarify an increase to the insured's coverage level must be requested on or before September 30th prior to the start of the crop year. The commenter also recommended combining proposed sections (c) and (f) or moving section (f) to follow section (c). The commenter also recommended removing the phrase ''whichever is later,'' in proposed section 3(f) and adding the phrase ''the later of'' between the words ''on'' and ''October.''

Response: FCIC has removed proposed section 3(f) because, except for carryover policies for the 2006 crop year, all coverage level changes must be submitted by the sales closing date and section 3 has been revised to clarify the date by which the changes requested for the 2006 crop year take effect and the date by which the changes for all subsequent crop years date effect.

Comment: An insurance service organization and a reinsured company asked whether a coverage level increase could be denied if a loss occurs within the 30-day waiting period for the higher coverage level to attach but the reinsured company is not made aware of the loss until after the higher coverage level attached.

Response: A request for a higher coverage level can be denied if a loss occurs during the 30-day waiting period even if the reinsured company is not notified of the loss until after the 30-day waiting period has elapsed.

Comment: An insurance service organization stated that newly redesignated section 3(e) should reference ''section 6(g)'' and not ''section 6(f).''

Response: FCIC agrees and has revised newly redesignated section 3(e) accordingly.

Comment: A crop insurance agent stated the Eligible Plant List must use adequate (plant) pricing, as well as offer coverage on all items.

Response: It is not possible to cover all items at this time. Without adequate pricing information to ensure that the plants receive the proper amount of insurance and are not over or under insured, plants cannot be added to the Eligible Plant List. As such information is obtained, FCIC continues to update and expand the Eligible Plant List to provide additional plants and plant price data. Each crop year, the Eligible Plant List is expanded to include new plant varieties and cultivars, including plants covered by written agreements the previous crop year. No changes are made in response to this comment.

Section 6—PIVR

Comments: An insurance service organization asked if inventory revisions are required when liners are put in larger containers or planted in the field.

Response: When liner plants are repotted into larger containers or placed in the field, the insured should increase the PIVR to reflect the increased value of the larger plant. If the PIVR is not increased to reflect higher plant values and an insurable loss occurs, an under-report factor may be applied to reduce the payable indemnity.

Comment: An insurance service organization and a reinsured company suggested that cancellation of policies for the subsequent crop year due to failure to submit a PIVR by September 1st prior to the start of the crop year could lead to higher costs for companies and less coverage for growers. One commenter stated that growers may intentionally not provide a PIVR to get partial year coverage and prorated premiums. The commenter asked whether an insured grower will be treated as a new applicant if the grower is cancelled because of failure to timely submit a PIVR but then submits a report later in the crop year. The commenter

expressed concern that year after year of repeated cancellations and applications would result in added time and costs for the reinsured company.

Response: Since the crop year has been revised, the provisions regarding when PIVRs must be submitted must also be changed. To ease administration of the policy, section 6(b) has been revised to require the PIVR be submitted with the application or by the sales closing date for each subsequent crop year. However, there may be legitimate times when the grower cannot submit the PIVR, or the catalog or price lists, because the grower does not know the inventory, such as after a loss has occurred or the catalog has not been finalized by the crop year. RMA agrees that cancellation of the policy and reapplication may impose a burden on the reinsured company and grower. FCIC has revised the provisions to specify that if the grower does not submit the PIVR, or the catalog or price lists, by the sales closing date, insurance will not attach until 30 days after the grower submits the required information. This should mitigate the burden on reinsured companies and growers. While it may still be possible for growers to delay providing the necessary documentation in order to get partial insurance for the year and pay a partial premium, the legitimate inability of some growers to timely provide such documentation outweighs the likelihood that growers will risk suffering losses while insurance has not attached. However, the risk associated with such conduct is already included in the premium rates.

Comment: An insurance service organization recommended carrying over the plant inventory value from the previous year if the renewal plant inventory is signed less than 30 days prior to the sales closing date and an inspection is required. This commenter stated new values should attach 30 days after new inspection. If no inspection is required, the new values take effect on the sales closing date.

Response: For all years after the year of application, PIVRs must be submitted by the sales closing date, which is 30 days before the start of the insurance period. As stated above, if the grower fails to provide a PIVR by the sales closing date, insurance does not attach for such plants until 30 days after the PIVR is received by the agent. FCIC chose this revision instead of the recommendation to use the previous year's plant inventory value because plant inventory values for most nurseries are seldom, if ever, the same from one crop year to the next. Therefore, carrying-over plant inventory values from one crop year to the next could lead to misreporting penalties and introduce significant errors in amounts of insurance coverage provided and amount of premium owed, including the amount of imputed premium paid by the Federal government for polices with CAT coverage. FCIC also believes the 30-day waiting period between submission of a Plant Inventory Value Report and insurance attachment is an adequate time period for the reinsured company to complete an inspection. To delay until 30 days after the reinsured company has made an inspection will subject the grower to the additional risks that a loss may occur before insurance has attached. Further, reinsured companies have been operating under the 30 day deadline to complete their inspections since 1999. Therefore, this requirement does not impose any additional hardships on reinsured companies.

Comment: An insurance service organization asked if separate PIVRs are required if field grown and container grown are separate crops. The commenter asked if both nursery crops can be reported on one PIVR. The commenter stated that clarification is needed if a PIVR is provided timely for one nursery crop but not the other; *i.e.* would the entire policy be cancelled or coverage be cancelled on the applicable nursery crop.

Response: The format of the PIVR form will be revised to reflect Nursery Program changes contained in this rule. A PIVR will be required for each practice, because each is a separate crop covered under separate policies. If an insured fails to timely submit a PIVR on a practice, as stated above, insurance does not attach for all nursery plants insurable under that practice. Insurance is not affected for nursery plants insurable under the other practice if a report is submitted timely for that practice.

Comment: An insurance service organization asked if separate PIVRs will be required for additional coverage and CAT coverage. The commenter also asked if all basic units are reported on one PIVR.

Response: As stated above, PIVRs must be separately filed for each practice, regardless of whether the practices are both insured under additional coverage or one under CAT and the other under additional coverage. The policy has been revised to clarify that regardless of whether an insured has additional coverage or CAT coverage on a practice, an inventory value must be provided for each basic unit, including by plant type, insurable under the practice. This is necessary to calculate total premium for additional and CAT coverage and producer premium for additional coverage.

Comment: Three nursery trade associations recommended basing the insurable prices of plants on the insured's wholesale catalog or price list price when an additional level of coverage is purchased.

Response: FCIC does not currently have the experience to determine the effect of allowing such prices on coverage or premium rates. Therefore, the use of such prices cannot be allowed in this final rule. However, FCIC is developing a Pilot Nursery Grower's Price Endorsement that would permit growers with additional coverage to establish the insurable price of select plants on their catalog or price list prices. If approved, this pilot endorsement may be available for the 2006 crop year in select areas. The pilot would operate for several years and, if FCIC determines the pilot is successful, the endorsement will be codified in the **Federal Register** and could be made available to all growers with additional coverage. No changes are made in response to this comment.

Comment: An insurance service organization requested that the Plant Price Schedule be updated to provide an appropriate pricing reference for all sizes and types of plants, so coverage of larger plants is not limited.

Response: The Plant Price Schedule base price tables are established using plant price data available to FCIC from grower catalogs and price lists. If such data is not available for a plant size or type, they cannot be included on the Plant Price Schedule. FCIC will continue to expand the sizes listed on base price tables as price data becomes available. If the pilot endorsement discussed above is approved, growers in the pilot area with additional coverage who elect this endorsement will be able to price containerized and field grown plants on their catalog or price list prices even though they exceed the size limitations and prices contained in the Plant Price Schedule. No changes are made in response to this comment.

Comment: One reinsured company stated that clarification is needed on whether plant inventory value is reported on the inventory value at time of submission of the PIVR or is based on the expected plant inventory value for the crop year.

Response: Because inventory valuation can vary throughout the crop year, these provisions cannot stipulate the point in time on which the dollar amount reported on the PIVR must be based. Requiring the reported values be fixed in time would arbitrarily cause

growers to be in an under-reporting or over-reporting situation. Growers must be given some flexibility in determining how to report their inventory, considering the ramifications of under-reporting or over-reporting of inventory. To mitigate the problem of selecting a specific value when the inventory and values change, growers are permitted to increase their PIVR during the crop year. Language is added to section 6(g) to limit the number of inventory revisions during the crop year to two. This is to reduce the administrative burden on reinsured companies and growers to track an unlimited amount of changes during the crop year. FCIC believes the large majority of wholesale nurseries do not require more than two inventory revisions for a basic unit during the crop year to maintain an accurate amount of insurance. This should be sufficient to permit growers to more specifically tailor their reported values to the actual values present at the time. However, to allow changes more often would increase the complexity and burden on reinsured companies and growers. Insureds with additional coverage can also utilize a Peak Inventory Endorsement to increase their plant inventory valuation. No changes are made in response to this comment.

Comment: An insurance service organization and a nursery trade association asked for clarification regarding required documentation and proof of the PIVR. One commenter also asked if the type and value of coverage will be restricted for a grower who does not have three years of history on a new nursery or new plant varieties.

Response: The reinsured company has the option of requiring documentation in support of the plant inventory value, including a detailed listing of plants on the PIVR, sales and purchase records for the three previous crop years, and the grower's ability to obtain and maintain nursery stock. Such records are not required. However, if the reinsured company requests documentation and the grower fails to provide it, the provision is clarified to specify that insurance is denied for the crop year for any basic units for which such documentation was not provided. This means if the grower fails to provide documentation for any plants within a basic unit, insurance will be denied for the unit. Insurance will not be affected for other basic units for which applicable documentation have been provided. If the grower obtains a new nursery, insurance may be provided after an inspection of the facilities if the reinsured company determines a grower has the ability to properly obtain and maintain nursery stock, the insurance provider may bind coverage in the absence of records. Further, three years of records are not required to insure a new plant variety and no adjustment will be made or insurance denied.

Comment: An insurance service organization and a crop insurance agent stated that flexibility should be allowed when determining insurability of a plant that is partially damaged, because this cannot be accurately established at the time inventory is reported.

Response: Language in section 11 of these provisions permits a loss adjuster to defer the determination of amount of damage to a plant up to one year after the end of the insurance period for the crop year in which the damage occurred. A plant that is damaged but will recover to its pre-damaged stage of growth must be insured at a reduced value until fully recovered. Section 6(e) has been revised to clarify that if a loss adjuster is unable to determine whether a plant is damaged prior to the time the grower submits the PIVR for the subsequent crop year, the plant is insurable at full value based on the lesser of the Eligible Plant List price or the catalog/price list price. The reinsured company may, however, reduce the insurable value of a plant later in the crop year if the extent of damage can be determined. This should allow the maximum flexibility and avoid the potential for over-insurance.

Comment: Four nursery growers expressed opposition to the change that will require inventories to be updated six times each year. They indicated it would be a time consuming burden.

Response: There were no provisions in the proposed rule, nor are there provisions in this final rule, that require plant inventories to be updated six times each year. The grower must report inventory once with the application or by the sales closing date and the grower has the option to revise it twice during the crop year. Therefore, no change is required.

Comment: An insurance service organization recommended that ''a liner value be established for all policies and coverage levels.''

Response: Liners in standard nursery containers are classified as a plant type and will constitute a separate basic unit when insured under a policy with an additional level of coverage. This means that the liner value will be established for the basic unit, which can have only one coverage level. Liners are insurable under CAT coverage. However, CAT policies are limited to basic units by share, so liners are not a separate basic unit under CAT. This means the liners will receive the same CAT level of coverage as other plants in the practice. No changes are made in response to this comment.

Comment: A reinsured company asked how and in what manner plant prices in the Plant Price Schedule will be available since they are not published in the actuarial documents.

Response: The Eligible Plant List and Plant Price Schedule is part of the actuarial documents and is available on RMA's Web site at *http://www.rma.usda.gov*. The Eligible Plant List and Plant Price Schedule is also available on compact disk from the crop insurance agent.

Comment: An insurance service organization recommended replacing the phrase ''for the subsequent crop year'' in the second sentence of proposed section 6(b) with the phrase ''for that crop year.''

Response: The recommended change does not reflect the actual intent of the provision. For the year of application, the PIVR must be submitted with the application. For each crop year after the year of application, the PIVR must be submitted by the sales closing date. Section 6(b) has been revised to clarify this distinction.

Comment: An insurance service organization recommended the phrase ''of each basic unit'' in the first sentence of proposed section 6(c) is not necessary since basic unit value is defined.

Response: FCIC agrees and has removed the phrase ''of each basic unit'' from the sentence. The word ''value'' is made plural for clarity. However, the provision is revised to specify that all information, such as growing locations, share, etc., must be reported by basic unit. This will make it much simpler to identify the different basic units and eliminate potential errors that can result with information is not segregated.

Comment: An insurance service organization asked if the misreporting penalty addressed in proposed section 6(c) is to be applied for any inadvertent reporting omission. The commenter asked if ''any indemnity'' will be denied if an error is discovered on the PIVR, but the error does not affect the basic unit with a loss. This commenter asked if misreporting on one nursery crop would result in denial of coverage on the other nursery crop. Another insurance service organization and an insurance agent recommended the word ''Intentional'' be added to the beginning of the last sentence in section 6(c) that addresses misreporting on the PIVR and denial of an indemnity due to the misreporting.

Response: FCIC recognizes the dollar amount of plant inventory in many wholesale nurseries varies considerably during the crop year. Growers should

not be penalized because of this expected variability. Further, differentiating between intentional and unintentional misreporting on the PIVR would be very difficult for the reinsured company to determine. Therefore, FCIC has removed language from these provisions regarding misreporting of material information on the PIVR.

Comment: An insurance service organization recommended the last two sentences in proposed section 6(c) be moved to section 6(d) or section 6(c) and (d) be combined.

Response: As stated above, the provisions relating to misreporting have been removed from the policy. However, section 6(c) pertains to the contents and verifiability of the PIVR, which includes the requirement to provide documentation if requested. This is unrelated to section 6(d), which pertains to the use of the PIVR to determine premium and the amount of insurance. Because the requirement to provide documentation upon request is contained in section 6(c), the consequences for failure to provide such documentation should remain in section 6(c). No changes are made in response to this comment.

Comment: An insurance service organization recommended changing the sentence structure of proposed section 6(f) by removing the comma and word ''or'' after the word ''coverage'' and inserting a semicolon.

Response: FCIC agrees that redesignated section 6(h) need clarification and has revised them to specify that if insurable plants are damaged, the price may be reduced if the plants are accepted or the plants will be removed from the PIVR if they are not accepted.

Comment: An insurance service organization requested clarification of the term ''applicable price'' in section 6(f).

Response: FCIC has added the phrase '', as determined in accordance with section 6(e),'' after ''applicable price'' in redesignated section 6(h) of these provisions because section 6(e) contain the provisions regarding how the price for each plant is determined.

Comment: An insurance service organization recommended cutting-off acceptance of revisions to the PIVR no less than 2 months prior to the renewal date to allow time for inspections for increases in inventory.

Response: As stated above, FCIC believes the 30-day waiting period between submission of a revised PIVR and insurance attachment is an adequate time period for the reinsured company to complete an inspection. To extend this date would increase the risk for growers that a loss may occur before insurance attaches and could force the grower to purchase increased coverage before such a need arises. One of the intent of the changes to the policy has been to permit growers to have the flexibility to tailor their insurance to their needs. No change has been made in response to this comment.

Comment: An insurance service organization asked if the phrase ''increased 50 percent or more from the previous values on a policy basis'' in the third sentence in section 6(g) of the proposed provisions means an increase on both nursery crops together or separately.

Response: The term ''policy'' in section 6(g) actually refers to each nursery practice because each practice is insured under a separate policy. However, although increases can be reported for each basic unit, to determine whether there has been a 50 percent increase, the total value of all basic units in the practice is used. For clarity, FCIC has revised the language in section 6(g) to be more specific and state inspection requirements for increases on the PIVR apply when the total of all the basic unit values contained on the PIVR is increased 50 percent or more from the previous total of all the basic unit values. Specific reference to practice is not necessary because the provisions refer to a revised PIVR and section 6(b) has been revised to clarify that each practice is contained on a separate PIVR.

Comment: An insurance service organization requested clarification on the requirements in proposed section 6(g) if a grower decreases the PIVR.

Response: The purpose of the revision to the plant inventory value is to allow producer to adjust their inventory when they restock plants. Such plants would not be insured under the original inventory values because such plants did not exist at the time and coverage on the original plants that were sold or damaged was included in the original inventory value so when new plants are added to the nursery, there must be a mechanism to provide coverage for such plants. It was not the intent of the policy to permit decreased plant inventory values so section 6(g) has been revised to clarify that it applies only to increases and specify that the PIVR cannot be revised to decrease inventory values after the start of the crop year. As stated above, FCIC has also added language to clarify that inventory values cannot be increased more than twice during the crop year to reduce the potential administrative burden that could result from unlimited revisions during the crop year.

Comment: An insurance service organization recommended the term ''appropriate sized'' in the first sentence of proposed section 6(i) be hyphenated.

Response: FCIC agrees and has hyphenated the term in redesignated section 6(j) of these provisions.

Comment: One interested party requested the language in proposed section 6(j) be modified to require that a nursery grower's wholesale catalog or price list is ''machine generated'' and the issue date be shown on the catalog or price list.

Response: FCIC agrees that wholesale catalogs and price lists must be type-written and show an issue date. The issue date of the catalog or price list shows the time-period for which the catalog or price list was first issued (*e.g.* 2004, fall 2003, etc). The issue date can be handwritten on the front of the catalog. Further, FCIC has revised the provisions to require the catalog or price list be provided to customers and used in the sale of plants. Reinsured companies will be able to now verify the prices used in the sale of the plants because FCIC has revised the documentation provisions to require sales records contain the name and telephone number of purchasers.

Comment: A reinsured company stated that it is unclear whether the application and PIVR will be processed, resulting in premium earned, if the insured fails to submit a catalog or price list.

Response: FCIC has revised section 6(b) to make it clear that the PIVR and the catalog and price list must be submitted at the same time. Further, as stated above, FCIC determined that the proposed sanction of no indemnity being due or the denial of insurance was too harsh because there are legitimate reasons why such documents could not be timely provided. Further, it imposed too great a burden to require reapplication. Instead, failure to provide any one of these required documents with the application or by the sales closing date, as applicable, will result in insurance not attaching until 30 days after all the documents have been received by the crop insurance agent. In such case, premium would not be earned until insurance attached.

Section 7—Premium

Comment: An insurance service organization and a reinsured company asked if the reference to prorated premium in section 7 applies to new applicants, insureds with revised inventories, Peak Endorsements, or all of these.

Response: Under section 7(b), premium amounts are prorated the first

year of coverage for new insureds with partial year coverage and for coverage terms of Peak Inventory Endorsements. FCIC believes that premium amounts should also be prorated, based on the time remaining in the crop year, if the grower submits a PIVR or wholesale catalog or price list after the sales closing date or if the insured's PIVR is revised. Section 7(b) is revised to include proration of an insured's premium if the PIVR or wholesale catalog or price list is submitted after the sales closing date or a revised PIVR is submitted.

Comment: An insurance service organization and a reinsured company stated that section 7(b) should be revised to state premium will be prorated, rather than adjusted, for the partial crop year.

Response: FCIC agrees that the term ''prorated'' is more appropriate than the term ''adjusted,'' and section 7(b) of these provisions is revised to provide the conditions under which premium will be prorated.

Comment: A crop insurance agent stated that some factors currently used in determining premium are missing and clarification seems appropriate.

Response: The commenter is correct that FCIC has other premium adjustment factors on the actuarial document besides the monthly proration factor and FCIC will continue to use such factors under the new rule as appropriate. Therefore, FCIC has revised section 7(a) to add such factors.

Comment: An insurance service organization stated proposed language in section 7(c), as written, removes section 7(a) of the Basic Provisions; therefore, this section does not address when nursery premiums are earned and payable or when the premium and administrative fee will be billed when an application is made prior to July 1st.

Response: FCIC agrees that, as drafted, the provision eliminated all the requirements contained in section 7(a) of the Basic Provisions. However, it was only intended to be in lieu of section 7(a) of the Basic Provisions when new applications are submitted after July 1st (now April 1st as a result of a change to the insurance period explained more fully below under section 9) of the crop year. FCIC has revised section 7(c) to add the provisions found in section 7(a) of the Basic Provisions for applications submitted before April 1st. FCIC has also added a provision stating that if the PIVR or wholesale catalog or price list is submitted after April 1st the premium is owed and payable when such documents are submitted. This change was made because filing these documents after April 1st has the same effect as if application were made after April 1st. FCIC also clarified that if premium was not paid when the application or PIVR or wholesale catalog or price list is submitted, not only would there be no insurance or indemnity owed for the crop year, the grower could not apply again for insurance until the next crop year.

Section 8—Insured Crop and Plants

Comment: A reinsured company asked if growers will be required to insure their liners.

Response: As stated above, growers only have the option of insuring or not insuring their plants at the crop level, which means by practice. If a grower elects to insure a practice, such as container grown, growers will be required to insure all applicable plant types under that practice, including liners. However, the producer has the option to insure one practice and not the other. Therefore, section 8 needs to be clarified to specify that the insured crop is the practice the insured elects to insure and in which the insured has a share to be consistent with the Basic Provisions. Section 8 has been revised to make these changes.

Comment: An insurance service organization recommended the word ''section'' in the introductory paragraph of section 8 be changed to ''sections.''

Response: FCIC agrees and has revised redesignated section 8(b) accordingly.

Comment: An insurance service organization stated that proposed sections 8 and 8(j) appear to exclude from insurance any nursery plants that do not provide edible fruits/nuts. The commenter recommended revision of proposed section 8(j) to state ''Are intended for sale as plants (not just the edible fruits or nuts produced by the plant).''

Response: FCIC agrees that the provision could be read to require the plant produce edible fruit or nuts to be insurable but that is not the intent. Previously, plants that produced edible fruit or nuts were only insurable if they were not harvested while they were in the nursery. However, FCIC has determined that harvest of the edible fruit or nuts does not affect the quality or marketability of the trees. Therefore, the intent is to make it clear that plants that produce edible fruit and nuts may be insurable even if they are harvested while in the nursery as long as they are made available for sale. To accomplish this, FCIC has revised the provision to so specify.

Comment: A reinsured company requested clarification regarding whether growers can harvest and sell fruits and nuts from trees if the trees are intended for sale.

Response: As stated above, whether the fruits or nuts are harvested or not is no longer material. Insurability is determined by whether the plants producing the edible fruits or nuts are made available for sale during the crop year. The provision has been revised to make this clearer.

Section 9—Insurance Period

Comment: Two insurance service organizations, a reinsured company, and a crop insurance agent stated the crop year starting date of October 1st is a problem because that date is in the middle of the hurricane season. Two commenters recommended changing the date for areas susceptible to hurricanes.

Response: FCIC agrees and has moved the starting date for the crop year from October 1st to June 1st and has moved the ending date from September 30th to May 31st. This change will allow the crop year to start before the beginning of the hurricane season and allow the entire hurricane season to be covered in a single crop year. To initiate new crop year dates, the 2006 crop year ending date is May 31, 2006. The 2007 and subsequent crop years will begin on June 1st and end on May 31st of the calendar year following the starting date. The contract change date will be January 31 prior to the start of the crop year, the sales closing date will be May 1, and the cancellation date will be May 31 prior to the start of the crop year. The termination date will be May 31 of the crop year. The billing date will be April 1 of the crop year. The PIVR and catalogs must be submitted on or before the sales closing date for each crop year following the year of application. The actuarial documents for the 2006 crop year will show premium proration factors for calculating the premium amount for the shortened crop year.

Comment: A State Department of Agriculture and a crop insurance agent stated that some producers have no plants in their greenhouses during some months but are charged premium for 12 months of coverage. One commenter stated October through January is a period with high premium proration factors so premium paid during this time period may be substantial, unwarranted, and not needed. The commenters stated that coverage periods are being adjusted through cancellation and reapplication and use of Peak Inventory Endorsements. However, the peak amount of insurance is limited by the plant valuation of the basic unit. The commenters requested that nursery crop insurance provisions allow for changes in inventory values to address

the needs of growers who have limited inventory during certain time periods.

Response: As stated above, the crop year has been changed from October 1 through September 30 to June 1 through May 31. As a result of this change, the proration factors for October through January should also change. This should mitigate the complained of effect. FCIC also agrees that limitation of the amount of insurance under the Peak Inventory Endorsement may limit its benefit to growers who have high variability in their inventory and has increased the amount of insurance permitted to 200 percent of the basic unit value. However, complete removal of the liability limitation on the Peak Inventory Endorsement or revising the Nursery Crop Provisions to permit insureds to select coverage periods with starting and ending dates within the crop year would introduce adverse selection into the program. If coverage was permitted under shortened, select insurance periods or the peak liability limitation was completely removed, FCIC believes many insureds would either carry coverage only during high risk periods or would carry minimum year-round coverage and maximized Peak Inventory Endorsements during high risk periods. This could significantly affect indemnities paid and amount of premium that would have to be collected to maintain an actuarially sound program. Further, FCIC is unable to respond to the commenters' statement of how coverage periods are adjusted through cancellation and reapplication. Growers are permitted to cancel coverage prior to the cancellation date and submit a new application after the start of the crop year. Once coverage attaches, it cannot be cancelled for the current crop year. Therefore, insurance periods cannot be adjusted through cancellation and reapplication. No changes have been made in response to this comment.

Comment: An insurance service organization recommended combining sections 9(a)(1) and 9(a)(3) and adding a hyphen between ''30'' and ''day'' in section 9(a)(3).

Response: FCIC agrees that since both section 9(a)(1) and (3) involve the date coverage begins for the year of application, FCIC can combine the two sections into one and has done so. However, because FCIC also revised the crop year, FCIC has also included provisions specific for the 2006 crop year. FCIC has also inserted a hyphen between ''30'' and ''day'' in section 9(a)(3) as recommended.

Comment: An insurance service organization recommended fixing the two-minute coverage gap resulting from language in section 9(a)(2) that ends the insurance period on September 30th at 11:59 p.m. and starts the next insurance period on October 1st at 12:01 a.m.

Response: FCIC agrees that there is no need to reference a time for the start of the insurance period because it is clearly understood that a particular date starts at 12 a.m. However, the time is still needed for the end of the insurance period to make it clear that it ends at the end of the day. Sections 9(a) and (b) have been revised accordingly.

Section 10—Causes of Loss

Comment: Three nursery industry trade associations recommended insurance coverage be expanded to cover inability to market plants due to a Federal or State order prohibiting sale, including, but not limited to, a quarantine, stop sales order, or phytosanitary restriction. Another commenter stated the policy should be amended to cover plants order destroyed by a Government organization.

Response: Under section 508(a)(1) of the Federal Crop Insurance Act (Act), FCIC can only cover losses to the crop due to a ''drought, flood, or other natural disaster (as determined by the Secretary).'' Under a Federal or State quarantine, stop sales order, or phytosanitary restriction, some losses may be covered if the plant has been infected or exposed to a covered natural disaster, such as disease. However, quarantines, stop sales orders, and phytosanitary restrictions frequently affect plants that have not been infected or exposed to a pathogen. There is no authority under the Act to provide coverage for such plants.

Comment: A reinsured company stated that section 10(a)(2) should be revised to clarify that fire must be due to natural causes.

Response: According to sections 508(a)(1) and (b)(1) of the Act, all insurable causes of loss must be due to natural causes. This requirement is implemented in section 12 of the Basic Provisions, which states: ''All specified causes of loss, except where the Crop Provisions specifically cover loss of revenue due to a reduced price in the marketplace, must be due to a naturally occurring event.'' The causes of loss listed in the Nursery Crop Provisions specifically state they are in accordance with the Basic Provisions. Therefore, the requirement that fire be due to natural causes is already contained in the policy and to repeat the reference on for fire could create the mistaken impression that other causes of loss listed do not have to be from natural causes. No change is made in response to this comment.

Comment: An insurance service organization stated the reference to section 10(b) in section 10(a)(1) should be changed to 10(c).

Response: FCIC agrees and has revised the reference accordingly.

Comment: An insurance service organization recommended proposed section 10(b) be expanded to exclude losses due to failure of the irrigation water supply and failure of the power supply unless due to an insurable cause of loss in section 10(a). The commenter recommended the section start with the phrase ''Insurance is also provided against the following, if due to a cause of loss specified in section 10(a).'' The commenter recommended the phrase ''if such plants would have been marketed during the crop year'' in the first sentence of section 10(b) be enclosed in parentheses instead of commas. The commenter also recommended the last sentence of section 10(b) be revised by removing the phrase ''coverage is provided for reduced value, due to an insured cause of loss.''

Response: FCIC agrees and has revised section 10(b) to state that coverage is provided against inability to market nursery plants, failure of the irrigation water supply, and failure of the power supply if due to a cause of loss specified in section 10(a) and has reorganized the paragraph as suggested. Section 10(b) has been revised to remove the ''For example * * *'' and just include the example for poinsettias. This removes the redundancies in the provision, making it clearer and easier to read. As a result of these changes, FCIC does not believe enclosing the phrase ''if such plants would have been marketed during the crop year'' in parentheses is necessary. Therefore, this change is not made.

Comment: An insurance service organization stated the semicolon and word ''or'' at the end of section 10(a)(6) in the current provisions should be removed and a period added.

Response: As stated above, section 10(a)(6) of the current provisions has been moved into section 10(b) as section 10(b)(2).

Comment: An insurance service organization stated that proposed section 10(c) should be amended to: (1) Reference sections or subsections 12(a) and (c) through (f) of the Basic Provisions; (2) change the periods at the end of proposed sections 10(c)(3) and (6) to semicolons to be consistent with the other subsections in section 10 of the current Nursery Crop Provisions; (3) insert the word ''the'' before the word ''refusal'' in section 10(c)(3); (4) change

the commas to semicolons after the words ''production'' and ''boycott'' in section 10(c)(3); and (5) move the word ''or'' from the end of section 5 to section 6.

Response: FCIC has revised the language in section 10(c) of these provisions to reference sections 12(a) and (c) through (f) of the Basic Provisions; changed the periods to semicolons at the end of redesignated sections 10(c)(2) and (5); added the word ''the'' before the word ''refusal'' in redesignated section 10(c)(2); and removed the word ''or'' at the end of redesignated section 10(c)(4) and added the word ''or'' at the end of redesignated section 10(c)(5). FCIC has restructured redesignated section 10(c)(2) for clarity and readability. Therefore, the use of semicolons is no longer necessary.

Comment: An insurance service organization recommended the phrase ''In lieu of 12(b) of the Basic Provisions'' be added at the beginning of section 10(c)(6) of these provisions.

Response: FCIC agrees and has revised the provision accordingly.

Duties in Event of Damage or Loss—Section 11

Comment: An insurance service organization recommended changing the term ''11(a)(2)'' to the phrase ''this section'' in section 11(a)(2)(i).

Response: To avoid ambiguity, crop insurance policy provisions generally use the exact section identification when referring to a section. While it may appear to be redundant, there is no confusion over what term is being cross-referenced. No change is made in response to this comment.

Comment: An insurance service organization recommended inserting the word ''the'' or the word ''an'' between the words ''determine'' and ''amount'' in section 11(a)(2)(ii). The commenter also recommended replacing the numeral ''1'' with the word ''one'' in the same subsection.

Response: FCIC agrees and revised the provision accordingly.

Settlement of Claim—Section 12

Comment: An insurance service organization and a reinsured company asked if the new misreporting factor in the 2005 Basic Provisions applies in addition to or instead of the under-report factor.

Response: Section 6 of these provisions states that section 6 of the Basic Provisions is not applicable. Section 3(a) of these provisions states the production reporting requirements contained in section 3 of the Basic Provisions are also not applicable. However, to avoid any ambiguity because other provisions in section 3 of the Basic Provisions remain in effect, FCIC has revised section 3 to clarify that the provisions not applicable also include the misreporting provisions.

Written Agreement—Section 14

Comment: An insurance service organization stated the written agreement section needs to be revised to be consistent with the language in the 2005 Basic Provisions.

Response: While FCIC has not proposed any changes to the written agreement provisions, FCIC agrees that the provisions must be revised to conform to the 2005 Basic Provisions.

Comment: An insurance service organization recommended revising section 14(a) of these provisions as follows: ''In lieu of section 18(a) of the Basic Provisions, you must request (in writing) a written agreement with the application for the initial crop year, and not later than the cancellation date for each subsequent crop year.''

Response: While FCIC has not proposed any changes to the written agreement provisions, the requested change is technical in nature and would not change the meaning of the provision. Therefore, FCIC has revised section 14(a) to require requests in writing.

Comment: An insurance service organization recommended adding a comma after the word ''Provisions'' in section 14(b).

Response: FCIC agrees and has inserted a comma between the words ''Provisions'' and ''any'' in section 14(b) of these provisions. FCIC has also revised the provisions to clarify that section 14(b) is in lieu of section 18(d) of the Basic Provisions. Section 18(d) of the Basic Provisions permits multi-year written agreements and contains provisions applicable if multi-year agreements are provided. However, section 14(b) of the Nursery Crop Provisions restricts the written agreement to that portion of the crop year remaining after the request for written agreement is accepted.

Comment: An insurance service organization recommended changing the words ''initial year'' to ''initial crop year'' in section 14(c) of the current provisions. The commenter also recommended breaking section 14(c) of the current provisions into sections following the word ''if'' to read as follows:

''(1) You demonstrate your physical inability to have applied timely; and

(2) After physical examination of the nursery plant inventory''

Response: While FCIC has not proposed any changes to the written agreement provisions, the requested change is technical in nature and would not change the meaning of the provision. FCIC agrees with adding the word ''crop'' between the words ''initial'' and ''year'' in section 14(c). FCIC also agrees with the recommendation to restructure section 14(c) and has revised the provisions accordingly.

Examples—Section 15

Comment: An insurance service organization stated FCIC may need to consider changes to the settlement of claim examples based on proposed policy changes. The commenter also recommended enclosing the step numbers referenced in the examples in parentheses.

Response: FCIC agrees that revisions to the examples are necessary to remove the references to price election because, as stated above, amounts of insurance will not be provided on less than 100 percent of the insurable plant prices. FCIC agrees that since there are parentheses around the numbers in the steps, all references to such steps should also have the numbers in parentheses.

Peak Inventory Endorsement

Comment: An insurance service organization asked if separate Peak Inventory Endorsements would be written by basic unit (plant type) within each nursery crop.

Response: Peak Inventory Endorsements are considered separate for each plant type basic unit. However, if more than one Peak Inventory Endorsement is being sought at a time for a practice, separate Peak Inventory Value Reports for each plant type basic unit within that practice do not have to be submitted. A single Peak Inventory Value Report can be submitted for each practice that contains multiple plant type basic units and each such basic unit will be considered a separate Peak Inventory Endorsement. However, if the Peak Inventory Endorsements are sought at a different time, a new Peak Inventory Value Report containing the new plant type basic units must be submitted. The provisions are revised to clarify the operation of the Peak Inventory Endorsement and the Peak Inventory Value Report. The Peak Inventory Value Report form will also be structured to permit a grower to apply for peaks on more than one plant type under a practice using a single form.

Comment: An insurance service organization recommended the term ''7 CFR 457.162'' be removed from section 2(a), and the word ''that'' between the words ''year'' and ''this'' be removed

and the words ''for which'' or ''to which'' added in its place.

Response: While FCIC has not proposed any changes to section 2(a), the requested changes are technical in nature and would not change the meaning of the provision. Therefore, the term ''7 CFR 457.162'' is removed and the word ''this'' is removed, and the phrase ''for which'' is added in its place.

Comment: An insurance service organization recommended replacing the words ''and is'' between the words ''loss'' and ''limit'' in section 2(d) of the proposed provisions with a comma.

Response: As stated above, Peak Inventory Endorsements can be used to provide maximum flexibility in tailoring the policy to meet the grower's risk management needs because it can be used to increase plant inventory values to avoid under-reporting. However, the grower is limited to two Peak Inventory Endorsements per basic unit unless the basic unit has suffered a loss and the grower has restocked the nursery. In the proposed rule, the Peak Inventory Endorsement is limited to covering the amount of the restock. Under the current provisions of the Peak Inventory Endorsement, there is no limitation on what the endorsement may cover except that liability cannot exceed the practice value reported on the PIVR. To maximize the usefulness of the Peak Inventory Endorsement, FCIC believes the liability limitation should not be restricted to the amount of restock following a loss because it could result in a grower being under-reported if a subsequent loss occurs. Therefore, FCIC has revised section 2(d) to remove the phrase ''and is limited to the amount of restock.'' Therefore, the recommended word change is no longer applicable.

Comment: A reinsured company stated that allowing 28 Peak Inventory Endorsements on one policy would make loss adjustment extremely difficult.

Response: The commenter is correct that because the number of potential basic units has increased from two per crop to 14 for the field grown crop and 15 for the container grown crop, there could be up to 30 Peak Inventory Endorsements on one policy. FCIC agrees the sheer number of potential Peak Inventory Endorsements, coupled with the allowable changes to the PIVR, could significantly impact loss adjustment. Therefore, section 2(d) of the Nursery Peak Inventory Endorsement is revised to limit the number of Peak Inventory Endorsements that may be purchased for each plant type during the crop year to one unless a loss is suffered and the nursery is restocked. Flexibility is still maintained because, along with the permitted revisions to the PIVR, growers are permitted to change their inventory values at least three times during the crop year even if there has not been a loss.

Comment: Three crop insurance industry trade associations recommended that peak season adjustments be offered to embrace production expansion in addition to seasonal production increases.

Response: Section 3(c) of the proposed rule restricted the use of the Peak Inventory Endorsement to situations where there was a temporary increase in the values reported on the PIVR. FCIC agrees that such a limitation would be unduly restrictive, especially in light of the limitations on the number of changes in inventory that can not be made through the revised PIVR and the Peak Inventory Endorsement. Therefore, FCIC has removed section 3(c) from the Peak Inventory Endorsement.

Comment: An insurance service organization recommended inserting a comma after the term ''e.g.'' in section 3(c).

Response: As stated above, since this provision has been removed from the Peak Inventory Endorsement, the requested change is no longer applicable.

Comment: An insurance service organization recommended fixing the two minute coverage gap resulting from language in section 4 that begins coverage at 12:01 AM on the coverage commencement date and ends at 11:59 on the coverage termination date. The commenter also recommended the references to ''AM'' and ''PM'' be stated consistently between the Crop Provisions and the Peak Inventory Endorsement.

Response: FCIC agrees that the Crop Provisions and Peak Inventory Endorsement should be consistent in the manner that they state the beginning of the coverage period. As stated above, the hour and time is not necessary for the beginning of the insurance period. However, the date and time is still required for the end of the insurance period. Therefore, FCIC has revised section 4 accordingly.

Comment: An insurance service organization stated the third sentence of the example in section 5 of the Peak Endorsement is difficult to follow and recommended it be amended by inserting a comma between the words ''month'' and ''and'' and the phrase ''for the'' be inserted between the words ''and'' and ''month.''

Response: FCIC agrees that the example is difficult to follow and has revised it to make it more easily read and understandable. Further, because premium adjustment factor is already a term included in the Basic Provisions, and which, as stated above, has been added to the Nursery Crop Provisions, FCIC has revised name of the adjustment factor to the ''peak inventory premium adjustment factor.''

Comment: A crop insurance agent recommended the size of the Peak Inventory Endorsement (peak amount of insurance) not be limited to the amount of the basic unit value.

Response: FCIC agrees that there will be regular situations where the value of the inventory added exceeds the basic unit value and the current limitation would result in a situation where the grower has under-reported. However, to allow an unlimited increase could result in excessive risks under the policy. Therefore, FCIC has changed the limitation in section 7 to permit the peak amount of insurance to be 200 percent the basic unit value declared under the Nursery Crop Insurance Provisions.

Nursery Rehabilitation Endorsement

Comment: An insurance service organization stated the adjustment costs may be excessive in relation to the rehabilitation payment if the under-report factor is on a crop basis.

Response: FCIC agrees with the commenter. However, as stated above, the under-report factor is now calculated on a basic unit basis, not crop basis. Therefore, this should no longer be an issue.

Commenter: Three nursery trade associations and four nursery growers stated that a Rehabilitation Endorsement should be offered on containerized plants that will recover to their pre-damaged stage of growth.

Response: Since this is new coverage, FCIC determined this endorsement should initially cover rehabilitation costs for pruning and set-up of field grown plants because it has sufficient data to properly rate the coverage. FCIC may evaluate the feasibility of extending the Rehabilitation Endorsement to containerized material as it obtains information compiled on rehabilitation measures used and costs incurred for rehabilitation of containerized plants.

Comment: An insurance service organization and a reinsured company asked if a rehabilitation payment reduces the crop year deductible.

Response: As currently drafted, any deductibles paid under the Rehabilitation Endorsement would be included in the crop year deductible but this was not the intent of FCIC. Not all growers will have to pay a deductible under the Rehabilitation Endorsement

so it would be unfair to only include those that do against the crop year deductible. As a result, FCIC is revising the definition of ''crop year deductible'' to exclude any deductibles paid under the Rehabilitation Endorsement.

Comment: An insurance service organization recommended deleting ''Crop Insurance'' from the heading.

Response: FCIC believes the term ''Crop Insurance'' should be retained in the heading of the endorsement, so the heading format is consistent with other nursery crop endorsements. No change is made in response to this comment.

Comment: An insurance service organization recommended that sections 1(b) and (c) be reversed, so it is clearly stated the endorsement is only available for field grown plants. The commenter also recommended proposed section 1(b) be rearranged for clarity to specify: ''You must elect this endorsement:

(1) At the time of application for the initial crop year;

(2) By October 1st if your field grown plants are already insured * * *''

Response: FCIC agrees with both recommendations and has reversed proposed section 1(b) and 1(c) and separated new section 1(c) into two paragraphs. Because of the change in the crop year, language is added to clarify the endorsement must be elected by October 1, 2005, for the 2006 crop year and by the sales closing date for each subsequent crop year.

Comment: An insurance service organization asked who makes the determination of ''reasonable expectation of recovery'' addressed in section 2(a)(2). The commenter asked if ''reasonable expectation'' includes consideration of whether it is ''practical to rehabilitate'' according to section 2(b)(3). The commenter stated that some kind of definition or indication of the limitation might be helpful. The commenter cited an example of a tree that is 18 months of age but would take 24 months to recover.

Response: The loss adjuster will determine if damaged nursery plants covered by the Rehabilitation Endorsement have a reasonable expectation of recovery. The loss adjuster should first determine whether the plant will live or die. If it will live, the loss adjuster must determine whether it can recover to the point that it is a marketable plant. In some cases it may be easily determined based on the type and extent of damage of the plant. In other cases, loss adjusters will have to consult with agricultural experts. The policy is revised to provide some clarification and procedures will also be included in the loss adjustment handbook. FCIC also agrees the proposed rule does not clarify the relationship between expectation of recovery and the practicality of rehabilitation and had restructured section 2 to make it clear that there must be a reasonable expectation of recovery and it must be practical to rehabilitate the plant before any payment can be made and redesignated the sections. In the example cited by the commenter, the type and severity of damage would be considered and whether the cost of rehabilitation would exceed the value of the plant.

Comment: An insurance service organization recommended adding the word ''the'' before the phrase ''occurrence of damage'' and the word ''and'' after the phrase ''occurrence of damage'' in section 2(b)(2).

Response: FCIC agrees with adding the word ''the'' before the phrase ''occurrence of damage'' and the word ''and'' after the same phrase in redesignated section 2(c)(3).

Comment: An insurance service organization and a reinsured company stated that one rehabilitation payment (on insurable plants that are rehabilitated on each basic or optional unit during the crop year) is too limited. The commenters stated there should not be a minimum number of payments, just a maximum dollar amount that can be paid on the unit.

Response: As stated above, insurance is now only provided on a basic unit basis. FCIC agrees that there may be situations where multiple insurable causes of loss occur during the years and the other conditions for payment in the endorsement are still met. Proposed section 2(d) of the endorsement that limited the number of rehabilitation payments on an insurable plant during the crop year is removed. Instead of limiting the number of payments, a new section 2(d) is added to limit the total dollar amount of all rehabilitation payments for the basic unit for the crop year.

Comment: Four nursery growers expressed dissatisfaction with changes to a rehabilitation payment or time to recover payments for containerized material, because all nurseries can currently obtain a payment for damage without losing the plant. These same commenters stated that the 7.5 percent cap will greatly reduce the number of plants that are able to be rehabilitated, and it will be a disincentive to salvaging plants.

Response: The indemnity payment that growers currently receive is for the loss of value of damaged plants. Nothing in this endorsement changes or limits that indemnity payment. The Rehabilitation Endorsement is a new optional endorsement to the Nursery Crop Provisions for field grown material that would provide an additional payment to cover the costs associated with rehabilitating the plants. Since this payment was not previously available to growers, it should not provide a disincentive for growers to rehabilitate damaged plants.

Comment: An insurance service organization stated the two percent or $5,000 trigger to qualify for the first dollar of rehabilitation costs could have unintended consequences on growers' rehabilitation decisions.

Response: Rehabilitations costs covered by the endorsement are limited to labor and material for pruning and setup and growers are required to provide verifiable records of rehabilitation expenditures. To mitigate the possibility that growers will inflate their costs, or incur greater costs than are necessary to rehabilitate the plant, to qualify for a payment, loss adjusters will be required to determine if reported expenditures are reasonable and correspond with expected rehabilitation measures and their costs before any payments are made. Loss adjusters can consult with agricultural experts to determine reasonable costs. Redesignated section 2(c)(2) has been revised accordingly.

Comment: An insurance service organization recommended removing commas before and after the phrase ''contained in the Nursery Crop Provisions'' in section 3 of the proposed Rehabilitation Endorsement and enclosing the phrase in parentheses.

Response: FCIC believes commas are appropriate for setting off the nonrestrictive phrase ''contained in the Nursery Crop Provisions.'' No change is made in response to this comment.

Comment: An insurance service organization asked at what point a rehabilitation payment is no longer a rehabilitation payment and becomes an indemnity payment. The commenter asked if a rehabilitation payment ever reduced an indemnity payment.

Response: An indemnity pays for the loss of value of the plant. However, the rehabilitation payment pays for the costs associated with rehabilitation of the plant. These are two totally separate payments. A rehabilitation payment never becomes an indemnity payment, nor does it reduce an indemnity payment. Section 12(g) has been revised to clarify that the rehabilitation payment is not an indemnity payment and is not considered when totaling all indemnities for the purposes of determining whether such amounts exceed the amount of insurance.

Comment: An insurance service organization stated it was not clear if the Rehabilitation Endorsement will be available to growers with CAT coverage.

Response: Section 1(a) of the Rehabilitation Endorsement states an insured must purchase additional coverage for the Endorsement to attach. Therefore, it is not available to growers with CAT coverage.

Other Comments

Comment: A reinsured company stated that premium rates for liner coverage must be commensurate with the increased risk exposure.

Response: FCIC agrees and has contracted a study to evaluate the impact of the changes to the Nursery Crop Provisions, including liner coverage, and appropriate premium rate adjustments will be made.

Comment: Three nursery trade associations recommended that, prior to policy renewal, a nursery be inspected and improvements required when excess moisture is an insured cause of loss more than twice in a three-year period unless caused by a named tropical storm or disaster declaration.

Response: Interested parties affiliated with nursery industries and reinsured companies have reported that nursery crop insurance losses due to excess moisture or flood have been excessive and prevalent in certain areas, and recommended controls be implemented to minimize future losses. Under section 10(a)(1), coverage for adverse weather conditions can be limited in the Special Provisions. One such limitation can be to require growers in areas susceptible to large amounts of rainfall and flooding take adequate measures to minimized losses for these perils to be covered.

Comment: Three nursery trade associations recommended that vegetable and herb plants in standard containers be provided coverage.

Response: Many vegetable and herb plants are currently on the Eligible Plant List and are covered. A plant not on the Eligible Plant List can be covered by written agreement under an additional coverage policy.

Comment: Four nursery growers stated opposition to liner coverage because additional coverage and premium would be required, and coverage under the noninsured disaster assistance program (NAP) would not be available.

Response: An additional level of coverage is not required for liners to be provided insurance coverage. Growers have the option of purchasing CAT or additional coverage for a specific practice. If producers elect additional coverage for a practice, then the liners in that practice must also be insured under additional coverage and the grower can elect to have a separate basic unit for the plant types, including liners. If the grower elects to insure a practice under CAT, then the liners in that practice must also be insured under CAT and no additional premium would be owed. However, additional basic units by type are not available. The commenter is correct that the availability of CAT coverage for liners precludes coverage under the NAP program.

Comment: One nursery grower stated that the insurable prices for field grown English Boxwoods are low and should be raised to reflect actual market conditions.

Response: FCIC will review prices for English Boxwoods to determine if a higher maximum insurable price is appropriate.

Comment: An insurance service organization asked if a grower would be eligible for a container policy for liners if the liners are not for resale (*i.e.* the liners will be used for grow-out within the nursery), but there are established values for the liner plants.

Response: Liners used for grow-out in a nursery are insurable. However, the grower will be required to provide a catalog or price list that specifies wholesale values of the insurable liners.

Comment: Three nursery industry trade associations recommended the Nursery Crop Provisions be amended to offer a program based on adjusted gross income rather than the Plant Price Schedule.

Response: Nursery crops are covered under the Adjusted Gross Revenue (AGR) and AGR-Lite programs where such programs are offered. Since AGR is still in the pilot stage, AGR has not been offered in all states and counties. AGR-Lite was submitted by a private submitter for approval for reinsurance and subsidy under section 508(h) of the Act. As a private submission, the submitter determines the terms of insurance and where it will be offered. However, even where these programs are offered, there are liability limitations, coverage and payment rate limitations, reporting requirements, and claim submission timelines in the AGR program that may make coverage not suitable for nursery growers. Once the AGR pilot program is completed, it will be evaluated to determine whether the terms of insurance are appropriate and whether it should be expanded to all states and counties.

Comment: Three nursery industry trade associations recommended that FCIC should work to increase crop adjusters' familiarity and knowledge of nursery plants and trees by encouraging them to take an appropriate nursery professional certification program.

Response: Loss adjusters must complete specific training courses and take continuing education courses on adjusting crop losses. Reinsured companies, not FCIC, establish specific training requirements for adjusters in accordance with guidelines specified by FCIC. However, FCIC is evaluating the feasibility of sponsoring one or more training classes, taught by university extension service personnel, for loss adjusters, on identifying and evaluating damage on nursery plants.

Comment: One nursery industry trade association recommended that FCIC work directly with the University of Florida to establish realistic values for damaged Florida plants. Another nursery industry trade association made the same recommendation but suggested that FCIC work with the Texas A&M University system for damaged Texas plants.

Response: As stated above, FCIC has removed the proposed provisions regarding the establishment of values for damaged plants and will include such determinations in the loss adjustment manual. FCIC intends to work with nursery experts to refine the methodology for making such determinations. However, language currently in the loss adjustment manual recommends loss adjusters consult with such experts to assist them in valuing damaged plants.

In addition to the changes described above, FCIC has made the following changes:

1. Amend the definition of ''nursery'' to clarify the nursery must be engaged in both the growing and wholesale marketing of plants. This purpose of the definition was to specify that at least 50 percent of the gross income had to come from wholesale marketing but there was confusion regarding whether nurseries that only sell the plants but do not produce them are eligible for insurance. This change makes clear that to qualify as a nursery, the nursery must also produce the plants.

2. Remove the proposed definition of ''nursery plants.'' FCIC believes the definition is redundant and provides no useful information.

3. Amend the definition of ''plant inventory value report'' to change the defined term to the acronym ''PIVR.''

4. Revise the definition of ''plant price schedule'' to clarify that insurable plant prices published by FCIC establish the maximum insurable value of undamaged plants.

5. Amend the definition of ''practice'' in the current provisions to remove the

words ''Standard nursery.'' This change is made to because throughout the policy, FCIC uses the term ''container grown'' to identify the practice. Standard nursery containers do not specify the insurable practice, they specify the type of container necessary to qualify for a container grown practice.

6. Add a definition of ''sales closing date'' because FCIC has removed the previous May 31 sales closing date and now allows sales all year round. However, for subsequent crop years, certain documents must be filed by the sales closing date and there must be a means to identify that date.

7. Revise the proposed definition of ''survival factor'' to specify the factor is shown on the Special Provisions instead of the actuarial documents. The survival factor for liners may vary by region. Therefore, it should be specified accordingly in the Special Provisions.

8. Revise the definition of ''wholesale'' to require determinations be made on a county-by-county basis. Insurance is provided on a county basis and, under the proposed definition, it is possible for multiple nurseries comprising a single business enterprise to qualify as a wholesale marketer even though some individual nurseries insured in different counties would be considered retail nurseries. Because the determination is made at the enterprise level such retail nurseries would qualify for insurance. Therefore, to ensure that only wholesale nurseries are insured, such determinations must be made on a county-by-county basis.

9. Amend proposed section 2(a) to clarify that a basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units if additional coverage is elected for a practice to conform to the responses to other comments above. It was always the intent of FCIC to limit basic units for CAT coverage to shares and to only allow additional basic units by type if the grower elected additional coverage. This amendment is needed to clarify that intent.

10. Amend sections 3(c) and (d) by structuring the provisions so they are more readable and easily understood and redesignating the sections accordingly.

11. Amend section 5 to clarify the cancellation date is May 31 preceding the crop year and the termination date is May 31 of the crop year. This change is necessary to conform to the change to the beginning and end of the insurance period.

12. Amend proposed section 6(b) to clarify that an insured must submit two copies of the most recent wholesale catalog along with the PIVR at time of application and on or before the sales closing date for each crop year following year of application. Also, FCIC added language to clarify that an insured will be notified in writing if an application for insurance is refused because the inventory or the wholesale catalog or price list is not acceptable.

13. Amend section 6(c) by structuring the provisions so they are more readable and easily understood.

14. Add a new section 6(f), applicable to CAT policies only, that limits the total of the insured's basic unit values for each practice to 110 percent of the higher of the greatest amount of plant sales in any of the three previous years or the actual inventory value for the crop year at the time the PIVR is submitted. The insured must report on the PIVR for each practice the greatest amount of plant sales in any of the three previous years. The current Nursery Crop Insurance Provisions limit the PIVR of an insured with CAT coverage to 150 percent of the previous year's sales for container grown material and 250 percent of the previous year's sales for field grown material. Available information suggests these limitations are set too high, and plant inventory values of CAT polices are often over reported. FCIC believes limiting the PIVR of insureds with the CAT coverage to 110 percent of the higher of their greatest amount of plant sales in any of the previous three years or the inventory value at time the PIVR is submitted is fair and equitable, and the 110 percent limitation also coincides with the limitation in section 6(g) of the Basic Provisions that addresses misreporting of liability on other insurable crops.

15. Amend proposed section 6(f) (redesignated as section 6(h) to remove the last sentence, including sections (1) through (5) that address the methodology to determine the insurable value of plants that are damaged but will fully recover (partial damage). No comments were received on the last sentence of proposed sections 6(f) and 6(f)(1) through (5). However, RMA is currently working with nursery industry personnel and crop reinsured companies to evaluate if the calculation procedure to determine the insurable value of partial damage plants should be revised. This evaluation will not be completed prior to publication of this final rule. The procedure to determine the insurable value of partial damaged plants will be included in the Special Provisions.

16. Amend proposed section 6(g) to clarify an insured may increase their PIVR by submitting a revised report prior to 30 days before the end of the crop year. This will permit growers to have the maximum flexibility in insuring their nurseries and will correspond to the changes in the policy that eliminate the date by which applications must be submitted. Language is also added to clarify that an increase to the PIVR of 50 percent or more does not trigger an inspection if the increase is due to restocking subsequent to an insured loss. This change is made because reinsured companies should not have to go through the administrative burden of an inspection simply because a grower restocks after a loss.

17. Amend section 12(f) to clarify that fifty-five percent of the insurable plant price is used in the settlement of claims calculation if CAT coverage is elected.

18. Amend the title of the Nursery Crop Insurance Rehabilitation Endorsement as proposed to remove the word ''Optional.'' FCIC believes this word is redundant and unnecessary. For clarity, FCIC has removed the phrase ''In return for payment of'' in the introductory paragraph of the proposed provisions and added ''If you elect this endorsement and pay * * *.''

19. Amend section 2(b) of the Nursery Crop Insurance Rehabilitation Endorsement, as proposed, to remove the phrase ''under this endorsement.'' FCIC believes this phrase is redundant and provides no meaningful information.

20. Amend section 2(c)(2) of the Nursery Crop Insurance Rehabilitation Endorsement, as proposed, (redesignated as section 2(d)(2)) to remove the phrase ''based on the lower of the Plant Price Schedule price or the lowest wholesale price listed in your nursery catalog or price list'' and replace it with ''based on the insurable plant prices determined in accordance with section 6 of the Nursery Crop Insurance Provisions.'' This change is made to avoid any potential policy conflicts.

21. Amend section 2(b)(4) of the Nursery Crop Insurance Rehabilitation Endorsement, as proposed, (redesignated as section 2(c)(5)) to clarify the insured's total rehabilitation cost for each loss occurrence must be at least the lesser of 2.0 percent of field market value A or $5,000 to be eligible for a rehabilitation payment. Clarifying that rehabilitation costs are applicable to each loss occurrence on the basic unit avoids the potential for any confusion on eligibility for a rehabilitation payment.

22. Amend section 3 of the Nursery Crop Insurance Provisions Rehabilitation Endorsement, as proposed, to clarify that the

endorsement will continue in effect until cancelled or coverage under the Nursery Crop Insurance Provisions is cancelled or terminated.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. Good cause to make the rule effective upon filing at the Office of Federal Register exists when the 30 day delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

With respect to the provisions of this rule, it would be contrary to the public interest to delay implementation. To make implementation effective for the 2006 crop year, this rule must be published prior to the June 30, 2005, contract change date for the crop year. The public interest will be served by providing better insurance coverage to nursery growers. Changes to the Nursery Crop Insurance Provisions contained in this final rule include: (1) Making container and field grown separate crops; (2) providing coverage in plants in containers that are equal to or greater than one inch in diameter; (3) providing separate basic units by share for all coverage levels and basic units by plant type when additional coverage is purchased; (4) permitting insureds to select one coverage level for each plant type basic unit when additional coverage is purchased; (5) allowing increases to the Plant Inventory Value Report up to 30 days before the end of the crop year; (6) allowing acceptance of an application for insurance for any current crop year up to 30 days before the end of the crop year; and (7) changing the starting and ending dates for the crop year to June 1st and May 31st, respectively. These changes will allow nursery growers to better structure coverage to their individual risk management needs. In addition, it will give insurance providers adequate time to prepare necessary insurance documents, train personnel, and inform insureds of these policy changes.

If FCIC is required to delay implementation of this rule 30 days after the date it is published, publication would occur after the contract change date for the 2006 crop year; therefore, the provisions in this rule could not be implemented until the next crop year. This would mean nursery growers would be without the benefits to the nursery program for an additional year.

List of Subjects in 7 CFR Part 457

Crop insurance, Nursery, Reporting and recordkeeping requirements.

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 for the 2006 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. Revise the introductory text of § 457.162 to read as follows:

§ 457.162 Nursery Crop Insurance Provisions.

The Nursery Crop Insurance Provisions for the 2006 and succeeding crop years are as follows:

* * * * *

■ 3. Amend section 1 of § 457.162 as follows:

■ a. Add definitions of ''American Standard for Nursery Stock,'' ''basic unit value,'' ''container grown,'' ''fabric grow bag,'' ''FCIC,'' ''good nursery practices,'' ''liners,'' ''monthly proration factors,'' ''PIVR,'' ''sales closing date,'' ''survival factor,'' and ''wholesale'';

■ b. Revise the definitions of ''amount of insurance,'' ''crop year,'' ''crop year deductible,'' ''Eligible Plant List,'' ''field grown,'' ''field value market A,'' ''field value market B,'' ''nursery,'' ''occurrence deductible,'' ''Plant Price Schedule,'' ''practice,'' ''standard nursery containers,'' and ''under report factor''; and

■ c. Remove the definition of ''field market value C,'' ''in-ground fabric bag,'' ''price election,'' ''plant inventory value report,'' and ''practice value.''

■ d. Amend the definition of ''irrigated practice'' to capitalize the phrase ''eligible plant list.''

The revised and added text reads as follows:

1. Definitions

* * * * *

American Standard for Nursery Stock. A publication of the American Nursery and Landscape Association, or a subsequent successor organization, issued in accordance with the rules of the American National Standards Institute, Inc. that provides common terminology and standards for nurseries.

Amount of insurance. For each basic unit, your basic unit value multiplied by the coverage level percentage you elect and multiplied by your share.

Basic unit value. The full value of all insurable plants in each basic unit as shown on your PIVR, including any revision that increases the value of your insurable plant inventory.

Container grown. Nursery plants planted and grown in standard nursery containers either above ground or that are placed in the ground, either directly or when placed in another pot in the ground (i.e., pot-in-pot).

Crop year. The period beginning the day insurance attaches and extending until the following May 31. Crop year is designated by the year in which the insurance period ends.

Crop year deductible. The deductible percentage multiplied by the sum of all plant inventory values for each basic unit. The crop year deductible will be increased for any increases in the inventory value on the PIVR or through the purchase of a Peak Inventory Endorsement, if in effect at the time of loss. The crop year deductible will be reduced by any previously incurred deductible, except any incurred under the Rehabilitation Endorsement, if you timely report each loss to us.

* * * * *

Eligible Plant List. A list that includes the botanical and common names of insurable plants, the winter protection requirements for container grown material and the areas in which they apply, the hardiness zone to which field grown material is insurable, the designated hardiness zone for each county, and the unit classification for each plant on the list, published by FCIC on RMA's Web site at *http://www.rma.usda.gov*. It is also available on compact disk from your crop insurance agent.

Fabric grow bag. A fabric bag (including a woven or matted bag with a plastic or fabric bottom) used for growing woody plants in-ground or as an above-ground nursery plant container that provides adequate drainage and is appropriate in size for the plant.

FCIC. The Federal Crop Insurance Corporation, a wholly owned corporation within the USDA, or a successor agency.

Field grown. Nursery plants planted and grown in the ground without the use of an artificial root containment device. Plants grown in in-ground fabric grow bags, plants that are balled and burlapped or plants grown in containers that allow the plants to root (excluding fibrous roots) into the ground (for example, a container without a bottom) are also considered field grown.

Field market value A. The value of undamaged insurable plants, based on the lesser of: (1) The prices contained in the Plant Price Schedule; or (2) the prices contained in your catalog or price list in the basic unit immediately prior to the occurrence of any loss, as

determined by our appraisal. This allows the amount of insurance under the policy to be divided among the individual units in accordance with the actual value of the plants in the unit at the time of loss to determine whether you are entitled to an indemnity for insured losses in the basic unit. This value is also used to calculate the actual value of the plants in the basic unit at the time of loss to ensure that you have not under-reported your plant values. For liners, the total value of undamaged liners is multiplied by the survival factor to determine the value of undamaged insurable plants.

Field market value B. The value of insurable plants, based on the lesser of: (1) The prices contained in the Plant Price Schedule; or (2) the prices contained in your catalog or price list in the basic unit following the occurrence of a loss, as determined by our appraisal, plus any reduction in value due to uninsured causes. This is used to determine the loss of value for each individual unit so that losses can be paid on an individual unit basis.

Good nursery practices. In lieu of the definition of ''good farming practices'' contained in section 1 of the Basic Provisions, the horticultural practices generally in use in the area for nursery plants to make normal progress toward the stage of growth at which marketing can occur and: (1) For conventional practices, generally recognized by agricultural experts for the area as compatible with the nursery plant production practices and weather conditions in the county; or (2) for organic practices, generally recognized by the organic agricultural industry for the area as compatible with the nursery plant production practices and weather conditions in the county or contained in the organic plan. We may, or you may request us to, contact FCIC to determine whether or not production methods will be considered to be ''good nursery practices.''

* * * * *

Liners. Plants produced in standard nursery containers that are equal to or greater than 1 inch in diameter (including trays containing 200 or fewer individual cells, unless specifically provided by the Special Provisions) but less than 3 inches in diameter at the widest point of the container or cell interior, have an established root system reaching the sides of the containers, are able to maintain a firm root ball when lifted from the containers, and meet all other conditions specified in the Special Provisions.

* * * * *

Monthly proration factors. Factors contained in the actuarial documents that are used to calculate premium when you do not insure the nursery plants for an entire crop year.

Nursery. A business enterprise that grows the nursery plants and derives at least 50 percent of its gross income from the wholesale marketing of such plants.

Occurrence deductible. This deductible allows a smaller deductible than the crop year deductible to be used when the inventory value is less than the reported basic unit value. The occurrence deductible is the lesser of: (1) The deductible percentage multiplied by field market value A multiplied by the under-report factor; or (2) the crop year deductible.

PIVR. The plant inventory value report, your report that declares the value of insurable plants in accordance with section 6.

Plant Price Schedule. A schedule of insurable plant prices that establishes the maximum insurable value of undamaged insurable plants, published by FCIC as an actuarial document available on RMA's Web site at *http://www.rma.usda.gov.* It is also available on compact disk from your crop insurance agent.

Practice. A cultural method of producing plants. Container grown and field grown are considered separate insurable practices.

Sales closing date. In lieu of the definition in section 1 of the Basic Provisions, the date shown in the Special Provisions. New-policy applications may be filed at any time. However, all applications, including those for new or amended coverage, are subject to a 30-day waiting period before commencement of coverage as specified in sections 3(d) and 9(a).

Standard nursery containers. Rigid containers not less than 1 inch in diameter at the widest point of the container interior (including trays that contain 200 or fewer individual cells, unless specifically provided by the Special Provisions), above-ground fabric grow bags, and other types of containers specified in the Special Provisions that are appropriate in size and provide adequate drainage for the plant. In-ground fabric grow bags, balled and burlapped, and trays (flats) without individual cells are not considered standard nursery containers.

* * * * *

Survival factor. A factor shown on the Special Provisions that specifies the expected percentage of liners that normally survive the period from insurance attachment to market.

Under-report factor. The factor that adjusts your indemnity for under-reporting of inventory values. The factor is always used in determining indemnities. For each basic unit, the under-report factor is the lesser of: (1) 1.000; or (2) the basic unit value, including a Peak Inventory Value Report during the coverage term of a Peak Inventory Endorsement, minus the total of all previous losses, as adjusted by any previous under-report factor, divided by field market value A. Payments made under the Rehabilitation Endorsement will not be considered a previous loss when calculating the under-report factor.

Wholesale. To sell nursery plants in large quantities at a price below that offered on low-quantity sales to retailers, commercial users, governmental end-users, or other end-users for business purposes (*e.g.* sales to landscape contractors and commercial fruit producers). This determination will be based on a county-by-county basis.

■ 4. Revise section 2 of § 457.162 to read as follows:

2. Unit Division

(a) If you elect additional coverage for a practice, a basic unit, as defined in section 1 of the Basic Provisions, may be divided into additional basic units by each insurable plant type designated in section 2(b) for which a premium rate is provided by the actuarial documents.

(b) Only the following plant types contained on the Eligible Plant List are insurable:

(1) Deciduous Trees (Shade and Flower);
(2) Broad-leaf Evergreen Trees;
(3) Coniferous Evergreen Trees;
(4) Fruit and Nut Trees;
(5) Deciduous Shrubs;
(6) Broad-leaf Evergreen Shrubs;
(7) Coniferous Evergreen Shrubs;
(8) Small Fruits;
(9) Herbaceous Perennials;
(10) Roses;
(11) Ground Cover and Vines;
(12) Annuals;
(13) Foliage;
(14) Palms and Cycads;
(15) Liners (container grown only and inclusive of all insurable plant types); and
(16) Other plant types listed in the Special Provisions.

■ 5. Amend section 3 of § 457.162 as follows:

■ a. Amend paragraph (a) by adding the phrase '', including the misreporting provisions,'' between the words ''requirements'' and ''contained'';

■ b. Redesignate paragraphs (b), (c) and (d) as paragraphs (c), (e) and (f), respectively, and add new paragraphs (b) and (d);

■ c. Revise redesignated paragraph (c); and
■ d. Amend redesignated paragraph (f) by removing the term ''6(f)'' and adding ''6(g)'' in its place.

The revised and added text reads as follows:

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

* * * * *

(b) In addition to the requirements of section 3 of the Basic Provisions, you may select either catastrophic risk protection or additional coverage for each insured practice. An administrative fee established in accordance with section 7(e) of the Basic Provisions will be owed for each practice insured.

(c) In lieu of section 3(b) of the Basic Provisions:

(1) If you select additional coverage for a practice:

(i) You may select one coverage level for each plant type insured in that practice if you elect basic units by plant type;

(ii) You will receive 100 percent of the price election for all plant types in that practice;

(iii) You must provide on the application a coverage level percentage for each plant type that will be insured; and

(iv) You must select a coverage level if:

(A) A new plant is added under a revised PIVR or Peak Inventory Endorsement; and

(B) The plant is not categorized under a plant type reported on the initial PIVR.

(2) If you select catastrophic risk protection for a practice, all plant types under the practice must be insured at the catastrophic risk protection level.

(d) In lieu of section 3(d) of the Basic Provisions, you may request changes to the coverage level for a plant type by submitting them in writing to us as follows:

(1) For new policies, changes cannot be made for the crop year after the date of the application; and

(2) For carryover policies:

(i) For the 2006 crop year only, changes must be requested on or before September 30th prior to the start of the crop year;

(ii) For all subsequent crop years, changes must be requested on or before the sales closing date; and

(iii) Unless we reject the proposed increase because a loss occurs within 30 days of the date the request is made (Rejection can occur at any time we discover such loss has occurred), requested changes will take effect:

(A) For the 2006 crop year, 30 days after the date you submitted your request; and

(B) For all subsequent crop years, on the date of the start of the crop year.

* * * * *

■ 6. Amend section 4 of § 457.162 by removing the phrase ''June 30'' and adding ''January 31'' in its place and adding the word ''crop'' between the words ''each'' and ''year.''

■ 7. Amend section 5 of § 457.162 by removing the phrase ''September 30'' and adding ''May 31'' in its place.

■ 8. Amend section 6 of § 457.162 as follows:
■ a. Revise the heading of section 6;
■ b. Revise paragraph (b);
■ c. Revise paragraph (c);
■ d. Amend paragraph (d) by removing the phrase ''plant inventory value report'' and adding ''PIVR'' in its place and capitalizing the phrase ''peak inventory value report'';
■ e. Revise paragraph (e);
■ f. Remove paragraph (h), and redesignating paragraphs (f) and (g) as paragraphs (g) and (i), respectively;
■ g. Add new paragraphs (f) and (h);
■ h. Revise redesignated paragraph (g);
■ i. Amend redesignated paragraph (i) by removing the word ''practice'' wherever it apears and adding the phrase ''basic unit'' in its place and removing the word ''your'' wherever it appears and adding the word ''each'' in its place; and
■ j. Add new paragraphs (j) and (k).

The revised and added text reads as follows:

6. PIVR

* * * * *

(b) You must submit a PIVR for each insured practice, as applicable, and two copies of your most recent wholesale catalogs or price lists in accordance with subsection (k) to us with your application on or before the sales closing date for each crop year following the year of application.

(1) You will be notified in writing if an application for insurance is refused because the inventory or wholesale catalog or price list is not acceptable.

(2) If you fail to provide a PIVR or applicable catalog or price list on or before the sales closing date for any crop year, insurance will not attach until 30 days after all such documents have been received by your crop insurance agent and we will not be liable for any losses that occur before insurance has attached.

(c) The PIVR must include, by basic unit, all growing locations, basic unit value, coverage level selected, as applicable, and your share.

(1) If you do not elect additional basic units by plant type or you elect CAT coverage, the plant inventory values for each plant type in the basic unit must be separately reported on the PIVR and totaled to determine the basic unit value.

(2) At our option, you will be required to provide documentation in support of your PIVR, including, but not limited to, a detailed plant inventory listing that includes the name, the number, and the size of each plant; acceptable records of sales and purchases of plants for the three previous crop years in the amount of detail we require; and your ability to properly obtain and maintain nursery stock. Acceptable records must contain the name and telephone number of the purchaser or seller, as applicable, names of the plants, the number of each plant sold or purchased, and the sales price for each plant.

(3) Failure to provide documentation when requested or providing inadequate documentation will result in denial of insurance for the crop year for any basic units for which such documentation was not provided. This provision does not apply to:

(i) Plant varieties you have not previously grown; or

(ii) New nurseries where an inspection has determined you have the ability to properly obtain and maintain the nursery stock.

* * * * *

(e) Your PIVR must reflect your insurable nursery plant inventory value by basic unit.

(1) The price for each plant and size listed on your PIVR will be the lower of the Plant Price Schedule price or the lowest wholesale price in your nursery catalog or price list submitted in accordance with section 6(k).

(2) In no instance will we be liable for plant values greater than those contained in the Plant Price Schedule.

(3) If you have previously made a claim and the loss adjuster is unable to determine whether a plant was damaged prior to submission of your PIVR for the current crop year, the plant will be insurable at full value based on the lesser of the Eligible Plant List price or the catalog or price list price. The value of the plant may be reduced at any time during the crop year if the extent of damage is discovered.

(f) For catastrophic level policies only, you must report, on the PIVR for each practice insured, your greatest plant sales in any of the previous 3 years and the actual inventory value on the date insurance attaches.

(1) You may be required to provide documentation to support the above reporting requirements. To be considered adequate, sales documents

must contain the name and telephone number of the purchaser, names of the plants, the number of each plant sold, and the sales price for each plant.

(2) For each applicable practice, the total of your basic unit values cannot exceed 110 percent of the higher of your:

(i) Greatest amount of plant sales in any of the previous 3 years; or

(ii) Actual inventory value on the date insurance attaches.

(3) Failure to provide documentation when requested or providing inadequate documentation will result in denial of insurance for the crop year for any basic unit for which such documentation was not provided. This provision does not apply to:

(i) Plant varieties you have not previously grown; or

(ii) New nurseries where an inspection has determined you have the ability to properly obtain and maintain the nursery stock.

(g) You may increase your reported inventory value for each basic unit no more than twice during the crop year by submitting a revised PIVR prior to 30 days before the end of such crop year.

(1) Any requested increase must be made in writing and contain the same information as required in section 6(c). The limitations in section 3(d) regarding making changes to the coverage level after a specified date are not applicable to a revised PIVR that adds new plant types. The limitations continue to apply if plants are added for a specific plant type.

(2) An inspection will be performed when the total of all the basic unit values contained on the revised PIVRs is increased 50 percent or more from the previous total of all the basic unit values on the PIVR, and the increase is not due to restocking subsequent to an insured loss.

(3) At our discretion, we may inspect the inventory if an increase of less than 50 percent is reported on the revised PIVR.

(4) Your revised PIVR will be considered accepted by us and insurance will attach on any proposed increase in inventory value 30 days after your written request is received unless we reject the proposed increase in your plant inventory value in writing.

(5) We will reject any requested increase if a loss occurs within 30 days of the date the request is made.

(6) You cannot revise your PIVR to decrease the plant inventory value after the start of the insurance period specified in section 9.

(h) For insurable plants that were damaged prior to the attachment of insurance coverage:

(1) The applicable price, as determined in accordance with section 6(e), will be reduced for inventory reporting purposes if we accept such plants for insurance coverage;

(2) The plants will be removed from the PIVR if they are not accepted;

(3) The procedure for calculating the insurable value of damaged plants that are accepted for coverage is contained in the Special Provisions.

* * * * *

(j) Insurable plants in over-sized containers will be valued for purposes of reporting inventory and loss adjustment as if the plants were in appropriate-sized containers in accordance with the standards contained in the current American Standard for Nursery Stock. Each cell in a multiple-cell container is considered a separate container. (See the Eligible Plant List at *http://www.rma.usda.gov/* for additional information and requirements on container specifications and volume calculation.)

(k) At a minimum, your wholesale catalog or price list must:

(1) Be type-written and legible;

(2) Show an issue date on the cover page (may be handwritten);

(3) Contain the name, address, and phone number of your nursery;

(4) Be provided to customers and used in the sale of your plants; and

(5) List each plant's name (scientific or common), plant or container size, and wholesale price.

■ 9. Revise section 7 of § 457.162 to read as follows:

7. Premium

(a) In lieu of section 7(c) of the Basic Provisions, we will determine your premium by multiplying the amount of insurance by the appropriate premium rate, any premium adjustment factor, and the monthly proration factor contained in the actuarial documents, if applicable.

(b) In addition to the provisions in section 7 of the Basic Provisions, we will prorate your premium based on:

(1) The time remaining in the crop year after insurance attaches:

(i) If you have made application after the start of the insurance period specified in section 9; or

(ii) If you submit a PIVR or wholesale catalog or price list after the sales closing date;

(2) The time remaining in the crop year after insurance attaches and the additional amount of inventory reported, if you submit a revised PIVR to report an increase in inventory value for a basic unit; and

(3) The time period for which insurance is provided under the Peak Inventory Endorsement.

(c) If your premium is prorated, premium will be charged for the entire month for any calendar month during which any amount of coverage is provided under these provisions or the Peak Inventory Endorsement.

(d) In lieu of section 7(a) of the Basic Provisions:

(1) If you apply for insurance before April 1st, the annual premium is earned and payable at the time coverage begins. You will be billed for the premium and administrative fee not earlier than the premium billing date specified in the Special Provisions.

(2) If you apply for insurance, or submit your PIVR or wholesale catalog or price list, on or after April 1st, the premium for the partial crop year will be due and must be paid at the time of application.

(3) Failure to pay the premium at the time of application, or when you submit your PIVR or wholesale catalog or price list, will result in no insurance and no indemnity being owed for the crop year.

■ 10. Amend section 8 of § 457.162 as follows:

■ a. Revise the heading of section 8;

■ b. Revise the introductory text of section 8;

■ c. Revise section 8(i);

■ d. Revise section 8(j); and

■ e. Add a new section 8(k).

The revised and added text reads as follows:

8. Insured Crop and Plants

In lieu of the provisions of sections 8 and 9 of the Basic Provisions, the crop insured will be all nursery plants and plant types in each practice, contained on the Eligible Price List, in which you have a share, that you elect to insure, and that:

* * * * *

(i) Are not stock plants or plants being grown solely for harvest of buds, flowers, or greenery;

(j) May produce edible fruits or nuts provided the plants are made available for sale (Harvest of the edible fruit or nuts does not affect insurability); and

(k) Are not produced in nursery containers that contain two or more different genera, species, subspecies, varieties or cultivars.

■ 11. Amend section 9 of § 457.162 as follows:

■ a. Revise section 9(a); and

■ b. Revise section 9(b)(4).

The revised text reads as follows:

9. Insurance Period

(a) In lieu of section 11 of the Basic Provisions:

(1) For the year of application, if you apply for coverage:

(i) On or before August 31, 2005, for the 2006 crop year, coverage begins on October 1, 2005, unless we notify you in writing that your inventory is not acceptable;

(ii) After August 31, 2005, and on or before May 1, 2006, for the 2006 crop year, or on or before May 1st of the crop year for any subsequent crop year, coverage begins 30 days after your crop insurance agent receives an application signed by you, unless we notify you in writing that your inventory is not acceptable;

(iii) After May 1, 2006, or after May 1st for any subsequent crop year, coverage will not begin until the next crop year, subject to the 30-day delay specified in subparagraph (ii); and

(2) For continuous policies:

(i) For the 2006 crop year, the insurance period begins on October 1, 2005.

(ii) For the 2007 crop year, the insurance period begins on June 1, 2006, and for each subsequent crop year, the insurance period begins on each June 1st.

(b) * * *

(4) 11:59 p.m. on May 31, 2006, for the 2006 crop year, and on May 31st for each subsequent crop year.

■ 12. Amend section 10 of § 457.162 as follows:

■ a. Amend section 10(a)(1) by removing ''(b)'' after the numeral ''10'' and adding ''(c)'' in its place;

■ b. Amend section 10(a)(4) by adding the word ''or'' at the end;

■ c. Amend section 10(a)(5) by removing ''; or'' and adding a period in its place;

■ d. Remove sections 10(a)(6) and (7);

■ e. Amend section 10 by redesignating sections 10(b) introductory text, 10(b)(1), and 10(b)(3) through (6) as sections 10(c), 10(c)(1), and 10(c)(2) through (5), respectively, removing 10(b)(2), and adding a new section 10(b);

■ f. Amend redesignated section 10(c) introductory text by changing the word ''section'' to ''sections'' and adding the phrase ''(a) and (c) through (f)'' between the numeral ''12'' and the word ''of'';

■ g. Revise redesignated section 10(c)(2);

■ h. Amend redesignated section 10(c)(4) by removing the word ''or'' at the end;

■ i. Revise redesignated section 10(c)(5); and

■ j. Add a new section 10(c)(6).

The revised and added text reads as follows:

10. Causes of Loss

* * * * *

(b) Insurance is also provided against the following if due to a cause of loss specified in section 10(a) that occurs within the insurance period:

(1) A loss in plant values because of an inability to market such plants, provided such plants would have been marketed during the crop year (e.g. poinsettias that are not marketable during their usual and recognized marketing period of November 1st through December 25th);

(2) Failure of the irrigation water supply; or

(3) Failure of, or reduction in, the power supply.

(c) * * *

* * * * *

(2) The inability to market the nursery plants as a result of:

(i) The refusal of a buyer to accept production;

(ii) Boycott; or

(iii) An order from a public official prohibiting sales including, but not limited to, a stop sales order, quarantine, or phytosanitary restriction on sales;

* * * * *

(5) Any cause of loss, including those specified in section 10(a), if the only damage suffered is a failure of plants to grow to an expected size; or

(6) In lieu of section 12(b) of the Basic Provisions, failure to follow recognized good nursery practices.

■ 13. Amend § 457.162 by revising section 11(a)(2) to read as follows:

11. Duties in the Event of Damage or Loss

(a) * * *

(2) You must submit a claim for indemnity to us on our form, not later than 60 days after the date of your loss, but in no event later than 60 days after the end of the insurance period. This requirement will be waived by us if the final adjustment of your claim is totally or partially deferred because we are unable to make an accurate determination of the amount of damage to the insured plants. If within the time frame specified we notify you that we are unable to make an accurate determination of damage on all or some of your damaged plants:

(i) For those damaged plants on which the loss adjustment and claim have not been deferred, you must submit a partial claim within the time frame specified in section 11(a)(2) and we will settle your claim on such plants;

(ii) For those damaged plants on which the loss adjustment and claim have been deferred, we will determine the amount of damage at the earliest possible date but no later than one year after the end of the insurance period for the crop year in which the damage occurred; and

(iii) You must maintain the identity of the plants on which loss adjustment is deferred throughout the deferral period.

* * * * *

■ 14. Amend section 12 of § 457.162 as follows:

■ a. Amend sections 12(a) and (d) by inserting a hyphen between the words ''under'' and ''report'';

■ b. Revise section 12(f); and

■ c. Revise section 12(g).

The revised text reads as follows:

12. Settlement of Claim

* * * * *

(f) If the result of section 12(e) is greater than zero, and subject to the limit of section 12(g);

(1) For other than catastrophic risk protection coverage, your indemnity equals the result of section 12(e), multiplied by your share.

(2) For catastrophic risk protection coverage, your indemnity equals the result of section 12(e) multiplied by fifty-five percent, multiplied by your share.

(g) The total of all indemnities for the crop year will not exceed the amount of insurance, including any peak amount of insurance during the coverage term of the Peak Inventory Endorsement, if this endorsement is elected.

■ 15. Revise section 14 of § 457.152 to read as follows:

14. Written Agreements

(a) In lieu of section 18(a) of the Basic Provisions, you must request in writing a written agreement with the application for the initial crop year, and not later than the cancellation date for each subsequent crop year, except as provided in section 14(c).

(b) In lieu of the requirements of section 18(d) of the Basic Provisions, any written agreement is valid only until the end of the insurance period for the crop year such written agreement applies; and

(c) In lieu of section 18(e) of the Basic Provisions, an application for a written agreement submitted after the date of application for the initial crop year and the cancellation date for all subsequent crop years may be approved if:

(1) You demonstrate your physical inability to have applied timely; and

(2) After physical examination of the nursery plant inventory, we determine the inventory will be marketable at the value shown on the PIVR.

■ 16. Revise section 15 of § 457.162 to read as follows:

15. Examples

Single Unit Example

Assume you have a 100 percent share and the plant inventory value reported

by you is $100,000, and your coverage level is 75 percent. Your amount of insurance is $75,000 ($100,000 × .75). At the time of loss, field market value A is $125,000, and field market value B is $80,000. The under-report factor is .80 ($100,000 divided by $125,000). The deductible percentage is 25 percent (100 − 75), the crop year deductible is $25,000 (.25 × $100,000) and the occurrence deductible is $25,000 (.25 × $125,000 × .80). Your indemnity would be calculated as follows:

Step (1) Determine the under-report factor $100,000 ÷ $125,000 = .80;

Step (2) Field market value A minus field market value B $125,000 − $80,000 = $45,000;

Step (3) The result of step (2) multiplied by the result of step (1) $45,000 × .80 = $36,000;

Step (4) The result of step (3) minus the occurrence deductible $36,000 − $25,000 = $11,000; and

Step (5) Result of step (4) multiplied by your share $11,000 × 1.000 = $11,000 indemnity payment.

Peak Inventory Value Report Example

Assume you have a second loss on the same basic unit. Your amount of insurance has been reduced by subtracting your previous indemnity payment of $11,000 from your amount of insurance ($75,000 − $11,000 = $64,000). Your crop year deductible has been reduced to zero by the previous loss ($25,000 − $36,000, but not less than zero). You purchase a Peak Inventory Endorsement and report $60,000 in inventory. Your peak amount of insurance is your reported inventory times your coverage level ($60,000 × .75 = $45,000). The combined amount of insurance for the coverage term of the peak endorsement is $64,000 + $45,000 = $109,000. Your crop year deductible is increased by $15,000 ($60,000 × .25). At the time of loss, field market value A is $124,000, and field market value B is $58,000. The under-report factor is 1.00 [($160,000 − $36,000)/$124,000]. The crop year deductible is $15,000 (.25 × $60,000) and the occurrence deductible is $15,000 (the lesser of field market value A × .25 or the crop year deductible). Your indemnity would be calculated as follows:

Step (1) Determine the under-report factor $160,000 − $36,000) ÷ $124,000 = 1.00;

Step (2) Field market value A minus field market value B $124,000 − $58,000 = $66,000;

Step (3) The result of step (2) multiplied by the result of step (1) $66,000 × 1.0 = $66,000;

Step (4) The result of step (3) minus the occurrence deductible $66,000 − $15,000 = $51,000; and

Step (5) Result of step (4) multiplied by your share $51,000 × 1.000 = $51,000 indemnity payment.

Your peak amount of insurance is reduced to zero. Your amount of insurance is reduced by the amount the indemnity exceeds the peak amount of insurance. $64,000 − ($51,000 − 45,000) = $64,000 − $6,000 = $58,000.

§ 457.163 [Amended]

■ 17. Amend section 1 of § 457.163 as follows:

■ a. Revise the definitions of ''coverage commencement date,'' ''peak amount of insurance,'' and ''peak inventory value report''; and

■ b. Add a definition of ''peak inventory premium adjustment factor.''

The revised and added text reads as follows:

§ 457.163 Nursery peak inventory endorsement.

* * * * *

1. Definitions

Coverage commencement date. The later of the date you declare as the beginning of the coverage or 30 days after a properly completed Peak Inventory Value Report is received by us.

* * * * *

Peak amount of insurance. The additional inventory value reported on the Peak Inventory Value Report for each basic unit multiplied by your coverage level and by your share.

Peak Inventory Value Report. A report that increases the value of insurable plants over the value reported on the PIVR, declares the coverage commencement and coverage termination dates, and the other requirements of section 6 of the Nursery Crop Insurance Provisions.

Peak inventory premium adjustment factor. A factor calculated by subtracting the monthly proration factor for the month following the month containing the coverage termination date from the proration factor for the month in which coverage commenced. Peak Inventory Endorsements with a coverage termination date during the month of May will have a premium adjustment factor equal to the proration factor for the month containing the coverage commencement date.

* * * * *

■ 18. Amend paragraph 2 of § 457.163 as follows:

■ a. Amend paragraph 2(a) by removing ''7 CFR 457.162'';

■ b. Amend section 2(b) by removing the phrase ''either the limited or'' and adding the word ''an'' in its place;

■ c. Revise paragraph 2(c); and

■ d. Revise paragraph 2(d).

The revised text reads as follows:

2. Eligibility

* * * * *

(c) You must submit a Peak Inventory Value Report, which will serve as the application for coverage under this endorsement.

(1) The Peak Inventory Value Report may contain one or more plant type basic units and each plant type basic unit will be considered a separate Peak Inventory Endorsement.

(2) We may reject the Peak Inventory Value Report if all requirements in this endorsement and the Nursery Crop Insurance Provisions are not met.

(d) You may purchase no more than one Peak Inventory Endorsement for each basic unit during the crop year unless you have suffered insured losses and have restocked your nursery, in which case an additional Peak Inventory Endorsement may be purchased after each insured loss.

■ 19. Amend section 3 of § 457.163 by revising paragraph (a) to read as follows:

3. Coverage

(a) The amount of insurance provided under the Nursery Crop Provisions for each basic unit is increased by the peak amount of insurance for such unit for the coverage term.

* * * * *

■ 20. Amend section 4 of § 457.163 by removing the phrase ''at 12:01 a.m.''

■ 21. Amend section 5 of § 457.163 by revising paragraph (a) and adding an example of a Peak Inventory Endorsement premium calculation at the end of this paragraph to read as follows:

5. Premium

(a) The premium for this endorsement is determined by multiplying the peak amount of insurance by the appropriate premium rate and by the peak inventory premium adjustment factor.

Example of Peak Inventory Endorsement Total Premium Calculation

Assume a grower reports a peak amount of insurance on a basic unit of $100,000 with a 65 percent coverage level and a share of 1.000. The base premium rate is $0.051. The proration factors for the Peak Inventory Endorsement are 0.68 for the month that coverage commenced and 0.52 for the month following the month containing the coverage termination date, as stated in the actuarial documents. The peak

premium adjustment factor is 0.16 (0.68—0.52). The total premium amount for the Peak Inventory Endorsement is $530.40 ($100,000 × 0.65 × 1.000 × $0.051 × 0.16).

* * * * *

■ 22. Amend section 6 of § 457.163 by capitalizing the phrase ''peak inventory value report.''

■ 23. Amend section 7 of § 457.163 by removing the phrase ''the practice'' and adding the phrase ''200 percent of the basic unit'' in its place.

■ 24. Add a new § 457.164 to read as follows:

§ 457.164 Nursery rehabilitation endorsement.

Nursery Crop Insurance Rehabilitation Endorsement

If you elect this endorsement and pay the additional premium designated in the actuarial documents, this endorsement is attached to and made a part of your Nursery Crop Insurance Provisions subject to the terms and conditions herein. In the event of a conflict between the Nursery Crop Insurance Provisions and this endorsement, this endorsement will control.

1. Eligibility

(a) You must have purchased additional coverage under the Nursery Crop Insurance Provisions, and you must comply with all terms and conditions contained in the applicable Nursery Crop Insurance Provisions and endorsements.

(b) All field grown nursery plants insured under the Nursery Crop Insurance Provisions must be insured under this endorsement. Nursery plants produced in standard nursery containers are not covered under this endorsement.

(c) You must elect this endorsement:

(1) At the time of application for the initial crop year your field grown nursery plants will be insured under the Nursery Crop Insurance Provisions; or

(2) By October 1, 2005, for the 2006 crop year and by the sales closing date for each subsequent crop year if your field grown plants are already insured under the Nursery Crop Insurance Provisions.

2. Coverage

(a) This endorsement is only applicable to field grown plants damaged by an insured cause of loss specified in section 10 of the Nursery Crop Insurance Provisions.

(b) Rehabilitation costs covered by this endorsement are limited to expenditures for labor and materials for pruning and setup (righting, propping, and staking).

(c) To be eligible for a rehabilitation payment:

(1) The damaged plants must have a reasonable expectation of recovery based on:

(i) The type of damage (e.g., broken limbs from high winds, trees uprooted by hurricane, etc.);

(ii) The extent of damage (e.g., twenty percent of the limbs broken, half the canopy removed, etc.); and

(iii) Whether the plant can recover to the point it is marketable;

(2) Verifiable records must be provided showing actual expenditures for rehabilitation and such expenditures must be reasonable and customary for the type and extent of damage sustained by the plants;

(3) Rehabilitation procedures must be performed directly following the occurrence of damage and before additional deterioration of the damaged plants occurs;

(4) We must determine it is practical to rehabilitate the damaged plants (It is not practical if the costs of rehabilitation are greater than the value of the plant); and

(5) The total actual rehabilitation costs for each loss occurrence on the basic unit must be at least the lesser of 2.0 percent of field market value A or $5,000.

(d) The maximum amount of each rehabilitation payment for each basic unit will be the lesser of:

(1) Your total actual rehabilitation costs multiplied by the under-report factor contained in the Nursery Crop Insurance Provisions; or

(2) An amount equal to 7.5 percent of the value (based on insurable plant prices determined in accordance with section 6 of the Nursery Crop Insurance Provisions) of all your insurable field grown plants that were rehabilitated subsequent to an insured cause of loss, multiplied by the under-report factor described in the Nursery Crop Insurance Provisions, multiplied by the coverage level percentage you elect, and multiplied by your share. Insurable, rehabilitated plants that have not recovered from damage that occurred prior to attachment of this endorsement will have a reduced value in accordance with section 6(h) of the Nursery Crop Insurance Provisions.

(e) The total of all rehabilitation payments for the crop year for the basic unit will not exceed 7.5 percent of the value (based on insurable plant prices determined in accordance with section 6 of the Nursery Crop Insurance Provisions) of all your insurable field grown plants in such basic unit, multiplied by the under-report factor described in the Nursery Crop Insurance Provisions, multiplied by the coverage level percentage you elect, and multiplied by your share.

3. Cancellation

This endorsement will continue in effect until canceled or coverage under the Nursery Crop Insurance Provisions is cancelled or terminated. This endorsement may be canceled by you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date, contained in the Nursery Crop Insurance Provisions, preceding the crop year for which the cancellation of this endorsement is to be effective.

Signed in Washington, DC, on June 21, 2005.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

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