

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563-AB80

#### Common Crop Insurance Regulations; Nursery Crop Insurance Provisions

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

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Nursery Crop Insurance Provisions to: Make container and field grown plants 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 which will be further divided into basic units by plant type and a basic unit for all liners when additional coverage is purchased; offer one coverage level and price election for each basic unit when additional coverage is purchased; offer optional units by location for field grown plants; allow increases to the plant inventory value report if made on or before August 31st of the crop year; change the provision that precludes acceptance of an application for insurance for any current crop year after May 31st of the crop year; and make other policy changes to improve coverage of nursery plants. FCIC also proposes to amend the Nursery Peak Inventory Endorsement to reflect changes made in the Nursery Crop Provisions and add a new Rehabilitation Endorsement to provide a rehabilitation payment for field grown plants that will recover from an insured cause of loss. The intended effect of this action is to provide policy changes to better meet the needs of the insureds and to restrict the effect of the current Nursery Crop Insurance Provisions and Nursery Peak Inventory Endorsement to the 2005 and prior crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted

until close of business October 8, 2004, and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through October 8, 2004.

**ADDRESSES:** Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133. Comments titled Nursery Crop Insurance Provisions may be sent via the Internet to [DirectorPDD@rm.fcic.usda.gov](mailto:DirectorPDD@rm.fcic.usda.gov), or the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., c.s.t., Monday through Friday, except holidays, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Stephen Hoy, Risk Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, 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 that the expected benefits associated with this proposed rule outweigh costs to the government. The Nursery Policy changes, as proposed, would stimulate sales and encourage nursery growers to purchase buy-up 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 plant inventory value report; and (4) addition of a

Rehabilitation Endorsement. 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 to nursery growers.

Few problems are expected in servicing insurance policies and data reporting systems due to the changes in this proposed rule.

##### Paperwork Reduction Act of 1995

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the information collection and record keeping requirements included in the proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send your written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for RMA, Washington, DC 20503. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public concerning our proposed information collection and record keeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission responses.)

The collections of information for this rule revise the Multiple Peril Crop Insurance Collections of Information 0563-0053, which expire February 28, 2005.

*Title:* Multiple Peril Crop Insurance (Nursery).

*Abstract:* This rule amends the Common Crop Insurance Regulations (7 CFR part 457) by revising the Nursery Crop Insurance Provisions (7 CFR 457.162) and the Nursery Peak Inventory Endorsement (7 CFR 457.163) and by adding a new Nursery Rehabilitation Endorsement at (7 CFR 457.164).

The Nursery Crop Insurance Provisions are revised to: (1) Make container and field grown plants separate crops; (2) provide coverage for plants in containers that are equal to or greater than 1 inch in diameter; (3) provide separate basic units by share which will be further divided into basic units by plant type and a basic unit for all liners when additional coverage is purchased; (4) offer one coverage level and price election for each basic unit when additional coverage is purchased; (5) offer optional units by location for field grown plants; (6) allow increases to the plant inventory value report if made on or before August 31st of the crop year; (7) change the provision that precludes acceptance of an application for insurance for any current crop year after May 31st of the crop year; and (8) make other policy changes to improve coverage of nursery plants.

The Nursery Peak Inventory Endorsement is revised to reflect changes made in the Nursery Crop Provisions and clarify calculation of premium.

A new Nursery Rehabilitation Endorsement is added to provide a rehabilitation payment for field grown plants that are damaged by an insured cause of loss but will recover.

*Purpose:* The purpose of this proposed rule is to provide policy changes to better meet the needs of insureds and to restrict the effects of the current Nursery Crop Insurance Provisions and Nursery Peak Inventory Endorsement to the 2005 and prior crop years.

*Burden statement:* The information that FCIC collects will be used in offering crop insurance coverage, determining program eligibility, establishing an amount of insurance, calculating losses qualifying for a payment, combating fraud, waste, and abuse, etc. The burden hours have increased because FCIC assumes more producers will obtain crop insurance coverage to help protect their investments against risk and producers will be required to provide more documentation and records and notify the insurance provider more often.

*Estimate of Burden:* We estimate that it will take the producer and the insurance provider, including the agent,

an average of 1.9 hours to provide the required information.

*Respondents:* Producers and insurance providers including their agents.

*Estimated annual number of respondents:* 3,886.

*Estimated annual number of responses per respondent:* 6.2.

*Estimated annual number of responses:* 24,096.

*Estimated total annual burden on respondents:* The total public burden for this proposed rule is estimated at 7,313 hours.

*Record keeping requirements:* FCIC requires complete records of shipping, sale, or other disposition of all the insured crop on the unit for three years after the end of the crop year. However, these records are retained as part of the normal business practice and FCIC's requirement does not place additional burden on insured producers. Therefore, FCIC is not estimating burden related to this record keeping requirement.

#### **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**

The policies contained in this rule do not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

#### **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 proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. This rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. If FCIC takes any specific action under this policy, the administrative appeal provisions published at 7 CFR part 11 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**

FCIC proposes to amend 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 adding a new Nursery rehabilitation endorsement at 7 CFR

457.164. The provisions will be effective for the 2006 and succeeding crop years. The changes to the provisions for insuring nursery production are as follows:

*Section 457.162 Nursery Crop Insurance Provisions*

1. Definitions of “American Standard for Nursery Stock,” “container grown,” “crop value,” “fabric grow bag,” “FCIC,” “good nursery practices,” “liners,” “monthly proration factors,” “nursery crop,” “nursery plants,” “survival factor,” and “wholesale” are added for clarification. The definitions of “amount of insurance,” “occurrence deductible,” and “under report factor” are revised to reflect the removal of the term “practice.” The definition of “under report factor” is also revised to exclude any payments made under the Rehabilitation Endorsement when subtracting previous losses from the crop value. The definition of “practice value” is renamed “basic unit value” because container grown plants and field grown plants are separate insurable crops and not a separate practice. The definition of “field grown” is revised to clarify that in-ground fabric grow bags and balled and burlapping are not artificial root containment devices and plants grown in containers that allow the plants to root in the ground are considered field grown. The definitions of “field market value A” and “field market value C” are revised to clarify that the total number of liner plants applicable to each insurable plant and price listed in the Eligible Plant List is multiplied by the survival factor for liners. The definition of “field market value C” is also revised to specify that the value is based on the insurable plants within the crop immediately prior to the occurrence of any loss. The definition of “in-ground fabric bag” is removed because it has been combined with the definition of “fabric grow bag.” The definition of “plant price schedule” is revised to clarify that the schedule is an actuarial document. The definition of “practice” is removed because container grown plants and field grown plants are separate crops and no longer separate practices. The definition of “standard nursery containers” is revised to clarify that fabric grow bags are insurable containers and to provide insurability for plants in containers that are equal to or greater than 1 inch (reduced from 3 inches) in diameter at the widest point of the container interior to allow most liners to be insurable. Trays that contain 288 or fewer cells will be considered standard nursery containers.

2. Section 2(a)—Remove provisions that provide basic units by container

grown and field grown practices because container grown plants and field grown plants will be insured as separate crops and not practices. New provisions are added to allow basic units by share to be further divided into additional basic units for additional coverage policies by: (1) Plant type, if the plants are not liners, and (2) all insurable liners. Producers with catastrophic risk protection (CAT) coverage will continue to be limited to basic units by share. Provisions relating a basic unit structure’s relationship to an optional unit structure are moved to section 2(b).

3. Section 2(b)—Clarify that the basic unit will be used to establish the amount of insurance, crop year deductible, premium, and the total amount of indemnity payable under the policy. The insured will be subject to the under report factor if, at the time of loss, the aggregate value of the plants in all basic units exceeds the “crop value.” Provisions that provide optional units by plant type are removed because plant types will now be insured as separate basic units. Provisions for optional unit division are moved to section 2(d).

4. Section 2(c)—Clarify that the listed plant types are insurable. The reference to “Other plant types listed in the Special Provisions” is removed as an insurable type because the listed types cover all wholesale nursery plants, so reference to “other types” is not necessary.

5. Add a new section 2(d), and redesignate the following section, to provide optional units for field grown plants if each optional unit is located on non-contiguous land. Optional units are limited to field grown plants to avoid the potential for shifting of container grown plants between growing locations to facilitate losses.

6. Section 3(b)—Revise the provisions to allow insureds with additional coverage to select a single price election and coverage level for each basic unit (plant type) under their nursery crop. Insureds who select CAT coverage for one plant type or for liners must select CAT coverage for all plant types and all liners. The ability to select a single price election and coverage level for each plant type will allow insureds, who have purchased additional coverage, to structure their amount of coverage based on the perceived risk associated with each plant type.

A contract was recently awarded by RMA to evaluate the need for premium rate adjustments to reflect the additional risks associated with this change and the other proposed changes contained in this rule. RMA is aware that potential risks may vary by plant type. Based on

the results of the contracted study and other available information, RMA anticipates that it will be necessary to initially apply a surcharge to the current premium rates to reflect these risk variations. As data are collected, RMA will continue to make premium rate adjustments based on actual insurance experience. Public comments related to risk variability by plant type and subsequent premium rate adjustments are welcomed. RMA will not publish a final rule prior to completion of the contracted study.

7. Add a new section 3(c), and redesignate the following sections, to clarify that changes to the price election and coverage level will not be made after the date of application for new policies and after September 30th for carryover policies. The sales closing date is removed to allow applications for coverage to be submitted throughout the crop year. Premium will be prorated based on the number of months insured during the crop year.

8. Add a new section 3(f) to clarify that for subsequent crop years, following the year of application, if the insured increases the coverage level or price election on a basic unit, coverage will attach to the unit the later of October 1st or 30 days after the date the request is submitted unless the increase is rejected.

9. Section 6(b)—Revise this section to now require all producers to submit a plant inventory value report each crop year by September 1st prior to the start of the crop year. The insured’s policy will be canceled for the subsequent crop year if a plant inventory value report is not submitted by September 1st. This change is necessary because the inventory values of most nursery growers change from one crop year to the next. Therefore, reporting is required for each crop year to accurately establish coverage and premium amount of each insured. If an insured’s policy is canceled due to failure to provide a plant inventory value report, the insured may still submit a new application for coverage for the crop year for which the policy was canceled. Coverage will attach 30 days after the date the crop insurance agent receives the application and plant inventory value report, unless the insurance provider determines the inventory is not acceptable.

10. Section 6(c)—Change the term “practice value” to “basic unit value” since the term “practice” is no longer applicable. Clarify that failure to provide requested documentation on the plant inventory value report will result in denial of insurance, and misreporting on the plant inventory value report will

result in denial of an indemnity for the crop year although full premium will still be owed. The requirement that producers with CAT level policies report previous plant sales on their plant inventory value report is removed. Documentation of previous plant sales is no longer required because coverage is based on the value of insurable plants declared on the insured's plant inventory value report and is not restricted to limitations over previous years' sales.

11. Section 6(e)—Clarify that the price for each plant and size listed on the insured's plant inventory value report is the lower of the Plant Price Schedule price or the lowest wholesale price listed in the insured's nursery catalog or price list. The amount of assumed liability is not in excess of plant values contained in the Plant Price Schedule.

12. Add a new section 6(f), and redesignate the following sections, to clarify that prices for insurable plants that are damaged prior to the attachment of insurance coverage will be reduced for inventory reporting purposes to reflect their true values.

13. Redesignated section 6(g)—Change the final plant inventory value report revision date from May 31st to on or before August 31st to allow the report to be increased throughout the crop year. A new provision is added to clarify that an inspection is required if the plant inventory value is increased 50 percent or more of the previous value on a policy basis.

14. Redesignated section 6(h)—Change "practice value" to "basic unit value" since the term "practice" is no longer applicable.

15. Redesignated section 6(i)—Remove the limitations for catastrophic insurance coverage that specify a producer's plant inventory value cannot exceed the lesser of the actual value based on prices contained in the Plant Price Schedule or 150 percent of previous years' sales for container grown plants or 250 percent of previous years' sales for field grown plants unless a waiver is received. Although a waiver is no longer required, the report must accurately reflect insurable plant inventory and valuations based on the lower of the Plant Price Schedule price or the lowest wholesale price listed in the insured's catalog or price list. Insureds with catastrophic risk protection coverage or additional coverage are still permitted to increase their plant inventory value during the crop year, subject to company approval, by submitting a revised plant inventory value report. New provisions are added to clarify that a plant in an oversized container will be valued as if the plant

was in an appropriate sized container and each cell in a multiple cell container is considered a separate container for insurability and valuation purposes.

16. Add a new section 6(j) to incorporate into the nursery policy that two copies of the insured's most recent wholesale catalog or price list, that are in accordance with stated requirements, must be submitted at the time of application and on or before September 1st for each crop year following the year of application. Catalogs from each insured nursery are required to establish insurable plant prices in the event of a loss and to update the Plant Price Schedule each crop year. This requirement was previously in the Special Provisions. Failure to provide the wholesale catalog or price list, or if they are not in accordance with FCIC procedure, will result in no indemnity being due for the crop year.

17. Section 7(a)—Clarify that premium is determined by multiplying the amount of insurance by the appropriate premium rate and the monthly proration factor contained in the actuarial documents.

18. Add a new section 7(c), and redesignate the following section, to specify that the insured's premium amount is due and must be paid at the time of application if the application for the crop year is received on or after July 1st of that same crop year. This is the same date that premium is due for all other nursery policies. Failure to pay the premium at the time of application, if the application is received on or after July 1st, will result in no insurance coverage for the crop year.

19. Section 8—Clarify in the introductory paragraph that the insured nursery plant inventory is all the nursery plants in the county for each nursery crop insured since container grown and field grown are now considered as separate crops.

20. Section 8(i)—Clarify that plants being grown solely for harvest of buds, flowers, or greenery are not insurable under the Nursery Crop Provisions.

21. Section 8(j)—Revise the provision to allow harvest of fruits or nuts provided the plants are primarily intended for sale while in the nursery. The removal of fruits or nuts from nursery plants does not adversely affect plant values. Therefore, insurability should not be restricted if the plants are being grown primarily for sale.

22. Section 9(a)—Remove the requirement that an application for insurance must be submitted on or before May 31st for coverage to attach during the current crop year. This change provides insureds with greater

control over their risk management plan by allowing crop insurance coverage to be purchased throughout the entire crop year. Since there is a 30 day waiting period before coverage begins, if an application is received after August 31, coverage will not begin until the following crop year. Provisions pertaining to coverage for the 1999 crop year are no longer applicable and are removed.

23. Remove section 10(a)(7) because it provided insurance coverage for a delay in marketability which was vague and open to interpretation. In addition, section 10(a) specifies causes of loss on which insurance coverage is provided. Marketing impacts are a result rather than a cause of loss. Therefore, the provision addressing coverage of loss in plant value due to marketing ability is moved to new section 10(b).

24. Add a new section 10(b), and redesignate the following sections, to provide coverage for loss in plant values because of an inability to market plants, if such plants would have been marketed during the crop year, due to an insured cause of loss that occurs within the insurance period. Changing the coverage criteria from delayed marketing to inability to market provides a more definitive guideline for coverage of plant valuations based on marketing ability. Delayed marketing can result in highly variable plant valuations that may be difficult to determine accurately. Inability to market can be ascertained more accurately and generally results in plants having little or no value.

25. Redesignated section 10(c)—Clarify that insurance is not provided against causes of loss specified in sections 12(a) and (c) through (e) of the Basic Provisions. Section 12(b) of the Basic Provisions excludes insurability of a loss due to failure to follow "good farming practices." However, these Nursery crop insurance provisions use the term "good nursery practices" in lieu of the term "good farming practices."

26. Redesignated section 10(c)(3)—Clarify that insurance is not provided against any loss caused by the inability to market the nursery plant as a result of a refusal of a buyer to accept production, boycott, or an order from a public official prohibiting sales including but not limited to, a stop sales order, quarantine, or phytosanitary restriction on sales.

27. Redesignated section 10(c)(6)—Revise the provision to clarify that no cause of loss will be covered if the damage suffered is only a failure of the plants to grow to an expected size. The reference to drought in this provision

was confusing because nursery plants must be irrigated unless the Special Provisions allow coverage of non-irrigated, field grown plants.

28. Add a new section 10(c)(7) to clarify that failure to follow recognized good nursery practices is not a covered cause of loss.

29. Section 11(a)(2)—Clarify that submission of a claim for indemnity may be waived if final loss adjustment is partially or totally deferred because the adjuster cannot make an accurate determination of amount of damage to the insured plants and what will occur if the claim is deferred. A deferred claim may be required to allow nursery plants to go through a dormancy period followed by a period of growth. The deferral period will result in more precise information on both the severity and amount of damage thereby improving the accuracy of the loss adjustment process.

30. Section 12(g)—Revise the provision to specify that the total of all indemnities and rehabilitation payments cannot exceed the amount of insurance, including any peak amount of insurance during the coverage term of the Peak Inventory Endorsement, to ensure that the total amounts paid in any crop year do not exceed the value of the insurable plants.

#### *Section 457.163 Nursery Peak Inventory Endorsement*

1. The definition of “peak amount of insurance” is revised to coincide with the change that allows insureds with additional coverage to select a single coverage level and price election for each basic unit (*i.e.* for each plant type and for all liners) in the Nursery Crop Provisions. A definition of “premium adjustment factor” is added to clarify calculation of the factor.

2. Section 2(b)—Revise the provision to remove the term “limited” because all coverage in excess of catastrophic risk protection is now termed “additional coverage.”

3. Section 2(d)—Revise the provision to reflect the removal of the term “practice” and clarify that an additional Peak Inventory Endorsement may be purchased after each insured loss if the nursery is restocked.

4. Add a new section 3(c) to clarify that a Peak Inventory Endorsement can only be used to temporarily increase the value reported on the insured’s initial or revised plant inventory value report for the crop year and cannot be used in lieu of a revised plant inventory value report to provide coverage of insurable plants that are added because of physical expansion of the nursery facilities (*e.g.* a newly acquired structure or location).

5. Section 5(a)—Clarify that the premium for this endorsement is calculated by multiplying the peak amount of insurance by the appropriate premium rate and the premium adjustment factor. An example of a Peak Inventory Endorsement premium calculation is added for clarity.

6. Section 7—Change “practice value” to “basic unit value” since the term “practice” is no longer applicable.

#### *Section 457.164 Nursery Rehabilitation Endorsement*

This endorsement provides a rehabilitation payment for field grown plants that are damaged by an insured cause of loss but will recover to their pre-damaged stage of growth if appropriate rehabilitation measures are taken (*i.e.* pruning and setup) and rehabilitation costs equal or exceed the established trigger amount. Nursery growers who purchase the endorsement, have insurable plant damage, and qualify for a rehabilitation payment have an incentive to take necessary procedures to enhance the recovery and subsequent value of damaged plants. This payment will be the lesser of the actual cost of rehabilitation of the insurable damaged plants or 7.5 percent of the value (based on the lower of the Plant Price Schedule price or the lowest wholesale price listed in the insured’s nursery catalog or price list) of all insurable, rehabilitated plants in each basic or optional unit at the time damage occurred, multiplied by the under report factor, multiplied by the coverage level, multiplied by the price election, and multiplied by the share. Based on reported rehabilitation costs of field grown material, calculation of the rehabilitation payment using 7.5 percent of the value of the insurable damaged plants is an approximation of such costs. Actual costs incurred by growers during the rehabilitation process must be verifiable through receipts and records.

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

Crop insurance, Nursery.

#### **Proposed Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 the Common Crop Insurance Regulations effective for the 2006 and succeeding crop years, to read as follows:

#### **PART 457—COMMON CROP INSURANCE REGULATIONS;**

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

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

2. Section 457.162 is amended as follows:

a. Revise the first sentence of the introductory text.

b. In section 1, remove the definitions of “In-ground fabric bag,” “practice value” and “practice;” add definitions of “American Standard for Nursery Stock,” “basic unit value,” “container grown,” “crop value,” “fabric grow bag,” “FCIC,” “good nursery practices,” “liners,” “monthly proration factors,” “nursery crop,” “nursery plants,” “survival factor” and “wholesale;” and revise the definitions of “amount of insurance,” “field grown,” “field market value A,” “field market value C,” “occurrence deductible,” “plant price schedule,” “standard nursery containers,” and “under report factor.”

c. Revise section 2.

d. Revise section 3(b).

e. In section 3 redesignate paragraphs (c) and (d) as paragraphs (d) and (e) respectively.

f. Add new sections 3(c) and (f).

g. In section 6 redesignate paragraphs (f), (g), and (h) as paragraphs (g), (h), and (i) respectively.

h. Revise sections 6(b), (c), (e), and newly redesignated paragraphs (g), (h), and (i).

i. Add a new section 6(f).

j. Add a new section 6(j).

k. Revise section 7(a).

l. Redesignate section 7 paragraph (c) as paragraph (d).

m. Add a new section 7(c).

n. Revise the introductory paragraph of section 8.

o. Revise section 8(i) and (j).

p. Revise section 9(a).

q. Remove section 10(a)(7).

r. Redesignate section 10(b) as 10(c).

s. Add a new section 10(b).

t. Revise newly redesignated section 10(c) introductory text and paragraphs (3), (6), and add paragraph (7).

u. Revise section 11(a)(2).

v. Revise section 12(g).

The revisions and additions to § 457.162 read as follows:

#### **§ 457.162 Nursery Crop Insurance Provisions.**

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

\* \* \* \* \*

##### 1. *Definitions.*

\* \* \* \* \*

*American Standard for Nursery Stock.* A publication of the American Association of Nurserymen 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 is multiplied by the coverage level percentage you elect, multiplied by your price election, and multiplied by your share.

*Basic unit value.* The full value of all insurable plants in each basic unit on your plant inventory value report including any revision that increases the value of your insurable plant inventory.

*Container grown.* Nursery plants planted and grown in standard nursery containers. Nursery plants in standard nursery containers that are placed in the ground, either directly or when placed in pots in the ground (*i.e.* pot-in-pot), are considered as container grown plants.

*Crop value.* The sum of all basic unit values for the crop reported on all plant inventory value reports, including any revised reports and any peak inventory value reports during the coverage term of the Peak Inventory Endorsement.

\* \* \* \* \*

*Fabric grow bag.* (root control 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. In-ground fabric grow bags and balled and burlapping are not considered artificial root containment devices. Plants that are grown in the field in containers that allow the plants to root 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 prices contained in the Plant Price Schedule, in the basic or optional unit, as applicable, 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 for the purpose of determining whether you are entitled to an indemnity for insured losses in the optional or basic unit, as applicable. The total value of undamaged liners is multiplied by the survival factor for the purpose of determining the value of undamaged insurable plants.

\* \* \* \* \*

*Field market value C.* The value of undamaged insurable plants, based on the prices contained in the Plant Price Schedule for insurable plants within the crop immediately prior to the occurrence of any loss as determined by our appraisal. This value is used to calculate the actual value of the plants in the crop at the time of loss to ensure that you have not under reported your plant values. The total value of undamaged liners is multiplied by the survival factor for the purpose of determining the value of undamaged insurable plants.

*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 county for nursery plants to make normal progress toward the stage of growth at which marketing can occur and generally recognized by agricultural experts for the area as compatible with the nursery plant production practices and weather conditions in the county. 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, including trays containing 288 or fewer individual cells, 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 the entire crop year.

\* \* \* \* \*

*Nursery crop.* All eligible nursery plants:

- (1) Grown in standard nursery containers; or
- (2) Field grown.

*Nursery plants.* Plants grown in wholesale nurseries.

*Occurrence deductible.* (1) This deductible allows a smaller deductible than the crop year deductible to be used when:

- (i) Inventory values are less than the reported basic unit value; or
  - (ii) You elected optional units, if applicable.
- (2) The occurrence deductible is the lesser of:

- (i) The deductible percentage multiplied by field market value A multiplied by the under report factor; or
- (ii) The crop year deductible.

*Plant price schedule.* A schedule of insurable plant prices published by FCIC in the actuarial documents in electronic format that establishes the value of undamaged insurable plants and the maximum amount we will pay for damaged insurable plants. A paper copy is available from your crop insurance agent.

\* \* \* \* \*

*Standard nursery containers.* Rigid containers not less than 1 inch in diameter at the widest point of the container interior, including trays that contain 288 or fewer individual cells, above-ground fabric grow bags, and other types of containers specified in the Special Provisions that are appropriate in size and provide adequate drainage that is appropriate for the plant. In-ground fabric grow bags, burlap, and trays (flats) without individual cells are not considered standard nursery containers.

\* \* \* \* \*

*Survival factor.* A factor shown on the actuarial documents 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 crop, the under report factor is the lesser of: 1.000; or the crop value minus the total of all previous losses, as adjusted by any previous under report factor, divided by field market value C. Payments made under the Rehabilitation Endorsement will not be considered a previous loss when calculating the under report factor.

*Wholesale.* To sell:

- (a) In large quantities;
- (b) at a price below that offered on low-quantity sales; and
- (c) to retailers or commercial users or other end-users for business purposes (*e.g.*, sales to landscape contractors and commercial fruit producers.)

2. *Unit Division.*

(a) If you elect additional coverage, a basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by:

- (1) Each insurable plant type designated in section 2(c) if the plants are not liners; and
  - (2) All insurable liners (inclusive of all insurable plant types).
- (b) Although the basic unit may be divided into optional units in

accordance with section 2(d), 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. If, at the time of loss, the aggregate value of the plants in all your basic units exceeds your crop value, you will be subject to the under report factor.

(c) 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; and
- (13) Foliage.

(d) In lieu of the optional unit provisions in the Basic Provisions, if you elect additional coverage, and for an additional premium, field grown inventory that would otherwise be one basic unit may be divided into optional units by growing location if each location is located on non-contiguous land.

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 only one price election and coverage level for each basic unit insured under this policy if additional coverage is selected. If you select catastrophic risk protection coverage, you must select catastrophic risk protection coverage for all plant types and all liners insured under your nursery crop policy.

(c) In lieu of the definition of "sales closing date" in section 1 of the Basic Provisions and in lieu of section 3(b) of the Basic Provisions, changes to the price election and coverage level that would become effective for the current crop year are limited as follows:

- (1) For new policies, changes will not be made for the crop year after the date of the application; and
- (2) For carryover policies, changes will not be made for the crop year after September 30th.

\* \* \* \* \*

(f) For subsequent crop years, following the year of application, if you increase your coverage level or price

election, insurance will attach at the increased level or election on the basic units to which the increase applies on October 1st or 30 days after the date you submitted your request, whichever is later, unless we reject the proposed increase because a loss occurs within 30 days of the date the request is made.

\* \* \* \* \*

6. Plant Inventory Value Report.

\* \* \* \* \*

(b) You must submit a plant inventory value report to us with your application and for each subsequent crop year not later than September 1 prior to the start of the crop year. If you fail to provide a plant inventory value report by September 1, we will cancel your policy for the subsequent crop year. You may submit a new application for coverage for the crop year for which your policy was canceled. Coverage will attach 30 days after your crop insurance agent receives the application and the plant inventory value report signed by you, unless we notify you that your inventory is not acceptable.

(c) The plant inventory value report must include all growing locations, the basic unit value of each basic unit, and your share. At our option, you will be required to provide documentation in support of your plant inventory value report, including, but not limited to, a detailed plant inventory listing that includes the name, the number, and the size of each plant; sales and purchases of plants for the 3 previous crop years; and your ability to properly obtain and maintain nursery stock. Failure to provide such documentation will result in denial of insurance. Misreporting of any material information on the plant inventory value report will result in denial of any indemnity due for the crop year and because such denial is based on a breach of policy, the full premium will still be owed.

\* \* \* \* \*

(e) Your plant inventory value report must reflect your insurable nursery plant inventory value. The price for each plant and size listed on your plant inventory value report 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(j). In no instance will we be liable for plant values greater than those contained in the Plant Price Schedule.

(f) The applicable price for insurable plants damaged prior to the attachment of insurance coverage will be reduced for inventory reporting purposes if we accept such plants for insurance coverage, or they will be removed from the plant inventory value report if they

are not accepted. We will calculate the insurable value of damaged plants that are accepted for coverage as follows:

- (1) Determine the number of months required for the plant to reach the stage of growth at which damage occurred;
- (2) Determine the number of months required for the plant to recover to the stage of growth at which damage occurred;
- (3) Divide 6(f)(2) by 6(f)(1);
- (4) Subtract the results of 6(f)(3) from 1.00; and
- (5) Multiply the results of 6(f)(4) by the insurable plant price.

(g) You may revise your plant inventory value report on or before August 31st to increase the reported inventory value for the crop year. Any revision must be made in writing. An inspection will be performed when the value shown on the plant inventory value report is increased 50 percent or more from the previous values on a policy basis. At our discretion, we may inspect the inventory if an increase of less than 50 percent is reported on a policy basis. Your revised plant inventory value report 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. We will reject any requested increase if a loss occurs within 30 days of the date the request is made.

(h) You must report the full value of your basic unit value in accordance with section 6(e). Failure to report the full value of each basic unit value will result in the reduction of any claim in accordance with section 12(d).

(i) 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.)

(j) You must submit two copies of your nursery's most recent wholesale catalog or price list at the time of application and on or before September 1st for each crop year following the year of application. If your nursery publishes more than one edition of its wholesale catalog or price list offering different plants (e.g., a fall plant catalog and a spring plant catalog), you must submit two copies of the most recent edition of

each at the time the initial plant inventory value report is submitted. If you fail to provide copies of your wholesale catalog or price list or they are not in accordance with FCIC's procedures, no indemnity will be payable for the crop year. At a minimum, your wholesale catalog or price list must:

- (1) Be legible;
- (2) Contain the name, address, and phone number of your nursery; and
- (3) List each plant's name (scientific or common), size, and wholesale price.

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 and the monthly proration factor contained in the actuarial documents, if applicable.

\* \* \* \* \*

(c) In lieu of section 7(a) of the Basic Provisions, if you apply for insurance on or after July 1st, the premium for the partial crop year will be due and must be paid at the time of application. Failure to pay the premium at the time of application will result in no insurance, and no indemnity being owed, for the crop year.

\* \* \* \* \*

8. Insured Plants.

In lieu of the provisions of section 8 and 9 of the Basic Provisions, the insured nursery plant inventory will be all insurable nursery plants in the county for each insured nursery crop that:

\* \* \* \* \*

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

(j) Produce edible fruits or nuts provided the plants are intended for sale. (If intended for harvest of the fruits or nuts and not for sale, the nursery plants are not insurable.)

9. Insurance Period

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

(1) For the year of application, 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;

(2) For subsequent crop years, the insurance period begins at 12:01 a.m. each October 1st; and

(3) If you apply for coverage after August 31st, coverage will not begin until the next crop year, subject to the 30 day delay specified in this section.

\* \* \* \* \*

10. Causes of Loss.

\* \* \* \* \*

(b) Insurance is provided against a loss in plant values because of an inability to market such plants, if such plants would have been marketed during the crop year, due to a cause of loss specified in section 10(a)(1) through (6) that occurs within the insurance period. For example, coverage is provided for reduced value, due to an insured cause of loss, if a plant is not marketable during its usual and recognized marketing period (e.g., poinsettias with a marketing window between November 1st and December 25th).

(c) In addition to the causes of loss excluded in sections 12(a) and (c) through (e) of the Basic Provisions, we do not insure against any loss caused by:

\* \* \* \* \*

(3) The inability to market the nursery plants as a result of refusal of a buyer to accept production, boycott, or an order from a public official prohibiting sales including, but not limited to, a stop sales order, quarantine, or phytosanitary restriction on sales.

\* \* \* \* \*

(6) 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.

(7) Failure to follow recognized good nursery practices.

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 amount of damage at the earliest possible date but no later than 1 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.

\* \* \* \* \*

12. Settlement of Claim.

\* \* \* \* \*

(g) The total of all indemnities and rehabilitation payments 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.

\* \* \* \* \*

3. Section 457.163 is amended as follows:

a. In section 1, revise the definition of "peak amount of insurance" and add a definition for "premium adjustment factor";

b. Revise sections 2(b) and (d);

c. Add a new section 3(c);

d. Revise section 5(a); and

e. Revise section 7.

The additions and revisions read as follows:

§ 457.163 Nursery peak inventory endorsement.

\* \* \* \* \*

1. Definitions

\* \* \* \* \*

*Peak amount of insurance.* The additional inventory value reported on the peak inventory value report for each basic unit multiplied by your coverage level, price election, and share.

\* \* \* \* \*

*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 that coverage commenced. Peak inventory endorsements with a coverage termination date during the month of September will have a premium adjustment factor equal to the proration factor for the month containing the coverage commencement date.

\* \* \* \* \*

2. Eligibility

\* \* \* \* \*

(b) You must have elected additional coverage.

\* \* \* \* \*

(d) You may purchase no more than two Peak Inventory Endorsements 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 and is limited to the amount of the restock.

3. Coverage

\* \* \* \* \*



(c) This endorsement can only be used to temporarily increase the value reported on your initial or revised plant inventory value report for the crop year. If you expand your nursery growing facilities (e.g. newly acquired growing location or structure), you must revise your plant inventory value report.

\* \* \* \* \*

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 premium adjustment factor.

Example of Peak 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, a price election of 1.00, and a share of 1.000. The base premium rate is \$0.051. The proration factors for the Peak Endorsement starting month and month following the month containing the coverage termination date are 0.68 and 0.52, respectively, as stated in the actuarial documents, which results in a premium adjustment factor of 0.16 (0.68—0.52). The total premium amount for the Peak Endorsement is \$530.00 (\$100,000 × 0.65 × 1.00 × 1.000 × \$0.051 × 0.16).

\* \* \* \* \*

7. Liability limit.

The peak amount of insurance is limited to the basic unit value you declare under the Nursery Crop Insurance Provisions.

4. Add § 457.164 to read as follows:

§ 457.164 Nursery rehabilitation endorsement.

Nursery Crop Insurance

Optional Rehabilitation Endorsement

In return for payment of 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) You must elect this endorsement 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 by

October 1st if your field grown plants are already insured under the Nursery Crop Insurance Provisions.

(c) 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.

2. Coverage.

(a) Rehabilitation costs covered by this endorsement are limited to expenditures for labor and materials for pruning and setup (righting, propping, and staking) of field grown plants requiring rehabilitation that:

(1) Are damaged by an insured cause of loss specified in section 10 of the Nursery Crop Insurance Provisions; and

(2) Have a reasonable expectation of recovery.

(b) A rehabilitation payment may be made under this endorsement only if:

(1) Verifiable records are provided showing actual expenditures for rehabilitation;

(2) Rehabilitation procedures are performed directly following occurrence of damage before additional deterioration of the damaged plants occurs;

(3) We determine it is practical to rehabilitate the damaged plants; and

(4) The total actual rehabilitation costs for the basic or optional unit is, at least, the lesser of 2.0 percent of field market value A or \$5,000.

(c) The maximum amount of the rehabilitation payment for each basic or optional 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 the lower of the Plant Price Schedule price or the lowest wholesale price listed in the insured's nursery catalog or price list) 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, multiplied by your price election, 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(f) of the Nursery Crop Insurance Provisions.

(d) Only one rehabilitation payment will be paid on insurable plants that are rehabilitated on each basic or optional unit during any crop year regardless of

the number of losses that occur on the unit during the insurance period.

3. Cancellation.

This endorsement will continue in effect until canceled. It 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 August 3, 2004.

Ross J. Davidson, Jr.,  
Manager, Federal Crop Insurance Corporation.

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1775, 1777, 1778, and 1780

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1942

Rural Housing Service

7 CFR Part 3570

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4274

RIN 0572-AB96

Definition Clarification of State Nonmetropolitan Median Household Income (SNMHI)

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), and the Rural Utilities Service (RUS), agencies delivering the United States Department of Agriculture's Rural Development Housing, Business, and Utilities Programs, are proposing to amend their regulations to reflect the clarification of the definition of SNMHI. The definition will in essence state "the median